2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1206

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
01/20/2011
13170

☐ Conference Committee

Committee Clerk Signature Mary Maier

Explanation or reason for introduction of bill/resolution:

Relating to a western area water supply authority.

Minutes: See 16 attached testimony and handouts

Chairman Porter: We will open up the hearing HB 1206. We will take testimony in support of HB 1206.

Gene Veeder: I am here representing Mckenzie County Water Resource District. I am also here as the lead entity of four entities, the city of Williston, the Ray Tioga Water Association, Williams Rural Water District, and Mckenzie County Water Resources District. Those entities have signed a memorandum of understanding to proceed with the development of a western area water supply project. The region that these entities serve is experiencing rapid growth and has primary and secondary drinking water problems that need to be solved.

I'd like to start with giving you a little history of why this project is here today. Mckenzie County became aware of the growing water demand in the oil field prior to this rapid increase in the needs for the extraction of oil through the hydraulic fracturing in the Bakken and Williston basin. We were seeing growing conflicts between agriculture users and energy users in Western Mckenzie County over the Fox Hills aquifer. Oil companies were drilling temporary wells into the Fox Hills. The State Water Commission identified that aquifer was being depleted and the farmers and ranchers in the community were taking issues with those temporary permits, yet the oil industry needed that water to start fracturing.

We also had a project in Eastern Mckenzie County where we were working with Hess. They needed water at that time to desalinate their wells. That project is under construction today. That conflict in agriculture users and energy industry over the use of the Fox Hills aquifer water, about 7 years ago, the county came to a water district and said try to find a way to get industry water and protect our Fox Hills reservoirs.

Working with the State Water Commission, we explored alternatives it became evident that the natural solution to protecting aquifers in our county was to look at the Missouri River and Lake Sakakawea as it borders our county both to the north and to the east. Because of high cost of delivering water to that area, we saw a solution including industrial sales to reduce some of those costs. The volume sale spread that infrastructure cost over more users and increased sales to support loans to build the project.

We did our first project with the Three Affiliate Tribes and Hess and that is under construction today. In the last 2 years the need for hydraulic fracturing has exploded. A recent housing study sponsored by the North Dakota Department of Commerce, and the North Dakota Housing and Finance agency and the Bank of North Dakota is predicating growth in western North Dakota. In the next 10 to 20 years the most conservative estimates expect that population to increase by 30,000 to 45,000 people. Western North Dakota will experience a massive growth in the next 5 years. About 10,000 to 20,000 of those people are expected to move into Western North Dakota. That expanding population in the energy industry has brought many of them into conflicts with the water delivery and the use of water. How do we supply to that growing demand in our cities and in our rural areas and yet serve the energy industry that has a need for that water?

The summary of the water problems in this region, Crosby and Burke, Divide, and Williams Counties are in need of a new water plant at this time. The current water supply is of poor quality, limited in supply and expensive to treat. The Ray and Tioga water Association that serves Tioga, Ray, Stanley and Wild Rose, and in the near future will serve Crosby, Burke, Divide and Williams rural district are constructing a water treatment plant, but future water demand projections exceed the safe yield of their aquifer.

Williams Rural Water District has several water users that have been waiting for water for years. They have requested water and their growth area around Williston. They have to turn them down because they don't have capacity. Williston is also looking to provide fire flow in its growth area and its pressures and problems with that growth as well. The demand for industrial water there is putting extreme pressure on the aquifers and causing road damage in that area. Mckenzie County has rural water users that have been waiting for water, are currently using water from the city of Watford City. Watford City water supply quality and quantity has been deteriorating. The city has voted to change its source to the Missouri River by over 90%.

We also have issues of people watching the oil industry use water and they don't have potable water in their communities. The entire region needs a quality water supply. Most of the public water systems are struggling in that area and finding ways to keep ahead of the ever increasing demands. The only supply to meet those requirements is the Missouri River. The city of Williston stepped forward with this group and agreed to be a partner in assisting the region with our existing supply and treatment facilities. They have a permitted capacity in place. It doesn't need further permits from the Corp of Engineers to access the Missouri River. In response to all those circumstances, Mckenzie County has the lead, Ray and Tioga Water Supply Association, Williams Rural Water District, city of Williston are looking now at the Missouri River for water. We have been collaborating on this regional water system to deliver Missouri River water to the Williston Regional Water Treatment Facility to the entire region thru a project known as The Western Area Water Supply Project. Today, the Western Area Water Supply project would construct a series of transmission pipelines, reservoirs, pump stations and fill depots throughout the counties. In addition, a series of expansions for the Williston Water Treatment Facility would need to be included in that to serve this project as well.

When completed the Western Area Water Supply project will deliver Missouri River water to provide for the domestic and industrial water supply needs for the majority of northwest North Dakota. The nearly 150 million dollar proposed Western Area Water Supply project will be capable of delivering over twenty-one million gallons of water per day through northwest North Dakota. That would just meet peek municipal and rural water needs of the region. Public water supply systems are designed to meet peak daily demands over

relatively long term planning horizon. The highest peak day demands are typically limited to the driest years in your planning cycle. The Western Area Water Supply project will have significant unused capacity during non peak domestic demand periods for other purposes without increasing the size of cost of the water treatment facilities. The Western Area Water Supply would be capable provide over 13,000 acre feet of water than to oil and gas industry annually while having designed flexibility to expend and nearly double that amount. For the last two years, we have done a study with the Garrison Conservancy District to determine if the regional system or individual high tech water treatment plant would be the most cost effective. We have had engineering cost estimates completed for the project. We have had the existing intake and water treatment plant at Williston evaluated. We've completed a financial plan and looked at several water demand scenarios to evaluate the financial ability of the funding plan. We are currently examining water supplies to ensure that there's need for industrial water supply. Two years ago we participated in an economic feasibility study with the assistance of Garrison Conservancy District and the State Water Commission to determine the most economical way to solve this water and treatment issues in the region. That study showed that the solution to these issues is a regional approach to goes beyond the borders of McKenzie County Water District. We're in the middle of the largest oil development in the history of the state possible the nation. The state as a whole, water is a critical component to the success. Providing water to the oil industry will allow continued growth and is the first step in supplying infrastructure and needs and it would allow controlled growth, housing and stability to that regional economy. Key infrastructures take over's have all signed off. They agree to WAWSP process. They agree that it will address their challenges while providing numerous benefits. The oil industry and other oil related industries support the project, as it creates a supply for drilling and other growth, reduces the hauling distance of water to the oil fields, and increases safety in our area. The total project will cost over 150 million dollars, purposes a twenty-five million dollar grant from the state and bonding that will be issued by western water area water authority and a moral obligation from the state in the unlikely event that required debt services cannot be maintained by the system. The project has a potential payback period of 10 years through sufficient income, for debt service, through water rates if we started immediately. The need is immediate so the start date must be immediate. The result of this project will be to provide water with water infrastructure and distribution to the people as well as the capability of supplying future needs following the success of the Bakken drilling. When drilling declines, they will have adequate resources to eventually provide water for proposed potash plants, gasification plants, agriculture processing plants. This will help the area prosper for the immediate future and for the years following the Bakken drilling. We think the project has potential to solve water challenges on multiple levels while positioning the region for an economic windfall. The creation of the Western Area Water Supply Authority and the moral obligation from the State of North Dakota has a backstop for bonding. To construct the project is critical in meeting the needs of our rural citizens and communities in the region. It meets the needs of the oil and energy sector and growth associated with it. The members of Western Area Water Supply Project respectfully request that the state provide the necessary tools to meet these needs, propel the region and the State of North Dakota into economic prosperity. We urge you to support HB 1206.

Rep. Hofstad: You have several entities that have assets and likely liabilities. How do you address those issues, the assets of a water resource district or the city of Williston, the obligations, the debts? How do address those issues within this structure.

Gene Veeder: I will defer that question to other people that are going to testify. We have hired attorneys to address those questions. We are open to suggestions as to how things could work better in the authority.

Chairman Porter: Is there further support for HB 1206?

Ron Ness, North Dakota Petroleum Council: We stand in support of HB 1206. The water community has made great strides in not only getting better water supplies for their area, but also providing the critical water that we need for the Bakken. Southwest Water and McKenzie County Water has had a project in which we started meeting with people in the Ray and Tioga area. The water commission has informed us that in certain areas of the Bakken, north of Highway 2 the water resources are very minimal. The area north of Killdeer and the area southwest of Watford City where we anticipate the Bakken development to be robust and yet the water resources are very far to travel. What the community has done is a concept of this water supply system, recognizing the need in these areas. We will need the private developers, and all the water resources when you look at all the water we would need in a year for Bakken, it is one inch off that lake. The water commission made it very clear to us that is your source of water. This a win - win opportunity from the stand point of being able to fund a water system that likely could never get done in that area. Industry is ultimately going to pay for this system. We will reduce road impacts and increase safety on the roadways. The oil industry has proven this past year that they will find water. The economics are too great to drill a 6 million dollar well and not put it in production and not fracture that well because you don't have the water resources. The trucks just go further. The impacts get greater, the safety on the roadways diminish. From the oil operators stand point we are going to reduce costs as well. The cost of the water is minimal; it's the cost of the trucks, drive time, and sitting in line at some of these water depots. As the private permits hit their limits, they're shut down and they go to another one. There is certainly a need for private developers out there. We will continue to see that. People with rights to those private water resources are going to utilize those first in those areas. What we're talking about are the areas where the water resources are a long way and not available in close proximity. Those happen to be communities that don't have rural water projects like this. We stand in support of this bill.

Rep. Clark: There is a process out there called petro-fraccing where they use either propane or petroleum as the medium for the fraccing. Is this a new technique?

Ron Ness: That would be a question for the following speaker.

Brent Eslinger, District Manager for Halliburton: (See attached testimony #1)

Chairman Porter: Would you address Rep. Clark's question about other types of fracturing and the components other than water such as propane and using crude oil?

Brent Eslinger: Propane and crude oil is possible, but a lot higher risk. Compressing propane and if it is not done correctly, things can happen and it is a lot more dangerous than using standard water methods. Oil is another process to do that but as you start using those ingredients, the risks get higher and there's more danger involved with those types of operations.

Chairman Porter: So today and in the future, the norm will still be water fracturing?

Brent Eslinger: Correct. Most of our customers have not requested anything different than what we are currently doing. Production numbers are showing that what we're doing is good. We haven't had a lot of requests for changing things.

Rep. Nelson: Why can't we use the salt water that is coming out of the wells that we're injecting? Why do we have to use fresh water?

Brent Eslinger: Salt water is little more difficult to get the mix and the chemicals to react properly. Sometimes it has a negative effect on the formation, it may swell.

Representative Kasper: Do you have an idea or is it public information, can you share the dollar amount that your company has invested in North Dakota over the years you've been here just to get a feel for the magnitude of your investment?

Brent Eslinger: Just recently in the last 1 ½ years, we've invested about 40 to 60 million dollars just in the Williston area. We also have a 15 million dollar project in the Minot area. We are also in phase 1 of a 20 million dollar project to create housing for our employees which we will have about 30 houses in Williston by May or June.

Tami Norgard, Vogel Law Firm: (See attached testimony #2)

Chairman Porter: In regards to subsection 25, does that authority, later in the bill, expire or is that something that you think needs to be ongoing even though the emanate project timeline is now? Is there a reason why that provision can't expire in a year or two?

Tami Norgard: There's no provision in the statute as drafted that would have it expire but there is no reason why you couldn't put a sunset provision on it because the need is now. Watford City already held their vote. That was about a 9 month process by the time the city council has meetings periodically and they are going through bill drafts and ordinance drafting. It takes some time before it can get in final form and submit it to the voters and to the auditor so many days before the election. The view here we don't see there is a lot of controversy among these cities especially when Watford Cities vote was 90% in favor of changing the city's water source. I don't feel it is out of line to ask for that exemption but there is no reason you couldn't put a sunset on that.
I'd like to address Representative Hofstad's question. How are we going to deal with assets and liabilities of the existing systems and the water treatment plant? There has been some discussion but it is not something that has been finalized in any legislation. For example, 2 years ago Watford City and McKenzie County Water Resource District talked to the city of Williston about buying capacity in your water treatment plant. We want to invest in your plant so that we can have a guaranteed source of water. They did enter into a

contract whereby McKenzie County is obligated to pay the city of Williston for designated capacity. Out of the plant they're paying capitol component along with an O & M component and that contract is assignable to a regional authority to the extent a regional authority is developed. The parties can work together in a manner that will benefit Williston and will repay them for an investment in the plant and share in the bond repayment and someday proceeds from this project. There will be payment for infrastructure but it is not determined who's going to own what. That's something that will be subject to some further question. These entities are collegial and working together and have a common goal.

Representative Hofstad: This will then be a decision of the authority? If we have debt in one of these areas, will they be rolled into bonds or the cost of the project or will they remain with the particular district or entity?

Tami Norgard: It's a decision that will have to be made but there is a business plan that's being developed. Two years ago Advanced Engineering put together a feasibility study which valued the Williston Treatment Plant, the R & T System, the City of Watford City System and they put a value on the infrastructure needs. They calculated who needs how much pipeline and water. So there was a detailed financial analysis that was put together and distributed to this group of regional stakeholders. The parties have been working together and they've accepted that document and the valuation. They are agreeable and understanding so in the future they will have to find a way to work together.

Chairman Porter: Could you get us the amount of debt that exists for current water projects? If it would stay inside of the 150 million dollar moral obligation to the State, is the state also picking up the moral obligation for those bonds if they are rolled into one big project? Are you asking us as a State to just pick up the moral obligation of the new project?

Tami Norgard: It probably isn't clear in the legislation but there's no contemplation that the State would be backing 80% of current bonds. They are contemplating only future bond issues related to this project which currently is calculated to be 150 million dollars.

Chairman Porter: Isn't it common practice as you refinance, restructure, and redo things that you can roll old debt into a new bond and it just kind of goes away? I would want to be clear as to how that process is going to work.
In the bill, we talk about 150 million dollars but the State of North Dakota is already putting in 25 million so shouldn't that number be 125 million that we are morally obligating for because the total cost of the project from Mr. Veeder's testimony was 150 million.

Tami Norgard: Sure.

Chairman Porter: The other thing that I am not clear on, if a payment is missed, and the State of North Dakota steps in and makes that payment, does the State of North Dakota also get a partial ownership or what do we get for our moral obligation? What point would we start taking over if something happened and it isn't cash flowing? Does it become through receivership, ours to handle? If we're paying for it, do we get control of it?

Tami Norgard: I will defer questions about the moral obligation to Bob Campbell who is the investment banker and has been working with the bond underwriters.

Chairman Porter: This moral obligation is a forever moral obligation at that level. Should that also be limited for just the start up expenses or just this one time bond issue? Should it have an expiration date because our moral leaves this project because in 10 years it's going to be paid for and we don't want a 15 year moral obligation on something that the business plan is showing a 10 year payback? We need to have an answer to this. From a policy standpoint, in section 61-40-03, we talk about the membership and how it is developed. Are these elections or appointment by other political subdivisions or other inside groups? How does the public that is being serviced by this political subdivision have their ability to elect someone to this board? I don't see any public members being a part of this so that a citizen from Williston could run for one of these in a local election and get on that board. I know that in the Southwest Authority, there are elections held and the citizens decide who is representing them for those positions. This appears to be just an appointment and I'm not clear from whom.

Tami Norgard: Each member entity will appoint 2 representatives to the authority board. I think that there is the ability to add an election component but I don't think that is the will of the group. There are cities that are appointed as a member entity but those city counsels decide who their representative sitting on the board is. It's in the best interest of the water districts and the cities to have somebody that's involved in water and that knows the water supply and distribution system or has been involved and is informed to be on that board so that they have an understanding of the goal and how these groups are going to be working together in order to create this distribution system. I think the interest of the entities is they want to see somebody from their own boards that's accountable to the boards and that meets regularly with the water boards and understands each of the boards distribution and O & M system.

Chairman Porter: I don't think as a State that we have been very consistent on that practice because we have a multitude of models out there dealing with this same issue that are dealt with in different ways. We need to, as a State, either change our model to one way or the other and we need to be consistent on how hose boards are set up and function. I know in SW, it's an actual election process. I'm not sure about NAWS and Lake Agassy.

Representative S. Kelsh: With respect to the 'quick take' process, is the appraisal of the affected easement done after the construction has begun or is it done prior? How long does the land owner have to wait to have their day in court and the compensation that is due that land owner?

Tami Norgard: Usually with the 'quick take' process, an appraisal is done to determine the value of the easement to be taken. Before you even get to an emanate domain process, the entities go out and try to negotiate with the land owners. In my experience, the public entities that are negotiating with land owners are being fairly generous in what they are offering in terms of the right of way and meeting the concerns of the land owners. After that initial negotiation process, if it doesn't result in a voluntary agreement, the entity would have an appraisal and would advise the landowner what they believe your property is worth. If they choose not to take that offer, with 'quick take' that appraisal amount gets

deposited in the court in an account that the land owner can take out any time if they care to settle the case. A complaint is filed with the court saying we are an entity with 'quick take' emanate domain authority and we're asking the court to transfer the right of way to the authority so that we can construct this process. In standard condemnation, it would be a longer process. The property would not be transferred right away but the landowner would be able to litigate this. Sometime if it ends up in the Supreme Court, it can be years in emanate domain. With 'quick take', the property can be transferred by a judge after 30 days. It then sets up a schedule and says come back with your appraisals, they go to court, and the court decides what the fair market value is and any damage to the land.

Representative Hofstad: In the meantime, the construction has already begun.

Tami Norgard: After the court says the authority has the right to be on the property. The authority can be out there but they can still litigate value.

Bob Campbell, Barclays Capital: (See attached testimony #3) In answer to Representative Hofstad's question; we don't know exactly how we are going to reconcile the various debt obligations of the benefitted users and of the authority. We don't contemplate rolling their debt into this financing. This is contemplated as a standalone financing by the Western Water Supply Authority. How the various obligations get repaid by the beneficiaries; it's a detailed diagram. Ideally the authority would sell bulk water to the users, they would then impose rates and charges and figure out how to pay for that water. There are a lot of lien levels that you have to analyze to figure out where the obligation to repay the bulk water sale contract payments would come from. We would hope that the highest priority, treat it like a water supply expense, make it O & M expense, put it above their obligation to pay their own debt service.
Chairman Porter's question; on the sunset of the voter approval, if you have the sunset, it should be for at least these bonds and this project. It doesn't have to run over into other projects. Once you finance a project, you're going to have additions and betterments to it. You may want to restructure your financing with refunding. You want to have the same lack of voter approval condition associated with the bonds. Once you get started, you want to be able to finish.

Chairman Porter: The amount in the bill is 150 million dollars and it is unlimited in time. If the bonds get paid down to 75 million in 4 years and that authority goes further into debt back up to 150 million dollars with another bond release, then the State is still morally obligated for that total amount when their risk on this stand alone issue was decreased at one point in time. Are you asking State of North Dakota to be morally obligated to this project for its lifetime? Are you asking us for this one issuance and this one issuance only?

Bob Campbell: I see this as two different questions. One being; voter approval of bonds. For an expeditious development and for purposes that the voter approval exemption is not needed for this project. The moral obligation of the State should run with the bonds. If the bonds are outstanding, the moral obligation applies to them. If they get refinanced or restructured, it should stand with those bonds. If they get paid down, it's for the smaller amount and doesn't get raised back up.

Chairman Porter: do you think that the language says that?

Bob Campbell: I'm not sure but I will take a look at it. That's the intent and the market would say once the moral ob is attached to the bonds, it sticks to the bonds but it goes away. You can make another decision if you want to attach a moral obligation to betterment on this project. As this project gets built, it generates revenue; it establishes a history, than the need for the State moral obligation falls off or is diminished.

Chairman Porter: We are being told it is a 150 million dollar project. We've got 25 million dollars inside of the Water Commission's budget for this project. In this section of the code, shouldn't it read 125 million dollars plus those costs rather than 150 million because the cost of the project you're telling us is 175 million dollars.

Bob Campbell: I don't know the precise answer to your question. The moral obligation should attach to the amount of bonds that have to be issued.

Chairman Porter: So this number may not have reflected the 25 million dollar down payment?

Bob Campbell: It maybe too low and it may be too high. We need to be cognizant of that so we don't bake something in that doesn't work.

Chairman Porter: Who does the State go and get if a payment is missed and we use our moral obligation inside of this bill? Do we suddenly become owners of the WAWS? Do we have the first lien on it? What do we have for our moral obligation?

Bob Campbell: Nothing. The way this legislation is drafted, there is no opportunity for the State to take over the system or to assert ownership if it does contribute money based upon its moral obligation.

Chairman Keiser: When you go to the market and want to borrow 150 million, they don't just give you carte blanche. Those covenants are going to be very specific and are going to look at the moral obligation specifically and it will be limited to the 125 million. We can put it into the law but I have no reservations that the covenants are going to be clear and precise and it will be extremely well defined and those responsibilities for payment are going to be in first position. Is that correct?

Bob Campbell: That's correct. Whatever the number is and however the repayment obligations of the stakeholders are defined will be very clear.

Representative Nelson: Are the oil companies in any way making a commitment to the project as far as to buy or is there going to be these water depots, a price for water and their free to drive and get water or not as they may decide.

Bob Campbell: My understanding is the ladder is the case. They will not be entering into any long term contracts to buy water. They will buy it at the tap and pay for it.

Representative Nelson: What percentage of this project is planned to be paid for by the revenue by those companies.

Bob Campbell: About 80%.

Representative Nelson: What is the price anticipated?

Bob Campbell: I don't know that. I think that's still being fed into the models. We've looked at 10 to 40 dollars for the water. Depending upon the level of State support, what the rating will be. We'll know what the cost of the debt will be. We'll know what bogie we'll have to hit. We'll know how much e have to charge to have the bonds paid off in 10 years and to insulate the State. A number will drop out. It may be too high and then you talk to the oil and gas companies. The number could be smaller if you step up with a commitment. Right now, it is charge what needs to be charged to build the project and no further commitments.

Chairman Porter: Further testimony in support?

David Johnson, Operations Manager for Advanced Engineering & Environmental Service: (See attached testimony #4).

Representative Hofstad: What kinds of opportunities does the State have for oversight of this project once the bill is approved and once the bonds are let? We have a moral obligation so what's our oversight and how do we know what's going on?

David Johnson: I would suspect that it will be run through the State MR & I program. We do have a 25 million dollar grant portion of this project and in order to access those funds. If it's the MR & I program, those plans and specs are sent to the Garrison Diversion Conservancy District for review and approval prior to bidding. There is some opportunity for some oversight.

Representative Keiser: Given the strategy that is being proposed, is a revenue bond strategy with a grant at the front end. Was there any discussion that at the end of the payment of that bond, if there were certain thresholds met, that the 25 million could be repaid to the State?

David Johnson: That's been talked about a lot. It's not in our proposal. Would we entertain that offer? I think we could take that back to the users and ask them and that's a decision they'd have to make. We have not modeled that in any way to find out how feasible that is.

Chairman Porter: You have the information that Representative Hofstad had earlier about what the current debt load is on the existing infrastructure and what the plans are to pay back that debt. Is it to roll it into this new bond issuance and start at zero and pay off all other existing debt? Is it to carry that debt on the local level along with this project or what is the plan? As far as those plants with that debt, is it in the plan that that water plant in Williston becomes owned by this project or do they maintain their ownership and run in conjunction with?

David Johnson: The assumptions that were placed in our model assumed that the existing water users were going to continue to pay their fair share. They are going to

continue to have the rates where they are. The existing user rates would continue to service their existing debt. As the systems grow, they're going to continue that existing rate on their new customers as well. That's where you see the 20% revenue stream. The city of Williston Water Treatment Plant's agreement that is on the table right now is that the rate structure would pay for the existing debt load on Williston's plant. They would not be paid an additional amount of money for their existing facility. In exchange, the Williams Rural Water District has agreed that they will not block the city of Williston from growing out into their territory and providing fire flow protection. McKenzie County who is most likely going to have one of the largest oil demands to help pay for the system. Another huge demand is up north of Ray and Tioga. There's no water source there and there's going to be a huge oil revenue demand in that area. All of the oil revenue is going to come back to the authority to pay for the project. The existing rates will pay for the existing systems. The 150 million is only for the new construction of the project.

Chairman Porter: Can you clarify the 150 million? Is it really 175 because of the 25 million dollar grant or is the project 150 total and the State's moral obligation should be 125 million because we're already given you 125 up front?

David Johnson: The cost of the project is 150 million. But we don't have the 25 million in hand. It's in a budget.

Representative Keiser: We keep talking about expected revenue that will be generated from the oil and gas industry. The industry is already purchasing water and somebody is being paid for that. The current load of purchases isn't going to change. Somebody is going to lose that revenue and it will be transferred over. Are there entities that are going to lose revenue, should these go forward, that were anticipating needing that revenue in order to pay their debt service? How else does it work? There could be a significant growth in demand and the new demand could be what's paying for the debt. Just transferring the point of purchase doesn't change the dollars necessarily.

David Johnson: You're right. We fully anticipate that if we build this system and put in these high quality water depots where the trucks don't have to wait, we are going to take away the revenue streams Williston, Watford City, and the people selling them. The model is set up to show that we have enough revenues being generated to protect the level of revenue that those communities were receiving. We're going to be able to reimburse them for that amount of water that they'll lose. We're capping them at the 2010 level because what we can't do is turn around and provide a bunch of water to the city of Watford, for example, and they turn around and set up their own. Everybody's agreeing to that. They are going to share on the growth.

Chairman Porter: Further testimony in support of 1206?

Brad Bekkedahl, VP and Finance Commissioner for Williston: (See attached testimony #5).

Chairman Porter: Further testimony in support?

Rick Olson, Manager of Williams County Rural Water District: (See attached testimony #6).

Chairman Porter: Further testimony in support?

Jean Schafer, Executive Director of the North Dakota Water Coalition: (See attached testimony #7 and handouts #8 and #9).

Chairman Porter: Further testimony in support?

Jerry Ranum, President of R & T Water Supply Association: (See attached testimony #10 and handout #11, #12, and #13).

Chairman Porter: Further testimony in support?

Terry Metzler, Granite Peak Development: (See attached testimony #14).

Chairman Porter: Further testimony in support?

Lowell Cutshaw, City Administrator for Watford City: We are here to support the WAWS Project. When we first started looking at this, I looked at the water quality that our ground water source is producing. Over the past 23 years, a steady increase of sodium, bicarbonate sulfates and alkalinity so we approached the McKenzie Rural Water District about bringing water from Williston's water plant through a proposed to Watford City. When we compared water quality characteristics, we found that we could expect up to a 90% reduction of some of the characteristics of our water as opposed to the water from Williston Water Plant. We also looked at our two water plants are between 25 and 30 years old. They are in need of replacement and when we asked AE2S to do an economic analysis for us, it was found that the most reasonable and cheapest option for our customers was to look at bringing water from Williston through a pipeline and we would contract with McKenzie Rural Water District to provide water for Watford City. Another issue is that it is getting increasingly hard to get and keep qualified operators and this would eliminate our need to have an operator for our water plants. We would still need distribution personnel but the qualifications are not as rigorous as to operate a water plant. When we looked at changing our water supply from a ground water supply to Missouri River water supply to a vote of the people, the measure was overwhelmingly approved by 94% for, 6% against.

Chairman Porter: Further testimony in support? Is there any opposition to HB 1206?

Ron Henke, Project Development Director for NDDOT: (See attached testimony #15). We are neutral on the bill and have not taken a side on the bill.

Representative Keiser: Do you disagree with their projections as to what it will save in highway funding? If you agree with that or think it's greater, why aren't you here in support of any program or do you have so much money in your budget that you don't need those dollars?

Ron Henke: I'm going to have to defer that question. I have not looked at that report and been part of that. I would need to go back and talk to our executive branch. We can get an answer back to you.

Chairman Porter: Is this language consistent with how NAWS, SW Pipeline, Burleigh County Rural Pipeline was handled?

Ron Henke: I also don't know that. We have not researched into that. I will check into it and let you know if it is consistent.

Chairman Porter: I don't recall having any specific concerns. Were you as a department proposing an amendment? Were you proposing to have that language stricken? What exactly are you telling us?

Ron Henke: We were just trying to make you aware that the way we see the bill the way it is, we will continue using our permitting process as part of our approval.

Chairman Porter: Unless we tell you not to.

Ron Henke: That is correct.

Chairman Porter: We will close the hearing on HB 1206.

(See attachment #16 in opposition submitted after hearing.)

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: January 26, 2011

Recorder Job Number: 13510

Committee Clerk Signature Mary Main

HB 1206 Energy & Natural Resources Subcommittee:

Representative Keiser, Representative Hofstad, Representative S. Kelsh

Minutes:

Representative Keiser: We'll open the hearing on subcommittee hearing on HB 1206. I'd like to go around the room and voice your concerns and issues that you've heard so we can get them on the table so we can look at what we need to address.

Representative Hofstad: One of my concerns is any kind of oversight. It does not appear that with this bill we do have that oversight. We're obligating the state of North Dakota to a substantial amount of money without the kind of oversights that we generally have when we do water projects. We have a very good system in place by which we build projects. The State Water Commission is there. We haven't taken that path because it has worked well in all the projects that we build. It provides accountability to the citizens and the state whose money this is. It's an authority / commission that is made up of the governor and several members. If we can do it within some kind of oversight of the State Water Commission, I would feel much better. I don't want to delay this project because I think it is essential that we get a bill. I'm completely 100% supportive of it. I'm looking for some kind of oversight through the Water Commission, through the C District, or through the MR&I program. If you look at establishing this authority, there are lots of issues that I have questions about. You've got several different entities and although they've agreed to come together, the details are not worked out. I want to see us work through that and give the state some kind of oversight and responsibility toward that bonding in the project.

Representative Keiser: To support that, we're creating an authority (Political Subdivision). We'll find a solution but we are creating an authority which has the power of a Political Subdivision almost. As a political subdivision, that brings us back into play and we need to figure out a way.

Representative S. Kelsh: With respect to the eminent domain, the taking of right of way, whether the value of that property and when that appraisal took place. That was answered in committee. As a political subdivision, does it have the authority for joint House agreements?

Representative Keiser: My major area of concern is on the financing side. How do we do the financing? Who should issue the bonds? Should we use the current state vehicle for issuing bonds? Is there some advantage to allowing that? Do we go outside of that? I don't have much of a problem where the state is going to come in and take some liability. Where I do have a problem, the Authority becomes the owner of the property and assets. There is language in here that no bond holder can get to the assets. What if the state is on the hook? What if they come back and say 'state', we want to be paid. If we are going to be in that position, I want to be able to get back to whatever assets there are and recover them on behalf of the state and not allow the Authority to protect itself and say win, loose, or draw, we keep the assets. That's the way I read it now. How best do we structure the bonding process and to protect the state as much as we can recognize that there's going to be less to make this thing go. We didn't do other projects without the state taking some risk. There is some risk.

Karlene Fine: My concern is that there is no state involvement in issuance and yes, the state was going to be on the hook. I looked at it and said where should it best fall. The State Water Commission has been doing the bonding for all the state water projects and it seems logical that the Water Commission would be involved with the issuance of the bonds. Another alternative is whether the Industrial Commission agencies which is a Public Finance Authority previously known as a Municipal Bond Bank. They have the ability to issue bonds with a moral obligation of the state. They have some limitations. They can go up to 75 million right now under their authority of bonds that would carry the moral ob. The key issue for us is if the state is going to be on the hook, as we go to the rating agencies and talk about the state's rating that the state has some involvement, that they have a seat at the table and that they see how it's structured. There's a lot of discussion about the dexter of this and how that would be refurbished. I didn't hear a lot of discussion about how the cash flow would work with the operations and maintenance of the project. Those are important features that when we sit down with the rating agency, they're going to want to know that. We think there should be one of the state people involved in the process of the actual issuance of the debt.

