

GARRISON DIVERSION OVERVIEW COMMITTEE

The Garrison Diversion Overview Committee originally was a special committee created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. In 1981 the 47th Legislative Assembly enacted North Dakota Century Code (NDCC) Section 54-35-02.7, which statutorily created the committee. The committee is responsible for legislative overview of the Garrison Diversion Unit Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Under NDCC Section 54-35-02.7, the committee consists of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

In addition to its statutory responsibilities, the Legislative Council assigned to the committee Senate Concurrent Resolution No. 4041, which directed a study of the establishment of watershed districts to manage water based on watershed boundaries.

Committee members were Representatives Pam Gulleson (Chairman), Merle Boucher, John Dorso, Eugene Nicholas, Alice Olson, and Mike Timm and Senators Aaron Krauter, Tim Mathern, Gary J. Nelson, David E. Nething, John T. Traynor, and Terry M. Wanzek. Senator William G. Goetz, prior to his resignation on July 10, 1997, and Representative Tom D. Freier, prior to his resignation on April 6, 1998, were members of the committee.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

HISTORY OF THE PROJECT

Pick-Sloan Plan

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal Flood Control Act of 1944 (Pub. L. 78-534; 57 Stat. 887). The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in the state were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage, Garrison Diversion Unit, in August 1965 (Pub. L. 89-108; 83 Stat. 852).

Garrison Diversion Unit

The first detailed investigations of the Garrison Diversion Unit were completed in 1957 and involved a proposed development of 1,007,000 acres. The initial stage of the Garrison Diversion Unit provided for irrigation service to 250,000 acres in the state. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris, James, and Sheyenne Rivers and the Devils Lake Basin. The plan also anticipated water service to 14 cities, provided for several recreation areas, and provided for a 146,530-acre wildlife plan to mitigate wildlife habitat losses resulting from project construction and to enhance other wetland and waterfowl production areas.

Under the 1965 authorization, the Snake Creek Pumping Plant would lift Missouri River water from Lake Sakakawea into Lake Audubon, an impoundment adjacent to Lake Sakakawea. From Lake Audubon the water would flow by gravity through the 73.6-mile McClusky Canal into Lonetree Reservoir, situated on the headwaters of the Sheyenne River. The Lonetree Reservoir would be created by construction of Lonetree Dam on the upper Sheyenne River, Wintering Dam on the headwaters of the Wintering River, and the James River dikes on the headwaters of the James River. Lonetree Reservoir would be situated so that water could be diverted by gravity into the Souris, Red, and James River Basins and the Devils Lake Basin.

The Velva Canal would convey project water from the Lonetree Reservoir to irrigate two areas totaling approximately 116,000 acres. The New Rockford Canal would convey project water for irrigation of approximately 21,000 acres near New Rockford and to deliver water into the James River Feeder Canal for use in the Oakes-LaMoure area. The Warwick Canal, an

extension of the New Rockford Canal, would provide water for irrigation in the Warwick-McVile area and provide water for the restoration of the Devils Lake chain.

The United States Bureau of Reclamation has overall responsibility for operation and maintenance of the Garrison Diversion Unit and will operate and maintain all project works during the initial period following completion of construction.

A number of concerns have slowed or halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Unit would allow transfer of foreign species of fish and other biota to the detriment of Canadian waters in violation of the Boundary Waters Treaty of 1909.
2. Numerous problems concerning wildlife mitigation and enhancement lands.
3. Legal suits brought by groups, such as the National Audubon Society, seeking to halt construction of the Garrison Diversion Unit by claiming that the project violates the National Environmental Policy Act and to enforce a stipulation between the United States and Audubon to suspend construction until Congress reauthorizes the Garrison Diversion Unit.

Canadian Concerns

Canadian interest in the Garrison Diversion Unit has centered on concerns that because the Garrison Diversion Unit involves a transfer of water from the Missouri River to the drainage basins of the Souris and Red Rivers, the return flows entering Canada through the Souris and Red Rivers would cause problems with regard to water quality and quantity.

In 1973 the Canadian government requested a moratorium on all further construction of the Garrison Diversion Unit until a mutually acceptable solution for the protection of Canadian interests under the Boundary Waters Treaty of 1909 was achieved. The United States government responded by stating its recognition of its obligations under the Boundary Waters Treaty and by adopting a policy that no construction affecting Canada would be undertaken until it was clear that these obligations would be met.

During 1974 several binational meetings of officials were held to discuss and clarify Canadian concerns over potential degradation of water quality. An agreement was reached in 1975 between the governments of Canada and the United States to refer to the International Joint Commission the matter of potential pollution of boundary waters by the Garrison Diversion Unit.

The International Joint Commission created the International Garrison Diversion Study Board. The board concluded that the Garrison Diversion Unit would have adverse impacts on water uses in Canada, including adverse effects on flooding and water quality. The board recommended that any direct transfer by the Garrison Diversion Unit of fish, fish eggs, fish larvae, and fish parasites be eliminated by adopting a closed system concept and the installation and use of a fish screen structure.

In August 1984 representatives of Canada and the United States announced a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remained firmly opposed to the construction of any features that could affect waters flowing into Canada.

Garrison Diversion Unit Commission

The water and energy appropriations bill signed on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit.

The Secretary of the Interior appointed a 12-member Garrison Diversion Unit Commission to review the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of the state and to propose modifications to the Garrison Diversion Unit before December 31, 1984. Construction on the project was suspended from October 1 through December 31, 1984.

The commission worked under the restriction that any recommendation of the commission must be approved by at least eight of the 12 members and that should the commission fail to make recommendations as required by law, the Secretary of the Interior was authorized to proceed with construction of the Garrison Diversion Unit as designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. Municipal and industrial water needs and the possibility for development, including quality of water and related problems.
5. The possibility of recharging ground water systems for cities and industries, as well as for irrigation.

6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the Garrison Diversion Unit can be redesigned and reformulated.
8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the Garrison Diversion Unit, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of water development alternatives, compared with those of the Garrison Diversion Unit.
11. The international impacts of the water development alternatives, compared with those of the Garrison Diversion Unit.

The commission released its final report and recommendations on December 20, 1984. The commission affirmed the existence of a federal obligation to the state for its contribution to the Pick-Sloan Missouri Basin program but recommended that an alternative plan be implemented in place of the 250,000-acre initial stage of the Garrison Diversion Unit. The commission recommended that the Sykeston Canal be constructed as the functional replacement for the Lonetree Dam. While the Lonetree Dam and Reservoir would remain an authorized feature of the plan, construction of that dam would be deferred pending appropriation of funds by Congress and a determination by the Secretary of the Interior that consultations with Canada were satisfactorily concluded. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri and James River Basins instead of the initial stage 250,000-acre project. The commission also recommended that the first phase of the Glover Reservoir be included as a feature of the plan in lieu of Taayer Reservoir for regulation of flows in the James River.

The commission further recommended the establishment of a municipal, rural, and industrial system for treatment and delivery of quality water to approximately 130 communities in North Dakota. A municipal and industrial water treatment plant with a capacity of 130 cubic feet per second was recommended to provide filtration and disinfection of water releases to the Sheyenne River for use in the Fargo and Grand Forks areas.

An alternate state plan for municipal water development was submitted to the Garrison Diversion Unit Commission by then Governor Olson and Governor-elect Sinner, proposing that the state would design and construct the water systems and pay 25 percent of their costs. In return, the federal government would provide up to \$200 million in nonreimbursable funds for municipal water development projects. The federal government would pay 75 percent of the construction costs of the systems with only the operation and maintenance costs borne by the cities benefited. Garrison Diversion Unit Reformulation

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99-294; 100 Stat. 433). This legislation was supported by representatives of the state, the Garrison Diversion Conservancy District, the National Audubon Society, and the National Wildlife Federation.

The legislation addressed the James River by directing a comprehensive study of effects over the next two years during which time construction of the James River Feeder Canal, the Sykeston Canal, and any James River improvements could not be undertaken. Of the 32,000-acre New Rockford Extension included in the Garrison Diversion Unit Commission final report, 4,000 acres were transferred to the West Oakes area and 28,000 acres were authorized for development within the Missouri River Basin.

The legislation also provided for:

1. 130,940 acres of irrigation.
2. Deauthorization of the 1944 Flood Control Act and the 1965 Garrison authorization.
3. Preservation of the state's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed before enactment which will no longer be employed to full capacity, to the extent of the unused capacity.
5. Acre-for-acre mitigation based on ecological equivalency rather than the 1982 mitigation plan.
6. Deauthorization of the Taayer Reservoir and purchase of the Kraft Slough for waterfowl habitat.
7. Continued authorization, but no construction, of the Lonetree Reservoir. The Sykeston Canal was mandated for construction following required engineering, operational, biological, and economic studies. The Lonetree Reservoir could be built if:
 - a. The Secretary of the Interior determines a need for the dam and reservoir;
 - b. Consultations with Canada are satisfactorily completed; and
 - c. The Secretaries of State and the Interior certify determinations to Congress and 90 days have elapsed.
8. No construction of irrigation acreage other than on the Indian reservations or the 5,000-acre Oakes Test Area until after September 30, 1990.
9. A \$200 million grant for construction of municipal and industrial water delivery systems. A \$40.5 million nonreimbursable water treatment facility to deliver 100 cubic feet per second of water to Fargo and Grand Forks was authorized. All water entering the Hudson Bay drainage system must be treated and must comply with the Boundary Waters Treaty of 1909.
10. Municipal and industrial water delivery systems for the Fort Berthold, Fort Totten, and Standing Rock Reservations.
11. Irrigation soil surveys that must include investigations for toxic or hazardous elements.
12. Federal participation in a wetlands trust to preserve, enhance, restore, and manage wetland habitat in North Dakota.

Garrison Municipal, Rural, and Industrial Water Supply Program

Included within the Garrison Diversion Unit Reformulation Act of 1986 is an authorization enabling Congress to appropriate \$200 million for the Garrison municipal, rural, and industrial water supply program. These funds are for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state.

On July 18, 1986, the Garrison Diversion Conservancy District and the State Water Commission entered an agreement for the joint exercise of governmental powers. The agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the district was to enter an agreement with the Secretary of the Interior which designates the district as the fiscal agent for the state concerning money received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered an agreement that designates the district to act on behalf of the state in the planning and construction, as well as the operation and maintenance, of the water systems constructed pursuant to the Garrison Diversion Reformulation Act of 1986. The agreement defines the responsibilities of the United States and the district under the agreement and contains provisions concerning the work to be undertaken by the district, stipulations concerning the transfer of funds, and the procedure for reporting, accounting, and reviewing the planning and construction programs. The agreement also provides that the Southwest Pipeline Project is eligible to receive funding under this program.

PROJECT UPDATE

The committee received updates concerning the Garrison Diversion Unit Project from representatives of the Garrison Diversion Conservancy District, State Water Commission, the United States Bureau of Reclamation, and the United States Fish and Wildlife Service.

Appropriations

Since 1966, Congress has allocated \$678,848,485 for the Garrison Diversion Unit Project. Of this total, \$612,173,949 are federal funds and \$66,674,536 are nonfederal funds. The budget request for fiscal year 1999 is \$24,114,000 in federal funds and \$3,650,000 in nonfederal funds for a total of \$27,764,000. Because the total estimated cost of the project is \$1,599,427,406, the balance to complete after fiscal year 1999 is \$892,814,921 of which \$888,211,491 is federal funds.

Congress appropriated \$28.9 million for the Garrison Diversion Unit Project in 1998. Included in this figure was \$3.5 million for operation and maintenance of Indian municipal, rural, and industrial water supply projects located on the state's Indian reservations. Thus, the total appropriation for the Garrison Diversion Unit Project for 1998 was approximately \$25.4 million. Of the \$24,114,000 requested in federal funds for fiscal year 1999, \$20,563,000 is for Garrison Diversion Unit construction, \$463,000 for Jamestown Dam construction, and \$3,088,000 for Indian municipal, rural, and industrial water supply projects and operation and maintenance of these projects.

Of the \$20,563,000 allocated for Garrison Diversion Unit construction for fiscal year 1999, \$2,900,000 is allocated for water and energy management development that will continue the award of construction contracts for the development of Indian irrigation facilities; \$8,490,000 is for oversight of preconstruction and construction activities on approved state municipal, rural, and industrial water system projects; \$2,500,000 is to continue minimum maintenance to assure reliability of completed facilities still in construction status and minimum maintenance of the supply system required to maintain freshening flows; \$5,625,000 is to continue work on Arrowood, Audubon, and Kraft Slough National Wildlife Refuges, management funds for wildlife lands, and for the nonfederal contribution to the wetlands trust fund; \$800,000 for deferred construction related to beach belting on the McClusky Canal; \$148,000 for ongoing activities associated with the accessibility program including site evaluations, transition plans, and retrofitting of substandard existing facilities; and \$100,000 for continued construction of recreation facilities.