Representative Keiser: It's a real asset. The two groups have identified and have a lot of experience, knowledge, connections, things that can make this work if we do go to the market.

Mike Dwyer: Somehow the project has to get built. We really need this project. We've asked legislators, if you're uncomfortable with the bonding, are you willing to consider additional money because somehow this project has to get built. How and who? We have two authorities, Garrison and Southwest, where they're elected. We have the Red River where they're appointed. This one would be appointed. Should we have some discussion about having a consistent model? Who should build it? The Water Commission is building two big projects and so there is quite a bit of comfort in their capability, knowledge, bond authority, that sort of thing. We had a hearing before the Senate Appropriations Committee and the estimated revenues for water are about 235 million. We have this crisis on our hands which is Devils Lake that's going to take 120 to 150 million of that 235 million so while that's far more than we've ever had, we know we have to do Devils Lake. We have 90-100 million left to do SW, NAWS, Fargo flood control, this project and that's why we're having discussion about money. We asked the Senate Appropriations if they would consider appropriating an additional 100 million over and above the 235 and the response was 'everybody's asking for more money' so that won't be determined until later. We do have a significant money crunch because of the Devils Lake issue.

Andrea Travnicek: We're very much in support of the project. The governor has put 25 million towards the project for this next biennium. We had more questions on the funding aspects. Is bonding the best way or if it's through grants or through phasing? We had looked at some of the projects NAWS and SW Pipeline where there is more assurances. The state is willing to take some of the risk. We're not assured of any contracts right now. Just to make sure we have insurances that this pipeline will be used and of course the rural communities will. It's just a matter of how we get there and how we get it completed.

David Johnson: I think we've focused on the issues. On is what will the required state oversight be? I think we have quite a few concerns at the local level that this doesn't get slowed down because of some sort of process that we set up that we can't get through. A problem that we have is if we do slow it down, the revenue streams that are out there, that's what we're trying to speed up and capture all those. The other issue is we've studied this for quite a while and now that we have the local folks coming together and tore down those barriers, we don't want to integrate a process that's going to split that apart again. Maintaining that local support is going to be very important to this project.

Cory Chorne: Did you want to expand on the moral obligation and the affect that that has as far as the percentage that is in the bill right now?

David Johnson: A piece of information that we're working through right now is that what is the minimum amount of state moral obligation that we could still get to an industrial grade? By going to 80%, we get to a triple B. If you actually had a 100%, it would reduce the state's exposure because it would make it cheaper.

Representative Keiser: What is required to move from 80% to 100%?

David Johnson: Just switch that number from 80 to 100 in the legislation.

Representative Keiser: That's all. We'll have a moral obligation of 100%.

David Johnson: In reality, that would reduce the state's true risk because it cheapens the project.

Dennis Boyd: I'm really a generalist, not a water expert. I do appreciate everybody's interest and concern for this project. I've talked to a high percentage of legislators and I haven't had any pushback at all from anybody. There are concerns about the bonding but everybody thinks this is a great project. One of the reasons that the bonding route was chosen as opposed to an appropriation was to not detract from other water projects that are on the boards under the Water Commission. There's an interest in fast tracking this to capture the revenue from the oil field. It is sort of a historic moment because, even though there has been talk about this project for 6 or 8 years, they've never been able to bring all the interests together. They've even resolved a territorial dispute that has gone on over 10 years over electric service territories that Williston and the Williams Rural Water System have reached an agreement about a new subdivision there. Representative Hofstad, you asked several questions during the hearing about existing debt on some of the systems. Have we answered those questions to your satisfaction?

Representative Hofstad: You really haven't.

Dennis Boyd: Be sure that we do.

Representative Keiser: We can get that for the next meeting.

Representative S. Kelsh: At the hearing I did some math. The math on 150 million dollars is 3000 fracs. That's a significant number to know because in the big picture, that's not that much. You have to sell water for 3000 wells over a 10 year time period, that's going to be reduced substantially. The timeliness is critical because every day you're not selling one, somebody else is looking at that opportunity.

Representative Keiser: Now all we have to do is solve these questions that we have. Representative Hofstad and Representative S. Kelsh, if you want any information, just let it be known and for our next meeting, we'll have it. I have one other issue. I'm not comfortable with the numbers that we have and I want to be made comfortable that the 150 million, 125 million, or 175 million is the number that works as we go down this road. When will we know the real number and how confident are you in the number.

Cory Chorne: Our confidence level is pretty high but what we would preface that with is a plus or minus 10% after we look at our cost estimates, at the conceptual level of design that we're at. It will be more refined as we work through more detailed designs.

Representative Keiser: Let's define what dollars that you think we'll need. Is it 150 million + 25 or is it 125 + 25.

Cory Chorne: It's 125 + 25 million. That's our total project costs to have everything installed that we've got in our conceptual plan.

Representative Keiser: That comes to 150 million and plus or minus 10%. Are you engineers comfortable with 10%?

Cory Chorne: Yes. I know I could build this project for 150 million dollars.

Representative Hofstad: Let's identify the assets or the liabilities of all of the entities that are involved right now because I think that's an important part of this budget. Obviously there are assets and there are liabilities of all these different water districts and cities. How does that fit into the state's responsibility because once this political subdivision is formed, whose responsibility is that and where that liability or asset is assigned? Where does it go to?

Cory Chorne: That existing liability stays with the existing entities. That does not get transferred to the authority and the bonds do not cover a portion of that. Those existing assets that they have they keep and they're responsible for that.

Representative Keiser: One of the concerns comes back to the question we had in the hearing. If you're not producing significantly more water initially, those water authorities have their debt to manage, so where does the revenue come to manage these bonds?
If you're not paying them off so that they can now use their funds to buy your water? They already have their debt their managing plus they're buying water from you. This increases their cash flow requirements dramatically. How does that work?

David Johnson: We have an appraisal level financial plan that we can give to the committee which details the cash flow and how it works. The initial years, the first 2 to 3 years of construction, is funded with the bond issue until the construction is completed and you can actually start selling water. The initial par value of the bonds would include a prefunding of the required debt service reserves. It will include interest during construction and the cost of construction. After the facilities are in place, you have the revenue streams to start paying back the bonds. We think we could start selling water sooner as we get some facilities on line but that has not been included in the projections. Those revenue streams will come after the project is complete. We have that kind of detail that we can provide to the committee.

Cory Chorne: Right now, they've got a user base. That user base is paying a monthly bill and that monthly bill is paying of existing debt. How do those local entities make a contribution to this overall project? You've got these existing users that are paying their existing liabilities and their covering those costs. As people are moving into the area,

they're adding to their user base. Now they've got their existing base covering existing debt and as their population expands, they've got additional revenue. It's that additional revenue stream that these entities will have coming in that will help pay for this regional project and a significant portion of the local cost share. That's how this gets translated into a local cost share for not only the new people. Watford City, for example, has 2 water plants that are paid for. They looked at their water quality through their existing plants and the citizens wanted better water. They had one option that was building an advanced treatment plant in Watford City. They looked at the cost and it was pretty expensive. They looked at going to Williston. That was financially a better option for them. Beyond what they are paying now, they also compared to what else they would have had to do to get the same water quality. They also looked at rate increases. You may also see existing users paying a bit more than they are now but not as much as other options that they looked at. It will be a combination of things that will help generate revenue.

Representative Hofstad: The only way that model really works is if you have expanded user base. You're assuming that your district is going to grow. If your system doesn't grow, you still have debt service, you still have replacement of you existing system most of them are probably paying off. In all of these systems and entities, there's enough growth and enough added revenue from the changing rates to satisfy all these debts.

Cory Chorne: Right. If we looked at the conceptual design of this project, was based on domestic demands. We looked at population projections that were done by the Housing Finance Authority and the Bank of North Dakota and a couple other agencies. There projections showed from 30 to 45 thousand people from 2011 through 2025 moving into western North Dakota. We looked at the different areas. In the Williston area, the conservative side is about 20,000 and the high side is 35,000 people projected to move into that area. That's what we based our concept on.

Representative Keiser: The growth up there has been phenomenal. Those communities have built water systems 5 or 10 years ago based on projections, are probably almost paid off. It would be nice to know what their financial status is so we have more confidence in this model. We could get that information for our next meeting of all the partners and all the users that will be buying into this. If we see some growth patterns, what happened to their financing so that they are in fact going to be able to make payments on water when they use it and the bonds are going to have a real revenue stream? Let's talk about this bonding. We now know that you want 125 million and it's going to be a revenue bond with the good faith of the state at the back end. What do we need Karlene?

Karlene Fine: You're exactly right. When you talk 125 million, that's just the project cost. You're talking about finance and capitalized interest for 3 years. You're also want to fully fund your debt service reserve. So you're talking a bond issue that's closer to

200 million. That's just the facts of trying to put together the numbers and that is what the state is on the hook for.

Representative Keiser: Does that include the 10%?

Karlene Fine: No.

Representative Keiser: So it's going to be 220 million?

Karlene Fine: No. The 10% was just on the construction costs. So about 200 million.

Representative Keiser: Is everybody OK with 200 million?

Representative Hofstad: Those costs again are debt service or what again?

Karlene Fine: Because you don't have any revenues coming in for approximately 3 years, you're going to capitalize the interest. The bond rating agencies require a debt service reserve and it has to be for 2 years because he legislature only meets every 2 years. You have to fully fund your debt service reserve.

Representative Keiser: How much is that typically?

Karlene Fine: Let's say you were doing a 200 million dollar bond issue with a 10 year payback, you're going to have debt service that has to be paid each year is about 22 million dollars and for 2 years, about 40 million dollars. That's dollars that will come back to you eventually but it has to be bonded to bear the cost.

Representative Hofstad: Does that bonding give us the money to put into those accounts?

Karlene Fine: Yes.

Representative Keiser: We would get 200 million. We would open a debt service account and put in whatever that amount is and have a capital interest account. Then we're going to start construction.

Karlene Fine: Correct. This is the cost of doing the bond issue. There are all those costs that get tacked on when you do a bonding.

Representative Keiser: OK. 200 million. What's the best approach that we can get the best deal?

Karlene Fine: You would look at a moral obligation since an appropriation is out.

Representative Keiser: We were talking about 80% or 100%. What do you want?

Karlene Fine: It has to be 100%. 80% would be a BBB- and you won't get a very good rating with 80% because it's not fully covered.
Representative Keiser: It's 100% moral obligation by the state. What else?

Karlene Fine: The rating agencies would be looking that there's some state involvement.

Representative Keiser: Who's going to go to the market for the bonds? Does the state or these guys?

Karlene Fine: The way the bill is written now is it would be this authority. That is not ideal.

Representative Keiser: What's the best way? Have the Water Commission go?

Karlene Fine: The Water Commission has an established reputation with the rating agencies.

Representative Keiser: Can you go to the market if it's not your project?

Mike Dwyer: I work for the Water Commission. I don't know if that would work. I'm assuming that if the Water Commission was going to issue the bonds, they'd want to build the project. The governor would have to make that decision.

Karlene Fine: Advantageous would be an identified repayment source in addition to the moral obligation such as an identified tax that was going to support the bond issue. If there was a percentage of a fund that would come off the top like the Water Resources trust fund or some other fund if we need it. When we did the water project for Grand Forks, SW original, Devils Lake, the Bank of North Dakota ended up having a guarantee on those bonds. Those are all things you can put on to make it have a better rating.

Representative Keiser: Who has the capacity to tap that we want to identify?

Karlene Fine: That becomes an OMB issue of which funds to utilize.

Mike Dwyer: The Water Development Trust Fund, the tobacco fund, is pretty much bonded out.

Representative Keiser: It is.

Mike Dwyer: The resources trust fund which is the dedicated water fund doesn't have any bonds attached to it I don't believe except for the tier down.

Representative Keiser: Can you think about it and see. I agree. What we want in the bill is clear delineation of what's going to happen. If we're going to go to the market for 200 million, we better know what we're doing and who's going to be backing it. How we're going to operate. Who do I need to talk to on that or do you want to do something with that – the payment source? I can talk to the guys on Appropriations and come back with a suggestion.

Representative Hofstad: Within the framework of a SW Water Authority, is there a mechanism within that kind of authority that would work better for bonding?

Mike Dwyer: What happened on both the SW Pipeline and NAWS is that they started with an advisory committee. The Water Commission did the construction and they did the bonding. Ultimately, in the SW the legislature created an authority not before hand but after hand, after construction was about 10 years down the road. There have been a number of bond issues with the SW Pipeline. The NAWS project is following that same model where an advisory committee was created by the legislature and the Water Commission is building it but they haven't got to the point of creating an authority yet. In that project, one of the discussions will be 'what roll will Garrison play in the creation of that authority?' In SW, Garrison is not involved. In NAWS, Garrison includes all those counties so there is a duplication if you create an authority. That has to be some discussion between Minot and the surrounding counties, the C district, and the state as to what they're going to end up with. We haven't got there yet on that. That was the model on those two.

Representative Keiser: The beauty out here is everybody is together ready to form the authority. Everybody's on as we understand it. I think that's one of the conditions we need in the bill. What if somebody backs out? We want to be able to null and void the deal. That's the precaution we need to have in there. It has to stay intact and this authority has to be officially formed. Would you do that before you go to the bond market?

Karlene Fine: I would think so. I think the way SW was able to do it was because the Water Commission was the entity that went to the bond market while they had the advisory committee. Now that they have an authority structured, the Water Commission does the bonding for the authority.

Representative Keiser: You're saying if the Water Commission bonds it, they want to build it.

Mike Dwyer: No. I just said I assumed that. I don't know. The governor's the chairman.

Andrea Travnicek: We'd have to do some to figure out if that's the best way. There would have to be some oversight since we're taking . . . .

Representative Keiser: Andrea, would you check with the governor and see if he thinks he wants the Water Commission to do the bonding but not the building.

Andrea Travnicek: OK

Mike Dwyer: He may have to have a discussion with the Commission. He is the chairman but there is a commission.

Representative Keiser: I understand. He can take it to the commission and let us know whether or not they think it's a good idea.

Representative Hofstad: The Water Commission could do the bonding and do the oversight and have someone else do the building.

Representative Keiser: That's the question. Those are the two questions that we'd like you to have a discussion with the governor on and provide the feedback to the subcommittee. We'll be looking at other alternatives. I'll talk to the Appropriations folks. Bob Skarphol does want this project. The authority has to be officially formed and what else do we need to have happen to make sure that the state is OK as we move towards bonding and putting moral obligation on the state? Bob Skarphol told me if you're happy with whatever we propose, he's happy.

Karlene Fine: As long as the Governor is happy with it and the Industrial Commission. I think we've covered most of the issues.

David Johnson: We had one more suggestion for you to consider. If we can find a way to fund the debt service repayment on an annual basis, either with a letter of credit from the Bank of North Dakota or some other source, that you can get that interest requirement to be a single year versus 2 years, you reduce that reserve down to 25 million.

Karlene Fine: He's correct. Typically, rating agencies don't like to look at an entire debt service being all in the bond issue. They like to have another source and so you look at when we do the public finance authority financing, we have half of it come from a letter of credit from the Bank of North Dakota.

Representative Keiser: Do we want to add that?

Karlene Fine: That would be something you'd negotiate in your financing. That doesn't have to be in the legislation. That would be something you'd work through the structure.

Representative Keiser: It really does reduce that 200 million down to 175 and gets you back closer to what the original proposal was.

Representative Hofstad: Is there any validity in staging this project as far as bonding and obligation to the state of North Dakota?

David Johnson: It's a possibility however the problem we run into are the revenue streams are out on the ends of the system. A lot of the revenue streams are coming from way out there so that's the need for getting the whole project completed so you can get out and into the oil field.
Representative Keiser: I'm not an expert in bonding, but you don't need 200 million on day one. Is there a way to structure the bonds so that there are periodic payments into the account so you reduce the interest cost?

Karlene Fine: Probably not because your revenue stream. They're really looking for the whole picture and what your revenue stream is going to be to support that. Unless you broke it up into a smaller piece and enough revenue would be coming in from that 1st phase that you could support that bond issue. Then you'd do the next bond issue and that would be the next phase. I would think that they'd be looking for a total project.

Andrea Travnicek: If you broke it up like that, you would almost be how the Water Commission usually does their projects where every biennium there's more money set aside to go towards the projects. That's how NAWS and SE Pipeline have been.

Representative Keiser: So that's everything that we need and we'll work with Tim Dawson to begin to get some drafts going on that. Eminent domain – you're OK on the language that is in the bill. We're giving guys a lot of authority creating the authority to go on people's land. It's in very short order but otherwise it's not fast tracked and tha't one of the keys to making this go.

Dennis Boyd: We're not really seizing somebody's property. We're just burying a pipeline. We're not seizing a building or throwing somebody out of a house so that somebody can build a parking lot.

David Johnson: That's just another argument for why it's so important that the locals are in the middle of that because they are going to be very sensitive to using that.

Cory Chorne: I work with a lot of districts that have that authority and capability but everyone that I've ever worked with, it was always a last resort. I don't know that I've ever actually had to use it on any of the pipeline projects that I've ever built.

Representative S. Kelsh: When this appraisal is done if the value of the property would be altered in such a way that nobody could go out and reevaluate.

Representative Keiser: What about the joint powers agreement. Is that an issue?

David Johnson: In that case, the Ray & Tioga Water system has been established as a joint powers agreement between Ray and Tioga. The problem with using that model

is whenever they go to borrow money to do improvements, one of the two cities has to take that on as an obligation on their system for them individually. It's causing problems because those folks need to grow their communities. What their trying to do is create a commerce authority for that system. There's actually a law in there that creates it. There was one small issue that was a problem that he wanted corrected in the existing law.

Representative Keiser: With that oversight, what else do we need to get into the bill? If the Water Commission will provide oversight, and or financing, would that be adequate?

Representative Hofstad: That would make me comfortable because I think we have to have somebody at state level and some state agency whether it be the C District or the State Water Commission that has the kind of oversight. We're obligating 200 million dollars so I think its vitality important that we have that kind of oversight. The State Water Commission are the experts, they're responsible for water projects in the state and there needs to be integrated into it.

Representative Keiser: It makes sense from a policy standpoint long term.

David Johnson: We've talked with the systems about oversight and nobody's concerned about having technical oversight and they welcome that. They don't want a project that's not designed properly. All of these systems are used to using the MR&I program which typically goes through the Garrison Diversion Conservancy District.

Representative Keiser: Mike, you raised the question. I had a little concern when I read the bill too about how people get appointed versus elected. Do we have the right model? We have 4 entities coming together and they appoint to the first management team for this authority and then it can grow but they remain appointed. We've got two different models in the state, Garrison and SW are elected.

Mike Dwyer: Representative Porter had asked the question in the hearing.

Representative Keiser: What do folks think?

Representative S. Kelsh: I would like to know what Mike thinks. What do you think is the best model?

Mike Dwyer: I think we need to get the Water Commission, the Garrison Conservancy District, NAWS and these folks together and have a discussion. I don't know what the different folks think and I represent some of them but we haven't had a chance to get the offices and C District together and ask what their take on this is or the Minot folks. We've had discussions for years and they've been sometime we need to sit down and have a discussion. That's all the further we've gotten.

David Johnson: These 4 systems have spent quite a bit of time rustling with that whole issue. We've talked about whether or not you'd do by districts and a voting of the people. They landed on this format but also notice in the bill there's provisions that they could set the bylaws which will do some sort of weighted voting by volume of water sold and things like that. The formula that's envisioned will migrate as systems grow or decline so that it continues to be fair. That was a significant issue to get passed in order for them to agree that they wanted to work together on it.

Representative Keiser: They're happy with the way it's set up?

David Johnson: Yes. This wording is very close with those systems.

Representative Keiser: Who should build it and what are the alternatives? The Water Commission? Who else?

Mike Dwyer: There are really only 3 options: One would be them – the authority, the other would be the Water Commission, and the other would be the Garrison Conservancy District. The C District has all the same authority that the Water Commission has but they haven't been to the bond market. The C District is a regional authority and the Water Commission is a state agency.

Representative Keiser: As we look at those two things, the items that were identified that need to be addressed with speed, we want to pass some legislation and go to the bond market and be on line in 3 to 4 years. Who can do it? Can the Water Commission do that? Can Garrison Diversion do it? Guarantee that they'll be on line? Can this authority do it? Speed is the key. The oil business out here needs the water today and the state needs the state money on the roads today. I'm getting a little frustrated that we spend all that money out there knowing that the trucks are going to tear it right back up. We can't get water out there fast enough if we want to truly save money. We can save 100's of millions of dollars on roads if we can get this out there fast enough. Of these three options, who can build it?

David Johnson: We're confident that the water authority can. At least that group is. The key is to make sure that the package we put in the legislation is sellable in the bond market.

Representative Hofstad: I'm not so sure. The trouble that I have is that we're establishing something that is not there yet. We don't have this in place although you've talked about the agreements that they all have in place. I trust that you're right but the details have not been worked out yet. We have not worked out those bylaws and they can be very difficult when you get all those people together. We have a couple models in place that have worked and I don't care. I just think we need to get this thing done and get it done as fast as we can and be as responsible to our citizens as we need to be. Let's have the discussion and lay it on the table and find the best way.

David Johnson: Don't get my comments mistaken that I'm sure if there's another workable way to do it, they're open to listening to those things. As we look forward, we want to be looking at what staff to be dedicated as well.

Representative Keiser: We've got to put those things on the table. We're not going to beat around the bush here. My gut feeling is if you go Water Commission or Garrison Diversion, the project doesn't go. These groups out there have put together their deal and they like it. You need them because right now, they own it and they're not going to own the others. The Water Commission or Garrison Diversion could have been talking about this 2 or 3 years ago but when they start could be a different point in time. That's just my feeling.

Representative S. Kelsh: Only that the Water Commission has been to a bonding.

Representative Keiser: We're going to have to see if they want to help us with that or not. I like Curt's idea of the oversight from a state position. If we're going to change it, we need the legislation to get the money. If we want to cut the authority out, this is it or we wait 2 years.

Mike Dwyer: One thing that should happen is those folks should have a discussion amongst themselves. If the Water Commission built it, are we comfortable with doing that because the Water Commission could build it the quickest.

Andrea Travnicek: Each plant could deal with the layout and what their staffing is and if they're able to do it. Don't rule them out completely; just try to figure out what their staff is.

Mike Dwyer: If the Water Commission ruins the project because of the local situation, that's one thing. If the locals say we don't care whether we build it or the Water Commission builds it, we just want it built the way we designed it. The Water Commission built 2 projects. They've done it all. The C District has not.

Representative Keiser: I'm hoping. We can and will get an extension, a suspension of the rules. Feb. 7th, every Appropriation bill is out of committee. It is a rule and that's the way it works. We have till now and we have to take action on the floor and some other things in between there. We can always get a little bit of an extension. There does come a day called crossover and there isn't an extension on that. So let's have a discussion with the Water Commission. Who's going to do that?

Andrea Travnicek: Do you want to invite Todd or how do you want to handle that? I can have that discussion with him and come back.

Representative Keiser: Have the discussion. If he wants to come in, let us know because we need to get back together fairly soon.

Mike Dwyer: Let me point out, Todd is not going to be able to speak for the commission. The commission is going to have to meet the Governor and the commission . . . . .

Andrea Travnicek: Right.

Representative Keiser: I understand that but we need to see if they have an interest so that we can go on. We need you guys to have the discussion up there. We want the Water Commission to do the project if they want to do the project if they can do it as fast or faster.

Andrea Travnicek: You're thinking about meeting again tomorrow?

Representative Keiser: If we're ready to get going. We'll announce it on the floor tomorrow. This is what it's about. We'll have these discussions and see where we're going. We've got the bill. We can amend it and get it in shape. We've got to find a solution. What do you guys need in terms of speed?

David Johnson: What we need is to be able to figure out how to get the money. However that's going to be and whatever that oversight's going to be so that we can get started on that. Because of the leadership of the Water Commission and Garrison Conservancy District, we do have some money that put together this project and we are moving forward up to 30% design on all of these features so that we would be ready to move forward and complete it. What we really need out of this group is this clear direction that we can go to the bond market and get the money whatever way that works out to be.

Cory Chorne: A clear direction and a framework with which to work in, the oversight or . . . . .

Representative Keiser: Yes. Is there anything that anybody else had? Thank you very much and we'll keep you posted.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: January 27, 2011

Recorder Job Number: 13596

Committee Clerk Signature Mary Maier

HB 1206 Energy & Natural Resources Subcommittee:

Rep. George Keiser, Rep. Curt Hofstad, Rep. Scot Kelsh

Minutes:

Representative Keiser: We'll call the Subcommittee for HB 1206 into session and continue our discussion from yesterday. Introductions were made:

Tim Porter - CFO of Bank of ND
Karlene Fine – Industrial Commission
Mike Dwyer – North Dakota Water Users
Andrea Travnicek – Governors Office
Dennis Boyd – Advanced Engineering & Environmental Services
David Johnson – Advanced Engineering & Environmental Services
Dave Laschkewitsch – North Dakota State Water Commission
Todd Sando - North Dakota State Water Commission
Dave Koland – Garrison Diversion
Jean Schaeffer – North Dakota Water Coalition

Representative Keiser: We are trying to move forward on the issues that came up yesterday in subcommittee and find some way to manage those. The commitment is still there. Leadership is committed to getting this done. That's our challenge – to do everything we can to make it happen. The governor is committed to it and wants to get water to northwest North Dakota. His one concern was – if we take on the moral obligation, how we make this happen for the people out there. The way the bill is

written now; there are some opportunities that are not acceptable to the state. We will get amendments done for those. The proposal that Dave has proposes that 20% of the money will be residential and 80% will be industrial. The governor suggested, and I concur, that we want to have in the bill as a requirement, that those 4 political subdivisions that are involved, have to agree to make a contractual commitment to participate. We need signed commitments from the 20% residential. The 80% industrial will be tougher. Oil companies are not going to easily sign a commitment. The governors concern is that some small city, that's not in the system, decides to sell water cheaper and all the oil companies start rolling their trucks out there to save money. What we do know is that Dave and his company can give us a proof of demand from the oil companies. The governor and I think we need to work and see what we can do to get some kind of letter of intent. Also, the current language has 'the authority to obtain the assets if there is a default '. The only way this is going to work is if the state finances it and agrees to the moral obligation. The assets and revenue stream have to come back to the state if there's a default. We need language to that effect. Any thoughts from committee members?

Representative S.Kelsh: Do the other projects, Southwest and NAWS project, have contracts in place and what do they sell their water for?

Todd Sando: They do have water service contracts in place but I don't know the exact price off the top of my head. We did build one water depot for the SW pipeline this past year and we're just providing water to the private company that built the rest of the depot to service the oil industry.

Dave Laschkewitsch: In both NAWS and Southwest, the state owns those facilities and structures. This project is intended to be owned by the locals. SW took 18 years to build because we only could do a little segment at a time. NAWS is going down that same track – very slowly constructed. This is one that they want to bring up as a private entity.

Representative Keiser: We need to move forward and build into the actual legislation these kinds of requirements and anything else that we may come up with to propose. The next issue is how to finance it and Tim and Karlene have made some suggestions, recommendations, and options. One option is the Public Finance Authority option – Tim?

Tim Porter: Public Finance Authority is a state agency that can issue debt with the moral obligation of the state backing the bonds. The agency is rated A+ and it has to be a project that makes economic sense and it goes through the Industrial Commission for approval. Once approved, they can issue bonds using that credit rating. The moral obligation of the state says that 'if the bonds default, the Bank of North Dakota has the letter of credit on the bonds' that acts as a reserve so they tap the Bank of North Dakota to make the bond payments. The Public Finance Authority would go back to the

Legislature to replenish that letter of credit. That would happen at every biennial legislature if there was a default.

Representative Keiser: When we create, in this legislation, the 1st letter of credit for . . It's just in the bond.

Tim Porter: The Bank of North Dakota has been doing letters of credit for the capitol financing program for several years.

Representative Keiser: So we don't have to do anything on this bill for that?

Tim Porter: No

Representative Keiser: There are some problems with this. One – the PFA currently has a 75 million dollar limit. Karlene – do you think that that limit could be raised?

Karlene Fine: We could certainly try. We could make some calls and have some conversations.

Representative Keiser: How long does hat take to find that out?

Karlene Fine: We could make some calls tomorrow but I don't know if we'll find out tomorrow.

Tim Porter: Under the PFA, there are several programs. There's also the State Revolving Fund which has requirements that the Health Dept. has to meet before the moneys would be made available under that program. The PFA would have other programs that they could check into for a project like this.

Representative Hofstad: Is that opposed to private bonding company?

Representative Keiser: But this will be a publically issued bond and we do use a private bonding company or do we do it our self?

Tim Porter: No – that's correct. The PFA would do a competitive bond issue where they would bid it and do it with the company that provided the best rates and cheapest costs.

Representative Keiser: Another big issue was oversight. You had a lot of concerns about oversight I would hope since we had a moral obligation here. How do we create oversight and what levels?

Dave Koland: There are principally three alternatives that we could do. The MR&I program is a GDU program that involves both the State Water Commission and Garrison Diversion. Make sure the bidding process is correct and MR&I is basically a

fiscal deal. The moneys are extended and expenditures are verified both at the Water Comm. and at the district that they are legitimate and meet the contract, etc. A check is issued out of the district to pay the water system that in turn, turns around and pays the contractor based on their request and their estimated cost for that period. That system is up and running. We process about 25 million dollars a year in MR&I projects each year. The additional cost of doing that type of oversight would be 0 to the project. An intermediate step would be to have Garrison Diversion retain their engineering firm, Black & Veatch. They have an arrangement with full disclosure with AE2 that they work with locally. Black & Veatch could come in and do a value engineering look at the plans and specs that they have so far and as they develop. The other oversight thing to be concerned about is the inspection while the job is being built. The owners and engineers will have inspectors out there but we could put an additional level and have Black & Veatch come in once a week and make sure their doing the inspection properly and taking the proper samples, etc. If you go to the full level of oversight, then you would have Garrison Diversion or the State Water Commission construct the project. That would involve full-time staff. This is a major project so it's would involve staff time and creation. I can't put a dollar figure on what we're talking about although Black & Veatch will give me a number on that by early next week as to what they think that would cost or . . . .

Representative Keiser: What they would charge for value engineering or value engineering and inspection.

Dave Koland: Value engineering and inspection. I expect that they would give us a number for both so we have an idea. We did a study 2 years ago for this group and their question was 'how are we going to provide governance for this system?' That's where they came up with forming a new authority. These 4 entities that don't totally trust each other will have a governance situation. I think once the project is built, nobody is particularly interested in running other than the fact that you get paid your money. You can best accomplish that by having a good project. Those are the 3 levels and they have different costs involved that either the project's going to have to pay, the state's going to have to pay, or someone's going to have to pick up. Other than the MR&I program that is an existing program and there are no additional costs that we're not recovering.

Representative Hofstad: How does the money flow through the MR&I program?