Of the \$463,000 allocated for work on the Jamestown Dam, \$87,000 is for continuance of the Pick-Sloan cost allocation study at Jamestown and the ongoing collection of streamflow records on the James River; \$371,000 for day-to-day operation of Jamestown Dam for flood control operations and for continued delivery of project water to downstream users; and \$5,000 for examination of existing structures at Jamestown Dam and Reservoir.

Of the \$3,088,000 allocated for Indian municipal, rural, and industrial water supply programs, \$2,923,000 is to continue contracts with Indian tribes to carry out operation, maintenance, and replacement activities for water treatment and distribution facilities, and technical assistance and oversight to the tribes by the Bureau of Reclamation for the operation, maintenance, and replacement of their water supply and distribution systems in accordance with United States trust responsibilities; and \$165,000 is allocated for cleaning and repair of distribution systems through a cooperative agreement with the state's Indian tribes.

Of the \$200 million authorized for the Garrison municipal, rural, and industrial water supply program, approximately \$146 million has been received since 1986. The State Water Commission has developed a five-year fiscal year 1999 through fiscal year 2003 allocation schedule of remaining Garrison municipal, rural, and industrial water supply grant funds. This schedule includes \$10,928,000 for the Benson Rural Water Project; \$1 million for the Northwest Area Water Supply Project - Rugby phase; \$24,851,000 for the Northwest Area Water Supply Project - Minot phase; \$2,920,000 for the Pierce County Rural Water Project; \$13,210,000 for the Ransom-Sargent Rural Water Project; and \$800,000 for municipal, rural, and industrial water supply program administration. The nonfederal cost share of these projects is \$28,756,000.

The Southwest Pipeline Project has supplied water to Dickinson since October 15, 1991. The pipeline is currently servicing 17 communities and 1,200 rural hookups in North Dakota. The committee learned that the city of Lemmon, South Dakota, has voted to join the Southwest Pipeline Project and under an agreement will be required to pay an additional \$4 to \$5 million to reimburse the project for needed capacity in order to supply water to northwestern South Dakota. However, the committee learned that future financing of the Southwest Pipeline Project is in doubt. Of the \$200 million in Garrison municipal, rural, and industrial water supply funds available under the Garrison Diversion Unit Reformulation Act of 1986, \$71 million has been allocated to the Southwest Pipeline Project and this sum has been exhausted. Bonding was used for the first time in 1997 to finance construction of project facilities. Bonds were issued in two series and combined with a United States Department of Agriculture grant to finance approximately \$12 million in construction in the project's Bucyrus service area. This included 1997 construction of main transmission facilities to the cities of Reeder and Hettinger as well as the Bucyrus Reservoir. In 1998 construction of the Jung Lake Reservoir, Jung Lake pump station, and rural water connections to 240 hookups completed the service area. To finance this construction, the State Water Commission issued North Dakota State Water Development Series A revenue bonds totaling \$6.83 million in 1997. Series B bonds totaling \$3.4 million were sold in 1998 to the United States Department of Agriculture's Rural Development Agency and used in conjunction with a rural development grant for \$2.6 million to fund the remainder of the Bucyrus service area. The revenue bonds are being financed from water user payments. Although bonding has been used to leverage water repayments to the extent possible, the committee learned that until passage of the Dakota Water Resources Act and its additional authorization for Garrison municipal, rural, and industrial water supply projects, the financial future of the Southwest Pipeline Project is questionable.

Bureau of Reclamation Activities

Representatives of the Bureau of Reclamation reported on bureau activities. The Bureau of Reclamation finalized and distributed Phase 1, Part A, of the Red River Valley water needs assessment in April 1998. The Red River Valley water needs assessment was an analysis of present and future municipal, rural, and industrial water needs in the Red River Valley. The bureau completed the draft report of Phase 1, Part B, of the Red River Valley water needs assessment in August 1998. This report was an analysis of the in-stream flow requirements for fish, riparian vegetation, and recreation in the Sheyenne and Red Rivers. The study was undertaken in response to comments received on Phase 1, Part A. The draft report is being reviewed by a technical steering team composed of representatives from the State Water Commission, the State Department of Health, the environmental community, the city of Grand Forks, the city of Fargo, the city of Moorhead, and rural water systems in the Red River Valley as well as bureau representatives. Phase 2 of the Red River Valley water needs assessment will be an analysis of water development and management alternatives to meet the projected needs identified in Phase 1, Parts A and B. The technical steering team is involved in developing alternatives and alternative components. Work is continuing on approximately 23 components that may help alleviate water supply shortages during critical drought periods. Components include water supply augmentation from the Missouri River, enlargement of existing reservoirs, construction of new reservoirs, ground water recharge programs, purchase of agricultural water, water conservation, and water demand management. A draft summary report for Phase 2 of the Red River Valley study is scheduled to be completed in January 1999.

United States Fish and Wildlife Service

The committee received information from the United States Fish and Wildlife Service concerning the status of mitigation and enhancement on the Garrison Diversion Unit Project. The United States Fish and Wildlife Service reported that it reached a milestone on October 1, 1997, when the Bureau of Reclamation transferred the last of 48 wildlife development areas to the Fish and Wildlife Service and the State Game and Fish Department. Approximately one-half of these tracts are located on the McClusky or New Rockford Canals and were acquired at the time the canals were being developed. An additional 18 wetland tracts were acquired throughout the state as mitigation for the Garrison project. Approximately 22,000 acres have been transferred to the Fish and Wildlife Service and the State Game and Fish Department as mitigation for the Garrison project. Concerning concurrency, the Fish and Wildlife Service reported that the federal government is 140 percent of concurrency on the acquisition of wetlands as mitigation for the Garrison Diversion Unit Project.

RECENT DEVELOPMENTS

Dakota Water Resources Act of 1998

The committee received information on the Dakota Water Resources Act of 1998. The Act amends the Garrison Diversion Unit

Reformulation Act of 1986. The Act outlines a program to meet the water needs of North Dakota including irrigation; municipal, rural, and industrial water supply projects; fish and wildlife; recreation; flood control; augmented streamflows; and ground water recharge.

The Act establishes the purposes of the project and adds wildlife enhancement, streamflow augmentation, and ground water recharge as purposes of the project to the 1986 Reformulation Act. It provides that the project will be a joint effort between the Secretary of the Interior and the state of North Dakota and that there will be a financial return to the federal government on the existing facilities and full reimbursement of the cost assigned to the Red River Valley municipal water supply facilities. It assures compliance with the Boundary Waters Treaty of 1909 and provides for state responsibility for design, construction, operation, and maintenance of the features constructed.