Dave Koland: The water system sends in their estimate and that request is signed off on by the owner, the engineering firm, and by any other funding agency that might be involved. We verify that and make sure those are allowable costs and we then write a check to the water system. At the same time, the Water Comm. is going through that same process of independently verifying. Jeffrey and I make sure our numbers agree and Garrison will cut the check. At the same time, the state cuts a check to Garrison for reimbursement. We pay the water system and they turn around and pay the contractor.

Todd Sando: This has worked really well when there has been federal funds and federal involvement. This project's not going to have federal funds associated with it. Its state money so there's an extra step to run it through the C district.

Andrea Travnicek: That 25 million would be on top of ....?

Todd Sando: Right now we have 25 million earmarked in the executive budget for water commission to allocate to the Western Area Water Supply Project. There wasn't anything in there to bond or finance the rest and we thought with the 25 million up front, they would be able to find a way to finance .....

Representative Keiser: If we were to hire Black & Veatch, do they offer a construction manager? Are they checking the architectural plans?

Dave Koland: Yes. They will verify specs. We just went through this process on the Red River Valley water supply. We're 30% done with the preliminary design on that project. We hired a value engineering team that went through all the plans and preliminary plans for that project. This is a 400 million dollar project. They identified about 45 million dollars worth of potential savings for us because they are looking at things with a different set of eyes. They're still engineers. They met with our design team and the engineers argued about the best way to do that – how can we accomplish this – this is why we do this, etc. The end result is a much better product project wide.

Representative Keiser: Would that impact the bonding? If we went MR&I, that's just managing the financial. But if we go with hiring Black & Veatch through Garrison Div. as a construction manager, will that influence?

David Johnson: What he is talking about is the value engineering process where you go over the plans and specs and make sure there sufficient and doing the right thing. The construction manager would be where they actually come out and do an inspection.

Dave Koland: I was talking more about checking to make sure the inspections is going the way il should. It's a purely oversight step.

Todd Sando: How does that work? You already have them under a joint venture – Advanced Engineering and Black & Veatch for Garrison Div. This is a separate entity, and would it . . . .? I have a concern.

Dave Koland: I know we have a concern because Black & Veatch as engineer and AE2 is a sub consultant. We're dealing with professional engineers in this case. They are a huge company. We had them do some other work and they brought in totally different people to do a different facet that we were working on.

Representative Keiser: We don't want them to do the engineering – we want them to do the auditing of the engineering.

Representative Hofstad: How do we handle competitive bidding in this process? Is that an issue?

Dave Koland: When this project first started, they went through that process with the engineering.

Representative Keiser: If we created an authority, which is a political subdivision, doesn't it have to meet all the political subdivision requirements?

Representative Hofstad: That will become an issue.

Representative Keiser: If they are a true political subdivision, which is what we're creating, they are required to follow all of the sections of the code that involve political subdivision and bidding. That is, if you get over a certain dollar value, it must be bid publically and open publically and bonded and all the requirements that we have for a political subdivision. That's one advantage of creating this PS.

David Johnson: We had the investment banker run some scenarios on the different moral obligations and the result in the amount of money that you'd have to borrow.
(See attachment #1 - 80% scenario)
(See attachment #2 – 100% moral obligation – finance 1 year of debt reserve)
(See attachment #3 – 100% moral obligation – fund full debt service reserve)

Tim Porter: The only scenario that the Bank of North Dakota would offer a letter of credit is if the Public Finance Authority is the issuer.

Representative Keiser: Yes. We have to get that to work to make this work.

Tim Porter: Those are backed by the moral obligation of the state. If it's this kind of structure, the bank is bearing the risk on the bonds.

David Johnson: Could the state take some money and put it in a fund and dedicate it?

Representative Keiser: No. If we could do it, why wouldn't we just pay it and save the interest.

David Johnson: We are giving you an idea of the range and the value in having the state behind it.

Representative Keiser: You're right. The better we can structure it, the less risk we take. Representative Hofstad, this provides what you asked for. Does this seem reasonable?

Karlene Fine: I think they're reasonable. There will have to be some cost included in there but this fits with some scenarios that we had run.

Representative Keiser: How do revenues work against these different scenarios? What's the projected payoff?

David Johnson: The projected payoff, in our initial work on this, on the 3rd scenario, our load industrial demand worked out that we could pay back the bond in 10 years and also consider paying back the 30 million dollars.

Representative Keiser: 25 mills plus . . .

Karlene Fine: Yes – Which the state is putting up.

David Johnson: When we ran the BBB- scenarios, (attachment 1), at 20 dollars a 1000, we had to have at least the average, if not more into the high end, of the industrial demands to meet that scenario.

Representative Keiser: As we prepare amendments for the bill, one of the assumptions that we need built in is finding a mechanism for financing that will result in this rating. We get that into the bill. If we don't reach it this bill is null and void until 2 years from now. We need an amendments drafted so this is built in and for residential signings and the proof of demand.

Karlene Fine and Tim Porter: We can work on it together.

Todd Sando: We're still committed to going forward with the base project if we can't get this financed? Those 25 million dollars . . . .

Representative Keiser: That's in the budget. The dilemma with phasing it is – there is a limit to life to the oil fields. It may change. Based on what we know today, the longer it takes us to get water to the fields, the less return based on the current model we get. If you look at oil projection – there are the first few years and then it starts dropping. We only need 3000 fracs and this thing goes financially.

Todd Sando: We only have to buy for 3000 frac jobs to pay it all off? And the 25 million?

Representative Keiser: Not the 25 million

David Johnson: Ron Ness threw that number out yesterday. If you do the math, you'll find that's 2 ½ million gallons per frac times 3000 fracs times $15-20 a thousand gets you to 150 million. It doesn't include interest and other things. It's not that much water.

Representative Keiser: Are we in agreement that this is what we want in the bill?

Representative Hofstad: At what point during this process are we going to know if that bond will fly?

Representative Keiser: We will have to write legislation that has certain criteria that have to be met. It's up to the parties involved to go to the market, test the waters, and see what happens. There's going to have to be some flexibility. They've done this before. I assume what we'll put as a limit of financing that we'll do through a bonding mechanism. What I would suggest is you take 158 and add 10% - approximately 175. Otherwise you don't have the payoff. You can't afford to do it.

David Johnson: All of our models include O & M. We looked out beyond the repayment to make sure as that revenue dropped off we had O & M reserves and replacement reserves on the end of this to make sure the project was viable.

Representative Keiser: Depending how that legislation gets crafted, if something changed and you needed 20 million more, than we may end up facing it and building 85% of it with the money we have and coming back to Appropriation in 2 years to put the kill on it. I'd rather see us do it right.

Dave Laschkewitsch: Setting it up the way you are, the payments would go to the Public Finance Authority. There has been some discussion of repaying the 25 million. How would that . . . .?

Representative Keiser: That's at the end of the bond payment.

Dave Laschkewitsch: Just curious as to once your paid off there . . . .?

Representative Keiser: You're second in line.

Representative S.Kelsh: Do we write that into the legislation?

Representative Keiser: Absolutely. There might be some provisions of certain performance standards and they've reached that and they can be paid back. We don't want them to pay it back if they can't pay it back.

David Johnson: We would want to be able to put together some replacement reserves and O & M reserves before we had to replace that so that the project is viable.

Representative Keiser: Or pay it back over a 10 year period. We'll try and make it flexible so that we can get the bill done.

Representative Keiser: Let's go to the oversight. Are there other options we should be looking at? How much is Black & Veatch or someone else going to cost to have that kind of oversight on this type of project?

David Johnson: Where we do a value engineering process, I don't see the cost of it being much different than Red River. It's going to be a week long process bringing the same types of people so you're looking at a couple hundred thousand dollars.

Dave Koland: And Inspection oversight – so you're talking 250 to 300 thousand. These are rough numbers because that's all you have to work with. That's outside the water district. That's C district. It's not state oversight.

Representative Keiser: I understand. I like it. That gives me a little more comfort.

Representative Hofstad: The MR&I, the C district reports to the Water Commission. Would this be part of that?

Dave Koland: Absolutely

Representative Hofstad: In a sense, we do have a connection to the state.

Representative Keiser: Let's put it right in the legislation and make that explicit.

Dave Koland: Our mandate in the district is to supplement the work of the State Water Commission. Our job is to help the Water Commission do their job and we're not conflicting agencies. Our only mandate in these discussions is if this created conflict, I don't want anything to do with it because we work very well together. They have a lot on their plate.

Todd Sando: We have so much on our plate right now with this wet cycle; I don't want to be tackling another major project.

Dave Koland: We can work that out. We report to the governor and the Water Commission.

Andrea Travnicek: If we set up some sort of mechanism where there is still some sort of oversight you're looking for.

Todd Sando: That link is already there. Dave comes to the Water Commission to report and this is just like the Southwest does. We have that same reporting mechanism there.

Representative S. Kelsh: It makes me wonder if the Political Subdivision has taxing authority.

Representative Keiser: We grant taxing authority to various Political subdivisions and we get that granted in this political subdivision.

Karlene Fine: It's prohibited.

Representative Keiser: It's prohibited in the bill so we don't have that. What about the oversight issue? What's your sense there?

Representative S. Kelsh: I'm comfortable with what you decide because this is new territory for me.

Representative Keiser: I strongly support this value engineering and the fact that they would be reporting to providing to MR & I in addition to that. If it saves us money – great. If it costs us 250,000 on this much money, it's not a bad thing.

David Johnson: We probably would have recommended our clients do that to insure that we haven't missed something.

Dave Laschkewitsch: We can work something so we will be providing this oversight.

Todd Sando: We'll work on something.

Representative Keiser: There is another bill that is a companion bill.

David Johnson: That was for tweaking the Commerce Authority so that the R & T system could reorganize because it is causing problems with their local communities not having bonding authority.

Representative Keiser: They could not be a joint . . . So that's their separate bond. OK. These are the 2 big issues – finding a way to fund it and a way to oversight it and who's going to get the claw back - the assets and revenues coming back.

David Johnson: Of all of these things, the one that's going to be the most troubling is the turning of assets if the oil field goes down. They're going to look at this saying we're willing to sign contracts for what we know we can do with this thing but to turn over the assets if the industry goes away. They're going to say the 20% is our skin in the game. Why do we have to do this part of it?

Representative Keiser: The only time that they have to turn it back is if it defaults. Is there any value for a proportional asset allocation in a default?

Dave Koland: The assets will come back to the state.

Andrea Travnicek: Then you can almost phase it and then you're back to phasing again when the revenue is working in certain areas.

Dave Laschkewitsch: Are we talking about new assets that are constructed?

Representative Keiser: None of the current assets. Just new assets. Just what we buy with the $150 million. It's the Williston Water Treatment Plant that would be of concern. That would drive them out.

Tim Porter: What about the expansion of the treatment plant?

Dave Laschkewitsch: It would only be the assets that are covered by this bonding which will include part of the expansion of that treatment plant.

David Johnson: Could there be a provision if the system paid back the cost of that expansion – they could get that asset back. To me, that's the asset that's going to cause heartburn.

Representative Keiser: We can hold them harmless on that part of the development.

Tim Porter: I don't think the state wants to get involved in local municipal water issues but in this case because of the price tag, there would have to be some way to recoup some of that investment from the state.

Representative Keiser: This makes sense that we have to have that part. Anything else?

Representative Hofstad: The authority that's getting established through this legislation, is it appropriate to put in some kind of arbitration method if we run into some kind of bypasses that we have a mechanism to resolve these issues? I can imagine that there could be some problems with trying to establish these bylaws.

Representative Keiser: Two options. One, we put a default clause in it that if something comes up that violates any of the conditions – it's null and void. Two, you give them the authority to go to the Industrial Commission or the Water Commission of somebody, and they would have to have some power to make some decisions. This is outside their domain. It's a Political Subdivision. You either default them or create the opportunity to go to a designated source with problems and they can make the decision. We would grant our authority away as a legislative body as we do for the emergency commission. Give them the power to make decisions.

Representative Hofstad: I need to think about that. The second issue is, where is the public involvement to the authority because there is no election here? How do we appoint the members to the authority?

David Johnson: They are appointed by elected bodies. The Williston City Commission, the McKenzie County Water Resource District, the Williams Rural Water District, R & T Water Association. Those entities which have boards that are created would appoint the members.

Representative Hofstad: All those boards are elected?

David Johnson: Not the McKenzie County Resource District. They are appointed by their elected city boards. We did consider setting up districts and voting but it got to be problematic as the boundaries change.

Representative Keiser: If we're asking these 4 entities assigned, they should have the authority to appoint who they want.

Dave Koland: They're signing on as entities.

Representative Keiser: If the city of Bismarck enters into an agreement, they should have the authority to appoint someone to represent them on that board. They do that all the time. Your group helped these guys figure out what structure to go, why did they get to where they are?

Dave Koland: This is a classic urban / rural problem. Nobody trusts. Substitute Fargo for Williston and you'll understand the situation. That's what it is out east. The only solution we could come up with that they could buy into was this water authority. There was no provision to create that in state law now so the only recourse was to come to the legislature and create this new governance vehicle for this particular project.

Representative Keiser: Think about it. We'll get back together Monday or Tuesday. We'll get them to suspend the rules in getting that appropriation out. That's the only way that this is going to work. It's been done before. Next week is the week that it has to come out of committee to do it. I don't think we're there and I don't think anybody wants us to rush it. Thank everybody for their help and input.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: February 1, 2011

Recorder Job Number: 13822

Committee Clerk Signature Mary Main

HB 1206 Energy & Natural Resources Subcommittee:

Representative George Keiser, Representative Curt Hofstad, Representative Scot Kelsh

Minutes:

Representative Keiser: Call the meeting of the subcommittee on HB 1206 to order. Roll was taken. The last time we left, we had various people who agreed to attempt a first draft at some of the amendments. Karlene, let's start with you.

Karlene Fine: What we've attempted to do in these amendments are a couple of things that the committee had requested. The first amendment is the title. Page 2 line 12 talks about that the participating members of the Western Area Water Supply Authority must make a commitment to stay with the authority until any bonds that have been issued that are outstanding, they must remain. They cannot withdraw from that authority.

Representative Keiser: Let's stop there. If you have a question at any point, let's deal with it when we're there. Staying with the authority, there has been a slight modification there. We had talked about 20% and that has been removed from this area. Is that correct?

Karlene Fine: Correct. When the committee met last time we talked about having the participating entities sign contracts up to 20% that they thought they could commit to. They were going to get letters of intent for the remaining 80%. After looking at that closer, we felt that that's not something that should be in statute. That should be negotiated.

Dennis Boyd: With whom would that be negotiated?

Karlene Fine: I think that that would be in the due diligence process that's being done by the Public Finance Authority and the Bank of North Dakota and ultimately the budget section.

Representative Keiser: It could be part of the bond requirements but it would not be in statute?

Karlene Fine: Correct. There's a bit more flexibility. We talked about the fact that the property of the authority has to be committed to the bond issue. That shows up in a number of places.

David Johnson: That new property that the authority creates, there might be a problem with municipalities having to pledge assets. I don't know if they can do that.

Representative Keiser: We'll get back to that. At this point, what we're saying is if you bond 180 million and you build some assets with that 180 million. Whatever you build is part of what we can recover. That's my understanding.

Karlene Fine: Correct. The next item is on page 6 where we're removing some language. This is language that talks about the property could not be forfeited. That relates to that property issue. On page 7, we're adding in the words "or any other property." Line 29 is just a clean up – the word negotiability was in the title and it is not in that section. Page 8 – lines 20 through 29 deals with property so we deleted that section. Page 9 – clean up language in line 6 and 18. Page 11 which before was the moral obligation language was included in the bill. You said an 80% guarantee from the state wasn't going to be beneficial for issuing the debt so we've removed that language which will allow 100% guarantee. We've inserted the language that "if there's a bond financing that uses this provision, the moral obligation, then the financing must undergo due diligence examinations by the Public Finance Authority and the Bank of North Dakota and receive approval of the budget section. (See attachment #1)

Representative Keiser: That provides a great deal of oversight. One, the budget section would bring the legislature back in to the view which give me a lot of confidence from an oversight position. Examination by the Public Finance Authority and the Bank of North Dakota gives me a lot of comfort in terms of oversight of the financial transaction before we go on the line. With this portion of the amendment placing into play, I think on the financial oversight, at least of the bond issue, a lot of authority.

Representative S. Kelsh: On page 8, lines 20 through 29 the title reads liability of authority for bonds – taxing power prohibited. Are you removing the prohibition against the taxing power by that amendment?

Karlene Fine: It just said it in the title, it really didn't match because there isn't any language in there unless Tim sees something in there that I don't see but it really didn't fit with that. The further amendment into that moral obligation section, says "to the extent any reserve fund is replenished that if the state had to step in and replenish the obligation, which in essence meant that there probably was a default, the state of North Dakota the authority shall be obligated to reimburse the state from any revenues, funds, or property as directed by the budget section. That leaves some flexibility for the budget section and if there was just a glitch for one biennium that cash flows didn't work, the budget section said we'll give you two more years, they could allow that. The budget section is the one who can make that determination.

Representative Keiser: Section 2.

Karlene Fine: The last section is the repayment of the State Water Commission.

Representative Keiser: That refers to the 25 million dollar C grant on the front end.

Dennis Boyd: That's the money contained in the Senate bill 2020 I believe.

Representative Keiser: Yes.

Karlene Fine: The way I read in the finance fund, additional 5 million anticipated in next biennium. That hasn't been committed.

Dennis Boyd: 30 million total.

Karlene Fine: Between the two bienniums.

Representative Keiser: Any questions on the amendment?

Dennis Boyd: We have had some discussion about adding an emergency clause to this legislation. I'm wondering if by adding the emergency clause, there's a conflict with oversight by the budget section. The budget section meets quarterly I believe. I suppose they could meet more often.

Representative Keiser: I don't think that that has a conflict, does it?

Tim Dawson: Conflict wouldn't be the word. Useless, but it wouldn't be conflict. I don't know when the budget section can meet either.

Dennis Boyd: If the emergency clause becomes law immediately, then we might have to sit until the next meeting of the budget section.

David Johnson: What we're contemplating is that the emergency clause would help so you could form the authority right away. They could get started on those things rather than waiting till July. We would do it anyway but it would put the input . . . . .

Representative Keiser: The amendment is proposed is what it is. It does have points that which you have to go to the budget section to have review. If you have to wait a while, you'll have to wait until they meet. The chairman can always call them if it's essential. There's that flexibility. One part that we have not talked about that I want addressed is some amount of these dollars for this bond issue are dedicated to the Williston Water Treatment Plant. We have in here the provision that we can take the assets upon default and that would include that portion of the Williston Water Project. They need to be aware of that. I want that on the record. I don't want anyone saying 6 months from now nobody mentioned that.

David Johnson: That was the reason for my comment before, we haven't finished researching yet, but I don't know that they can actually do that in this municipal law. We haven't finished looking at that.

Representative Keiser: That's one of the launch pins for this whole deal. We have to get some resolution on that and if they can't do it, we have 2 options. One – we're done. Two – we find an alternative.

Representative Hofstad: Let me go back to the beginning. It seems like every time we turn a page, we run into another road block. We have a vehicle in place that really does address all of our issues. We have an agency in place that can build this, we have a model in place (the SW Water Authority) that addresses so many of the issues that we're talking about. I would like to open up that discussion again and see amongst the committee and the people sitting at this table, if we ought not to back up and take a look at having the Water Commission build it because they are the agency that is responsible for building water projects in the state of North Dakota. They have vast amounts of experience especially in projects of this size. There are a lot of pit falls as we go down this road. I don't want to impede the progress of this project because I think it is vitally important to the state of North Dakota but we do have a model in place. I would be more than willing to take a look at how this project fits within that model.

Representative Keiser: Let's do it. We've been sitting at the table for a couple of weeks. How's the Water Commission going to do it? Do you want it?

Todd Sando: We're more than capable of taking it on if that's what the committee wants and that's what the house passes.

Representative Keiser: Who will own it?

Todd Sando: That would be a decision that you guys will have to make too. The model for SW Water Authority is the state of North Dakota owns the infrastructure.

Representative Keiser: It's an option. We can redraft this and say the Water Commission does it and they do it in 2 years. Let's get the legislation drafted if that's what you want. We want it done in 2 years.

Todd Sando: The timetable show more than 2 years to get it complete.

David Johnson: The timetable currently is we are at 30% design. The systems have all agreed on the governance. We're ready to move forward with this thing and issue contracts and be constructed by the year 2014 complete.

Representative Keiser: So you don't have the contracts, but you're going to build it. But you're going to get the contracts between now and then.

Andrea Travnicek: The SW is set up so that it wasn't all built in 2 years. It was phased.

Todd Sando: It's been a phased project over decades and that's the same with NAWS project. It's a phased project that's taking years to get accomplished. All the regional water systems are phased projects.

Representative Keiser: That's our thing but let's get water to the oil folks that want it and let's use the Water Commission to do it.

Representative Hofstad: That's a vitally important component to this plan is getting water to those oil wells so that we save the infrastructure of the state. I think everybody understands and realizes that.

Representative Keiser: If the Water Commission is the right model.

Dave Laschkewitsch: Can the Water Commission use the Public Finance Authority?

Andrea Travnicek: Yes it can.

Representative Keiser: So the Water Commission can go for bonds and the states behind it anyway. You'll have to get the commitment from the local users.

Representative Hofstad: How does the authority work within that model? Do we establish an authority or is it an advisory committee? In the case of the SW, it started with a committee and migrated to an authority. Right Todd?

Todd Sando: Right.

Representative Hofstad: How do we begin this process? Do we begin with an authority or does it matter?

Todd Sando: It can work either way. If they want to have an authority formed right now based on what they have structured here, that framework could work too. There are a couple different models that do work for authority and oversight. It could either be advisory or authority. We've seen regional water systems authorities work just fine.

Representative Keiser: So you would contract with them as the authority or create your own authority?

Todd Sando: If they want to set their own authority, that would be fine.

Representative Keiser: They've got one they're working on one. Let's do it. They're going to build it by 2014. Let's go. They'll bond for everything and pay for it through the revenue bonds.

Dave Laschkewitsch: I'm assuming that's the structure you're looking at because we don't have adequate revenues to build it. We don't have the cash.

Representative Keiser: They're not coming asking for anything more than 25 and they're going to pay it back. Let's keep the field level. So you're going to do it with a revenue bond. That's what you're comfortable with.

Representative Hofstad: I'm comfortable with the State Water Commission building it. That's the vehicle we have in place. They build all of our major projects. They are the experts.

Karlene Fine: The Public Finance Authority is an agency that is available to the Water Commission. It does have the 75 million dollar limitation. There may be some issues there. I don't know whether the cash flow of the Resources Trust fund could help you through that process. So when you say we could bond for the entire thing, I'm not confident in saying that.

Dave Laschkewitsch: Although it's no different than if this entity was doing it or is there a difference if the other entity was doing it? At one point, you had some conversation about increasing the 75 million.

Karlene Fine: Right, but we don't have that commitment that we could do that. The difference you might have if the Water Commission was doing the bonding, you don't have their revenues committed to the project. The only revenue source would be with the Water Commission entered into some contracts.

Dave Laschkewitsch: What it's going to generate from sales.

Representative Hofstad: Let's revisit that issue again.

Karlene Fine: The question of whether the Water Commission could bond for the entire project and get the moral obligation. No, they could not on their own. They would

have to go to the Public Finance Authority to get the moral obligation unless the legislation was written in a way that gave moral obligation authority to the Water Commission.

Representative Keiser: That's the problem how I see it is the revenue stream. Maybe it's there. Maybe these communities say go ahead and put the pipe down here. We're not committing a thing. We got a deal going, you didn't like it, you do it. It's time to move forward. No hidden agendas here. I'm open to wherever you want to go but we have to move forward.

Representative Hofstad: I think that if the State Water Commission is willing to make that commitment, I'm comfortable. If they're not willing to commit, then . . . . .

Todd Sando: The executive budget came out with 25 million dollars to help get the project going. We thought there would be some financing by the local entities to help move it forward so now this is not in the Governors budget.

Representative Keiser: I understand but we have a problem in the subcommittee that says they don't want to go unless it's the State Water Commission. No we have to make it work. The State's not coming up with more money. We can adjourn and think about it and come back. We have to get this resolved. This agenda been here the whole time and we haven't surfaced it until now.

Todd Sando: Curt's right. We've demonstrated over the years how to build these things. We have expertise in the field and the engineering managers to oversee and get this project constructed so I'm totally convinced we can get it done and make use of the engineering expertise to get it built. We can use a consulting firm to get it built so we're not going to do all the work. We have a lot on our plate but we would be willing to oversee.

Andrea Travnicek: So the resources are there it's just a matter of trying to figure out the funding and the revenue stream coming in and the commitment to contracts.

Representative Hofstad: It seems that the revenue stream is the issue. I think we need some answers on that.

Representative Keiser: We can adjourn for now and come up with a proposal on how you're going to do it if you think you've got it. These folks have come to the state and said we'll put together this authority. We think we've got it, we've got the revenue, the engineering and you're asking for the state to participate in a private/public partnership. That's plan A. Now you want plan B. It is my belief that you're not going to get a lot more money and they're going to say we want revenue bonds just like these folks have.

I don't know how you're going to do it because you don't have them as partners. If I were them, I'd walk and say you're on your own – just build it. We'll use it. You take 100% of the risk. That's what I'd do. What we are trying to do is bring you guys in as oversight in some way because it is private/public.

Andrea Travnicek: That's still an option.

Representative Hofstad: I think there has to be a plan C which is some level of oversight from the State Water Commission.

Representative Keiser: We tried to build that in last time and we have it in some of our amendments directly and indirectly. The Water Commission can have some oversight. We're putting our name on a lot of money. We want oversight but we also want to get water out there by 2014. Todd – you need to come back and tell us how we're going to do this.

Todd Sando: I'd like to speak with the Governor.

Representative Keiser: Yes. Let's adjourn and come back Thurs. or Friday. This does change it. Representative Delzer asked where we were and if we had any more money in there. I told him no.

Andrea Travnicek: Do you want to have any more discussion on the plans.

Representative Keiser: We don't want to take any more time because if this is a Water Commission project then we go from there. We'll see what they put together. Thank you everybody.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: February 3, 2011

Recorder Job Number: 14000

Committee Clerk Signature Mary Main

HB 1206 Energy & Natural Resources Subcommittee:

Chairman George Keiser, Representative Curt Hofstad, Representative Scot Kelsh

Minutes:

Chairman Keiser: Call the subcommittee for HB 1206 back into session. At the conclusion of our last meeting, there was a discussion relative to having the State Water Commission look at the feasibility and desirability of building and managing this project. We adjourned so that the director, Todd Sando, could meet with the Governor and others and answer those questions.

Todd Sando: The question I was posed at the last meeting was if the State Water Commission could build this project within a 2 year timeframe based on the revenues. To answer that question, we would not be able to complete that in a 2 year time period. There isn't adequate revenues to fund it all and right now an executive budget of 25 million dollars so there would have to have additional billings to have revenues to be able to do it in a 2 year time period.

Representative Keiser: That does help us answer that question and perhaps we can move back. We have two major issues that the committee has been working on and many minor issues. We need to resolve the 2 major issues before we even consider any minor issues. The two major issues are 1) how to finance this project and 2) the oversight of this project financially, engineering, and operational because as long as the State has the participation of its good name and faith in the bonding of this project, the

State has important concerns about what's going to be happening. I think we should go back to the financing and go through it in detail.

Karlene Fine: We're working off the old amendment. I can walk back through this. (See attached discussion draft amendments #1 – discussed in detail on Feb. 1 subcommittee minutes.)

Representative Keiser: If this project goes forward, once it gets implemented, the budget section becomes, at least the legislative oversight, connection.

Karlene Fine: Correct.

Representative Hofstad: The any other property, are we talking about property that's . . . . Inaudible.

Karlene Fine: The way it's drafted, it talks about any property facility so I'm not exactly sure what the authority is contemplated, what properties all plan to be committed to the authority. Any new property would be not included, but I haven't seen enough of your documents, bylaws, or agreements of the Western Area Group to know what they are committing to the authority.

Representative Hofstad: Will we at one point know and understand exactly what that commitment is or what that property is? Is it important to know?

Karlene Fine: I would assume the budget section would want to know that.

Representative S. Kelsh: I was looking for the section in the bill that prohibits the authority from having tax levying authority or does it not need to be spelled out if they don't specifically grant it?

Karlene Fine: My understanding is they do not have taxing authority and it ot given to them in this bill.

Representative S. Kelsh: So by not giving it to them, they do not have it?

Karlene Fine: They do not have it.

Representative Keiser: Going back to Representative Hofstad question, it's my understanding and I want it on the record, when we talk about the property that's committed, any property that is created with this bonding is part of that property.

Karlene Fine: I believe that would be the case.

David Johnson: I'd like to introduce Scott Wegner. He's been helping us on the legal side on this financing. He has an alternate way to deal with that property issue which is

a lot more consistent with revenue bonds that municipalities and systems typically go through rather than pledging property, you're actually pledging revenue streams and taking over operation.

Scott Wegner: I'm for acting as bond counsel to the Western Area Water Authority and we had drafted some amendments following the committee hearing. Looking at Karlene Fine's amendments, we consolidated them. These are displayed topically so that we could discuss specific topics rather than scatter. (See attached proposed amendments #2.) The 1st topic is dealing with property. The top paragraph is what we would suggest. Typically when a city or Political Subdivision issues revenue bonds, they're not permitted to any way encumber or pledge their systems and the idea is that we're dealing with essential governmental services and the idea is those should not be subject to forfeiture or loss due to nonpayment of bonds. A bond trustee would have the right to come in and take control of the system. If there was some problem in help us running or to recover any revenues they can. That's what this top paragraph does. This gets you to the same place, you don't have to go through the process of pledging property but you still have a remedy in which the State steps in. This is consistent with how a city revenue bond would work and other political subdivisions. You also avoid how you actually pledge the property, are there mortgages. I think you'd have a real mess with title issues.

Representative Keiser: We have lots of attorneys and the Water Commission that we want to look at this so what you're offering is just a substitute proposal to the concept that we have developed to this point.

Scott Wegner: It is. It would accomplish the same thing.

Representative Keiser: I don't want anybody representing our side of this issue to make any determination at this point. I want them to have the chance to look at it in detail. We knew this wouldn't be the last meeting of the subcommittee but we are moving in that direction. What we will do is ask Karlene Fine and the Water Commission and the Governor's office to take the proposed language and examine it and see whether or not it's a workable alternative or whether or not we have to combine some of the elements found in both. I want to give everybody involved time to look at it. The other major issue that committee members have is the oversight. By oversight, it is the oversight on the financing and ongoing revenue stream and how we get reports. From an engineering and design standpoint, the oversight so the state can be looking at the project to make sure that things are moving along OK. It has been suggested that there are a lot of groups that can do that but the sense that I get is we want the Water Commission to be involved in the oversight. Todd, can you share your thought on oversight.

Todd Sando: Regarding oversight. There are several different models that have worked for oversight. I'll probably put in back into your court. I'll talk about the SW Pipeline, SW Authority and the NAWS Project and using MR & I guidelines to overview

the project. In SW Pipeline Project, the oversight there is that the State actually owns the project and we initially operated and maintained it and at some point turned it over to an operating authority called SW Water Authority. The Water Commission still has involvement in setting rates, looking over rates, looking over the annual operating plan for each year. They're heavily involved in those decisions where we issue all the contracts, we do all the change order to build the project out. With the NAWS Project, it's set up a little differently. Minot has a lot at stake there. They have this Magic Fund and they've put 1% of the money from a 1% sales tax, over 30 million dollars to construct the project. Actually it's mainly Federal Funding and city of Minot funding with a little bit from the State of North Dakota. We're building that project for them too and so there is a little different set up. Another format as with the MR&I, there is a bunch of smaller regional water systems out there that we review the plans and specs and we have an MR&I coordinator, Jeff Mattern, that oversees and reviews those. We take that and get it approved through the State Water Commission and through the Garrison Diversion Conservancy District as a joint effort. That's a different level of oversight. All three have their plusses and minuses and any of these models do work. It just depends what level of oversight you want to have.

Representative Keiser: To build it, they would then contract with you to build it?

Todd Sando: Under this proposal, they would be on their own. It would be more if they wanted us to oversee their business plan and how they set their rates and there structure and payments for the bonds back.. The Water Commission could oversee some of that. The original plan, it's a locally led project and we don't have anything built in for oversight so we have to figure out how to structure that.

Representative Keiser: I know Representative Hofstad and Representative S. Kelsh: have had concerns about that. What do you see as oversight in this project?

Representative Hofstad: We've gone back and forth and back and forth. Obviously, the State Water Commission has backed down from building it so now we're at oversight. I'm comfortable with some high level of oversight. They're going to build the project but let's get a high level of oversight from the State Water Commission and get them involved so that we have our assets protected. We've got a lot riding on this thing. I don't know Todd, you're going to have to guide us and give us those options and I'm not sure how that works and what it does. I know that when I was on the State Water Commission at those meetings when we were dealing with SW, that was an intimate part of those commission meetings. We were informed of the projects. I think that's where we should be at some high level of oversight without getting in their way. I don't want to impede this project but I want the State to be protected.

Representative Keiser: When often does the Water Commission meet?

Todd Sando: We meet every couple months, average 2 to 3 months. We have telephone conference calls if something comes up. Some of the things, like Water

Commissions, when they're actually involved, procurement process, selection of engineer, going through the bidding process, we followed all that. That can be some conditions too that they have to go through the state bidding process and those types of things. Local entities do not do their job; they're not regulated to the same level as . . . .

Representative Keiser: What do you think about going through the state bidding process?

David Johnson: Political subdivision has to be very similar to the bidding process. We had envisioned that you not only had some high level of oversight on the financial side, by the time we get it through the bond people and the bankers and legislative side, what we really need from the Water Commission is the technical oversight to make sure that we haven't missed anything in the design of this project. Approval of plans and specs before we award. Those kinds of oversight would be very useful.

Representative Keiser: We are going to have to write this out so each of the parties understands what's involved. It sounds like the Water Commission is meeting anywhere from quarterly to every other month. Those are regular meetings so the Water Commission is called.

Todd Sando: There not regularly scheduled. It's based on the Governor's schedule.

Representative Keiser: But they are called. That would give us the schedule at which it seems reasonable to have one part of agenda report on this project, an update to the Water Commission. That could be part of the requirement. We have to address and get into the legislation whether or not the State bidding process or we'll leave it to the local political subdivision. There are some advantages to using the State to bid. You get expertise on projects that the local subdivisions may not have. They have bid these things and so they know some of the standards.

Todd Sando: The Attorney General stands behind us and are right there at the bid openings. We have legal representation. This is one of the plusses.

Representative Keiser: Let's say at this point that we'll use the State bidding process. Engineering oversight. How do we do that?

Todd Sando: We could review the plans and specs and have a 3rd party take a look at them for additional review.

Representative Keiser: How about if we leave it open for you, the State Water Commission, will determine how but you will be responsible for reviewing the plans and specs? If you want to subcontract then go ahead. If you want to do it internally, you can do it. Does that work?

Todd Sando: Yes, that would work.

Representative Keiser: So, review of plans and specs – State Water Commission. Does this sound OK so far? What else do you want?

Todd Sando: Michelle was mentioning to me to that maybe we want to have a review of the overall concept, not just viewing plans and specs for a specific contract, but actual project layout. Say 15 water depots, is that the right number and are they in the right location.

Representative Keiser: Approve overall project plan. This sound hard but I don't think it is. I think you guys built the concept and what we're getting at low cost is the best expertise available in the State of North Dakota to look at this. This is good business.

Representative Hofstad: Can we also address the arbitration issue if we have an impasse with regard to the bylaws so that as that authority comes together, we have some mythology to come to a resolution there. Can the State engineer provide that?

Representative Keiser: We create this authority, and we get into the project and there gets to be an internal dispute. We have a lot of money out there and things are going on and we need dispute resolution. If that occurs, what do we do?

Representative Hofstad: The problem is the authority does not have the bylaws. We're giving them the authority to set it up but we don't have the bylaws set yet.

Representative Keiser: Each of the partners in this authority has to approve the bylaws when they get developed. We could get the State Water Commission or somebody to approve the bylaws. You better address what's going to happen, not that it will but if it does, that could be a problem. Are you the right person to approve the bylaws? Or is there a better entity like the Attorney General?

Michelle Klose: How do rural water districts define . . . . .inaudible?

Mike Dwyer: We have done that already.

Representative Keiser: OK, the Attorney General will review and approve bylaws.

David Johnson: Is that initial ones or initial and amended?

Representative Keiser: Initial and amended. As soon as you get the bonds paid off, you're on your own. You can do whatever you want but until they do. . . . .
OK, we've got reports occurring on a regular basis, if the State Water Commission meets, you are obligated to be there and provide a report. They will have it on their agenda. We'll have the State bidding process followed and that will be through the State Water Commission. They will manage that bidding. The State Water Commission will review plans and specs and approve overall project concept and plans.

The Attorney General will review and approve the bylaws. We understand there's going to be flexibility in these things. Anything else that member of the committee or anyone else has?

Todd Sando: It depends how far we want to go down the path of construction and inspection too. If we want to be involved in that or if we want to just rely on the local engineers to do all the construction inspection.

Representative Keiser: Can we put in the provision to allow the Water Commission to do it if you deem it necessary?

Todd Sando: We wouldn't want to be the ones responsible but we would like to oversee the construction inspection possibly.

Representative Keiser: Can we give them the authority to review it? Oversee assumes that you are signing off on it.

Michelle Klose: When you are issuing contracts you want the owner to make sure those contracts and the authority . . . . If you're looking at a review, you may have a concurrence of something by the Water Commission so that you can present it to the Water Commission for approval. If you have the approval then you will award those contracts. It depends on how much oversight you want. If you want any change orders signed off by the Water Commission. If you have the overall concept approved, they're going to know that that's the way to carry that out and so you may not need any additional per change orders or anything else like that because they're moving those projects forward. It really depends on what your model is and how much oversight or how much flexibility you want to provide. Providing a review that would be current at the commission meetings and overall review of the model itself, of the plan. It's a pretty good level of oversight without having to get involved with every single construction contract or the inspection of the construction contract because the owner of authority is going to want the engineering firm to take care of that inspection and provide information back. If there are any problems with construction, those should be brought up at the committee update.

Representative Keiser: Sounds good? I think that sound right, review and concurrence that the construction elements at you regular meetings whenever they are. Anything else? I think we may have it.

Representative S. Kelsh: Do we need the State Water Commission to have oversight over the rates or contracts or revenue stream part of it?

Representative Keiser: Only concern that I have had in any discussions is that in the case of a default, that's the only time that I have any concern about rates. They should be able to set rates as long as they want and run this project. But if it defaults, I don't want them cutting and acting inappropriately with rates.

Dave Laschkewitsch: If it goes into default, the assets come back anyway and we start operating it. After default, we'd set the rates.

Representative Keiser: Then that's not an issue.

Representative S. Kelsh: How about prior to going to that stage?

Representative Keiser: Prior to going to that stage, that's up to the 3 of us to decide. My feeling is this is a private / public effort and they have to set the rates and make it work and if they miss a payment, we take them over and then set the rates. Other than that, that's where I'm at. Where are the committee members at?

Representative S. Kelsh: If we adopt the amendment, it will go back to us. But, if the revenue stream isn't where it needs to be, then it will obviously default and come back to us.

Representative Hofstad: There's an awful lot involved in setting rates. I've got mixed feelings and would have to think about it a little longer.

Representative Keiser: I do think that they're out there already and the existing water entities have their own rate structures, their own customers, their already operating. They know what they're doing and they know their market. This is a gamble and it takes a little risk but we do want to be able to come in if the rates that they start using aren't working. We can come back to this at the next meeting unless we want something specific done.

Representative Hofstad: I think that would probably be part of your overall review, would it not Todd? You're going to look at how that revenue stream fits together and the business model and make sure that those payments can be made. All those decisions have to made up front. The O & M charges, the transmission charges, and all of those charges in those water systems have to be predetermined so that this thing fits together and works. You're going to oversee that.

Representative Keiser: I will guarantee that the banks are going to be looking at it. We'll come back next meeting. Think about it. Anything else that we want in terms of oversight? We'll get the amendments drafted so you can see them so we'll all be talking the same language. Those are the 2 big issues. We're going to have everybody involved that plays a role in the financing look at the suggestions and amendments and see if we can use them or incorporate the best parts of both and make it work. Are there any other issues? Anybody in the audience have any comments to make?

Ward Kouser, Mayer of Williston: We are involved in this whole process and have spent the last couple of years working with these organizations where we have been able to build faith and trust in each other so that we can work together and do this. We

are the largest city in the area and there is always making sure that we work together, that we're all at the same side and working together. I appreciate the work that ou are going through in this and I want to commend you for the oversight part of it. We recognize that that's critical for us. We want to make sure that it's done right. This is as chance that we rarely get where we can have an industry basically pay for infrastructure that will remain in NW North Dakota for many years. When the oil industry moves on in 10 or 20 years, if this can happen, we will then have infrastructure that can be used by the whole state where there could be food processing, manufacturing, or whatever needs that water source. We always talk in our area about trying to find ways to get the industry to help us with some of this. In general, they tend to be supportive. This is a unique situation where you have an industry paying for a system that will be a benefit not only to NW North Dakota but be an asset for the whole state. I appreciate the work you've been doing in wrestling with these issues and I commend you on the oversight. We want to make sure it's done right. The last thing we want is to have this thing come apart at the seams and go into default. That is not what we want. We want it to be successful not only for us and our residents and the oil companies and everybody there, but for the whole state. Thank you for addressing it.

Representative Keiser: Thank you. It's great to have you here. I'm very impressed with what you all have done out there. The intellectual property part of the concept and the coordination and work you have gone to bring these folks together is a model for other communities. We will adjourn until Friday afternoon. The meeting was held Monday, Feb. 7th.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: February 7, 2011

Recorder Job Number: 14174

Committee Clerk Signature Mary Main

HB 1206 Energy & Natural Resources Subcommittee:

Chairman George Keiser, Representative Curt Hofstad, Representative Scot Kelsh

Minutes:

Representative Keiser: We'll call the Subcommittee for HB 1206 into session and take roll. Tim Dawson has taken these many pages of amendments and put them into engrossed form and color coded them. To review some of the issues that we addressed at out last meeting was financing, make sure the participants could not withdraw. That the property funded by the bonding was committed and that there was a 100% moral obligation. We talked about due diligence relative to the financing which is Bank of North Dakota Finance Authority and the Budget Section and a clause for repayment of the 30 million dollar grant at the front end or a loan. The Budget Section retains oversight authority. That's the financing as I recall it. As we go through these amendments, I encourage the members of the committee to look for those elements. We had oversight that in a default, the State Water Commission would have authority on a lot of the oversight, would be able to set rates if there is a default, that they would receive the annual off rating plan proposal, that they would have oversight on the building, and report at regular meetings to the State Water Commission relative to the State and utilize the State bidding process, and approve overall project finance. The Attorney General would review and approve the bylaws. That's a summary of what we talked about previously. There may be more. I would like to have Tim Dawson walk us through and show us how we have addressed these elements.

Tim Dawson: These amendments came from Karlene Fine and Scott Wegner. When it comes to the substance of them, I would prefer that they address the substance with them. I took their amendments, some of them did conflict, sometimes I chose one thing and sometimes I chose another.

Representative Keiser: Karlene Fine, your checking these as we go because your going to give us the stamp at the end and say that it's ok.

Karlene Fine: Yes, I am.

Tim Dawson: Reviews attachments #1 – (proposed amendments) & #2 – (proposed engrossed HB 1206).

Michelle Krose: Page 1 – line 18. Typically water projects are not used for irrigation so I didn't know who was suggesting irrigation.

Representative Keiser: Where did it come from?

Scott Wegner: I believe that came from our firm. For some reason, if it did work out to be water supply, it's in there that that's an option.

David Johnson: It is not any of the intended purpose of the project.

Representative Keiser: Does it create a problem?

Michelle Klose: I don't know if it creates a problem. You just typically wouldn't use drinking water for irrigation purposes because the volume for irrigation usually drastically larger. If you had an irrigator at the end of the line, and it wasn't used for other purposes, you may be able to contract. It seems like the costs would be prohibitive to use it for irrigation.

David Johnson: The only example where you might use it would be a nursery.

Michelle Klose: They could be considered an industrial user either way.

Representative Keiser: I would suggest we strike irrigation.

Representative Hofstad: I would too. It seems a little out of the norm to use it for irrigation. It can go as far as I'm concerned.

Representative Keiser: We're going to strike the word irrigation.

Tim Dawson: Continue with Page 2 – lines 12-15.

Representative S. Kelsh: On the amendment we just talked about. If the 30 million dollars isn't repaid are they still allowed to withdraw from the authority?

Karlene Fine: Are you suggesting that 'and after the loan has been repaid' should be inserted there.

Representative Keiser: What if on line 14, strike the word 'or' and replace it with a comma, and insert 'or grants' so it reads 'any bonds, refunding bonds, or grants issued under this chapter remain outstanding'.

Representative Keiser: Is that ok with everybody?

Tim Dawson: I'll probably put Water Commission grants in there somewhere.

Representative Keiser: OK

Tim Dawson: Continuing with line 3; lines 23 & 24. At one level the attorney general reviews them and at the other level they have to receive approval for dispute resolution.

Representative Keiser: There are two parts to this proposed amendment. Should the Attorney General also approve the bylaws? In other words, the Attorney General shall review and approve the bylaws and shall approve for adequacy any provision of the procedure for dispute resolution. If they approve the bylaws, that would include the adequacy for any dispute resolution but it is more general. That was the subcommittees intent was that they approve the bylaws, not just the dispute resolution.

Representative S. Kelsh: To what standard do you want them reviewed at?

Representative Keiser: A good standard. To sign off on them I guess. That's what I meant when I approve them, to review them and sign off. That was our original discussion, that they would have that oversight to make sure that they were solid.

David Johnson: He asked the question that makes us a little nervous. What standard are we trying? We don't have a problem with them and I don't think this is a problem but . . . . How would you interpret that?

Representative Keiser: If they just review it and don't like it. They've been reviewed. I want the Attorney General to say yeah, I've reviewed them and they look ok.

Representative Hofstad: What's the resolution to the dispute?

Representative Keiser: It will be addressed in the bylaws. It has to be acceptable and they are our legal entity.

Tim Dawson: So very short sentence that says the Attorney General shall approve the bylaws.

Representative Keiser: Sounds good to me. That will include dispute resolution and how people are elected or appointed or whatever.

Tim Dawson: Continuing on Page 5; line 22 & line 31.

Representative Keiser: We are guaranteeing the bonds with the assets of the project that are purchased with the bonds.

David Johnson: We are actually securing it with the revenue stream.

Representative Keiser: OK. If we're not guaranteeing it with the assets then I guess I don't have as much concern, but if we were guaranteeing, I don't want assets sold without us being informed that the sale is going to happen. So if you're going to sell assets that would affect the revenue stream, then I would get nervous. If you have a pipe going out to wherever and you decide to sell it, that's directly related to our revenue stream that's been anticipated. I think we should have notification and approval for any sale of assets related to this financing.

David Johnson: We don't intend to sell it.

Representative Keiser: I understand but you create these assets with financing, and that creates a revenue stream and then if you were to sell those assets that could be detrimental. I don't want to eliminate the ability to sell an asset covered by the financing, but I do want some approval of that sale prior to the sale. Does that make sense?

Representative Hofstad & Representative S. Kelsh: That makes sense.

Karlene Fine: I think that his goes with that bigger picture that Scott Wegner was going to talk about where they wanted to insert a separate paragraph. You're correct on that you don't want any of the assets to disappear on us.

Representative Keiser: If the assets are related to the revenue stream that's guaranteeing this, I want to have some input on selling those assets. Not that we disagree with it but we can't let them just run with it and discover that some of that revenue stream isn't there because of some action on the assets.

Michelle Klose: When it says pledge any or all income, typically when the authority forms their water rates, it should be structured that they have a portion going to their O & M expenses, the actual cost to produce and treat the water and then capitol repayment. So typically you should have those rates defined. When you're talking about pledge any and all income received by the authority for the bond issue, are you

saying you're pledging all that income to go to the revenue because part of that income has to be used for their typical costs or to pay for those costs for O & M, treatment, distribution, pumping costs, power costs, as well as staffing costs. I don't know if your trying to make a distinction that their rate is going to have their O & M rate covered so their typical operation has to be covered by their water rate. Then a portion of that will be set aside for capitol repayment. That capitol repayment has to go to the bond revenues. I don't know if that's too complicated or not but just the caution when you say 'pledge any and all income'. They are going to have revenues which should not be pledged to cover a payment because it has to be used for typical operations.

Representative Keiser: Does this language preclude covering the old and then expenses.

Michelle Klose: I'm not sure how it's read when it says 'pledge any and all income profits and revenues received by the authority.' The authority will have to have your monthly base rate or something that is charged to the users to take care of the normal operations. The authority actually sets that rate structure and says how much they plan to put aside for capitol repayment. You have that the authority sets the rate that will go to repayment or a portion of their revenue but when you're saying 'pledge all income or revenues' that might be a problem because they will have . . . . Maybe you should have 'pledge all capitol repayment revenues'. If their water rate is set up for a structure typical to what we have seen on SW and NAWS, you actually divide out the supply and treatment costs, the O & M cost, the extraordinary maintenance, and the repayment. You have those income streams defined and maybe it's pledging all income for capitol repayment to these bond issues or something. I know that structure is not set up in here. I'm not sure how you would do that.

Scott Wegner: This is typical revenue bond language and it's true, only the net revenues would be pledged. There are some cases where gross revenues are pledged for certain cities. There might be circumstances under which you pledge a gross. That's why the language is broad. Before the authority could sell any bonds, all of this would have to be worked out in great detail in the bond documents. I think they should stay general, the way it is. Bonds won't be able to be sold unless they can demonstrate that there's money for O & M as well as money for debt service. I think that takes care of itself.

Michelle Klose: So that allows that flexibility for the bond. OK

Representative Keiser: Karlene Fine, you're ok.

Karlene Fine: This is what we've seen in all the other statutes that had this.

Representative Hofstad: When we talk about the repayment of the 30 million dollars, we do spell out the capitol reserves in that summation.

Representative Keiser: Let's leave it as it is but think about this and at our next meeting, we'll have an answer.

Tim Dawson: Continuing on Page 6; lines 28-30

Representative Keiser: By striking this, we get the assets. Right? If there's a default, the property comes back to the State when we take over the obligation.

Tim Dawson: Right. Continuing page 7; lines 15-16. Then new section page 7, lines 24 – 29. Your language about notification of the sale of assets might belong in there. Is there some other language?

Karlene Fine: We haven't talked about that anywhere.

Tim Dawson: It's not elsewhere. This might be a good place for it.

Representative Keiser: Any plans to sell and asset would be reported to the Water Commission.

Karlene Fine: Since these were drafted, I did have a conversation with the Water Commission and they sent me some language that in that second sentence, it reads slightly different. It says the authority shall present the overall plan and contract plans or specifications for the project to the State Water Commission for concurrence.

Representative Keiser: OK. So that would replace that first sentence on line 25.

Karlene Fine: The second sentence that starts at the end of line 26.

Representative Keiser: So what would we strike. Discussion on final language. Would you read it.

Tim Dawson: "The authority shall present the overall plan and contract plans and specifications for the project to the Water Commission for concurrence."

Karlene Fine: So concurrence and approval mean the same thing.

Michelle Klose: They're similar. What you're looking at is the Water Commission concurs that these plans are adequate. They're meeting the overall piece but it's not the State Water Commission saying we approve these. These are exactly the way we would do that. It's basically concurring that this is adequate and the overall plan meets the needs and if the funding that's being provided is appropriate.

Tim Dawson: Reread previous sentence again.

Scott Wegner: We have one suggestion. On that section, if the lead-in could have language such as 'in relation to the initial construction of the system'. We're looking at an authority that, 30 years from now, they'll have a projects and extensions long after these moral obligation bonds are paid off.

Representative Keiser: So the key is this authority only lasts as long as the payments are made. When they're all made, the requirement to report goes away. Can we put language in there that as long as . . . . .

Tim Dawson: We could copy the language from page 7. "In relation to construction of the system, "

Representative Keiser: Would that do it?

Scott Wegner: Yes.

Karlene Fine: Is that also true at the time of the loan repayment.

Representative Keiser: Yes.

Karlene Fine: So that whole thing "construction and repayment and debt paid" or something.

Representative Keiser: Tim will go back and get this redrafted with the color coding and new language and get it out to us so that we can review it and come to the next meeting and be ready to act. We're not going to take any action today. I want all the parties to take a look at it and make sure that we're ok.

Tim Dawson: Continue with clean-up on page 8. Continue on page 9 and page 10.

Representative Keiser: Again we are just putting "any other property" into all these sections. The purpose of doing that is . . . .?

Karlene Fine: That was the wishes of the subcommittee on the first meetings. The property of this financing would be committed to this project.

Tim Dawson: The rest is clean-up until the last page.

Representative Keiser: Generally, what are we trying to do here? What's different? Is the State ok with what's here? Or is this a proposal from some bond cousel?

Karlene Fine: This is the language that we proposed. Scott did some additional work on it that was fine.

Representative Keiser: This is ok to the State?

Karlene Fine: We've identified that we can due diligence will be done by the Public Finance Authority and the Bank of North Dakota. It talks about reimbursement. Scott had added on these amendments that 150 million dollar limitation. Insert the word 'million'.

Representative Keiser: Let's go back up to item 1. Reread portions of section 1. This is standard for a bond to have this and what does this letter of credit or similar instrument do?

Scott Wegner: It's just flexibility. Normally with the reserve fund, the reserve would get funded with cash out of the bond sale itself. Sometimes it might be more cost effective, rather than putting cash into the reserve, that you buy a letter of credit from a bank. This just indicates that the reserve fund may be a pot of cash, it might be a letter of credit, maybe there will be some other financial instrument out there in the future. It would stand ready to provide the reserve.

Representative Keiser: So when we say 'or similar instrument', that could be cash or something else. So when we go to the bond market with this, we're going to get the best, at that time, a letter of credit, cash, or . . . . . Everybody's good on this?

Representative Hofstad: Does that then increase that limit of 150 million dollars and then tracing that limit to fund that reserve account? Is that what we're talking about because those reserve/interest accounts will be considerable more than the 150 million dollars? Are you talking about increasing the sale of those bonds to fund that reserve account?

Scott Wegner: It is correct if you cash fund the reserve, you have to issue more bonds up front to have the cash to set aside. An alternative would be to not bond for as many dollars and instead get a letter of credit. That's true. Any reserves would be above and beyond 150 million.

Representative Hofstad: Are we being somewhat disingenuous by talking about a 150 million dollar limit? Should it be somewhat more than that? At some point in time, we could be talking more than 150 million dollars if we're talking about the debt reserve, the interest payment, and those funds that have to be funded.

David Johnson: The 150 million dollar limit is the limit for actual funds for construction of the project. The amount above that are the costs of borrowing and so what this provision does is allow us to reduce that amount. So if we had to borrow 2 years of debt reserve, that's another 40 million dollars, the this gets closer to 200 million dollars. If we can use that letter of credit so we don't have to borrow that much money, that keeps the cost of the financing lower.

Representative Hofstad: Is that something that we will get? Will we get that letter of credit so we will be able to reduce those funds or, are we likely not to get it and have to bond for more, or don't we know?

Representative Keiser: They are asking for 150 million for capitol construction. The financing is always, and always will be, greater than 150 because that's what you need to build this. What they're trying to do with this language is give them flexibility so when they put the final package together, the good name of the State of North Dakota is going to be for 150 million plus either the cost of the letter of credit or the cost of the reserve, whichever is less expensive. It's not disingenuous to put 150 million in here because that's the capitol cost. The bond may be greater and when they go to the market, those people who might purchase the bond have got to look at everything and say will this work as a revenue bond, are the revenues adequate to fund the 150 plus cost. We don't know the cost. What they're suggesting with this language is to say when that day comes; we're going to go with the least expensive option. It may be a letter of credit or some other financial instrument which might be cash. If it's cash, it gets added. The bond issue itself is going to be for more, regardless of what we adopt, than 150. Is this correct?

Scott Wegner: Correct.

Representative Keiser: We're trying to build flexibility so they get the best deal with the lowest overall cost for the revenue bond. We have an option reducing the 150 to reduce our exposure or give them the 150 that they say the building needs and try and minimize the costs. This language attempts to do that. There is no way that the bond will be for 150. It will be more and we don't know how much more. The bond market will not accept it if they don't think the revenues can manage whatever it is. The day the bonds are sold, we will know what the exposure is.

Scott Wegner: It will be locked in on that date.

Representative Keiser: What might it be? 180? 160?

David Johnson: When we looked at it, if we don't have to fund the debt reserve and a letter of credit, it's about 167 million. If we have to fund 1 year's worth of debt reserve, it gets to about 185. If we have to do 2 years, it gets close to 200 million.

Representative Keiser: We have to go into this with our eyes wide open. The best is 167 maybe, and the worst is 200. I'm not going to hold you to it. Does that seem reasonable?

Karlene Fine: Yes.

Representative Keiser: It does not say that in this document. It does say 150 for construction. With these numbers, we need to make sure that we have protection as

best we can. There is risk. Subsection 1 is trying to give the flexibility when we go to the market to get the best deal we can given that we want to borrow 150. Everybody ok? Is the Water Commission OK?

Michelle Klose: We do have a question on the State Water Commission roll in here. When it says the amount for the reserve fund is going to be certified by the authority to the State Water Commission, is that saying the authority will tell the State Water Commission what amount needs to be set-aside and the reserve fund and then the Water Commission goes to the legislature and tells the legislature that this is the amount needed for the reserve fund. Is that the intent?

Representative Keiser: Our intent is that the State Water Commission has the initial oversight of the structure and amount in there and that the budget section. You would then take it to the budget section. Is that right?

Karlene Fine: What we're trying to do is say we are 3 years down. It appears that the revenue flow is not going to be sufficient, so it becomes the Water Commission's responsibility to notify the legislature. We have a problem. We're going to have to ask you for some money.

Representative Keiser: Is that what this does?

Karlene Fine: This is being put on the Water Commission because we needed to pick a State agency and we felt it's the Water Commission because they've been getting reports on a regular basis. They are aware if it were to come to that point.

Representative Keiser: That's what you think this does?

Karlene Fine: Correct. This may need to be a bit stronger based on some conversations last Friday that it may need to be a little bit stronger for the bond holders. So we're sure that not only the Water Commission inform the legislature but they will request that there's an appropriation made.

Representative Keiser: If it's short?

Karlene Fine: Right.

Scott Wegner: We have proposed and it's in the letter to the subcommittee, just a couple of amendments. This is one of them. (See attachment #3 – page 2, section B) Refer to proposed engrossed bill (attachment #2) Page 12, line 7 after the word 'reserve." We would like to insert the sentence from attachment #3 – pg 2, section B, line 11.

Representative Keiser: This is getting into the default situation, right? If we are in default, the liability comes back to the state and what they're asking for is if you're in

default, you're going to have a mechanism for getting that money to cover the default. This is the language that you're proposing.

Scott Wegner: It will give the rating agencies and the bond holders an assurance that something is in place to get the request in place.

Representative Keiser: The process is in place. This is new. We're going to take this and think about it. We'll consider it. I understand what you're saying. Subsection 1 talks about default. If there is a default, what's our process for managing it? This is what you're proposing. Our folks have to look at this and they can work directly with you.

Andrea Travnicek: When there is that default, is that when the assets come back to the State also?

David Johnson: If the State so chooses to take it, yes.

Representative Keiser: Yes. We want to leave the option for the State to take it. There are two triggers. We have to define when the default occurs and then the assets come to the State and also the bond market wants to know what our process is to cover the cash requirements upon default. I think that's legitimate. There may be other questions. We want to make it permissive for the State to take it because if there's just a minor default, we want to be able to provide the cash to make it whole and to leave it operational and then take it whenever we deem it necessary. We want to have the authority to take it even if it's minor. If it's minor, we may not want to take it. We want that flexibility. We don't have the language yet. I'm talking just the general policy. I understand the bond market is going to want a definition of how that money's coming in. Without it, you can't go to the market. It's one thing to say the good name and faith of the State of North Dakota's behind it. They're going to say ok, but how does it work? We're not going to default on this project because we're going to have plenty of oversight on the front end to make sure it's good. Is that what section 1 is trying to do.

Karlene Fine: Correct.

Representative Keiser: We could meet tomorrow at 3:30?

David Johnson: Wednesday would be a lot better.

Representative Hofstad: Wednesday would work better for me too.

Representative Keiser: We will do Wednesday at 3:00 in here. Any comments on subsection 1? What about subsection 2 on page 12? What about subsection 3? This is where we bring the Bank of North Dakota and the Public Finance Authority into the picture. This is where there's a legislative appropriation required.

Karlene Fine: Subsection 3 is saying that before anything goes ahead, there's going to be due diligence and there's going to be the approval of the budget section.

Representative Keiser: OK

Karlene Fine: Subsection 2 is the provision that says we get the property back.

Representative Keiser: OK. Is that worded adequately or do you want a change?

Scott Wegner: On subsection 3, we ask that this provides for the financial due diligence by both the Public Finance Authority and the Bank of North Dakota. We request that it just be the Bank of North Dakota.

Representative Keiser: Not going to flow.

Tim Porter: The Public Finance Authority would be doing the due diligence on the revenues for the project. The Bank of North Dakota's due diligence would be on the letter of credit. We do need to have both parties in there.

David Johnson: I think we misunderstood what they were asking as well.

Representative Keiser: We're through the marked up copy that Tim provided. Tim will try and get all the parties involved. If you provide your e-mail address, we can forward it to you and you can print it out. By next meeting, you will have reviewed the amended bill. Anything else from parties at the table.

Scott Wegner: On the letter that was submitted to the subcommittee, there were a couple amendments we'd like to suggest. (See attachment #3). Explains new subsection 61-40-18.

Representative Keiser: So we would create a new subsection 18, right?

Scott Wegner: Correct.

David Johnson: We'd like to remove all of those segments where you put the property section.

Representative Keiser: Karlene, Tim and anybody else, if you would look at this. If it is an acceptable alternative, let Tim know. It would be a deletion of 'and the property of' in those appropriate sections. All offices need to look at this. If it's ok with all offices, then it's ok with me.

Dave Laschkewitsch: What's the purpose for deleting 'and the property of"?