Concerning wildlife mitigation and enhancement, the Act authorizes specific recreation and fish and wildlife enhancement facilities and determines responsibility for mitigation and enhancement facilities' costs. The Act provides that the Kraft Slough program includes land exchange authority, and designates the deauthorized Lonetree Dam and Reservoir as a wildlife conservation area.

The Act provides that Garrison Diversion will continue to be part of the Pick-Sloan Missouri Basin program that was authorized in 1944. The Act contains language concerning the interest rate for authorized features of the project during construction and prevents interest from accruing until a particular project feature is completed.

Concerning irrigation, the Act further reduces authorized irrigation acreage to 70,000 acres, none of which will be located in the Hudson Bay or Devils Lake Basin. The Act guarantees irrigation authorized in the Act as eligible to receive project pumping power, continues Indian irrigation, and defines a process by which future irrigation is to be developed.

Concerning power, the Act authorizes Pick-Sloan preference power for municipal, rural, and industrial water supply systems and irrigation development. It also freezes current suballocation costs associated with the Pick-Sloan Missouri Basin program.

Concerning the state municipal, rural, and industrial water supply grant program, the Act authorizes continued development of municipal, rural, and industrial water supply systems in cooperation with the state, retains a 25 percent nonfederal cost share, gives the state credit for nonfederal contributions exceeding the 25 percent level, and authorizes a water conservation program with incentives. The Act also authorizes continued development of municipal, rural, and industrial water supply systems on the state's four Indian reservations.

Concerning the Red River Valley, the Act authorizes a decisionmaking process to determine the best method or methods to meet Red River Valley water supply needs. The Act identifies the Red River Valley supply feature as a reimbursable project feature and provides that the state will repay costs, with interest, for the capacity used to deliver water to municipal and industrial users.

Concerning the Oakes Test Area, the Act authorizes the Secretary of the Interior to negotiate a mutually acceptable agreement for the transfer of the Oakes Test Area facilities to the state, and if no agreement is reached, the Secretary of the Interior is authorized to dispose of the facilities.

The Act authorizes \$200 million to complete facilities to meet Red River Valley water supply needs; \$300 million for state municipal, rural, and industrial water supply projects; \$200 million for Indian municipal, rural, and industrial water supply projects; \$6.5 million for recreation projects, including a wetlands interpretative center; \$25 million for the natural resources trust; and \$40 million for demolition and construction of a new bridge to replace the existing Four Bears bridge across Lake Sakakawea.

Finally, the Act authorizes an additional \$25 million for the North Dakota wetlands trust, renamed the natural resources trust, \$15 million of which is subject to completion and operation of the Red River Valley water supply project. The Act also authorizes an account for operation, maintenance, and replacement of fish and wildlife mitigation and enhancement and expands the scope of the trust program.

Devils Lake

The committee received updates throughout the interim concerning the Devils Lake flood situation from the State Engineer and the Lake Emergency Management Committee. Devils Lake is normally considered a closed subbasin of the Red River of the North Basin. However, evidence suggests that Devils Lake has, on several occasions during the past 10,000 years, reached its spill elevation of approximately 1,459 feet mean sea level and overflowed into the Sheyenne and Red Rivers. Geologists have concluded that Devils Lake water levels naturally vary widely due to climatic swings. Beginning 130 years ago with the first recorded level of 1,438.4 feet mean sea level, lake levels fell until reaching its recorded low of 1,401.9 feet mean sea level in 1940. From that point, the lake has followed a rising trend reaching the modern high of 1,444.69 feet mean sea level in June 1998. The lake is now approximately 10 inches below its July 1, 1998, level.

Flooding in 1993 caused Devils Lake to rise five feet in six months. The lake has steadily risen each year since then, almost 20 feet in total. The volume of water in Devils Lake has more than tripled since July of 1993. Over 51,000 acres of adjacent land, much of it deeded farmland or ranchland, has been flooded since 1993. The lake now covers approximately 98,000 acres. More than 172 buildings have been affected, and in 1997, approximately 400 damage claims were filed in Ramsey and Benson Counties totaling \$20 million. In addition, 83 homes on the Spirit Lake Nation Reservation have been or will be moved. National Flood Insurance claims paid in 1996 totaled \$7.1 million for damage to private homes and businesses. Maintaining a transportation infrastructure in the Devils Lake Basin has cost tens of millions of dollars since 1993. The United States Army Corps of Engineers is raising the city of Devils Lake levee system. Stages one and two were completed in 1997 at a cost of \$7 million and protect the city to an elevation of 1,445 feet mean sea level. Another \$43 million has been committed to raise the dike for community protection to 1,450 feet mean sea level.

The North Dakota Parks and Recreation Department has four parks adjacent to the lake. The Narrows State Park was flooded and abandoned in 1995. The road to Graham's Island State Park was flooded in the spring of 1997, forcing the park to close. However, in November the road was raised and the park has reopened. Shelver's Grove and Black Tiger Bay State Parks have some flooded facilities, but they remain open. Concerning the Ramsey County rural sewer system, engineers have estimated it will cost \$950,000 to relocate pipes and pump stations required to keep the system operable. As lakeshore property owners move away to escape the rising water, income to service the system's existing debt decreases as over 125 accounts have been lost due to Devils Lake flooding.

The State Water Commission has adopted a multifaceted, three-prong approach to address flooding in the Devils Lake Basin. These include the upper basin storage of water, infrastructure protection around the lake to protect the city of Devils Lake and its residents, and an outlet to the Sheyenne River. Approximately 60,000 acres of wetlands have been drained in the Devils Lake Basin while approximately 252,000 acres of wetlands and lakes are still intact and storing water. In 1995, the State Water Commission initiated the available storage acreage program to hold additional water in the upper basin. Since the program began, 167 sites providing 22,000 acre-feet of storage have been enrolled in the program. The United States Fish and Wildlife Service has identified 36 projects to provide 12,774 acre-feet of long-term storage potential on public lands in the Devils Lake Basin. In 1996 eight projects were completed and now provide 1,762 acre-feet of storage. Cost thus far is \$471,000 for permanent facilities. Following the 16th conservation reserve program signup, 653,000 acres in the Devils Lake Basin are enrolled in the conservation reserve program. A total of 7,035 acres in basin counties has been enrolled in the federal waterbank program for 1996-97. Also, the North Dakota Wetlands Trust is helping to finance wetlands restoration on conservation reserve program tracts through incentive payments to landowners. The state waterbank program is also continuing to receive and accept applications for wetland restoration.