Scott Wegner: The general rule is that governments do not put their property at risk of loss, their water systems, etc. All the revenue bonds statutes of North Dakota specifically provide that you can't mortgage your system. What they do provide is if you default on paying your bonds, normally it's a trustee, on behalf of bond holders, to step in and take over the system. That's what this section would do. It would say you can't mortgage or pledge your property, but if you don't pay, a trustee in the case of the bond holders, or what this sections does is say the State, can step in and take over the system. It's much cleaner, easier, and clearer. The section also specifically states if the moral obligation is used, there's already a requirement that the authority repay the state so this also provides that if that payment cannot be made or worked out, the State could simply take in and it's the Water Commission system. You don't get involved with already a pledged property and which parts. It's simply a takeover of the system.

Dave Laschkewitsch: Those properties that this entity has mapped before the takeover, those would be' property of'?

Scott Wegner: It would because it will be the revenues of the entire system pledged, so it's the system that gets taken over.

Andrea Travnicek: Those contracts that are the participating member entities that have those municipalities, if it gets brought up to the State Water Commission, do we loose those entities that are required to pay in? Or does that stay, the way this is written?

Scott Wegner: The state would try and run it and get those assigned to it and collect the revenues and pay the bonds. There is a lot of detail that would have to be worked out. The concept is that the Water Commission would have the authority to run the system, set rates, enter into contracts.

Andrea Travnicek: That's what I didn't know if you had to reenter into those contracts or would the contracts already in place through the authority, are they null and void?

Scott Wegner: I assume that they would just take over but I'm not sure.

Representative Keiser: It's always been our position that if there is a default, we want the assets and the revenues. That's the point. That's why we'll place in all those sections that language. I'm not sure but I'll leave it up to our legal folks to look at this. If this does the same thing, I'm ok but if it doesn't, it is our intent to have those assets come back and give us authority on the revenues. If this does it, I'm ok. If not, I'm not ok.

Representative Hofstad and Representative S. Kelsh: That's exactly right.

Representative Keiser: For our next meeting, look at this and if it does that, let Tim know. If it doesn't, let Tim know. He's got to get this new one drafted.

Bob Harms, represents the Independent Water Providers: I've been asked to represent the members of the private sector in the NW part of the state. As a courtesy to the subcommittee, we'll try to get you some comments relating to the bill.

Representative Keiser: I did bring a couple of letters that I've received from independent water holders but I won't distribute them. We appreciate any amendments that you bring forward. It is our policy position so far in the testimony that we've heard, that we want to minimize the diminution of the aquifers as much as possible and use other alternatives where appropriate so we move forward. That's a concern we have from a policy standpoint.

Scott Wegner: On the letter that was submitted, there is one other requested amendment. (See attachment #3 – Section C). That would be a new subsection 4 on section 61-40-17. We talked about the letter of credit earlier. Because of the biennium, a letter of credit at least for 1 year will be necessary. We'd like this language added. The reason for this is that we get to the point of issuing bond and we have the legislative approval and are ready to go we need the letter of credit and the bank won't give us one.

Representative Keiser: This is a requirement that is available if you need it or want it at the time of the bond issue.

Tim Porter: The language here would be problematic. It contradicts what we talked about on due diligence. Any separate letter of credit, no matter who it comes from, goes through our investment committee. If it's large enough, it comes up to the Industrial Commission. We've got a process for looking at these that we follow. We don't just take on risk this way. It would be problematic.

Representative Keiser: OK. Not going to happen. The Bank of North Dakota, the only State that has one of these things, and we've got our process. I understand that it would be great to have in advance but then we wouldn't be doing due diligence. The legislature is committed to seeing something happen out there. We're all together in this now we just have to get from point A to point B. Is there anybody else that wants to comment? I thank everybody participating in this project. We will meet again on Wed. at 3:00pm. I adjourn the subcommittee on HB 1206 till tomorrow.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: February 9, 2011

Recorder Job Number: 14293

Committee Clerk Signature Mary Main

HB 1206 Energy & Natural Resources Subcommittee:

Chairman George Keiser, Representative Curt Hofstad, Representative Scot Kelsh

Minutes:

Representative Keiser: We'll call the Subcommittee on HB1206 into session. We have copies of the engrossed bill – color coded. What I hope to do today is go through these amendments. What did get missed on the amendments so far is the emergency clause. We need to determine whether we want to add the emergency clause so that they can start if the project is approved. We had a meeting earlier with Bob Harms and some of his folks here, and following the amendments, we will get some input. I wanted everybody to be on the same page.

Tim Dawson: Goes through amendments on bill (See attachment #1 and #2 – note vertical lines after line numbers for newest changes in amendment).

Representative Keiser: Page 3, line 25 & 26. Is the Attorney General's Office OK with this?

Jennifer Verleger: Yes

Representative Hofstad: We've taken the resolution dispute out of that. Is that problematic or is it because the Attorney General is looking at them, reviewing them, and approving them. Any resolution in the development of those bylaws would be resolved, at what point?

Representative Keiser: The Attorney General would have to approve the resolution provisions or not approve the bylaws. Rather than have us worry about what those provisions would be exactly, the AG must approve them and say they are acceptable to the State.

Representative Hofstad: What if we get to a point where we have an impasse?

Representative Keiser: If he doesn't approve it, this doesn't go forward.

Representative Hofstad: But an impasse within the authority itself?

Representative Keiser: Again, the AG will be looking at that as they approve the bylaws. The bylaws will indicate what the resolution of the dispute will be. The AG will approve the process or not approve it.

Tim Dawson: Page 5, line 24

Representative Keiser: The rational for including the leases was?

Scott Wegner: Because these can be a financing mechanism and be done tax exempt, it's just another option.

Tim Dawson: Page 6, line 29-31& Page 7, line 1-2. Page 7, line 10; The word 'irrigation' was taken out in purposes in the beginning, do we want it out here as well?

Representative Keiser: I think to be consistent, it should be removed.

Representative Hofstad: It should be removed.

Representative Keiser: So that will be part of the amendment.

Tim Dawson: Page 7, lines 18-19.

Representative Keiser: What does this do?

Tim Dawson: It exempts municipalities from public voting requirements but limits that into relation to the initial construction of the system and for purposes of entering the contract which was there before.

Representative Keiser: Alright.

Tim Dawson: Page 7, lines 27-31

Michelle Klose: When it talks about if the bonds are issued by the authority under section, they're not actually issued under that section. If the bonds issued by the

authority, utilize section 61-40-17; the bonds aren't issued under that section. It's only if it goes into default, these conditions are happening.

Representative Keiser: So we need to clarify that?

Karlene Fine: It's in here in a couple of places so I'll help you with the content of the language that will work.

Michelle Klose: It shows up on page 7, the top line as well.

Tim Dawson: Do you have a suggestion?

Michelle Klose: Bonds issued by the authority use or utilize section 61-40-17.

Representative Keiser: So it's just 'utilizing' instead of 'under'?

Michelle Klose: Right. Get rid of the 'are' also.

Representative Keiser: When you get this Tim, read it so we get it on the record.

Tim Dawson: Start on bottom of Page 6, line 31 – 'However, if bonds issued by the authority utilize section 61-40-17, this subsection does not apply.' Page 8, line 2 – 'If bonds issued by the authority utilize section 61-40-17 or a grant has not been repaid, without written consent may not sell . . . .
Renumbering until Page 9, line 21-22. We should switch this language as well.

Karlene Fine: Line 22 – 'to any bonds issued which utilize section 61-40-17.'

Tim Dawson: That was the same as it was in the previous amendments.
Page 10, line 9; 'refunding' removed. Page 10, lines 19-20; clean-up. Page 12, line 8; Page 12, lines 24-27 added the word 'million'. Page 12, lines 28-30.

Representative Keiser: That's where we bring the budget section in.

Tim Dawson: Page 13, new section 60-40-18; Default. This is the replacement language for taking out other property throughout the sections of this bill.

Representative Keiser: Any questions on that language?

Tim Dawson: Section 2 – new section added in and was in the previous amendments and is also designated in the title and why we had the change in the title because we have a new section. Read Section 2.

Representative Keiser: Any questions from committee members?

Representative Hofstad: Back to page 7, section 25 where it talks about not requiring a public vote. Can somebody explain why we're not requiring a public vote because usually in water systems where we change the source or supply, we do get public vote? Why is that in here?

Dave Johnson: That provision was suggested primarily because of the time constraints to try to get this project done to get the public votes and leave it up to the boards. In the case of Williston, for example, they're not changing the water source so it's questionable whether or not they would have to vote. When you go to the bond counsel or the bond attorneys, there's that question out there. Should they have voted or not? This clarifies that they don't need to.

Representative Hofstad: I understand that but you are really disenfranchising the users. I don't know it that's a problem but in other water systems across the State, that is a provision that we always go through. I just wanted to be clear why that was there.

Steve Mortenson, Independent Water Providers from Williston: This project has been in the works for 4 years and last night we were at the Williston City Commission Meeting and that was the 1st time that it's been presented to the City Commission. We were not aware of this project in our area until 3 months ago. I guess I don't understand why there shouldn't be some sort of local input, where people can look at this project and have the right to vote on it. Right now, it's just being presented and moved through. Our local area, until last week, they didn't even know about the project.

Representative Keiser: Did your City Commission know about it?

Steve Mortenson: The City Commission knew about it but last night was the first time.

Representative Keiser: No discussion on their part that you're aware of?

Steve Mortenson: Not that I'm aware of.

Gene Veeder, McKenzie Count Water District: Waterford City has voted on this. That was about a year ago. 94% approved it.

David Johnson: Crosby has voted. R & T System is a joint powers agreement between several systems. They have not voted to join this authority. The city of Williston, their commission has been involved in this project from the very beginning. They're not changing their source, so would they need to vote. Probably not, but yet there's that without this provision, that really becomes a big question from the bond counsel world.

Representative Hofstad: It is an issue. I'm just afraid that there's a red flag out there and as you continue this project and go down the road, I see it as another red flag. I

don't want to stop this process, but I bring it up because I had not seen it before until we started going through this and I looked at and that's not the way we do it.

David Johnson: We talked at length about it with the City of Williston and the other systems. They were ok with it because it's permissive, meaning that the City Commissions can decide to offer their citizens a vote to do it. That's why they were willing to put this in. They could still ask their citizens to vote on it.

Representative Keiser: But there's no requirement. They're exempt from it.

Representative S. Kelsh: It was in the amendment the other day. Maybe we missed that language.

Representative Keiser and David Johnson: It was in the original draft.

Representative Keiser: Any thoughts from anyone else at the table?

Andrea Travnicek: On page 12, on the discussion of the Governors budget; I was wondering how much you were thinking was going to be set aside for the reserves budget.

Scott Wegner: The dollar amount depends entirely on how much the reserve is drawn. If no principle or interest was paid by the authority. Potentially it would be 2 years worth of debt service. That would be the max that we'd be asking the Legislature to appropriate.

Representative Keiser: At any particular session?

Scott Wegner: At any particular session and any amount less than that depending on how much principle and interest were paid.

Representative Keiser: We'll come back to that. Any other points? The emergency clause, we did not get that on this set of amendments and I think that was the intent to put it on. We can treat the emergency clause as absolutely standard language, we can treat it as being on and Tim can draft it. The other issue is that I thought we had discussed is they would have to use the State bidding process. Is that language that brings the Water Commission in strong enough to enforce that?

Michelle Klose: When we looked at the existing laws that are out there for the procurement of construction contracts. It already covers political subdivisions and so as long as the contracts are over 100,000, they already have to follow that for their construction contracts. That seems to adequately address that if that's the concern.

Representative Keiser: That would do it then. That's the only other thing that I have that we had talked about. Anything else from committee members? The amendments

as they're drafted are attempting to address all the concerns that we've discussed to date. Bob, will you share with us some of your perspective?

Bob Harms, representing the Independent Water Providers: Representative Hofstad's concern is one that we've had as well, the lack of Williston and concerned about the timetable that this project has followed. We'd like to see the Watford City vote and what the city actually agreed to support. We're concerned about the timetable and more importantly, the size and the magnitude of the project. It's a 200 million dollar project and we believe that there is more than enough capacity for water supply in Northwestern North Dakota at this point to serve both municipal and more importantly, the oil and gas industry. We have at present 15 million gallons a day available of private water at capacity and additionally at least another 5 million available from municipalities. We think there is 20 million currently available. We think the private will go from 15 to 23 million gallons a day capacity this year. We think the industry currently requires about, if we did 1500 fracs in 2010, 2 million gallons per frac, on average, it takes about 8 million gallons a day. We have more than twice that capacity today in place in both private capacity as well as public capacity. Our concern is what we're doing in this project is overlaying a publicly funded infrastructure that presumes to utilize or provide a major part of the oil and gas industry for its water supply. We believe that one of those two supply sources, either the existing private sector coupled with the municipalities or the proposed project, is going to be a casualty because there's not enough market to fund both. That's an overriding concern. We prepared amendments. I'm born and raised in Tioga, I have family that live there, we have business there, I have a home east of Williston so I'm up there 50 times a year. All of us want to accomplish a couple things. We want to access Missouri River water for the States long term interest. We think that's something we should do so that we don't have that capacity and that resource acquired by the State of Missouri or other friends that we have south of Bismarck. We think we should try and supplement the infrastructure that we have. We like the idea of having additional infrastructure but it should be sized correctly and priced correctly. We think that 1/3 the size of the project that you're talking about today would be more on the order of what NW North Dakota needs.

I talked with the industry and there's talk that we need water North of Highway 2 and Southwest of Watford City for the National Grasslands. We have private water depots that currently access water aquifers that do not include the Fox Hills aquifer that serves that area of the State for the industry right now. This project we're talking about would lay over the top of that. The amendments that we've prepared for you essentially take out all reference to industrial use, oil gas use, those kind of things. It takes project from 150 million down to 25 million bonding coupled with the 25 million dollar grant that's in the Governors budget. We think that's a more appropriately sized project and so those are the intent and the effect of the amendments that we've submitted. We think this bill needs a fair amount of work because of the concerns that we've just expressed.

Representative Keiser: Any questions for Bob or any of his group? We did meet earlier today and I appreciate him coming in. They're coming in late in the game but

that's ok, the game is still being played. We're not that far along. I expressed to them some of the concerns, from a policy standpoint, we have. They have shared their perspective with me and I hope that they do with you. They believe the aquifer out there is more than adequate to meet any needs that they have currently and in the future. They couldmanage any needs today and into the future without impacting the aquifers that are out there and therefore why this project. They also recognize that we have an opportunity to use significant water from the river and to use that for the future of North Dakota. They also themselves and others are looking to get that water on their own without the need for this project to do that. In terms of the competition and the overlay that this would provide, from their perspective as I understood it was that it would dilute the market dramatically. I shared with them my perspective, the oil companies are going to go to wherever it's least expensive; whether it's this project or it's their private source. They're not going to sign any contracts with anybody. They're going to the least expensive route to get their water. I share with them my concerns. The aquifers are an issue and I want to be assured that there is no long term impact if we do all the fraccing that oil play will eventually do and leave us in a situation that's not good. As legislators, it's going to be very difficult to continue to send hundreds of millions of dollars out there because people have to drive all the way around and to 80 miles instead of 20. If your industry wants to pay for the roads, we're all for it. We need to find a solution which get water closer to the demand and hopefully they'll use it in that manner because that saves a whole lot of money for the State of North Dakota. That's an issue we really have. We're seeing the diagrams of where they're going for water, and they're going a long way to get to where you folks are. This overlay brings the water a lot closer in many spots. This is a very open discussion we have here. You're among friends even though we're not always on the same side.

Mike Ames, Independent Water Providers: The Independent Water Providers will have more depots and we will lessen the traffic on the roads than this regional system. Presently there are 40 depots out there and there are 60 pending permits for depots; 20 of these are private depots. In the stretch from Williston, the 29 mile corner, by the end of this year, will have 6 independent water depots. That will greatly lessen the impact on the roads. This proposed project would have 2 in the same area. Somebody's system is going to fail with this project. This project is not economically feasible and with the private water depots that are out there and with the capacity for private industry to react, we feel the private industry will be more responsive, quicker to the market, and more cost competitive. The oil field does not need treated water to drinking water standards. They can get water directly from the Missouri River and they are doing it. One major company has laid a 10 mile pipeline from the Missouri River for their fraccing. In this study, the Independent Water Users weren't even addressed. They weren't even considered. The major pipeline by Bringham, wasn't considered in this study. To some extent, this major project is being misrepresented to you.

Representative Keiser: Any questions?

Representative S. Kelsh: Mr. Chairman, I share your concerns, does anyone know about the aquifer? Is the aquifer adequate? If it turns out that it's not, what's the

expandability of it? Can it retrofitted and be made larger to handle the needs of a decreased aquifer?

Representative Keiser: We come into the session and we're here for 80 days. Bottom line is, this is it. We have crossover in about 2 weeks. We have to make one decision. Do we keep this alive and send it and continue to work on it. You'll have a much better shot. You'll be more aware that it's on the Senate side and be able to work on that side. Or do we take it to the floor and kill it and I can assure you that that's not going to happen. Our job in the Subcommittee was to refine this bill and bring it back to the committee and have the committee vote on it. We are going to keep moving on this. We have to. We do have some time left.

Bob Harm: There are 3 things that the Subcommittee should be aware of as far as water sources. The Fox Hill Aquifer is the aquifer that is 1500 – 2000 feet deep and that aquifer has really been off limits as a practical matter. That's something that the industry has recognized. The other aquifers that the private water users access include the Tobacco Gardens, Ray, Wild Rose, Hofland and Nesend Valley, and the Little Muddy aquifers, all of which provide water for these people now. Those have been the primary sources of water the private providers have utilized. The other source that everybody's trying to get to, including the private sector, is the Missouri River. Those permits are pending and we hope that they will get them approved this year. That should provide some additional capacity for all of our uses. I don't know the details in terms of those aquifers I mentioned. I know there is some testing going on so maybe Todd or somebody else can speak for that. Those are the 3 areas of water supply that the subcommittee should be aware of.

Representative Keiser: Todd, do you want to provide any information now or do you want to do some more . . . .

Todd Sando: The experts are Bob Shaver, Water Appropriations Division and hydrologists on the aquifers. They are at another subcommittee meeting now. I'd like Bob to address some of that.

Representative Keiser: We have attempted to put into this amendment two areas of concern. One – oversight on the financing to make sure that we don't get into a financing situation that is inappropriate and secondly – oversight of the project. That's where you folks can come into play. We delegated to the State Water Commission a lot of authority to oversee this. They've got to oversee it. If the day it comes in , you have studies to present that says this is not a feasible project, they're not going to approve it. Right?

Todd Sando: That's the way it's structured right now. We have ability for the Water Commission to approve the plan or disapprove the plan.

Representative Keiser: We've given them the power to say no, this isn't going. In addition to that, this is the ultimate test, when you go to the market place, the market

place has to buy it. If you think anybody asks tough questions like is there adequate funding, is there adequate demand, what's the competition, what's happening out there? People aren't buying bonds if they're not comfortable with the answers to those questions and so we have tremendous oversight on the whole project. I think we have accomplished what we set out to do to get the oversight there. We're midstream. We are coming to the end to where we can delay our actions today or we can move it down to the committee and have the committee look at it. It's up to the wishes of the committee members. We've been talking for a long time and it's getting close if not here. I don't have anything else to add. I've accomplished everything that is essential to me. If there's anything you want done, we will stop and get it done.

Representative Hofstad: Would it be appropriate to move on the amendments that we have in front of us right now. I'm not saying that we need to conclude our business and take it to the committee right now but at least we can get to the point where I think we've accomplished a great deal in giving oversight and that bonding issue.

Representative Keiser: Absolutely.

Representative Hofstad: I would move the amendments that we have before us 02003.

Representative Keiser: Including the emergency clause?

Representative Hofstad: Including the emergency clause.

Representative S. Kelsh: Second.

Representative Keiser: The motion is made by Representative Hofstad, seconded by Representative S. Kelsh to move the amendments including the emergency clause. Further discussion on the amendments?

Motion to adopt the amendment incl. the emergency clause carried;
3 yes; 0 no; 0 absent

Representative Keiser: We have only adopted the amendments. We should meet again?

Representative Hofstad: I think so.

Representative Keiser: OK. We will get those amendments fully adopted into the bill draft as you have them, Tim and get them out to committee members and interested parties. We will reconvene tomorrow. For all of the agency folks, take a last good look at it if there's something we need to do. You're our experts and we rely on you.

Representative Hofstad: If the amendments that Mr. Harm has will be passed.

Representative Keiser: We can get those out to you.

Representative Hofstad: Give it to the agencies also so they can take a look.

Representative Keiser: Yes. That's a good idea. The committee is adjourned till tomorrow further notice. Thank you.

(See attachment #3 – Harms proposed amendments received after meeting)

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- ☐ Other

Date of meeting/discussion: February 10, 2011

Recorder Job Number: 14364

Committee Clerk Signature Mary Maier

HB 1206 Energy & Natural Resources Subcommittee:

Chairman George Keiser, Representative Curt Hofstad, Representative Scot Kelsh

Minutes:

Representative Keiser: We'll call the Subcommittee of HB 1206 into session. We are distributing a new set of amendments. (See attachment #1 – 02004 Amendments and #2 – HB 1206 version 11.0390.02004.) They are basically the amendments we had yesterday with a couple of changes. The emergency clause is on the amendment. 'Irrigation' was taken out in one section and the language was changed in 2 places. We will be working off of 02004.

Tim Dawson: Page 7, line 2 – talking about 'utilizing' – section 61-40-17 instead of 'bonds issued under' because bonds aren't actually issued under, it's used in relation to bonds. That same change is done on page 8, line 2 and page 9, line 22, three places.

Representative Keiser: OK. It is my understanding and want to confirm, the motion that Representative Hofstad made and seconded by Representative S. Kelsh was to adopt the amendments as they now are with the emergency clause and the other changes. We don't need to readdress those amendments. I do want to pick on discussion relative to elections. Where is that portion?

Representative Hofstad: Page 7, starting on line 17.

Representative Keiser: Subsection 25, page 7 states that 'the authority, municipalities are exempt from the public voting requirements or water contract duration limitations

otherwise imposed by section 40-33-16.' We have a question. How do you perceive it, in Williston, a vote versus not a vote; how the people are in support of this project or not in support of this project?

Ward Kouser, Mayor of Williston: We discussed this in a meeting a number of months ago with the four entities that were there. The attorney (legal counsel) that we had didn't feel that we needed to at that time and so we kind of dropped that. As I look at this, my sense would be that it would be supported. My concern comes in the timing of holding an election. We've been trying to fast track because we're up against the gun now. Even if we have a special election, it would delay things that I'm afraid that we may not get some of the aspects of the project done this year. You never know how voters are going to vote so I preface my comments by saying I certainly haven't done a poll of 10% of the people to know that. We've always promoted in our region the fact that we are as a region together and we support each other in the region. I believe, I've done this for 16 years, and I think our people recognize that. In general, the concept of supporting the region would be there, making sure that there's water for everybody especially as we're talking about the cities and towns and the rural residents. I believe an election would go well. I can't guarantee that. My big concern comes with the election causing a delay on the project.

Representative Keiser: What would the delay be?

Ward Kouser: I don't know exactly. We'd have to check with our legal counsel as to what kind of notice you would have to give once the bill became a law so we wouldn't jump the gun on that. We would have to give the proper notification and I don't know if that's 60 days, 90 days, or whatever. We would certainly try to do that as soon as possible. I don't think we would wait for the next election. It's too important of a matter for us so I think we would try to hold back. Each of the entities would need to do that. It wouldn't be just Williston I assume. It's a little difficult to say but I would say it delay the project a minimum of 3 to 4 months. My concern is, I don't know how much you'd be able to get in 2011.

Representative Hofstad: Under current law, would Williston actually have to take that vote since you're not changing your water supply. Your water supply is the same. Help me out here Michelle, would they technically, under current law, have to have an election?

Michelle Klose: It does mention, specifically, if you're changing water supply. I think what they're concern was that if the bonding or anybody else question, do they have to vote because now the water is coming from . . . . . I don't know if it's coming from the authority. I don't know if you're actually purchasing water from the authority or you're still running your own treatment plant so you're not being billed through the authority. Is all your billing and stuff staying the same?

Ward Kouser: I can't really answer that. We had talked about a lot of different ways of doing that and a lot of that we are working on in the bylaws. I hesitate to respond to that. Ken Norgaard was the attorney that was there in our meeting who felt like we didn't have to because we weren't changing water supplies. I know that's when Watford City voted this last year. They were switching because they were going to start buying water from us when they had their vote.

Michelle Klose: Not all cities have to do a vote of the public if they already have a home rule established. I don't know if any of those communities that need service already have home rule or not.

Ward Kouser: We have a home rule but it's limited to providing a sales tax so we wouldn't come under that clause.

Representative Keiser: Every city that does have home rule is technically a limited home rule charter. It isn't a blanket home rule charter if you look at the language. We can hold up our deliberations and take this up. My suggestion is we don't have the time before crossover to resolve this and I would suggest sending it out as it is. If it is an issue, it can be taken up on the Senate side. That's my personal opinion.

Representative Hofstad: Would the bonding authority be comfortable with the language that's in here to get around that? Does this give you that comfort level?

Scott Wegner: Yes it does because when you sell bonds, you want to know that you have contracts in place and the revenue stream in place. This language would give comfort to the bond market.

Representative Keiser: This would become law. You could challenge it to the Supreme Court I guess but that would be the case. Committee members, are there any other issues that you want to deliberate on? I'm more than willing to continue to work on this if there's anything of substance that you want to address.

Representative S. Kelsh: I don't know of anything.

Representative Hofstad: No.

Representative Keiser: Then I think the amendments are on the bill. We're at a point that we either need to make a recommendation to the committee or continue to work on it. I leave it to you.

Representative Hofstad: I would move that we bring this bill forward to the full committee; recommend the amendments as we've adopted them and bring it to the full committee.

Representative S. Kelsh: Second.

Representative Keiser: Any further discussion? Before we take the vote, I want to thank everybody here. You've been great.

3 Yes 0 No 0 Absent HB 1206 to full committee as amended.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
February 11, 2011
14418

☐ Conference Committee

Committee Clerk Signature Mary Maun

Explanation or reason for introduction of bill/resolution:

Relating to a western area water supply authority.

Minutes: "See attached testimony #1 & #2."

Representative Porter: We will take up HB 1206.

Representative Keiser: This has been an extremely important and interesting process that we've gone through. I'd like to thank Representative Hofstad and Representative S. Kelsh. A lot of State, private, and public folks including the Mayor of Williston are with us today that have participated in the drafting of the amendments relative to HB 1206. What I would like to do is give a brief overview and walk through the amendments and not go into any parts of the bill. If committee members do have questions on any parts of the bill that we didn't amend, we have had discussions in Subcommittee about every section of this bill. What we have here is an interesting concept. Historically and absolutely, large scale water projects in the State of North Dakota have been constructed by the State Water Commission and on a phase in process, generally speaking. There a lot of even smaller projects that have been constructed in that manner. What HB 1206 does is create a new business model for the development of a water project. The folks in the northwestern area looked at their current in infrastructure that they have and the demands that they are experiencing and will experiencing into the future as they continue to grow. There were some private sector folks that came up with a plan, and I like to refer to it as their intellectual property, to meet a need that exists out there. I asked committee members to step outside of the box a bit. At one point we had a discussion about perhaps we should forfeit all of 1206 and have the State Water Commission build the project. But, we did have significant discussion on that issue and we put down certain parameters. 1206 has some key provisions. One, that they would complete this project by 2014, we will be pumping water into the system within that short time period. In addition to that, they are not requesting outside additional funding, no FTEs, no additional dollars. We'll come back and talk about the 25 million which is almost 30 million that is a grant within the State Water Commission budget as front end money for this project. That is certainly a commitment and is in the Governor's budget and in the Water Commission budget so that money is out there in addition to whatever we propose here. We asked the State Water Commission if they could put the project on line by 2014? Can you do it without FTEs? Can you do it just through a revenue bond? They thought about it and considered it and they came back to

the subcommittee and said that's just not going to work. We are extremely busy with the projects we have although we could do this project, we are asking not to be held accountable for this at this time. We came back to 1206 as it was pretty much crafted and then started to look at additional issues.

When we had the original hearing on this bill, how many came up and testified and had any issues? I'll answer that – none. The minute the subcommittee started to meet and go forward; suddenly there were lots of fires and lots of concerns. Somewhat unfortunately, the private water developers in this area really did not become visible until our second to the last subcommittee meeting and raised some significant concerns that they have the capacity and currently the water capacity to meet the demands of the oil fields. They have the future capacity through additional permits that they are currently requesting but they don't have those approved but the potentially have the capacity to meet those future needs. This is an issue which your subcommittee did not get into. They did submit amendments. We asked Legislative Counsel Staff to look at those and see if they were consistent with the direction and the focus that we had in subcommittee and it was determined that they were not. We have not addressed them in here and we leave it up to them to make an argument on the Senate side if this bill goes that far and I think it should as it currently is structured.

The other issue that was raised early on, and the reason that we thought we didn't see the private water system users come forward, was that there were concerns raised initially about the quality and the long, long term capacity of the aquifers in that area. There is some debate over that. It has always been a concern. You here how many gallons it takes to frac a well and you start to get a little uneasy about what it is doing to the subsurface water if we are going to use that as the exclusive remedy? It is clear and we have seen letters that the ultimate solution is water from the Missouri River and that brings us to the unique situation that was presented here.

Coincidently, somehow, and a long time age, the City of Williston had gained access to permits from the Missouri River that they're not utilizing that can provide a great deal of water from the Missouri River to the western area. They already have the permits. That's one of the cornerstones of this whole concept, that they have the water capacity to do what they want to do with this project.

The subcommittee had two major issues and they are; the States participation is simply to provide its good name and commitment to the revenue bonds that would be issued by the authority thus how we protect the state. The protection of the State comes from two forms of oversight. As we go through the amendments, I want you to be thinking about that issue because that's where we focused our concentration. The oversight occurs in two areas. One – the oversight on the planning, engineering, and actual construction of such a large project. Two – the oversight on the bonding; what kind of authority do we maintain as a State. If we're going to put our good faith behind these dollars, we need to have some degree of confidence and assurance that we have proper oversight of the financial transactions that will occur.

We are going to walk through the amendments and if you look next to the language, wherever you see a black line between the line number and the words, there is an amendment. The amendments are also color coded. Note that even the title of the bill was amended. (See attachment #1 – HB 1206, 11.0390.02004 and attachment #2 – Proposed Amendments to HB 1206.)

Representative S. Kelsh: I'd like to thank the other members of the subcommittee. We had a lot of meetings on this, I believe 7 or 8 and all the participating members who sat in on the meetings. They were very responsive and did a good job of getting us the needed information. There is a lot of crosswise interests when it comes to water policy and I think we and the various agencies and interests did a good job of coming together and finding a solution that we can send over to the Senate and attempt to remedy any other concerns. It became apparent to me that the timing of this project was what was most important because we have to strike while the iron is hot. With the oil activity that is happening out west, we really need to get the water supplied. We have the ability to do this now in the State and I think it is very important that we do this while the timing is right. If and when oil activity does go away, we'll have the infrastructure out there for municipal water supplies and for further development of other industries. It's a good timing for the State and it's a good way to move forward with this. Because of the timing of the project, the Water Commission has typically built these kind of projects in phases but this was something that we need to get up and running in a much shorter time frame than they're accustom to. Again, thank you to the other committee members.

Representative Hofstad: I too would like to express my thanks to the other committee members. Great job, a lot of work. This is a major deviation from policy. If by now you haven't gathered, this is a major piece of legislation, it truly is. This is 150 million dollar moral obligation to the State of North Dakota. This is a big deal. When you come back here in 2, 3, or 4 years from now, this is something that will truly have a major impact on this state. Representative Keiser talked a bit about a deviation from the business model. This is something that is different. Water projects in the State of North Dakota are generally built by the State Water Commission. I would not like to change that direction. I think it is important that we as legislators continue to use the government infrastructure that we have in place because it works. It's important. It however didn't work in this case and philosophically, this legislative body has a disconnect with the water world. I think we have to somehow mend and repair that and get involved with prioritization of water projects. We need to seriously talk about that. Getting back to this project, we are where we are. It's important that we take this vehicle and use it to begin the process of developing the system out there. I think that we as a committee have done everything we can possibly do to bring the State back into this project so that we have oversight; oversight as far as construction and oversight as far as the bonding. I feel relatively good that we will be the watchdog as this project goes forth. The State Water Commission has the authority to look at this project as it's being developed, as it's being constructed. I think that's important. Financially, I think that this project will be scrutinized like no other projects. I would encourage this committee to vote yes on this bill. Look at it very carefully also. Be aware of exactly what we are doing, exactly what this project is doing for the State of North Dakota. I would encourage everyone to vote yes on this bill.

Representative Keiser: I move the amendments.

Representative Nathe: Second.

Representative Porter: To move the Keiser amendment 02004. Discussion?

Representative Hanson: I have a question for Representative Keiser. Can this project sell water to anybody in Montana or Canada or just in North Dakota?

Representative Keiser: In the original language, they have the authority to sell to parties outside of the current authority. Bring in new partners. It is possible that they could sell to somebody in Montana, theoretically.

Representative Porter: Any further discussion on the amendment. Seeing none, voice vote taken. Motion carries. We have amendment in front of us.

Representative Keiser: I move a do pass as amended.

Representative DeKrey: Second.

Representative Porter: I have a motion from Representative Keiser for a do pass as amended, second from Representative DeKrey. Discussion?

Representative Nelson: Not being a lawyer, the question I have is the taking over and the potential restoring. Are we just taking over the hardware or do the contracts and stuff as well move? I'm sure there's going to be a contract with the city of Williston, Watford City, etc. We have the situation in the bill where it could come to the State as well as go back to the authority. Do those contracts move with the authority?

Representative Keiser: I think this is correct but we can get clarification. The contracts belong to the city and are not part of the new project. What we do have the authority over is whatever the bonding pays for, that asset, we own if there's a default. The contracts are existing. I don't see how we would have authority over the contracts under any situation. All we have is the assets that we pay for.

Representative Porter: Any further questions. I would like to thank the subcommittee for all of their hard work. I know this was a very technical and difficult bill to work on. As Representative Hofstad, Representative Keiser, and Representative S. Kelsh all said, this is new ground for the State of North Dakota to be involved in order to meet the infrastructure needs out in western North Dakota. The clerk will call the roll on a do pass as amended.

15 Yes 0 No 0 Absent Do Pass as Amended Carrier: Representative Keiser

FISCAL NOTE

Requested by Legislative Council
04/11/2011

Amendment to: Engrossed HB 1206

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						$12,000,000
Expenditures				$75,000,000		
Appropriations				$75,000,000		

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1206 appropriates $75,000,000 from the permanent oil trust fund to the State Water Commission for construction of the Western Area Water Supply project. This funding is to be repaid with interest to the trust fund from the sale of water.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of the bill provides the appropriation. Section 3 provides the loan and repayment language.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Assuming a 20 year payback at 5 percent interest payments would be approximately $6 million a year.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	David Laschkewitsch	**Agency:**	ND State Water Commission
Phone Number:	328-2750	**Date Prepared:**	04/11/2011

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1206

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Becky Keller
Senior Fiscal Analyst

11.0390.02004
Title.03000

Prepared by the Legislative Council staff for
Representative Keiser
February 9, 2011

VK
2/11/11
1 of 3

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

Page 1, line 2, after "authority" insert "; to provide grant repayment by the authority; and to declare an emergency"

Page 2, line 12, after the underscored period insert "Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income or bond revenue to the authority, if any bonds or refunding bonds issued under this chapter remain outstanding or a grant of up to thirty million dollars from the state water commission has not been repaid."

Page 3, after line 19, insert:

"5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general."

Page 5, line 17, after the third underscored comma insert "leases,"

Page 6, line 25, after the underscored period insert "However, if bonds issued by the authority utilize section 61-40-17, this subsection does not apply."

Page 7, line 2, remove "irrigation,"

Page 7, line 10, replace "For" with "In relation to the initial construction of the system and for"

Page 7, after line 17, insert:

"**61-40-06. Oversight of authority projects.**

The authority shall report to the state water commission on the bidding, planning, construction, operation, and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for concurrence. The attorney general shall assist the authority at the request of the state water commission. If bonds issued by the authority utilize section 61-40-17 or a grant of up to thirty million dollars from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue."

Page 7, line 18, replace "**61-40-06.**" with "**61-40-07.**"

Page 7, line 26, replace "**61-40-07.**" with "**61-40-08.**"

Page 7, line 26, remove "**- When private sale authorized - Public sale and notice**"

Page 7, line 29, replace "**61-40-08.**" with "**61-40-09.**"

Page 7, line 29, remove "**- Negotiability**"

Page 8, line 1, replace "**61-40-09.**" with "**61-40-10.**"

Page 8, line 9, replace "**61-40-10.**" with "**61-40-11.**"

Page 8, line 20, replace "**61-40-11.**" with "**61-40-12.**"

Page 8, line 20, remove "**- Taxing power prohibited**"

Page 8, line 29, after the underscored period insert "However, this section does not apply to any bonds issued which utilize section 61-40-17."

Page 9, line 1, replace "**61-40-12.**" with "**61-40-13.**"

Page 9, line 5, remove "refunding"

Page 9, line 6, remove "bond and in accordance with the"

Page 9, line 18, remove "refunding"

Page 9, line 28, replace "upon" with "on all or part of"

Page 9, line 28, remove ", or any part of the revenues,"

Page 10, line 11, replace "**61-40-13.**" with "**61-40-14.**"

Page 11, line 1, replace "**61-40-14.**" with "**61-40-15.**"

Page 11, line 9, replace "**61-40-15.**" with "**61-40-16.**"

Page 11, line 15, replace "**61-40-16.**" with "**61-40-17.**"

Page 11, after line 15 insert

"1."

Page 11, line 16, after "reserve" insert ", including a letter of credit or similar instrument,"

Page 11, line 17, replace "authority" with "state water commission"

Page 11, line 18, after "authority" insert "to the state water commission"

Page 11, line 20, remove "However, the appropriation must be limited to an annual amount that does not exceed"

Page 11, line 21, replace "eighty percent of the required debt service reserve." with "The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state any amount as is certified to the commission by the authority. If the governor does not include in the executive budget the amount certified, the state water commission shall request independently an appropriation from the legislative assembly for the certified amount."

Page 11, line 25, after the underscored period insert "However, the amount of any refinancing may not be counted toward the one hundred fifty million dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced plus costs of issuance.

2. To the extent any reserve fund is replenished under this section, the authority shall reimburse the state from any revenues, funds, or any other property of the authority as dictated by the budget section.

3. Any bond financing planned by the authority utilizing this section must undergo due diligence examination by the public finance authority and the Bank of North Dakota, and must receive approval of the budget section.

60-40-18. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter, if the legislative assembly has appropriated moneys to restore the reserve fund for the obligation in default under this chapter, and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 2. STATE WATER COMMISSION GRANT REPAYMENT OBLIGATION. After any bonds or refunding bonds have been paid in full by the authority and after the provision of adequate funds for capital reserves and operation and maintenance reserves, the authority shall repay any state water commission grant made to the authority in an amount not to exceed thirty million dollars.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2-11-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1206

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Keiser Seconded By Rep. Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote taken motion carried

Date: 2-11-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1206

House House Energy and Natural Resources Committee

Legislative Council Amendment Number 11.0390.02004 .03000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Keiser Seconded By Rep DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson		
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper	✓				
Rep. Keiser	✓				
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Keiser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1206: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1206 was placed on the Sixth order on the calendar.

Page 1, line 2, after "authority" insert "; to provide grant repayment by the authority; and to declare an emergency"

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"5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general."

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Page 7, after line 17, insert:

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SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1206

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1206
March 3, 2011
Job Number

☐ Conference Committee

Committee Clerk Signature Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to a western area water supply authority

Minutes: Testimony attached.

Chairman Klein: Opened the hearing on House Bill 1206.

Representative Skarphol: In favor of the bill. He presented how he felt about the need for more water in Western North Dakota. He stated what he thought the problem was, how they could solve the problem, what the opposition would say and why he thinks the opposition is wrong.

Representative Keiser: In favor of the bill. He stated his purpose was to share what happened in the House with the bill. He said there were significant changes to the bill. He talked about those changes.

Questions and discussions about the bonds and how they will be sold and if someone could opt out later on. It was stated that it has to be repaid. There were also comments about there being enough business for everyone and that the others could continue to sell their water.

Senator O' Connell: In favor of the bill. Comments about how bad the water is in some of the areas. He said that public safety and road repairs are also in this.

Robert Campbell, Director of Barclays Capital: In favor of the bill. Testimony Attached (1).

Questions and answers about the water authority, supply and demand and the cost of the project.

Tami Norgard, Vogel Law Firm, Counsel for McKenzie County Water Resource District:
Testimony Attached (2).

Questions were asked about the private contractors and if it will affect their ability to sell water, who sits on the board and the pricing of the water.

Gene Veeder, Board Member of the McKenzie County Water Resource District: Testimony Attached (3).

Questions on who sets the rates, and who would own it if there was a default and who will be the first to receive the water, the oil industry or the people.

Ward Koeser, Mayor of Williston: In favor of the bill. Testimony Attached (4).

Questions about who would own the water treatment plant, vote not being feasible to this construction season, and if the city was selling water to the oil industry.

Jerry Ranum, President of the R&T Water Supply Association: In favor of the bill. Testimony Attached (5).

Questions on their selling water to the oil field and if he is representing the people of that area.

Jake Stoke, Member of the Board of Directors of Williams Rural Water: In favor of the bill. He handed out written testimony from Rick Olson, manager of Williams Rural Water District. He went over Rick's written testimony. Testimony Attached (6).

Question on how many users there were in their system.

Brent Bogar, Water, Sewer, Airport, Building and Planning Commissioner of the City of Williston: In favor of the bill. Testimony Attached (7).

Question about why they have not pursued grant funding, and if they didn't get the state funding if this project would still be possible.

Ron Ness, President of the North Dakota Petroleum Council: In support of the bill. Testimony Attached (8). He also handed out letters from Whiting Oil and Gas Corporation (9) and from Brent Eslinger, District Manager for Halliburton (10).

Wayne Biberdort, Consultant for Hess and Member of the Executive Committee of the North Dakota Petroleum Council: In support of the bill. He commented that they need to do this now and that there is a huge demand for this. He said in the Corp of Engineers report it stated that the water would have to come out of the river system in order to supply the industry and the truck miles need to be reduced because of the impact they have on the roads and the environment.

Brad Bekkedahl, Finance Commissioner for the City of Williston: In favor of the bill. Testimony Attached (11).

Robert W. Harms, Lobbyist for the Independent Water Providers: In opposition of the bill. Testimony and Proposed Amendments Attached (12). He stated that the first leg of this

project wasn't to get water to ranchers in rural McKenzie County or rural Williams County but to build a water depot south of Williston. He also said if there is an urgent need he feels the State Water Commission can build the project faster than the untested water authority that is made up of four other entities. He said the water commission, if given the direction and the FTE's to do it could begin building this project as soon as the Governor signs this bill.

Dallas Lulim: He is from Tioga and has just finished building a water depot. He hired an engineering firm from Bismarck and also hired a construction company. He said the way it is set up now the public and State would be responsible to pay this off if the oil industry would not continue. He hopes it can be changed so it is good for everybody.

Michael D. Nash: He owns a water trucking company in Williston. He said that he feels the private depots are more accessible. He said that he has been asked by his customers to not use the Williston outlet because it would cost them more money. He also said that the Government should not be in competition with the private sector. If it was not for the private industry he doesn't believe the oil companies would have been able to be as successful as they are. One of the main reasons the State is doing so well with the oil is because these people took the risk and had the foresight to put these depots out there to serve the oil and gas industry. He would hate to see them loose it all because of this project.

Questions asked about the amendment proposed by Bob Harms, what his cost is and what he makes per truck load.

Bill Sheldon: He is a farmer in the valley. He pumps out of the lake to irrigate his land. He said that the depots that are put in off of irrigation wells will only be servicing the oil industry commercially and not servicing irrigation.

Bruce Johnson: He is from Ray. He said that Brigham oil and gas is constructing a pipe line which is being sourced by service water and not an aquifer. This will have several turn outs on it and will also service other oil companies beside Brigham. He said that oil industry is moving to water transfer companies. They are setting up eight to ten inch irrigation pipes and moving the water to the site.

Bruce Krabseth: He owns a private water depot and is north of Williston. He said this project never realized how many water depots are out there. He talked about all the water depots that are out there and said they are already supplying the oil companies with enough water at this time.

Tyler Ashton: He said that the problem with this project is that it will be competing with the small business owners and hurting them.

Earl Jenson: He is on the Mountrail County water board. He talked about the opportunity and the risk involved. He said most of the projects are being done with the private water depots.

Chairman Klein: Said that they will have to come up with something that will be a working bill.

Brandon Ames: He is from Williston and has been involved in the water industry his entire life. He is a civil engineer and has seen the growth and the crash. He talked about his business and what he has done to make it work. He said the Governments role is to serve the people and not compete with them.

Steve Martinson: He talked about the oil companies putting water lines in. He said that the oil companies want to change the way they are getting their water and get the trucks off the road. He said that will change the numbers of depots that are needed. He doesn't want to see the bill stopped but just changed.

Pat Wheeler: He grew up west of Minot and is contemplating building a water depot. He said that he doesn't think this should be a cost to the tax payers. He said the four members will not have a risk on the project but the patrons will.

Mike Ames, President of Ag Industries: He didn't think he would ever have to defend the water industry. He employs seventy people and wants to be able to continue to provide a job for them. He said that the cost of the water does matter. He has served on the state water commission and that they are an amazing resource. He said to circumvent this organization is wrong. He also talked about what he felt were errors in the statements made by the ones that are in support of the bill.

Jerry Wurtz: He is from Plaza. He said that they all earn money by selling water and they pay income taxes from that. If they can't earn money they can't pay taxes.

Chairman Klein: We will conclude the hearing but will be asking the water commissioner to come and speak. Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1206
March 16, 2011
Job Number 15520

☐ Conference Committee

Committee Clerk Signature Ea Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to a western area water supply authority

Minutes: Testimony and Handouts

Chairman Klein: Opened the hearing.

Todd Sando P.E., State Engineer for the North Dakota Water Commission: Brief summary of water availability, use and management in Northwestern North Dakota, Attached (1).

Chairman Klein: Said that there are conflicting reports as to the availability of water in the aquifers. He said the most sustainable water supply is the river and we need to look at that so we don't run out of water.

Todd: He goes over the handout.

Senator Andrist: Said we are in a wet cycle and the last time they went through a dry cycle back in the eighties they weren't taking out as much water from those aquifers. Are you satisfied based on our present consumption of water that it will be okay?

Todd: Said that it was a very good point. It will act differently in a time of drought that is why they want to go about it in an incremental approach. That is something that the hydrologist will look at, the sustainability and it sometimes takes years to see how an aquifer will react. They have to do it cautiously, how they divide up the water. They feel there is water out there but it is going to take time modeling, decision making process. They can't just go out there and grant a lot of additional permits, it will take time to continue to evaluate the aquifers.

Senator Andrist: The most appealing aspect of the bill is it will allow us to capture the Missouri river water, do you feel this is a significant importance?

Todd: That is what is appealing about this project, using the Missouri river water. Right now the state hardly uses any of the Missouri river water, it is going unused right through are

state. If they were taking water from the Missouri river there would not be problems in granting permits. It is the best solution.

Senator Nodland: Asked if he had a preference on who would get water first, is there a scale.

Todd: Asked Bob to come up and explain.

Bob Shafer, Director of Water Appropriation for the State Water Commission: Said that if there are competing applications filed within ninety days of each other and the source of water is limited, so they couldn't issue permits to everybody that is within that ninety day period, than they have a hierarchy and human consumption, municipal domestic, municipal rural is the number one priority and you work your way down to the very bottom which is fish and wild life than industrial than irrigation, stock water. It only triggers in if you have competing applications that are within ninety days of each other and the source is limited.

Questions asked about the depth of aquifers, the lowest the water was, and the process of getting water.

Todd: Back to handout, Corp of Engineers, page three.

Senator Schneider: Said it is tough to understand how much water is available on a sustainable bases but have we seen a noticeable drawing down of the aquifers from water use for oil recovery or has it been overshadowed by the wet cycle we have been in?

Bob: Said that they have seen some developmental decline that is one of the issues, sorting out the natural variability and the actual use he referred to the handout.

Senator Larsen: Asked with the permit for agriculture and the water permit for industrial is there more water going out for industrial, or can a person use more water per day with the agricultural.

Bob: He said in terms of availability there would be no difference. He said agriculture is much more climate driven. He talked about the amount of water granted per acre and water permits. He referred to the handout on the permits given out.

Questions

Chairman Klein: Asked in his view if the project would be important to sustain the oil activity in western North Dakota because without it we would be depleting existing aquifers.

Bob: He said any project that is going to divert water from the Missouri river or Lake Sakakawea system is going to be a much more effective water source and reliable in terms of quality and quantity. It will be much less uncertainty, greater availability than the ground water sources. The ground water can meet some of the demand but it will not meet all of the demand. You need access to Lake Sakakawea and the Missouri river.

Senator Laffen: Asked in his opinion if permitting other new sources to come out of the Missouri is difficult now and we don't know in the future.

Bob: Yes they are dealing with uncertainty with the Corp; it is difficult to predict what they are going to do. He talked about the amount of money being charged. He commented that they feel they are entitled to the natural flows and that the Corp should not be levying surplus storage fees for this water.

Senator Larsen: He asked what the aquifers and depots supply, what percentage do the private entities supply the oil fields with.

Bob: He said roughly they are looking at seven million gallons a day to the oil fields.

Senator Murphy: He said the Corp is in control once that water reaches Lake Sakakawea but they have little or no control of the Missouri when it is free flowing is that correct?

Bob: Said with the Corp the Missouri river is under the waters of the United States. So with the Corp you would need two permits, regulatory permits which covers the 404 clean water act, rivers and harbors acts. They look at endangered and threatened species, different environmental issues. He also talked about a need for a real estate permit and that is there policy is now you have to enter into a surplus storage contract with them and sign off on that first.

Chairman Klein: Said that the next question relates to the water commissions involvement in this project being minimal. He asked if they could get it done in two years and with no FTE's, could they get it done in three years.

Todd: He said most of their money for projects is through the resources trust fund. He explained how the money is laid out and how it is split up throughout the state. In relation to this project, West River Water Supply they have twenty five million dollars to do the project or get it started. The locals were going to find out how they could build this project starting with the twenty five million dollars. In going through the process of trying to get bonding authority the bill was introduced to the House. They feel they need to capture the revenues through the hydro-fracing that is going on and would like to build it quickly. There business plan shows it being built by 2014, to build a 150 million dollar project with approximately 15 depots, and lots of pumping stations to get water out from both sides of the lake, upside the water treatment plant and getting a new intake horizontal collector well. In the water commission budget there is only 25 million dollars they are trying to figure out how to get the rest of the finance and what came out of the House side was a bonding package. This would give the locals the ability to build it all themselves and the state would have to stand behind the bonds. That is the background. Right now it wouldn't be a state run project; it would be a local project which the water commission would overlook. He said if the money was there the water commission could build it under those time frames.

Senator Andrist: Asked if he sees any potential for a partnership role between the engineering firm that has done preliminary studies and research and planning on this and the water commission. He asked if there was some way to have both of them rather than either or.

Todd: He said there is ways and they have worked with that firm before. He said they could lay out options and doesn't have a position on who will do it.

Senator Andrist: He asked if Todd could provide any proposed amendments that would make him more comfortable with this project. He said that he is hearing that you basically like the plan but also that there are a few things that are problematic, can you put that in the form of an amendment so we can see what would make you more comfortable with this whole proposal?

Todd: Said that he would feel a lot more comfortable laying out options and doesn't want to be dictating how this project is done. Regarding a plan there was 1.5 million dollars to develop a business plan, so there is a plan. There are several different potential priorities. A big part of this project is to upside the water treatment plant. He talked about visiting with the other parties and not doing the water treatment plant right away but getting the water to the people first.

Further questions for Todd

Lynn Helms, Director of the ND Industrial Commission: Handout Attached (2). He went over the handout. He talked about his statewide projections for oil wells and rigs for each area and the projected wells and long term jobs for each area. He believes there is enough water for everybody and opportunity to for everyone. He feels fracing will continue for a least twenty years and the need for more water. He talked about the water depots and keeping them away from the private suppliers.

Karlene Fine, Executive Director for the Industrial Commission: Handout Attached (3). The handout talks about state bonding and the different kinds of bonds that can be issued by the state. She stated that if the state is going to have the moral obligation they need to be involved somehow in the financing. She also said the Bank of North Dakota would also be involved if they were going to have a roll in the letter of credit. It would reduce the size of the bond issue but it would be another risk the state would be taking for the Bank of ND with a letter of credit. She would like to see the water commission involved in the project and stated the Western Area Water Authority is new and the water commission has been in the market before.

Tim Porter, CFO of the Bank of North Dakota: He said the bank has done this type of letter of credit in the past for public finance authority issues. He said they are asked to do that because the legislature meets biannually they are required by the rating agencies to establish a two year debt service reserve. He said a lot of times it would be big dollars that they have to borrow in addition to what the project cost would be. Instead of borrowing those additional costs they come to the BND and get a letter of credit, with the letter of credit if there is a default they would request money from the BND to pay those bonds and then the next legislative session the Bank would be in front of the legislature to replenish that letter of credit.

Questions; for Todd about the RFP process and bidding procedures and more on the water commission's ability to do the project.

Steve Burien, Chief Executive Office of Advance Engineering and Environmental Services, Representing the Western Area Water Supply Authority: Handouts (4) and (5). He talked about the increased number of people and the amount of water that would be needed. He said the project was designed to meet the peek domestic demands, not to meet the oil industry needs, with the exception that they can't provide water to the industry without depots. He went over both of the graphs.

Questions for Steve

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1206
March 16, 2011
Job Number 15533

☐ Conference Committee

Committee Clerk Signature Eva Luebke

Explanation or reason for introduction of bill/resolution:

Relating to western area water supply authority

Minutes: Discussion and Comments

Chairman Klein: Opened the discussion on House Bill 1206. He said they have taken in a lot of information. He said they will be getting the other information on what it will be doing to the rates.

Senator Nodland: Said that in the end were going to get water to the municipalities and the rural areas and that is the big issue everyone should be looking at. He said he asked Steve Burien to give them a synopsis of the financials that they can each read and also the transportation scenario and why they put the depots where they did. He said with the governess it will end up being a rural water district with rural people and rural communities involved. He would like to see these people represented in a governess in some way.

Senator Laffen: He said he is becoming more comfortable with the project and especially looking at the numbers that are going to be happening in this area. He said in the worst case they we will end up paying for it like they did in the southwest over a twenty year period. He would like to see it start slower, he wouldn't do all 200 million at once. He would make sure he had some contracts. He said he asked the engineers if it was possible, at first the answer was no but then it changed to Ray and Tioga needing the water. He would like to look at a half project.

Chairman Klein: Asked if anyone felt that the water commission needed to be involved in this. He said he feels they do. He said he hopes all these options can be addressed. He said it is his understanding they could do this without expanding the water treatment plant in Williston. They don't need the treatment plant to sell frac water.

Senator Andrist: He said if it all works it is the best bargain they have had but now he is back to that it is a bargain under the worst case scenario because they are going to capture the Missouri River water and build a distribution system for a large area of the state and if they ended up losing half of it and had to fill it in, it still represents a good bargain. As to the water commission being involved he would welcome that if they wanted to be in it but he didn't sense that they want much involvement in it.

Chairman Klein: Said that the water commission will do what the legislature or Governor asks him to do. He said in his opinion if the water commission can build it out 100% he would support this because they would then have more oversight then a water authority that is established. He feels it will work out for the private water depots.

Senator Larsen: Said that what bothers him is the western water authorities priority is not rural water, it is not rural water, it is to make money to pay for the project and that is for the oil field. If they are talking about piping water in, he doesn't want to be left holding the bag. He would support smaller projects going to the smaller communities.

Senator Murphy: Said if we are going to give the water commission some authority here, he said they would need some FTE's. He said concerning the governess, you can get them to agree to whatever you want.

Chairman Klein: He said this is a big project. He said his concern is that they are doing the prudent thing in moving forward with the people's money and the guarantee. He said he thinks it can work, all the indications are that it can work.

Senator Andrist: Said if we are going to look at phasing it and spreading it out, they want to make sure that the first phase get's them in the market to sell the water to pay the bonds, we don't want to do some phase that won't bring in the money to pay the bonds. The second thing is he can't imagine that they would give priority to the expansion of the treatment plant until they reach the point where they are positive that they need it. He understood the water treatment plant is almost a third of it.

Chairman Klein: Said his understanding is the first hook up they are going to have is the water depot south of Williston. So they are going to be in the business as soon as they can. He isn't so sure that if they don't have the water commission involvement, if they can make sure the money is being spent the way it should.

Senator Laffen: He said he feels this is truly a rural water project to get water to the citizens of that area and primarily 135 million of the cost is for that and the fifteen million is for the depots. The only reason they are adding the depots is to recapture all of the money to pay for the whole project. The funding source needs those depots. In the southwest water project the communities put in a little bit of money, is that possible in this project.

Senator Nodland: That is part of the governess part, each county that is involved has a one mill levy and the city of Dickinson had the largest mill levy.

Senator Schneider: Said the idea of funding this in phases sounds good but doesn't know what kind of impact it would have on the ability to bond something like this, he would like more information on that.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1206
March 23, 2011
Job Number 15892

☐ Conference Committee

Committee Clerk Signature Ela Luebke

Explanation or reason for introduction of bill/resolution:

Relating to western area water supply authority

Minutes: Amendment Attached

Chairman Klein: Committee will reconvene. He handed out amendments that he did with Tim Dawson, Attachment (1). He said there were questions on whose roll it would be, whether or not the water commission would have involvement, the state's moral obligation and to what extent. He asked Tim Dawson to come up and walk them through the highlights of the amendment.

Tim Dawson, Legislative Council: He is here to provide information on the amendments. He goes over the amendment. He said the amendment is pretty much a new bill.

Chairman Klein: Said for everyone...what that means in number one there... the water treatment plant of up to 14 million gallons per day. The assumption is that there would be enough water to build out to Watford City and to Ray and have six or seven water depots along the way. It is a build out that would not require at this point the addition to the Williston treatment plant.

Tim: He continues going over the amendment.

Senator Laffen: The way the bill came to us the cost was privately funded with the state guaranteeing the bond. We weren't actually using our own money.

Tim: Said that there was 25 million of state money and the rest was to be bonded for by the authority not by the state but then the state was backing that up with a moral obligation.

Senator Laffen: Asked under the new proposal how the financing would work.

Tim: He continued with the amendment.

Senator Andrist: He asked about section two and said that if everything goes as plan it becomes the states, it doesn't belong to the authority. He said the authority came up with the ides and said they could pay this off in ten years and they said they could bring some

huge benefits with this increase of water. I think they envisioned it, the western water authority, that they would own it. He said he thinks they could have some difficulty saying to Williston that you are going to donate your water to the state.

Tim: He said the state will own and construct it through the commission. He said as to how the water would come from Williston, they would be reimbursed for the water. This is a broad concept bill and a lot of the details would be workout through contractual agreements made later on in the process.

Chairman Klein: Asked if it was being modeled after the southwest project.

Tim: He said it is bringing together some of the provisions of the previous bill and then bringing together some of the northwest authority and some southwest and putting them together in a bill.

Senator Andrist: Said he can't see Williston buying into this. He can see some state involvement because they have some risk but at the end game, if we bought our way through this and paid off the bonds, this rather innovative approach should be rewarded with ownership of the thing.

Chairman Klein: Said he doesn't think they are taking ownership away from the Williston water treatment facility, in fact we are sticking initially five million into it to upgrade it and then if the project continues to move on another forty million but I could be told I was wrong. It seems to me that we are working with Williston and Williston happens to have the water and the treatment plant and will continue to enjoy the expansion of the facility for the surrounding area and their community.

Tim: Said Williston does get the benefit of the expansion and it can help their expansion for their growth, they do get to charge for the water. Any cost they may incur they can get that back as well. They do get the benefit of the line for their own city expansion. He continues going over the amendment.

Michelle Klose, NAWS Project Manager for the State Water Commission: She said they would be doing a partial improvement, they had indicated they could increase it form ten million to fourteen million with a 5 million dollar investment which is a very small investment but there would be an additional forty million to get it to the twenty one million gallon capacity as well as work on their intake. What you are doing here is limiting what is going to be bonded initially so it looks like you are doing a phase approach; you want to get water service out to Watford City as well as to the Ray, Tioga area. She said it looks like they are trying to capture some industrial use and benefits there it is not the full plan that had been in the earlier version. When you are doing this you would not have that same revenue stream for repayment of those bonds but still would have the bonding capability and be able to get some development out there. It seems like the focus here is on the domestic use or getting those communities a better water supply. The discussion about Williston's ownership, if you start having the state being involved with funding, if the funding is provided by the state then those facilities would be owned by the state. There would be discussion with Williston on how they would want to handle the water treatment plant and that would have to be worked out.

Questions for Michelle

Senator Andrist: He said he thought they wanted to bring the water commission in as a partner and it seems like these amendments take the project over totally. It becomes a state project and doesn't think they will get buy in from WAS if that is important. He said this just leaves WAS as an advisory capacity and the state takes over all the profits and if it works the state ends up in the business competing with the private water sellers. It would be much more productive to bring WAS to the table with some water commission people and use this as a beginning draft.

Michelle: It talks about the authority advising on construction as well as doing the O and M, there really is different options of doing this. If the state is providing grant funding we found in the past we don't need to have ownership of the facilities. If you are looking at the state water commission being involved with actual construction and issuance of those bonds, then the state takes up ownership of those facilities.

Jeffrey Mattern, MR& I Program Coordinator for the State Water Commission: He said currently the city of Williston uses three million gallons of water a day. In doing their projections they projected it could grow to 23, 000 people so the water use would go up to an average of 5 to 6 million gallons a day, it would double. On the peak the capacity goes from three to six million gallons a day out of the current plant. That is where they would have the difference between the six and the ten, they could provide to the southern portion and go down to the Watford City area and also additional water they could sell otherwise to the area.

Senator Laffen: Said the very first statement we heard when we started this was in testimony was that Williston has a certain right to a certain amount of water and if they don't start using it, we will lose that right, is there any validity to that?

Jeffrey: He said under the current water law with the state engineer, if you have a water permit you have a right to use that water, it is first in right first in time. They could have it taken away if they don't put it to beneficial use.