The third prong to address flooding in the Devils Lake Basin is construction of an outlet from Devils Lake to the Sheyenne River. Although several potential alignments for a Devils Lake outlet have been considered, the committee learned that a west-end outlet is critical to attain cost and environmental viability. The outlet will follow the Peterson Coulee and 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, it is unlikely that the outlet would be operated at its maximum capacity because of downstream flooding concerns, downstream water quality concerns, and Canadian concerns. The current design also precludes the outlet from being used as an inlet. Concerning the United States Army Corps of Engineers outlet study, the committee learned that the study is to be presented to Congress in December and will address economic feasibility, environmental issues, compliance with the Boundary Waters Treaty of 1909, and engineering feasibility. The current estimated cost of constructing the outlet is approximately \$44 million which will be split 65-35 with the federal government assuming 65 percent and 35 percent coming from nonfederal sources. The Legislative Assembly has authorized the State Water Commission to bond up to 25 percent of the cost of the outlet.

Missouri v. Craig

The committee received updates throughout the interim from the State Engineer and the Attorney General's office on a Missouri law suit entitled *Missouri v. Craig*. The litigation is important to North Dakota as it may impact upper Missouri River Basin reservoir management and the length of the navigation season on the Missouri River. *Missouri v. Craig* was an unreported decision by the United States District Court for the Western District of Missouri granting the United States Army Corps of Engineers' motion for summary judgment and denying the state of Missouri's and MO-ARK's motion for summary judgment. MO-ARK is a voluntary, nonprofit association whose organizational purposes are to promote flood control, navigation, irrigation, recreation, fish and wildlife, the environment, conservation, and the beneficial use of land and water resources within the Missouri River Basin. In this action, the state of Missouri and MO-ARK alleged that the United States Army Corps of Engineers adopted an annual operating plan for 1996-97 in violation of the National Environmental Policy Act. Specifically, the plaintiffs alleged that the corps took a "major federal action" regarding management of the Missouri River without first preparing an environmental assessment, finding of no significant impact, or preparing an environmental impact statement. The states of Montana, North Dakota, and South Dakota filed amicus briefs on behalf of the corps.

The United States Army Corps of Engineers operates the Missouri River mainstem reservoir system pursuant to a reservoir regulation manual known as the *Master Manual*. The *Master Manual* was prepared in 1979. The *Master Manual* states that in order to achieve the multipurpose benefits for which the mainstem reservoirs were authorized and constructed, they must be

operated as a hydraulically and electrically integrated system. Therefore, this *Master Manual* presents the basic objectives and the plans for their optimum fulfillment, with supporting data. The *Master Manual* provides that the navigation season may be shortened in the event of a severe drought in order to conserve the remaining available water supply. The *Master Manual* provides that a navigation season may be shortened by two weeks if the system storage falls below 39 million acre-feet on July 1 of the year in question. This figure is known as the "trigger point."

The *Master Manual* also provides for the preparation of an annual operating plan by the corps. Pursuant to the corps' 1996-97 annual operating plan, if the reservoir storage level fell below 52 million acre-feet by July 1, 1997, then the corps could shorten the navigation season by two weeks. The plaintiffs alleged that the corps failed to comply with the National Environmental Policy Act in raising the trigger point to 52 million acre-feet in the 1996-97 annual operating plan. The plaintiffs alleged that this change was a major federal action significantly affecting the quality of the human environment and that the corps failed to prepare an environmental assessment, finding of no significant impact, or environmental impact statement.

After reviewing the standard for granting a motion for summary judgment, determining that MO-ARK had standing to bring the action, and determining that since MO-ARK had standing it was unnecessary to decide whether the state of Missouri had standing, the district court found that changing the trigger point was not a major federal action significantly affecting the quality of the human environment. The plaintiffs did not present evidence showing environmental harm. The court said: Here, the Corps is seeking to adjust Main Stem water releases and storage in 1997, as it has done in the past, in furtherance of its many responsibilities under the Flood Control Act of 1944. Although the action "may" affect wildlife downstream and has caused a decrease in inland barge shipping, plaintiffs have not presented facts showing that a potential two week reduction in the navigation season this year is a major action that has caused or will cause a major environmental impact. Plaintiffs have not presented facts specifying the degree to which the threat of a shortened navigation season will increase pollution, endanger wildlife, or otherwise harm the environment. Plaintiffs have also not presented facts demonstrating any major environmental impact even if the 52 maf trigger point is extended for five years as proposed by the 1996-97 AOP. Therefore, plaintiffs have not shown any "major Federal action significantly affecting the quality of the human environment" and the Corps' conclusion that NEPA is inapplicable to the decision to increase the trigger point in the 1996-97 AOP is not unreasonable.

The corps also argued that the challenged corps action is categorically excluded from the National Environmental Policy Act. However, because the district court determined that the corps' conclusion regarding the applicability of the National Environmental Policy Act was not unreasonable, it was not necessary to determine whether the adoption of the annual operating plan was an action categorically excluded from the Act.

Following the district court's decision, MO-ARK filed a motion with the court to alter its judgment on the basis that it had discovered new evidence that would change the outcome of the court's decision. The "new evidence" was a report prepared by the Tennessee Valley Authority at the request of the United States Army Corps of Engineers entitled *Missouri River Navigation Benefits: Incorporating the Effects of Air Quality Improvements*. The corps requested the report as part of the environmental impact statement it is required to prepare before the corps can revise the *Master Manual*. The district court denied MO-ARK's motion on January 16, 1998. The district court found that the corps' commissioning of the report was not based upon the concern of the possible effect on the environment of increasing the trigger point in the 1996-97 annual operating plan. The district court also said the study requested by the corps was much broader than the issue involved in the case and that the report did not alter the court's conclusion that the potential decrease in the 1996-97 navigation season was not a major federal action significantly affecting the quality of the human environment. The district court found nothing to change its holding that the corps' decision that the National Environmental Policy Act was not applicable to the 1996-97 trigger point was unreasonable. On January 27, 1998, Missouri appealed the district court's decision. North Dakota and several other upper basin states have filed amicus curiae briefs but will not participate in the oral argument and will await the decision of the United States Court of Appeals for the Eighth Circuit before determining how to proceed.

Promised Payment Plan

The committee received information on the promised payment plan as envisioned by the North Dakota Rural Water Systems Association. Under the promised payment plan, a four-year construction schedule of the municipal, rural, and industrial water supply budget would be developed based on the \$66 million federal municipal, rural, and industrial water supply authorization contained in the Garrison Diversion Reformulation Act of 1986. Under the plan, if in any one year of the proposed four-year budget the federal payment fell short of the budgeted amount, the state would promise to cover the shortage until the federal dollars were received. Benefits of the promised payment plan identified by the North Dakota Rural Water Systems Association include full utilization of North Dakota's short construction season, lower project costs, better project design, increased initial sign-up of members, and orderly water development that would allow the best use of municipal, rural, and industrial water supply funds. The committee reviewed the feasibility of this plan and determined that based upon existing statutory provisions, it appears that the State Water Commission has the statutory authority to implement or facilitate the payment plan as envisioned by the Rural Water Systems Association. As a result, the committee passed a motion expressing its support for the State Water Commission to go forward to implement the promised payment plan.