Karlene Fine, North Dakota Industrial Commission: She talked about the bonds and the differences. The bonds if they are issued by the state water commission to the extent that the state water commission has been in the market before, they are a more accepted into the market with the state rating agencies, they have some experience. It won't change the moral obligation whether it is done by the western area or by the water commission but to the extent that there is a little more of a comfort level that we are involved in the financing and actually having the discussions with the rating agencies, than if it was done by the authority which is not a state agency.

Chairman Klein: Called Todd back up to answer questions. He said that a lot of work has been done by a particular engineering firm, if the water commission would take the project over would you see that they most likely continue, in your view they would probably be selected?

Todd: Said that they have to go through a selection process and they have rating criteria, more than likely they would be the front runner. I can't say right now that they would be selected.

Senator Nodland: Asked if they did the project if they have the time and staff to get it done.

Todd: He said if there is FTE's attached to it, they would need a project manager to oversee it, someone who deals with real estate acquisition overseeing that, I would like to have someone involved with inspections, so possibly up to three people would be necessary to see this project implemented in this accelerated time frame.

Senator Laffen: Asked if the project stays as is, most of the effort in this is engineering and then contractors and administrative, under the current bill the administrative is an authority that isn't even established yet and has never operated yet, at least you are established and in operation, I can't see how that would possibly slow it down.

Todd: Said they do have experience and they wouldn't slow the project down.

Chairman Klein: Committee discussion does anyone else have amendments? We need to get this down to appropriations.

Senator Andrist: Said he would like to give the WAS people a chance at his. He doesn't agree with the water commission taking this and leaving WAS as an advisory committee.

Senator Nodland: Said he tried to get as much information as he could. The information that he received was showing what the whole project would be.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1206
March 24, 2011
Job Number 15915

☐ Conference Committee

Committee Clerk Signature Eva Luetkes

Explanation or reason for introduction of bill/resolution:

Relating to western area water supply authority

Minutes: Discussion and Proposed Amendment

Chairman Klein: Called the meeting to order. He said he wanted to spend some time discussing 1206 and to work on amendments. There were some concerns on the water commission's authority yesterday and the project. My concern is to provide good clean drinking water to that area up there.

Senator Laffen: Said that in all of the discussions he likes how the project came to them, the independent group got together and said we think we can do this, he leans to leaving it to that authority but I also like the discussion of keeping the water commission. If there is a way to add water commission representation on to that authority, would be one possibility and then the other part that I think I like is the idea of breaking this into a couple of pieces. Instead of saying we will back stop 150 million, we say 100 million for now and let that group decide what is the past way to start with that funding. This amendment addresses these two issues, attachment (1).

Chairman Klein: Said the idea would be to have the authority maintain its own autonomy but with a member from the water commission.

Senator Laffen: Correct. He goes over the amendment.

Senator Nodland: Asked in regards to the bidding, planning and construction the authority will consult and report to the state water commission, this would be total oversight by the state water commission. Asked if the 100 million was in addition to the 25 million they already have.

Senator Laffen: Yes, we are getting close to the 150, so maybe the 100 should be 75.

Senator Nodland: Asked about the bonding, he wanted to know if the authority would put some of their own skin in the game as far as taxes, can the state if we used the 100 million and we asked them to come up with 25 million and the state came in with 75 million, would the state have to be 100% behind the bond.

Karlene Fine, North Dakota Industrial Commission: She said they would have to do the moral obligation on the entire issue in order to get the rating that the state carries with it. Any pieces that would be available to repay the debt will improve the assurance to the bond holders and show the rating agency that there are commitments being made. It was a concern they had of the gap being 80-20. They do have to be cautious on how this is crafted to make sure we are in compliance to the Supreme Court decision and providing assurance for the state as well as the bond holders that there is an income source to repay the debt.

Senator Nodland: Stated that the state would still have to be the guarantee at 100% of whatever that bond would be.

Chairman Klein: Said that he heard her say taxes, does this group by creating authority do they have taxing ability.

Karlene: Said No not as the bill is currently drafted they do not have authority that is something that would have to be amended into the bill.

Chairman Klein: Said so we craft some sort of taxing authority that would then provide some more assurance for the bond sellers that not only the state is on the hook but also there is a taxing authority from this water district?

Karlene: Said that would be one of the vehicles to them having skin in the game. Southwest area has the ability to do a mill levy and this entity hasn't been given authority to do that.

Chairman Klein: Said if they fall in tough times they would have the ability to go to the users to say we aren't making it with rates so we need to have an additional mill.

Karlene: Right.

Senator Nodland: Said even if we gave them taxing authority but they never started out with taxing authority, just the idea that we gave it to them it wouldn't hinder the bond.

Discussion on levy's and taxing authority

Senator Murphy: Said he wanted to ask the state engineer if he thought this would work.

Todd Sando P.E., State Engineer for the North Dakota Water Commission: Said he noticed a couple things in the amendments. He said following the administrative code, 891201, to his understanding is a MR&I guidelines for federal funding that they deal with and there is no federal funding in this project. He said he would rather have them follow the state water commission policy for the cost sharing program. He said regarding the oversight of the project it is reporting and consulting back and he is wondering at what level. He doesn't know if that is true oversight if you are just reporting and consulting back and would like them to consider that language more closely.

Senator Schneider: Asked if state water projects are done by policy and not necessary administrative rule.

Todd: He said they have administrative rule when they have these federal funds that are flowing through so there are guidelines that were set up for municipal, industrial and rural water supply projects that we fund. We also have state water commission developed policy for cost sharing for all of the state projects. This really doesn't fit using the administrative code for this type of project.

Senator Andrist: Said he liked this better as a working document than the set of amendments we had yesterday. I think we can work with the people of Williston and WAS with this, where we couldn't with the other amendment. He said in talking to some people from Williston they welcome having someone from the board from the water commission.

Chairman Klein: Asked if generally water projects make any money.

Todd: Said they are not in the business for profit.

Senator Laffen: Said that this was a good discussion and if there are profits they will end up in that authority and the authority would likely continue to build good water projects. He asked if they have the authority to turn that money over to something else.

Senator Schneider: Said he thinks the committee should take a look at what if the project fails and what if it exceeds more than they would expect. What is the authority going to do are they going to have to pay the state back one way or another.

Chairman Klein: Said that the bill does address them paying the state back the 30 million. He closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1206
March 29, 2011
Job Number 16147

☐ Conference Committee

Committee Clerk Signature Ella Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to western area water supply authority

Minutes: Discussion, Amendments and Vote

Chairman Klein: Called the committee back to order. He said to go to bill 1206. Senator Andrist handed out amendments.

Senator Andrist: Said the amendments were not totally his own there has been a lot of calibration with different pieces with different committee members. He said he thinks the amendments are good. He went over the amendments and moved to adopt them.

Senator Nodland: Seconded the motion.

Senator Andrist: He said that the amendments also give more oversight to the state water commission as well, particularly in the bonding process and a seat is given to the water commission on the governing board of WAS. He said both sides liked that concept.

Chairman Klein: Asked if Senator Andrist knew what five mills would raise total.

Senator Andrist: Said yes I do, according to the information provided to him it was about 150,000 dollars per mill, so it would be 750,000 total for all the counties.

Chairman Klein: Said that it would provide 750,000 dollars to help with this.

Senator Andrist: Said yes. The request was made by one of the counties if we provide authority so instead of levying the five mills they could put the equivalent amount of money in from other funds. The answer we got from that is it isn't needed in the bill, they really could do that anyway because if the water commission wanted to call for this levy they would call for it in dollars.

Senator Schneider: Said the language wouldn't preclude these counties from raising funds from other sources in order to avoid default, it is just in the event of default?

Senator Andrist: Said no it was proposed to put in language that would permit them to raise other funds.

Senator Nodland: Commented that they could raise the cost of the water which will be easier to do once they are getting good water.

Comments

Senator Murphy: Asked if there was a mileage that is specific from the public water depots to the private water depots.

Senator Andrist: Said we want to be sensitive to the concerns but we want to be careful not to micromanage this project because after all WAS is on the hook for seventy million dollars first. The whole plan here is to sell seventy five million dollars worth of water plus interest. That is why we opted for the language to say to have them to try to consider the impact of the Private Water Depots. The other thing we found that the price of the water will not be as critical to the oil industry as the location. The private water sellers are selling at a price that is about half of what WAS would have to charge so WAS will not undercut them.

Chairman Klein: Said that authority is still in charge and we added the water commission as a voting member of the authority and also they will report and consult with the water commission as they move through this process.

Senator Schneider: It seems like the legislative intent here hues closely to economic common sense. You're not going to put depot on top of a existing water source just because the private water source is going to undercut you.

Chairman Klein: The clerk will call the roll for a do pass for the amendments.

Roll Call Vote: Yes-7 No-0

Senator Andrist: Moved a do pass as amended.

Senator Nodland: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Klein to carry the bill

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Prepared by the Legislative Council staff for
Senate Industry, Business and Labor
March 28, 2011

3-29-11
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 18, replace "two" with "one"

Page 2, line 19, replace "representatives" with "representative"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, after "association" insert ", and one county commissioner each from Burke County, Divide County, McKenzie County, Mountrail County, and Williams County"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 21, replace "two representatives" with "the representative"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "Directors have a term of one year and may be reappointed. In addition, the governor shall select one member of the state water commission as a voting member on the authority's board of directors. The commission member serves on the board at the pleasure of the governor."

Page 2, line 30, after the underscored comma insert "except for the state water commission member and the county commission members on the board,"

Page 7, line 27, replace "report to" with "comply with the policy on cost-sharing of"

Page 7, line 27, replace "on the" with "as the policy relates to"

Page 7, line 27, after the second underscored comma insert "and"

Page 7, line 28, replace the first underscored comma with "of the project. The authority shall report to and consult with the state water commission regarding the"

Page 7, line 28, remove the second underscored comma

Page 7, line 29, remove "initial construction of the system and"

Page 7, line 30, remove "and contract plans and specifications"

Page 8, line 13, after the underscored period insert "Before July 1, 2012, the board may not issue more than seventy-five million dollars in bonds plus costs of issuance, capitalized interest, credit enhancement, and debt service reserve. After June 30, 2012, the authority may not issue revenue bonds without prior legislative approval."

Page 13, after line 9, insert:

"**60-40-19. Taxing authority.**

If projected or actual revenues are insufficient to prevent default, each board of county commissioners of Burke County, Divide County, McKenzie County, Mountrail County, and Williams County shall levy property tax in equal mills as is necessary to prevent default within a maximum of five mills for each county."

Renumber accordingly

Date: 3/29/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1206

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Nodland

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/29/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1206

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Nodland

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1206, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1206 was placed on the Sixth order on the calendar.

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 18, replace "two" with "one"

Page 2, line 19, replace "representatives" with "representative"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

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Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1206

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

HB 1206
04-01-11
Job # 16277

☐ Conference Committee

Committee Clerk Signature Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL relating to a western area water supply authority; to provide grant repayment by the authority; and to declare an emergency.

Minutes: See testimony attached #1 - 26

Chairman Holmberg called the committee to order on Friday, April 1, 2011 at 10:00 am in reference to HB 1206. All committee members were present. Tad H. Torgerson, OMB, and Brady Larson, Legislative Council, were present.

Senator Jerry Klein, District 14: In the Senate IB&L Committee we gathered a lot of information and adjusted the bill. We are creating a new authority, the Western Area Water Authority, to provide clean dependable drinking water to communities in western ND. We hope to have it paid for with revenues from selling water to the oil companies. The state water commission is not very involved in this project. We gave them a voting member from Burke, Divide and McKenzie, Mountrail, and Williams Counties. We also added a member appointed by the governor from the water commission. So it will be an 11 member board with one member from the water commission. We ask for more openness, and some participation in that area. Page 6 tells how they will purchase the land. On page 8 in section 61-40-06 we did add some additional authority that the water commission shall report to and consult with the state. We need to do it quickly because we are in the peak fracing years. We have 5-7 years to really capitalize on the amount of fracing that is done. We believe the Authority will move more quickly than the water commission. On page 13 number 3 of the bill it covers the bank involvement and the bond involvement. And the other part of this program with these funds, if fracing stopped, we would own a water project and water treatment plant in Williston. The taxing authority allows those counties to go to 5 mills. Not everybody was in favor of this idea, it was really difficult to get our arms around how we could balance the private water sellers with what the project might do. There are no contracts with anyone in here, no water being sold, and the moral obligation of the state of ND is a key component of this bill.

Chairman Holmberg: The committee members have received a lot of information on both sides. Senator Nething is here and he is going to offer an amendment. He is the author of the major water projects approved in 1999.

Senator Nething, District 12, offered a proposed amendment. Testimony attached # 1 and testified in favor of the bill. As you mentioned, in 1999 we approved what we called a state wide water development and bonds title, chapter 535 in the code. We set forth statewide water development goals and legislative intent for funding. We need to take a statewide perspective. See Testimony #1, page 7, number 10.) We need to take a long range view. I've not proposed any amendments on 1206 that would affect what you have before you other than to add the goals I've incorporated to the bill in section 3. In section 3 the bonds provide that after the bonds are paid and the O&M revenues are provided, then the remaining revenues go back into the resources trust fund for other water projects. We have $1Billion worth pending out there. All of these amendments relate to money and funding and incorporate WAWS into a statewide perspective.

Chairman Holmberg: We will have a subcommittee and they will take into account your expertise and the information that you gave us.

Lynn Helms, Director of Department of Mineral Resources, presented testimony (attached # 2). The Industrial Commission is neutral on this bill but does want you to have the facts before you regarding what oil and gas activity looks like for the next 5-7 years. In the absence of a complete collapse of oil prices, (which is at $106 today, so it would have to drop by more than 50% to really have an impact on activity) or EPA regulation of hydraulic fracturing, 2011 will make 2010 look like a slow year. We drilled 1213 wells last year. We hydraulically fractured about 1000 of those. There is an inventory of more than 200 waiting for a frac job as soon as load limits come off. We were consuming water at the low end of our expectations, around 15 M gallons/day in 2010. We expect going forward that we will need double that. A lot of the debate centers around revenue generation from this project. That means that approximately 20-23 million gallons/day has to come from sources other than currently permitted and deliverable. The cost of the water represents one third of the cost of the water delivered to a frac job. So the actual purchase price of the water is well under one third of the total price as it arrives at the well for a frac job. More important is transportation and time to get it there. Those represent 2/3 of that cost. A lot of what this cost is about is hauling water less distance and fewer trucks on the roads travelling less distance.

Chairman Holmberg: The oil prices in west Texas went up. Part of that is the Lybian crisis.

Gene Veeder, McKenzie County Water resource District testified in favor of HB 1206. See testimony attached # 3. We need to get potable water to our rural citizens. We will have 10,000 to 30,000 new people in western North Dakota who will also need to be served.

Senator Andrist, District 2: Testified in support of HB 1206. This bill came through the IB&L committee. We weren't all in solid support of this bill to begin with but we worked hard on this bill. The first draft of the bill would have made it totally managed by the state water commission and we realized this just would not work. We proceeded to put it together in this out of the box order of having a local private authority do it. We felt this would move the process faster. We need to do it this way to get buy-in from Williston which is contributing their water rights which are most significant as well as their water plant to the project. Altogether the final amendment package was #9. We feel we got buy-out from everyone except the private water users. I do understand their concerns. We did address some intent language in there. The Authority tried to address some of their needs. Of course there are some peers who think

this bill should be a water commission project. I would submit that if it works, we have a really innovative water system that supplies all the needs of northwestern North Dakota and doesn't cost the state anything. If it doesn't work, they default on the bonds and the local communities share in some of that default first. If that was the worst thing that happened, then it would become a state water commission project and it still would be a good project and a good investment for the state. That is the point where I bought into the system myself. I lacked a little bit of enthusiasm to begin with too. Sure there is some risk, but it seems to me if we pass the bill and it works, we win. If pass the bill and it doesn't work, we still win. After a thorough airing of these ideas, every member of the IBL committee voted for it.

 # 4,5,6 Written testimony submitted during the hearing and no one testified at the hearing.

Testimony # 4 includes letters from the following in support of HB 1206.

- **A. Gordon L. Johnson, manager, Norh Valley Water District, Cavalier, ND**
- **B. Les Bakken, Mayor Crosby, ND**
- **C. Dan Dolechek, City Commission President, Killdeer, ND**
- **D. Stan stenvold, Mayor, Park River, ND**
- **E. Neil Breidenbach, Manager, GF-Traill Water Users District**
- **F. Dr. Michael R. Brown, Mayor, Grand Forks, ND**
- **G. Dennis R. Walaker, Mayor, Fargo, ND**

Testimony # 5 - Western Area Water Supply Project Summary dated 03- 21-11 (pages 1 – 8).

Testimony # 6 – Western Area Water Supply Project Drinking Water System Fact Sheet.

Ward Koeser, Mayor of Williston, testified in favor of HB 1206 and submitted Testimony attached # 7. In Williston for the first three months of 2011 the water sales are 2.2 times what they were in 2010.

Senator O'Connell: In the next 5 years, how many people do we estimate will benefit from this project? How many urban and how many rural?

Ward Koeser: To go out 5 years it will obviously be just a guess. We would anticipate a growth of at least 10,000 in our community. It would possibly support 20,000 new individuals in 5 years. Right now there are probably 25,000 existing in that area.

Rick Olson, Williams Rural Water District, testified in favor of HB 1206. Testimony attached # 8.

Jerry Ranum, President of R&T Water Supply Association testified in favor of HB 1206 and provided written Testimony attached #9.

Ron Ness, ND Petroleum Council, testified in favor of engrossed HB 1206. Timeliness is important on this project. The demand for water is going to outpace the supply. We are going to need all the sources we can access. It is critical to plan for it now. **See testimony attached # 10. Included in my testimony are some statistics from the Corps of Engineers study.**

(See the bottom of page one of Testimony #10) Even at those estimations it is evident that we are not going to have an adequate supply of water unless we get water from ground water sources. The discussions started in November of 2009 when all the permits for ground water were in permanent delay status. We have been working with the Corps for well over a year to try to access water directly out of the lake. To date we have had almost no success in moving in that direction. Industry is going to ramp up those frac crews in the near future. We estimate that the pay for WAWS in its original version, at $150 M you would need to basically have 3,000 companies utilize this for a frac. You think about that in terms of the magnitude of the numbers Lynn is talking about. It is really not that significant a number of fracs over the next 7-11 years. I have with me Mark Johnsrud, the owner of Power Fuels in Watford City. He is a water hauler and also owns and operates water wells. He will be a good source of reference for you.

Ron Ness submitted a Letter of Intent to Purchase Bulk Water. See attached #11 signed by XTO Energy Inc. in support of HB 1206.

Ron Ness submitted letters of intent from the following in support of HB 1206. Testimony attached #12. They are as follows:

A. **Hess Corporation, Minot,ND; Hess ND Leadership Team**
B. **Samson Resources Company, Rich Frommer**
C. **Halliburton, Brent Eslinger, District Manager, ND**
D. **Whiting Oil & Gas Corp, Blaine Hoffman, Dickinson, ND**

Senator Warner: We have heard conflicting reports about the quality of water necessary for the industry. We have heard slough water, non-potable water, then we have heard treated water. What's your take on the quality of water necessary?

Ron Ness: We brought in the Halliburton expert on this topic. What industry needs is a consistent water source. It doesn't have to be potable water, it can be a non–potable water. You can treat it to the quality you need. You need a reliable water source so you know it is all the same that you are using in the frac process.

Senator Warner: Say you have to treat it, I assume clean water would be cheaper because it wouldn't have to be treated.

Ron Ness: It's really where you are going to get your water. Water is less than a third of the cost of the frac. You want it in a place where they can get it. Those trucks sitting in line cost you a lot more than the price of the water.

Mark Johnsrud, owner of Power Fuels and Land Tech Enterprises, spoke in favor of HB 1206. We are a fluid management company that focuses on the timely and efficient transportation and movement of oil field fluids. In addition to transportation, we also have a rental division and salt water disposal wells. Over the past 6 years since I purchased these companies, we have gone from 55 to 700 employees. We operate 350 trucks. Our plan for this year is to increase our employee base from the 700 to 1000 or 1100. That is following our same customer base, because the demand continues to grow. The demand growth is in the amount of fluid required especially for fracing. We used to see 40 tanks per frac, now it sometimes takes 160 tanks per frac. It is somewhere between 2500 and 5000 barrels per

stage and as the number of stages increase, the amount of water required also increases. I would like to voice my support for this project. I think there is a place for both the private water depots and the municipal water that is available. It is also important that this project moves forward because we need to make sure we have a timely consistent availability of water. Also if we put these access points along Highway 2 especially it ends up reducing the truck traffic on that highway. We know ultimately that is very important. The second part of that is that ND has an important resource in the Missouri River. I hope we would try to efficiently utilize it especially with what has gone on with the Corps of Engineers limiting access to that resource. Part of where my concern is as we've seen the amount of water for each well that is increasing the amount of fracs, I don't believe there is enough water available today to frac the wells as we are moving forward.

Senator Christmann: What is the average length of haul? **Mark Johnsrud:** It varies by area. It depends on water allocation and availability. If you look last year in Dunn County, once that water was out of their allocation, we hauled from Dickinson or from Dodge.

Senator Christmann: Throughout the year would 20-25 miles be an average range? **Mark Johnsrud:** On an average, yes.

Senator Christmann: When those allocations run out, does it occasionally happen or do these locations run for only part of a year? **Mark Johnsrud**: It is my understanding that most of these private water people did run out of their water allocation.

Senator Christmann: In your business, do you buy the water from a private entity or a city and sell it to an oil company or does an oil company buy it from them and hire you to haul it?

Mark Johnsrud: We end up buying it; we do not have any mark up in the cost of our water price. That way you match the trucks per water.

Steve Burian, CEO Advanced Engineering & Environmental Services, Inc. (AE2S) testified in favor of HB 1206 and provided written Testimony attached # 13. His testimony has 5 parts: the need for the project, projected population and water demands for the region, the project description, the business plan and financial analysis, and some supplemental analyses that were completed to answer questions as the legislative session has proceeded. The graph concerning population on page 4 shows the increase will be from 27,000 people to 47,000 people and they think this is a conservative estimate. The next thing I did is peak the water demands by daily use. Page 5 of testimony #13 shows a peak of 23M gallons/day. That is for just domestic needs. The estimated cost of the WAWSP project is $150M. The project's urgency is being driven by the pace of oil development. On page 8, the graph shows the expected capacity of the system. There is a significant difference between the peak day and the average day. We had to have some depots so the companies have access to the water. The graph on page 9 quantifies different water demands in the region. Pages 10-12 explained the financial plan. The table on the top of page 11 was based on the water demands at today's levels, not the demands anticipated in 2011 and beyond. The industrial price used is $20/Kgallons even though the current price is $11.90-$25.00/Kgallons. We priced on the upper end of that. We didn't want to be underpricing and we were instructed by the oil companies that the price of the water is really not the driving force so there didn't seem to be a huge incentive to sell the commodity at too much of an undervalue.

V. Chair Grindberg: I'm having a hard time understanding the entire cash flow of this project. If the bill passes there would be immediate cash flow, then on table 2 on page 7, Phase one and two on his colored chart, then you have phase three engineering. On the front end you have no engineering fees. Is there a cash flow that shows all sources of income, the bonding, the cash outlays that puts us into the phase one, phase two which is the next biennium and then phase three to illustrate all sources of dollars falling into this project? That would be helpful.

Steve Burian: I can get that to you. The engineering is included in each of the projects in phase 1 and 2. That is engineering and construction. In terms of all the cash flows, that is readily available. It isn't easy for the complexity of this to do it in a simplified fashion. He continued on page 11 of his testimony regarding bonds and explained how they achieved an A+ Bond Rating. The 5 and 6 scenarios were a little different than 1 through 4, looking at a 20 year amortization instead of a 10 year. They also included a 10 year call provision and we intend to pay the bonds back within the 10 year call provision. We were instructed by many parties that to have the flexibility to do a 20 year amortization with a 10 year payback in the event something went wrong was going to provide much more flexibility for the state and for the sponsors, and it was also going to be much more favorable for the bond rating agencies as they looked at the bonds. When we looked at the different approaches scenario 6 appeared to be the most efficient approach. Figure 4 on page 12 shows anticipated cash balances at the end of each year. The graph shows time on the horizontal axis and money on the Y axis. What it shows is that we are able to meet all of our reserve requirements and all of our O&M expenses and all of our debt service. Then we amass the cash that is shown in yellow. That cash under this scenario as modeled turned out to be almost $150M in 2023. What would happen in 2024 then is we would pay the state back for the $30M that was granted to the project. We would fund that black capital reserve at the initial amount of about $40M and the remaining difference would be used to pay back the bonds in their entirety. We would have one big correction in 2024 and after that the project would proceed. The city of Watford City and then a series of users in that R&T Water Supply Association.

Senator Warner: The cities of Parshall and Newtown rely heavily on water sales because there is so much Indian trust land within the city limits. The municipalities rely on the income from water sales. This would be taking money away from them. I am not arguing that point. Within the bill before us those same people who will be losing revenue under this scenario will be expected to pick up the lost tax revenue by accepting a mill levy should this project collapse. I don't think that is fair.

Steve Burian: I have a graphic at the end that shows I think it is going to be an "and" strategy as far as water sales not an "or" strategy. I think that the amount of water we are going to sell as a percentage of the overall industrial demands is somewhat miniscule. In any of the demand capture analysis we have done we recognize the copious amounts of water that Parshall and Newtown were both selling. It appears that water will be sold in its full capacity because of the growth that is expected. If we add this it doesn't appear that those water sales will be curtailed. It appears there is room for public entities and private to sell water as well as this project. He explained water demands by using the chart on page 13 of his testimony. The state risk for this project is complex to discuss. He used the charts on pages 15 – 18 to explain the risk factor of the state. (audio 63:20-67:00) He reviewed the transportation

analysis, top of page 19. He feels the upgrading of the road infrastructure could be one possible side benefit of this project. He reviewed the irrigation analysis, center of page 19.

Chairman Holmberg: We have heard folks tell us this is a good idea. We want to hear from folks who do not want us to pass this bill.

TESTIMONY BEGAN IN OPPOSITION TO HB 1206 AS PRESENTED TO THE SENATE.

Robert Harms, Lobbyist for the Independent Water Providers testified in opposition of HB 1206 and presented testimony in favor of amending HB 1206. Three documents comprised **attached testimony #14.** He also proposed an amendment. **See attached #15.- (The Harms Group letterhead – the amendments to HB1206) and # 15A (also on the Harms Group letterhead - written testimony)** I want to point out a couple of numbers. In your packet from Advanced Engineering is a colored chart. The premise of this entire business plan really turns on what's displayed in this chart. In 2010 ND fraced 1100 wells. In 2010 we utilized 1.9B gallons of water. What this chart shows you is the assumption of what the plan before you turns on, and that is that in ND we are going to be able to move from 1.9B gallons of water in 2010 to 4.6B gallons of water or upwards of 5.9B gallons of water by the year 2012. Where we are going to put those trucks, where we are going to get those people and where they will live is beyond me, but that is an underlying assumption that you should pay attention to in this discussion. We agree that we want to provide access to water and we want to provide water but we think that is a fundamental concern that we would like to discuss. With that I want to talk about what we have in mind for changes to the bill. See page 1 of Attached #15A. The amendments do 4 things. They authorize the features of the water project in a smaller way, but they authorize the features to provide potable water to the people of northwestern ND. Number 2, they authorize the creation of the Western Area Water Supply Authority without mandating how it should be structured. We do have some concerns with the structure that is in the bill now. We think it is complicated and it doesn't provide very good accountability but we don't take issue with that in our amendments. Number 3, it eliminates bonding entirely. It allows for the size of the project that is promoted by the proponents $55M in this biennium, another $55M in the following biennium, and then $40M to the Williston Water treatment expenditure in the biennium thereafter. We propose to do that with cash. There is a $25M appropriation in the governor's budget. We think we should add an additional $30M from the permanent oil trust fund which is funded by the oil industry and fund the project in the first phase with cash. The existing and proposed water depots are shown on page 1 of Attached #14. One of the key features of page 2-3 of Attached #14 is it gives you the prices that are being considered. One of the concerns we have is in the business plan is that it relies upon $20/Kgallons of water to cash flow. Current price today is $11.90/Kgallons. It also relies upon a 50% penetration into the market so they have to have 50% of the market in order to cash flow. With regard to the bill, I have listed some of our key concerns about the bill itself. One of the things that was done in the IBL committee was to provide some legislative intent on the beginning of the bill. We find that to be completely inadequate in terms of protecting the private investors. The bill provides for authorization to sell water outside of ND. We think the structure of the board is complex and erodes accountability. I have listed a number of things we think are objectionable. One of those is that it places 100% of the responsibility for this project on the people of North Dakota if there is a default. The local skin in the game is contained at the end of the bill that provides an obligation after default that $5M obligation would be imposed at the county level. I'm not sure if that is a fair thing for the people of Williams County where Williston is one of the main

proponents of the bill. Those are some of the concerns about the bill itself. The IBL committee testimony that was provided by them made clear that the moral obligation guarantee of these bonds is essential for marketability in the market. The idea is we are going to build a $100M - $200M infrastructure in northwestern ND relying on the idea that 80% of the revenue in order to cash flow will be paid by the oil industry. On testimony 15A page 2, number 2 he lists why he thinks that is a risky venture for the people of ND. He presented 2 resolutions from the State Water Commission. See page 1 and page 2 of **attached testimony #16 – Resolution on Construction.** There has been some talk about the 5 mills at the end of my testimony. We have spoken to the county auditors of each of the counties that are involved. We have given you the price what one mill is worth. The total of one mill per year is $102,000. There has been talk about we can pay for this project with 3,000 fracs but what those numbers assume is that this business is 100% profit, you take the value of one frac and apply it to the bottom line. In the oil and gas industry the typical return is about 8-10%. So instead of 3000 fracs we really need 30,000 fracs. This idea that we are going to save $29M-$50M on our roads, I would submit to you 2 points. That whole analysis is speculative at best but if we get to 5.9B gallons of water we are going to have so many trucks on our roads that any cost savings for distance is going to be eaten up in no time. Last couple of items: There has been talk about this is for potable water for the people of northwestern ND, it is not an industrial water supply. It only represents a small part of the project. So far in our involvement in this project we have heard 3 things. Number 1 that the industrial component only represents 10% of the cost of the project. Number 2, well now we have heard that it represents 20% of the cost of the project. But the bill itself in Section 23 actually provides that "a large component of the project expense is being incurred to meet the demands of the industrial users". So I don't know if it is 10%, 20% or if that is larger. There was also some talk about other communities. Neither Alexander nor Grenora is served by this project. Grenora hasn't even been contacted with regard to this project. The last point is that there has been this thought that we are somehow draining the aquifers of northwestern ND. The state engineer presented to the IBL committee a summary of water resources and access but in March of 2011 the Water Commission has stated very clearly and I quote "we are not depleting aquifers in northwestern ND, March 2011".