WATERSHED DISTRICTS STUDY

Background

Senate Concurrent Resolution No. 4041 reflected the Legislative Assembly's concern with the present system of managing water based upon political boundaries and whether the establishment of watershed districts to manage water based on watershed boundaries may be an improvement over the existing system.

Water Resource Districts

The creation and operation of water resource districts is governed by NDCC Chapters 61-16 and 61-16.1. Section 61-16-05 requires that all land in North Dakota must be within a water resource district. Section 61-16-06.1 provides that any two or more water resource districts may be consolidated into a single district or existing districts may be adjusted to reflect watershed boundaries, as determined by the State Engineer, by filing with the State Water Commission a petition signed by a majority of the members of the board of each of the districts or 50 percent or more of the landowners within each of the districts. A petition filed by the district boards must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition.

A petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. The plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The State Water Commission is required to hold a public hearing and the State Engineer is required to make, before the hearing, an investigation of the need for consolidation of the petitioning districts and to submit a report of the findings to the State Water Commission at the petition hearing. If the State Water Commission finds that it is not feasible, desirable, or practicable to consolidate the petitioning districts, it must deny the petition and state the reasons for the denial. If, however, the State Water Commission finds the problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water resource district desirable, it must grant the petition and create the district. Upon creation of the new water resource district, the State Water Commission is to dissolve the included districts or make necessary boundary adjustments to existing districts.

North Dakota Century Code Chapter 61-16.1 governs the operation of water resource districts. This chapter contains the powers and duties of water resource districts, including their basic authority, authority to finance projects, regulatory powers, and enforcement powers. Briefly, a water resource district may finance its operations or local projects through a general districtwide mill levy of not more than four mills for each individual water resource district, special assessments, user fees, revenue bonds or improvement warrants, and state or federal cost-sharing. In addition, joint water resource boards may levy an additional two mills for water projects.

Concerning the regulatory powers of water resource districts, districts are charged with the statutory responsibility to review and improve or deny permits for dikes, dams, and other devices that are capable of retaining, impounding, diverting, or obstructing more than 12.5 acre-feet of water and drains that drain a pond, slough, or lake, or any series thereof with a watershed area of 80 acres or more. Under NDCC Sections 61-16.1-51, 61-16.1-53, and 61-32-07, water resource districts have statutory responsibility to remove obstructions to artificial drains and restructure watercourses; take enforcement actions for unauthorized construction of a dike, dam, or other device for retaining, obstructing, or diverting water; and take enforcement actions for the unauthorized drainage of wetlands.

History of Water Resource Districts

The earliest beginnings of water resource districts can be traced to county drainboards. Legislation enabling the creation of drainboards was first enacted in 1895 to provide for the drainage of agricultural lands. However, it was not until 1935 that the Legislative Assembly established water conservation districts responsible for a broad range of water management and water development matters at the local level. Under 1935 Session Laws, Chapter 228, water conservation districts could be established only by the order of the State Water Conservation Commission upon receipt of a petition from any county, city, or township, or from 50 percent of the landowners within the proposed district. However, the Legislative Assembly, because it recognized the advantage of watershed boundaries over artificial or political boundaries, specifically directed the State Water Conservation Commission not to be constrained to county and township boundaries when creating districts.

The initial water management laws, codified as NDCC Chapter 61-16, remained virtually unchanged until 1957. At that time, the Legislative Assembly enacted a comprehensive reform of water management statutes and changed the name of local water conservation districts to water conservation and flood control districts. The State Water Conservation Commission retained authority to create districts and establish the boundaries upon receipt of a proper petition. However, the commission was given the authority to include additional watershed areas benefited by the creation of the district.

In 1973 the Legislative Assembly determined that all land in the state should be contained within a water conservation and flood control district. Most districts were created along county boundaries. Also, at this time, the name of water conservation and flood

control districts was changed to water management districts.

The Legislative Assembly enacted a second comprehensive reform of water management in 1981. The Legislative Assembly expanded the powers and authority of water management districts and made several changes to improve the effectiveness of local government in addressing water issues. The Legislative Assembly eliminated legal drainboards, transferred the powers and authority of legal drainboards to water management districts and renamed legal drains assessment drains. Also, recognizing the increased responsibilities of water management districts, the Legislative Assembly again changed their name, this time to water resource districts.

When water resource districts were first created in 1935, the Legislative Assembly gave the State Water Commission the authority to set boundaries and specifically directed the commission not to consider county and township boundaries when creating districts. North Dakota Century Code Section 61-16-05, as it existed in 1935, provided: **Areas to be included within district - How determined.** In determining the area to be included within the district, the commission shall disregard township and county boundaries and shall consider only the drainage areas to be affected by the water development proposed and the probable future development thereof. Whenever practicable, such boundaries shall follow section lines.

Thus, at that time, the Legislative Assembly preferred watershed boundaries over artificial or political boundaries for water resource districts and gave the State Water Commission sole discretion to determine and establish the boundaries of water resource districts.

North Dakota Century Code Section 61-16-05 was amended in 1957 to provide: **Area to be included within district - How determined.** The area or areas to be included in a water conservation and flood control district shall embrace the territory described in the petition for the creation thereof. The commission shall, however, consider and may include within boundaries of the district, the watershed and drainage areas which will be benefited by the construction and maintenance of works therein for water conservation, flood control or drainage as the case may be.

Thus, beginning in 1957, boundaries for water resource districts were established as requested in the petition, yet the State Water Commission had the authority to include additional watershed and drainage areas benefited by the creation of the district. The evolution of water resource districts has resulted in a water resource district in every county in North Dakota. In five counties, more than one water resource district exists. Also, there are 11 joint water resource districts operating in North Dakota. These include the West River Joint Board, the BOMMM Joint Board, the Souris River Joint Board, the Hurricane Lake Joint Board, the Rocky Run Joint Board, the Red River Joint Board, the Upper Sheyenne Joint Board, the Maple-Richland Joint Board, the Devils Lake Joint Board, the James River Joint Board, and the Tri-County Joint Board.

1979-80 Water Management Study

House Concurrent Resolution No. 3022 (1979) directed a Legislative Council study of the powers, duties, and jurisdictional boundaries of water management districts and legal drainboards. The objective of the study was to determine the most effective and efficient methods to provide for management, at the local level, of the state's water resources. The issue before the 1979-80 interim Natural Resources Committee was whether the then current water management system represented the most effective and efficient method of providing for local water management and, if not, what steps could be taken to provide for such water management. The committee heard testimony that water could be more effectively managed on the local level if the management agencies had jurisdictional boundaries along watershed lines and if local efforts were not duplicated by their agency. As a result of the study, the committee recommended a bill that would have established water district boundaries along watershed lines where feasible. However, in no event could water district boundaries divide a section or a city and the bill established a minimum of 25 and a maximum of 40 water resource districts in the state. Although this bill was enacted in 1981, the provisions relating to establishing water resource district boundaries on watershed boundaries were removed.

Water Management Districts in Other States Minnesota

The law governing watershed districts in Minnesota is codified as Minnesota Statutes Chapter 103D.

Minnesota watershed districts are special purpose local units of government the boundaries of which follow those of a natural watershed. The name of the primary lake or stream in the watershed is usually the name of the watershed district. Advocates note that because water is difficult to manage on the basis of political boundaries such as county or city lines, the Minnesota Legislature in 1955 authorized the creation of watershed districts. Advocates note that because these districts are based on the natural hydrologic boundaries of a watershed, they allow for more practical and efficient water management.

Watershed districts are formed when citizens, county boards, or cities petition the Minnesota Board of Water and Soil Resources to form a district. The board is the state administrative agency for watershed districts. There are 42 watershed districts in Minnesota.

Over the years, watershed district responsibilities have increased significantly from their original objectives of managing surface water and flooding conditions. Watershed districts now deal with a wide variety of water-related concerns, including wetlands, ground water management, and water quality.

Minnesota Statutes Section 103D.201 states that the general purpose of watershed districts is to conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources of the state. This section provides that a watershed district may be established to control or alleviate damage from floodwaters; to improve stream channels for drainage, navigation, and any other public purpose; to reclaim or fill wet and overflowed lands; to provide a water supply for irrigation; to regulate the flow of streams and conserve the stream's water; to divert or change all or part of watercourses; to provide or conserve water supply for domestic, industrial, recreational, agricultural, or other public use; to provide for sanitation and public health, and regulate the use of streams, ditches, or watercourses to dispose of waste; to repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district; to control or alleviate soil erosion and siltation of watercourses or water basins; to regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use; to provide for hydroelectric power generation; to protect or enhance the water quality in watercourses or water basins; and to provide for the protection of ground water and regulate its use to preserve it for beneficial purposes.

Minnesota Statutes Section 103D.205 outlines the requirements for petitions to establish a watershed district. An establishment petition must be filed with the Board of Water and Soil Resources. The establishment petition must contain the name of the proposed watershed district; a description of the property to be included in the watershed district; the necessity for the watershed district and the contemplated improvements within the watershed district; the reasons why the watershed district and the contemplated improvements would be conducive to public health and public welfare, or would accomplish any of the purposes outlined in Section 103D.201; show by illustration on a map the proposed watershed district; disclose the number of managers proposed for the watershed district; and contain a list of the nominees for manager positions containing at least twice the proposed number of managers.

Concerning the powers and duties of a watershed district, Minnesota Statutes Section 103D.335 provides that watershed districts have the power to sue and be sued; to incur debts, liabilities, and obligations; to exercise the power of eminent domain; to provide for assessments and to issue certificates, warrants, and bonds; and to perform all acts expressly authorized and all other acts necessary and proper for the district to carry out and exercise the power expressly vested in it. In addition, watershed districts may acquire and dispose of property, hire staff and consultants, and regulate development. The statute also authorizes watershed districts to exercise joint powers; cooperate with other entities; enter lands to make surveys and investigations to accomplish the purposes of the watershed district; provide for sanitation and public health and regulate the use of streams, ditches, and watercourses to dispose of waste and to prevent pollution; and borrow funds.

Minnesota Statutes Section 103D.401 governs watershed management plans. Watershed management plans must include updates and supplements of the existing hydrological and other statistical data of the watershed district; specific projects to be completed; criteria for storm water management from impervious surfaces pursuant to Section 103D.365; contain a statement of the extent that the purposes for which the watershed district was established have been accomplished; contain a description of problems requiring future action by the watershed district; contain a summary of completed studies on active or planned projects including financial data; and contain an analysis of the effectiveness of the watershed district's rules and permits in achieving its water management objectives in the watershed district. The Board of Water and Soil Resources encourages districts to expand their plans to include an inventory of pertinent information on the district that describes the watershed's setting and hydrological characteristics; a description and assessment of existing and potential water and water-related problems; a description and assessment of possible solutions to high-priority problems; a statement of the goals and specific objectives for water management within the district; and a list of district policy statements that define the district's role in managing water and water-related resources and that establish district performance standards for sound water management.

Concerning the fiscal management of watershed districts, districts are authorized to establish organizational expense funds, administrative funds, survey and data acquisition funds, projects of common benefit involving municipalities funds, emergency projects of common benefit funds, planning and implementation funds, maintenance of capital improvement funds, preliminary work funds, construction funds, repair and maintenance funds, emergency projects for the benefits of property funds, and bond funds: An organizational expenses levy may be levied once upon creation or expansion of the watershed district. The levy is an ad valorem tax and is the lesser of 0.01596 percent of taxable market value of real property within the district or \$60,000. The administrative levy consists of an ad valorem tax levy which is the lesser of 0.02418 percent of taxable market value of real property within the district or \$125,000. A survey and data acquisition levy may be collected once every five years, may not exceed 0.02418 percent of taxable market value of real property within the district, and the fund balance may not exceed \$50,000. The projects of common benefit involving municipalities fund is financed by an annual levy not to exceed 0.00798 percent of market value of real property within the district for a period not to exceed 15 consecutive years. This tax is designed to finance the cost attributable to the basic water management features of projects initiated by petition of a municipality of the watershed district. The emergency projects of common benefit fund is financed by an ad valorem tax levy upon all taxable property within the watershed if the cost is not more than 25 percent of the most recent administrative ad

valorem levy of the watershed district. The construction fund is designed to establish an account for each watershed district project for the receipt and disbursement of funds for costs associated with the project. This fund consists of the proceeds of the sale of county bonds and construction loans from any agency of the federal government, special assessments to be levied to supply funds for the construction of the projects, and expenses incidental to and connected with the construction. The repair and maintenance fund is designed to provide money for maintaining projects of a watershed district in a condition so that they will accomplish the purposes for which they were constructed. The fund is financed from property assessments based upon the benefit the project provides to the affected property.

Watershed districts also have authority to issue bonds to purchase property and to improve and develop the property.

Nebraska

In 1969 the Nebraska Legislature established 24 natural resources districts, charging them with the responsibility of developing facilities, works, and programs to manage, protect, and develop the state's natural resources. As a result of a merger, there are 23 natural resources districts in Nebraska. The districts were officially named in a manner indicating their relative river basin location and boundaries were watershed-based rather than based on political boundaries.

By the 1960s there were more than 500 special purpose districts in Nebraska, including irrigation districts that were created in 1895; drainage districts created in 1905; soil conservation districts created in 1937, which were later named soil and water conservation districts in the 1950s; watershed districts created in 1959; rural water districts created in 1967; advisory watershed improvement boards; reclamation districts; and sanitary improvement districts and sanitary drainage districts. In addition, state agencies were empowered to deal with natural resources issues involving fish and game, insects, predatory animal control, weeds, fertilizer and pesticide use, energy, environmental control, water and waste management, air pollution, public water supplies, road construction, irrigation, and surface and ground water.

This piecemeal approach to natural resource management was generally perceived as ineffective because of the overlapping authority, responsibilities, and geographic boundaries of existing entities. The solution devised by the Nebraska Legislature was for the state to create a system of natural resources districts that could deal with a wide variety of natural resource-related problems and opportunities. These districts were given statutory responsibility in 12 specific areas and given autonomy and taxing authority to provide local response to their natural resources challenges. The Revised Statutes of Nebraska Section 2-32-29 provides that the purposes of natural resources districts are to develop and execute plans, facilities, works, and programs relating to erosion prevention and control; prevention of damages from floodwater and sediment; flood prevention and control; soil conservation; water supply for any beneficial uses; development, management, utilization, and conservation of ground water and surface water; pollution control; solid waste disposal and sanitary drainage; drainage improvement and channel rectification; development and management of fish and wildlife habitat; development and management of recreational and park facilities; and forestry and range management.

In establishing boundaries, Section 2-32-03 requires the entire state to be divided into natural resources districts. The primary objective was to establish boundaries that provide effective coordination, planning, development, and general management of areas that have related resources problems. These areas were to be determined according to hydrologic patterns. The recognized river basins of the state were used in determining and establishing the boundaries for districts and, where necessary for more efficient development and general management, two or more districts were created within a basin. Boundaries of districts were to follow approximate hydrologic patterns except where doing so would divide a section, a city or village, or produce similar incongruities that might hinder the effective operation of the district. However, the law specified that existing boundaries of political subdivisions or voting precincts could be followed wherever feasible. Districts were required to be of sufficient size to provide adequate finances and administration for plans of improvement and the number of districts could not be less than 16 nor more than 28.

The law establishing natural resources districts governed the assumption of the assets, liabilities, and obligations of existing soil and water conservation districts, watershed conservancy districts, watershed districts, advisory watershed improvement boards, and watershed planning boards whose territory was included within the boundaries of a natural resources district. The law also contains procedures for changing the boundaries of districts, dividing districts, or merging districts. The legislation contains provisions for nominating and electing a board of directors and filling vacancies on the board.

Districts have the power and authority to levy a tax of not to exceed four and one-half cents on each \$100 of actual valuation annually on all the taxable property within the district and to levy a higher tax if authorized by a majority vote. Districts also have the power and authority to issue revenue bonds for the purpose of financing facilities. Other powers are enumerated in Section 2-32-28 and include the authority to receive and accept gifts; establish advisory groups; employ necessary personnel to carry out the purposes of the district; purchase liability, property damage, workers' compensation, and other types of insurance; borrow money; adopt rules; and invite the local governing body of any municipality or county to designate a representative to advise and counsel the board on programs and policies that may affect the property, water supply, or other interests of the municipality or county. Natural resources districts have the power to contract for the construction of projects, contract with the United States for water supply and water distribution and drainage systems under any Act of Congress provided for or permitting

the contract, acquire project works undertaken by the United States, and act as agent of the United States in connection with the acquisition, construction, operation, maintenance, or management of any project within the district's boundaries.

Testimony

The committee received testimony that management of water on political or county boundaries does not adequately address water management problems and in order to resolve these problems water must be managed on a watershed basin basis. Examples presented to the committee included the inability of water resource districts to adequately address damage to roads and bridges as a result of upstream flooding that is outside the jurisdiction of the water resource district. The committee also received testimony that county water resource districts were designed to establish and maintain natural and artificial drains but are not capable of handling larger water resource problems such as the clearing and snagging of watercourses. Also, the committee received testimony that county water resource districts can raise sufficient revenue to establish and maintain drains, but that there should be a procedure to enable the districts to raise additional revenue to address larger issues on a watershed basis.

The State Engineer testified in favor of managing water based upon hydrological as opposed to political boundaries and noted that much has been done to address the management of water on a watershed basis since the passage of the study resolution. For example, the Red River Basin Board was created within the past year by entities in North Dakota, South Dakota, Minnesota, and Manitoba to address water problems on a regionwide basis.

A representative of the North Dakota Water Resource Districts Association testified that the association, its members, and boards of county commissioners are opposed to the establishment of watershed districts. The committee received testimony that state law now allows the creation of joint water resource district boards which allow water resource districts to work together on a watershed basis to solve common water problems.

Legislation Considered

The committee considered a bill draft to allow water resource boards to undertake the snagging, clearing, and maintaining of natural watercourses and the debris removal of bridges and low water crossings. Under the bill draft, a water resource district board could finance a project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. All provisions of NDCC Chapter 61-16.1 applying to assessments levied by water resource districts would apply except that an assessment could not exceed 50 cents annually on agricultural lands and could not exceed 50 cents annually for each \$500 of taxable valuation of nonagricultural property and no action would be required for the establishment of the assessment district or the assessments except that the water resource district board must approve a project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy assessments to be made by a vote of two-thirds of the members.

The committee received testimony that the inability of water resource district boards to undertake sufficient clearing and snagging operations on watercourses is not the result of water resource districts being formed along political boundaries but is due to an inability to raise sufficient funds to finance larger water resource projects and that the bill draft would address this problem.

Although the assessments in the bill draft were patterned after those used for federal projects as authorized in NDCC Section 61-16.1-40.1, several members of the committee indicated that the assessment of up to 50 cents for each \$500 of taxable valuation for nonagricultural property was not fairly related to the assessment of up to 50 cents per acre for agricultural lands and they could not support the bill draft.

CONCLUSION

The committee makes no recommendation concerning the study of the establishment of watershed districts to manage water based on watershed boundaries.