Steven Martinson, a farmer and rancher in western ND felt he had some good facts to share. **See attached testimony # 17, regarding the cash flow analysis, and #18, Points: total wells frac in 2010, etc.** One of the things is the water sales. I know how much a frac job takes. When I sell that water to the oil company I get $20,000. That is about what I make. On this core issue they are talking about adding a storage fee. Even if the Corps of Engineers comes out and addresses where we have to pay a storage fee of $20/ acre ft., even if we use up to 9 acre ft per well (last year we just used 6 acre ft.) That would amount to $120/acre. If that fee even comes out we will still access Lake Sacagawea and the Missouri River for our water. I am in the business with another company where we installed this Brigham Water Line. We built this water line 9 miles to provide fresh water to the oil industry. We put laterals on this line of 8 miles. This water line and more that are being proposed are going to do more for the roads in our area than anything else. This is a system where we will pump the water into 60M barrel pits, we put pumps in there, we lay aluminum pipe from 3-5 miles on the ground and we will transfer the water to the rigs locations, eliminating the trucking of all the fresh water in. Advanced Engineering talked about the reimbursement to the communities for their sales. Any sales that lost area plan gets out in our area, there are going to be sales from the private industries. Who is going to guarantee my income on that? A lot of local people have made an investment out there to supply this water. Now they see it is a good deal and they want to

come on board. We don't oppose the cities selling the water. It is great revenue for them. Our group does not oppose bringing the treated water to the area that needs it. We have to address this bill and amend it to fit everyone and not leave the state on the hook for it

Brandon Ames, a **taxpayer of the state of ND and a hydraulic engineer**, has designed water depots and installed rural water systems. **He spoke in opposition to HB 1206 and provided written testimony # 19A Map overview showing water depots. And #19B ND State Water Commission (highlighted Mission statement and Agency Goals)** I think that it's really important to provide people with rural water. They are happy to get it and we are for that. But I also have been involved in booms and busts. I used to design subdivisions in Utah. I got caught up in the boom of it, then it went bust. A lot of what I am hearing is speculation. I am not ok with that as a tax payer, as a water depot owner, as a small businessman. I love water projects, I feel very strongly we have a very good state water commission. I have applied for water permits; whenever I need anything I always go to the state water commission. I printed out their mission statements. They are there to provide effective management of ND's water resources.

Will Berry, 4th generation resident farmer/ rancher, spoke in opposition to HB 1206. See testimony attached # 20.

Bill Sheldon, Rancher/farmer, Ray, ND, spoke in opposition to 1206. See testimony attached # 21. In western ND and eastern Montana there is approximately 250,000 acres of irrigated lands. This equates to approximately 400,000 acre ft of water used per year for agricultural use only. Our frac use in 2010 was about 6000 acre ft. 98.5% of the water use in the MonDak region was for agriculture. 1.5% was for the oil field. The water commission has a great history. We would like to see them oversee this project.

Senator Wardner: You indicated that you don't go along with that, but it is brought out that there will be a lot more demand for water and that the independent water people can't meet the demand. The other thing, the project is going to sell water at a higher price than the independent water providers. Does that alleviate your concerns?

Bill Sheldon: It's kind of a lose-lose. As an independent water provider when I pump alone, I remove up to 20M gallons a day. This would supply all the fracs in the state 2 or 3 times over. That is just from one aquifer. Of course distance would be a factor. Also quality is a big issue. It seems expensive potable water should be used for cities and rural needs, not for the oil field. They can use water that isn't that great. I am still on the hook as a tax payer. Either way I lose, I will lose sales or I will be at risk for bonding.

Senator Wanzek: If the project is built and the depots are there for industrial use to sell to the oil company, I haven't heard anybody address the need for someone to haul the water. Are the oil developers going to buy trucks to haul that water? Will WAWS buy trucks to haul it? **Bill Sheldon:** All the water haulers are independent haulers.

Senator Wanzek: Was there any consideration how there might be a win-win there? I am assuming there is going to be a need there. Someone still has to be engaged in delivery. Would there be some potential to find a win-win for both sets? **Bill Sheldon:** I don't know if I have an answer for that.

Mike Ames, President of AGRI Industries with stores in Williston and Sydney, has been in the water business for 30 years. He has been an irrigation dealer, a water well driller, a pipeline contractor, and a directional driller, and he is now an electrical contractor. He has installed about 25 water depots. We would like to see a win-win situation come out of this. We feel there is a lot of misinformation. **He presented a letter from Williams Rural Water District. See Attachment #22.** In phase 2 they were asking for a 5Mgallon/day water depot at 13 Mile Corner. That is about 13 miles north of Williston. In this area last year there were no water depots; at the end of this summer there will be 6 private water depots and we can fill 12 trucks at a time. In one year we have gone from 0 water depots to 6 water depots. We can provide about 6M gallons per day. In this plan you will see that when rural water was asking to put in a water depot at 13 Mile Corner their estimated cost of phase 1 was $1M. See page 2 of attached #22. Phase 3 they are asking for $3.25M to get water up to Black Hill Dam. Phase 4 they are asking for $5M to get water to rural areas south of Ray and Tioga. Why is it that Phase 2 costs almost $16M? Presently Williams Rural Water uses 5Mgallons/month. They want to put a water depot in 13 miles north of Williston that will use 5Mgallons/day where we will have 6 water depots. Can you understand our concern? As private industry, we will put in 20 more water depots in 2011. Last year where Bill lives we could fill 3 trucks at a time, next year we will be able to fill 10 trucks at a time at no cost to the state of ND. We're here to save you $150M. How many people come to you and lobby and want to save you money? That's why we are here. They all state that they are aware of our concerns, but there is nothing in this bill to protect us. He passed out another letter from **McKenzie County, dated December 23, 2009 to Governor Hoeven. See testimony attached # 23.** He pointed out the highlighted part on page 3. If we go from 3Mgallons/day to 4 or 5Mgallons/day, it will not just increase the cost by 10%. Something's not right. On page 4 it says we need $2.27M for System 1. For System 4 we need $4M. For Regional Water Service we need $23M, but this system is only going to cost you 10% more? Something is not adding up here. Private individuals can put in a water depot for about a cost of $250,000. We can supply a million gallons/day at that cost. The first water depot they had bid out cost $10M. Their mission is to provide potable water. As independent water providers we don't have a water depot that meets the public health standards. We have no desire to compete in that industry. **See testimony attached #24 – Alternate Plan for Western Area Water Supply.** That is where the public belongs. That is the purpose of a municipal water system, to provide potable water for its citizens. That is their area but we feel challenged when they come into our area and grossly overestimate the water needs and how they are going to fund this. Yet they claim they are not going to compete with us. Are they locking that 84 cents/barrel price in? Are they guaranteeing to us that they are going to sell water higher than we can? They did not contact a single private water provider about this plan. This year there are 20 more private water depots being built. Next year there will be 20 more. There are 60 applications at the state water commission for individuals to put out private water depots. We underestimated to some extent that need for water. We have gone back and requested a larger allocation from the state water commission. In a lot of cases we are being granted that. Some of these communities have had to shut off their water depots because they run low on water for their residents. We don't shut our depots off. I would like to share with you one more handout. **Testimony attached # 25 – Calculations Provided by Independent water Providers.** In 2010 we fraced 1000 wells; we used 6000 acre ft of water. Bill Sheldon told you irrigators used 400,000 acre ft of water. When you are talking 6000 acre ft, to us that is a drop in the bucket. We are used to pumping millions of gallons/day. These oil companies do not need potable water. Right now we have 73% of the market and we are

growing. We can compete in the industry and we can compete with one another on equal footing. There is no protection in this bill for us. There is nothing saying that these guys will not drop their price for water to 25 cents/barrel. There is nothing saying that they won't build water depots right on top of us. Look at where this is proposed. I thought we were supposed to get water to Watford City and Alexander. This isn't a regional water supply. Alexander isn't even a part of this plan. It was stated that the water sales are $70M to $100M/year. I wish that was a true statement. If there are 6000 acre ft of water used, and that's according to the state water commission, in 2010 that equates to $25M to $30M. We can only frac so many wells. In 2011 they say they can frac 1200 wells. We are going to have a 20% increase in the need for water. As independent water providers we are increasing our capacity by 50% this year and we will increase it by another 50% next year. This is why the state water commission needs to build this project. They will look at all the needs. They will look at where the private water providers are. We won't be run over. We feel comfortable and we know that agency will respect our investments and our capabilities. We also think it is extremely important that there is language in this bill to protect the private water depots. They all say it, but it needs to be in writing. That is important to us. I don't know if we will ever get to the point where we are selling $70M to $100M worth of water a year. We would have to triple the frac crews in the Williston Basin.

Terry Smith, Owner of Depot and lives by the 13 mile corner: I have invested a lot of money in my water depot at 13 mile corner. I feel like I am being used to fund this project. If I have to I will go down on my price. If they go down to 25 cents, I'll go down to 24. Booms come and go. It's going to come and go again, who will be responsible in the end?

Senator O'Connell: What's a lot of money? And how long does it take you to fill a truck?

Terry Smith: We can fill a truck in 6 ½ minutes. A lot of money is $300,000.

Senator Wardner: It was my understanding that the proposal in the bill and the organization that is doing the WAWS that they would be selling water much higher than any independent. What are you charging right now? How would it compare to what they are proposing?

Terry Smith: I just got my water depot on line yesterday. I've been in this oil activity since the early 1980s. It was $18/barrel; now it's over $100/barrel. I am charging 58 cents per thousand gallons of water, which is 58 cents/ barrel.

Senator Wardner: From the testimony, what was the amount that was being proposed to be charged by the WAWS? **Terry Smith:** They can charge whatever they want to charge.

V. Chair Bowman: There is definitely risk and no one can deny that, but there are also rewards for risk. If we can keep up with the fracturing of the wells that are being proposed, what is the reward for the state? If this thing works and it pays for itself, there will be revenues coming in and that will benefit every person in this state. Don't think that it will be all bad. If we can get the revenues coming in that's good.

Chairman Holmberg: Committee is adjourned.

Handout presented after hearing. **Testimony # 26 – Tioga Tribune – Latest News – New policy could curtail future Industrial water sales (In opposition of HB 1206.**

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

HB 1206
04-05-11
Job # 16338

☐ Conference Committee

Committee Clerk Signature Alice Delzer

Explanation or reason for introduction of bill/resolution:
A SUBCOMMITTEE HEARING RE: WESTERN AREA WATER SUPPLY AUTHORITY

Minutes: You may make reference to "attached testimony."

Chairman Wardner: called the subcommittee on HB 1206 to order. All committee members here: **Senators Wardner, Fischer, Warner** and sitting in is **Senator Grindberg, Tad H. Torgerson, OMB and Brady Larson, Legislative Council**. Also present: **Todd Sando, P.E. State Engineer and Chief Engineer-Secretary, ND State Water Commission; Charles S. Vein, P. E., President, Advanced Engineering & Environmental Services, Inc.; and Karlene Fine, Executive Director, Industrial Commission.**

Chairman Wardner: In Senate appropriations we have to have these bills out by tomorrow. We will not talk about policy. We are not going to amend the policy. Our plan is to get this bill to conference committee and the conference committee will be dictated by the chairman of the IB&L Committee. We are going to look at the fiscal part, we're going to talk about the bonding, the costs, and what we plan to do here is I want the subcommittee members to ask questions so that we know a little more about it. We know some things, we don't know everything, and the other day, Friday when we had the hearing we got into policy and substance, as a result we didn't zero in on the financing on this project as much as we probably should have. The first thing to start with who would answer this; the overall cost of this project and break it down and how it's financed.

Charles S. Vein, P.E. President, Advanced Engineering & Environmental Services, Inc. The overall project cost is $150M for both phases. The first phase being the expansion of the water treatment plant in Williston from 10 to 14 million gallons a day, and taking flow up to north to the R&T System to Ray, also a line going up to Crosby, and south to Watford City. That initial phase would be $100M. **Chairman Wardner**: So the first phase would be $100M and you are looking to use the dollars that are allocated through the state Water Commission? **Charles S. Vein:** Of the $100 M, $25M has been set aside in the Water Commission budget for this project; $75M would be bonded. **Chairman Wardner**: That would be the 1st phase? (Yes) The second phase and the remainder of the funding—how would you, what are you thinking there?

Charles S. Vein: The remainder of the project would entail increasing the water treatment plant capacity in Williston from 14 to 21 million gallons a day, and further service of the rural areas that we are serving. **Chairman Wardner**: And how will that funding be handled?

Charles S. Vein: On the second phase, what has been proposed is there would be an addition $5M through the Water Commission from the Resources Trust Fund, and $45M bonded at that time.

Senator Fischer: If this is an accurate schedule ?? Has the amendment changed that *(can't hear him on the tape!)* **Charles Vein:** As we've gone from the House version where we broke it up there may have been some changes to that, but thinks it was in Steve Burian's testimony, he's got a new layout – a new schedule for all of that. **Senator Fischer:** Could you give us a copy of that? (Yes)

Senator Warner: How long do you anticipate Phase One to be? One biennium? Two? **Charles Vein:** Phase One is one biennium; total project to be completed within 4 years. The critical nature of the first phase is that we need to get water to the northwest corner of Williston. They have about 500 homes and 1,100 apartment units that need water by the end of this year. The plan is to get those pieces of it right away, then continue on towards Ray and Watford City.

Senator Warner: Questions about the up-front part of it: governance structure, how long will it take to organize it, how long to get water permits, how do bids—what would be the first date to stick spade in the ground? **Charles Vein:** Looking at the potential of getting started in construction in 3 or 4 months. Would need to move that quickly. Other phases would take a little bit longer; in the schedule we're looking at the 2nd and 3rd quarters of 2011 is when the final designs will be taking place. Into the 4th and beyond quarters is when the rest of the construction would take place.

Senator Grindberg: You had visited this morning on that spreadsheet on cash flow; did you have a chance to finalize and proof that? Would copies be available for the subcommittee? **Charles Vein:** Don't have that ready; found a couple of things they need to correct. **Senator Grindberg:** Could you just remind myself and the subcommittee of the bonding amount of $75M, as additional costs it will move that even to a higher amount, with fees and prepaid interest (if he recalls), that could be an additional $25M? **Charles Vein:** You're right. The $75M was intended to be available for construction. **Senator Grindberg:** Presume those added costs will be built into this cash flow statement. (Correct)

Chairman Wardner: Question for Karlene--how is the state involved in this--backing their bonds. Can you give some background on that if we were to proceed the way the bill is; they would bond the project and would need the state backing?

Karlene Fine, Executive Director, Industrial Commission: The way the bill has been structured is that they requested a moral obligation of the state. This isn't a GO Bond, it falls into a different category of moral obligation. What that means is that should they not be able to meet their debt service, the Water Commission would come to the legislature and ask for them to make up the difference. The bond holders would be kept whole; that's the way the moral obligation would work—the impact to the state would be the next biennium.

Chairman Wardner: In reality, if the bonds were paid off and everything went as the business plan projects then the state would have no "skin in the game" at all other than they are backing them. **Karlene Fine:** Correct; it's just providing a guarantee for the bond holders that the

debt will remain whole. For the 1st four payments on the bonds that will come from capitalized interest that has been included in their scenario. There would probably be no impact at all until if their business plan didn't work. Probably not until the 2015-17 biennium.

Chairman Wardner: Any questions on the bonding and how that works?

Charles Vein: That par value of the $75M bond is estimated to be $88.8M. The locals have a 20% share they are liable for, that $88.8M would ultimately be under the responsibility of the state would actually be cut down to 80% of that number. **Karlene Fine:** Correct, but the way to get the best rating would be putting a moral obligation on the entire amount. (Yes)

Chairman Wardner: When you talk about the locals, you are talking about local subdivisions such as the city of Williston, the counties, etc.? **Charles Vein:** Yes, at this point what we originally looked at would be the stake holders in the project, but that was changed in the House bill but it was originally intended that McKenzie Rural Water, Williams Rural Water, R&T, and Williston would have the 20% share. **Chairman Wardner:** So that's who--it would be those water groups.

Chairman Wardner: we'll come back from this, but would like to hear from Todd, to talk about a typical scenario of what the funding would be if this was State Water Commission project.

Todd Sando, P.E. Chief Engineer, State Water Commission: Water commission projects on regional water supply systems have several different business models. SW Pipeline is set up, structured a certain way, NAWS project has another form; it is a 65/35 cost share with the federal government paying 65% and the locals are paying 35%, and the water commission has several million into it, it's mainly federal and local dollars. Southwest Pipeline there has been (mainly) federal, local and state dollars; they pay capital repayments so pay money back to the projects that way. Both projects are phased projects, so is taking SW Pipeline decades to get constructed. NAWS is a good decade into that. We try to spread out our funding all over the state so that is why they are phased projects and takes several biennium's and sometimes decades to get completed. That's how we move forward with those projects. With this WAWS project we set aside in the executive budget $25M out of the $150M to go towards that project. And they have to figure out how to finance and move forward with other funding.

Chairman Wardner: We have $25M dedicated from the Resources Trust Fund? (Yes) If you were to go ahead and have the state do this and under the same pattern as the SW water governance and funding, etc. how long would it take to take care of this project through the State Water Commission? **Todd Sando:** It all depends on the financing; how much money would be allocated from the legislature or through the Executive Budget to get moving. Depends on the level of funding we are provided. We could make the same timeline if we had similar dollars to build a project. Right now it's only $25M, now we have two different plans with the House plan and Senate plan that has bonding in there. We could only move forward with the $25M with the project; we'd probably provide cost share and they would have to come up with a local cost share up to possibly 25% to match the $25M.

Senator Fischer: I am looking at this, what you are looking at for the next biennium, would be about $100M . **Todd Sando:** To get the infrastructure out to get it to north and south side of Lake Sakakawea and get it out to the communities and these water depots. **Senator Fischer:**

(said something about Phase 3) So you would be ready to go after July 1st, of 2013? (Yes) Under any scenario, whether you build it or however it's done. **Todd Sando:** If it's $100M or whatever we're given to start. **Senator Fischer:** For the immediate need of Phase One, we are looking 27725, bottom of page 1, and that gets you through Sept of next year. **Todd Sando:** Yes, on your table you are looking at, Charlie explained it a little differently; you talked about two phases and on this diagram show Phase One, Phase Two and Phase Three.

Charles Vein: Apologize for the confusion; what he referred to as Phase One is Phases One and Two, and that's why the total is on the bottom. Phase One is what is in the design and construction immediately, and then jumping from that to the next piece of it is referred to Phase Two. All that is what is necessary to begin the project.

Senator Fischer: We are looking at the money in the Resources Trust Fund that's in the budget pretty much covers Phase One on this schedule, and then Karlene would have time to get that other amount funded, if we appropriate it or however it is done, that would not have to come all at once and, depending on how we decide to fund it. **Charles Vein:** The first $25M would get us started and proceeding quite a ways along the road before needing the other bonded.

Chairman Wardner: Little bit about funding--he is looking at the list from the Resources Trust Fund, there is the money for Fargo's flood control and he is not advocating taking it away from them cause they need it. In reality was wondering if they didn't get started, some will be used, are we getting into trouble by using that money for a project like this and then bringing it back in the next biennium, or is that a problem? **Senator Fischer:** It would be a problem.

Todd Sando: There is a lot of cash sitting in the Bank of North Dakota earmarked for Fargo flood control; $45M right now and another $30M for the next biennium so $75M. They will want to use some of it for design, acquiring land, getting moving on the project, and then finally getting to construction. **Chairman Wardner:** Just throwing this out—thought if money is lying there it could be used; if Fargo was going to use the money we could go to the BND and replenish it, but that could create a problem in future biennium's too..

Todd Sando: There are other places too that the money is not being spent; we have money allocated to Grafton for a diversion project, and it is sitting in the bank. There is money tied up in several projects. **Chairman Wardner:** In your professional opinion, what would happen if we started using those dollars that are earmarked with the idea that if they ever needed them we would have to go the bank and get money. **Todd Sando:** Good question; don't know how to answer that. **Chairman Wardner:** Suppose it is in the hands of the legislature. (Yes)

Senator Grindberg: Just another idea, if the desire is to fund this project, fast track it with a four year completion schedule. Think one of the concerns he has heard is that it cannot be allowed to be like SW Pipeline where it goes on for decades. This is an immediate need in unprecedented times, 4 year cycle and 4 year completion. If we decided to add to it from the oil trust fund, ($25M) and could get borrowing authority from BND is one idea. It is going to take a number of months to draw down $60M in payments, so the remaining amount could be months before we come back here in 2013. We would have that obligation through the BND and it would be a matter of continuing to pay off that note, and/or looking at bonding or something for the Phase Two and debt service of the upcoming biennium. I think there are

some ways to use the bank and not going the bonding route which is astronomical with the fees, prices, and interest costs.

Senator Warner: Bookkeeping question for Karlene; for the money we haven't transferred out of the bank the last two biennium's, which he understands to be in the unallocated reserves. If we borrow from the bank that still retains its status as unallocated reserves from the capital side not on borrowing money, correct? (Yes) But that money, even though at some point the legislature could decide to transfer that out of unallocated reserves and into the general fund, as long as we are just borrowing the money on the investment side—it still retains its status as unallocated reserves and would not affect our capitalization rate. **Karlene Fine:** As long as it's on the loan side, and it will be on a repayment plan for anything that is borrowed. If the bank was before you, we wouldn't need to build up the capital, so it is important that we maintain that no (??) is moved out of its capital structure. **Senator Warner:** We could take a loan and not affect the capitalization structure? (Yes)

Chairman Wardner: Anyone else have any questions? The chair will make a statement and would welcome committee members to make comments. We're a little leery of bonding; haven't had to bond for buildings and stuff, we like to pay cash if we can. In all fairness to the SW Water Pipeline, when that started we didn't have the money that we do now so had to go in baby steps. Can remember when if we had $8M for a biennium we were thrilled that we were going to get some work done. Things have changed, there is more resources to get it done. We don't have enough time, we will move this bill out and move it to conference committee and will be working with that conference committee from our side, helping them with some funding options. You will be able to make comment and have input too. It would be my desire to have one of us from this subcommittee to be on the conference committee but it is not my call. We have several bills to kick out, I don't plan on meeting again on this, we will move it forward with the idea we will work on it some more in conference committee. This is a personal thing for him; Watford city and McKenzie county needs water, both groups want it, we will work to get it done. Committee members, any comments?

Senator Warner: Believe me we are equally uncomfortable with bonding; if we have cash to do this would rather see it done that way. His highest priority is to get water to those people; the industrial use is nice but is ancillary but primary focus is to get water to people, particularly on the south shore. The northern shore community (includes his district) are fairly well served but need water for expansion and industrial use. Technically, would just as soon see a little more distinction between the Senate position and I would like to see Senate Appropriations put some sort of stamp on their position, and maybe in some way tailor the legislation so it reflected the Appropriations commitment to cash or paying for it up front rather than bonding, which he thinks is the Senate policy position. Would prefer to see a little more distinction between Senate policy and Senate Appropriations as we go into conference committee.

Chairman Wardner: Also the north shore is important too, but the south is probably a little more priority.

Senator Fischer: I signed on this bill because he felt it was something that needed to be done, and the schedule comes out and it is moved forward, (personally) it is exciting to be involved with something that is going to get done in four years. What we need to do is get going on it and find the most economic way to fund it, get a consensus among the stake

holders is very important to him. There is a real need for water in the communities as well as ancillary. Feel it's a good project and think it can be worked out in a couple of weeks to get started.

Charles Vein: I too think this is a good project. It is one that has extreme need as this area's population basically doubles. As I have talked with the city of Williston this is something that is being forced on them. Just looking for a means to meet the demand; this truly is designed to be a domestic water supply project with the ability to use excess capacity for sales.

Chairman Wardner: If no further comments, we'll adjourn.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

1206
04-07-2011
Job # 16433

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A ROLL CALL VOTE FOR A DO PASS AS AMENDED ON WESTERN AREA WATER SUPPLY

Minutes: You may make reference to "attached testimony."

Chairman Holmberg called the committee to order in reference to HB1206. Tad H. Torgerson, OMB and Becky J. Keller, Legislative Council were also present

Jerry Klein, District 14, The amendments are not quite as lengthy, as Senator Wardner explained earlier, page 2, on the bottom, the new language would start, and that's the appropriation. We are asking for $75M to come out of the permanent oil trust fund, if you look through all those removed lines what we are doing there is taking most of the bonding language out of the bill because we are no longer bonding so that language has been struck. Go to page 3 and line 13 it tells how we are asking them to repay the permanent oil trust fund with the principal and that the interest at 5% would come back to the resources trust fund. At the very end, and the discussion's been is, the water authority now is building the project. A member of the water commission will be at the table with the authority, we have included the commissioners from those counties but at the end of the project, after they pay back the principle, the interest and the grant money that's come from the water commission, we are asking them to provide 5% of the net profits to the state water commission, and then we are going to look at that on June 30th. It says 20/40 but I told Senator Nething that maybe we want to look at it at 20/39 so that we'll be able to address that issue that session. That's the amendments. We think we have come to a compromise. Williston has the ball, we need to work with them, it continues to have language in there to at least try to create legislative intent that the independent water producers are still out there and we're going to try and look out for them but we have nothing in here that sets a particular distance because we just can't there's still a question on how you can engineer around, somebody is at 5 miles, some at 4 miles, somebody is at 30 miles, but the idea here is certainly that they will create this and build those depots in the areas that are really necessary but I still believe that the whole idea behind this project is to get good clean drinking water to the communities that need it out there and we do have some way to help pay for this and certainly after a lot of discussion we have had in the last two days, Senator Wardner has been very helpful to come together with this and I think most the individuals are somewhat satisfied going into this. I'll answer any questions and with the help of Senator Wardner we'll get the answer for you.

Chairman Holmberg: Let's ask the questions if someone has any.

Senator Wardner: This is still a work in progress. We don't have all the I's doted and the T's crossed. When we get to conference committee we hope we will have things, all the little things, there are some little things that still have to be dealt with but not a problem.

Chairman Holmberg: The beauty here is to getting this out so all the interested parties can take a look at it in it's engrossed state and they will be ready and I certainly hope the chairman of IB &L will consider a member of the Senate on the conference committee that you will be appointing down the road when this goes over to the House.

Senator Klein: I would probably put 3.

Chairman Holmberg: Of the Appropriations Committee.

Senator Klein: I distributed these amendments earlier today so that some of the folks can get a handle on what's going on and they already looked at them.

Senator Wardner moved the amendment to 1206 # 11.0390.03012 . Seconded by V. Chair Grindberg.

Chairman Holmberg: We have a motion and second for the amendments. Discussion.

Senator Warner: At this point I will support the amendments but I really very strongly feel that this should be under the preview of the commission, not the authority. I look forward to seeing it advance and seeing how it progresses but I am not guaranteeing I'll vote for it at the end .unless the commission is in charge.

Chairman Holmberg: Would you call the roll on the amendments .03012.

A roll call vote was taken on the amendment # 03012 for HB 1206. Yea: 13. Motion carried.

Senator Wardner moved a moved Do Pass as Amended. Senator Fischer seconded it.

A ROLL CALL VOTE WAS TAKEN FOR A DO PASS AS AMENDED ON HB 1206; YEA: 13; NAY: 0; ABSENT: 0. MOTION CARRIED. Senator Klein will carry this to the floor. The hearing was closed on HB 1206.

11.0390.03012
Title.

Prepared by the Legislative Council staff for
Senator Klein

April 7, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

Page 1, line 2, replace "to provide grant repayment by the authority" with "to provide an appropriation; to provide for loan and grant repayment"

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 14, remove "any bonds or refunding bonds issued under this chapter remain"

Page 2, line 15, remove "outstanding or"

Page 2, line 18, replace "two" with "one"

Page 2, line 19, replace "representatives" with "representative"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, after "association" insert ", and one county commissioner each from Burke County, Divide County, McKenzie County, Mountrail County, and Williams County"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 21, replace "two representatives" with "the representative"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "Directors have a term of one year and may be reappointed. In addition, the governor shall select one member of the state water commission as a voting member on the authority's board of directors. The commission member serves on the board at the pleasure of the governor."

Page 2, line 30, after the underscored comma insert "except for the state water commission member and the county commissioners on the board,"

Page 5, line 24, remove "Issue and sell revenue bonds, including notes, certificates, leases, or other evidences"

Page 5, remove lines 25 through 31

Page 6, remove lines 1 through 16

Page 6, line 17, remove "17."

Page 6, line 21, replace "18." with "13."

Page 6, line 24, replace "19." with "14."

Page 6, line 27, replace "20." with "15."

Page 6, remove lines 29 and 30

Page 7, remove lines 1 and 2

Page 7, line 3, replace "22." with "16."

Page 13, line 10, replace "**STATE WATER COMMISSION**" with "**LOAN AND**"

Page 13, line 10, remove "After"

Page 13, remove lines 11 and 12

Page 13, line 13, replace "shall" with "The western area water authority shall make payments on the loan provided in section 2 of this Act to the state water commission. The state water commission shall transfer the funds to the state treasurer for deposit of the principal in the permanent oil tax trust fund and deposit of the interest in the resources trust fund. Upon the repayment of the principal, the authority shall make payments in at least the amount of the principal payments to"

Page 13, line 14, after the period insert "In addition, upon repayment of the state water commission grant, the authority shall provide five percent of the net profits to the state water commission for deposit by the state treasurer in the resources trust fund until June 30, 2040."

Renumber accordingly

Date: 4-7-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1206

Senate APPROPRIATIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number # 11.0390.03012

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Wardner Seconded By Grindberg

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 4-7-11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1206

Senate APPROPRIATIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☑ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Wardner Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No _____

Absent _____

Floor Assignment Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1206, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1206, as amended, was placed on the Sixth order on the calendar.

Page 1, line 2, replace "grant repayment by the authority" with "an appropriation; to provide for loan and grant repayment"

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

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Page 2, line 21, replace "two representatives" with "the representative"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "Directors have a term of one year and may be reappointed. In addition, the governor shall select one member of the state water commission as a voting member on the authority's board of directors. The commission member serves on the board at the pleasure of the governor."

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Page 5, remove lines 25 through 31

Page 6, remove lines 1 through 16

Page 6, line 17, remove "17."

Page 6, line 21, replace "18." with "13."

Page 6, line 24, replace "19." with "14."

Page 6, line 27, replace "20." with "15."

Page 6, remove lines 29 and 30

Page 7, remove lines 1 and 2

Page 7, line 3, replace "22." with "16."

Page 7, line 4, replace "23." with "17."

Page 7, line 9, replace "24." with "18."

Page 7, line 17, replace "25." with "19."

Page 7, line 22, replace "26." with "20."

Page 7, line 27, replace "report to" with "comply with the policy on cost-sharing of"

Page 7, line 27, replace "on the" with "as the policy relates to"

Page 7, line 27, after the second underscored comma insert "and"

Page 7, line 28, replace the first underscored comma with "of the project. The authority shall report to and consult with the state water commission regarding the"

Page 7, line 28, remove the second underscored comma

Page 7, line 29, remove "initial construction of the system and"

Page 7, line 30, remove "and contract plans and specifications"

Page 8, line 1, remove "bonds issued by the authority utilize section 61-40-17 or"

Page 8, remove lines 6 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 17

Page 11, line 18, replace "**61-40-15.**" with "**61-40-07.**"

Page 11, line 26, replace "**61-40-16.**" with "**61-40-08.**"

Page 12, remove lines 1 through 26

Page 12, line 27, replace "**60-40-18.**" with "**61-40-09.**"

Page 12, line 29, remove ", if the legislative assembly has appropriated"

Page 12, line 30, remove "moneys to restore the reserve fund for the obligation in default under this chapter."

Page 13, after line 9, insert:

"**61-40-10. Taxing authority.**

If projected or actual revenues are insufficient to prevent default, each board of county commissioners of Burke County, Divide County, McKenzie County, Mountrail County, and Williams County shall levy property tax in equal mills as is necessary to prevent default within a maximum of five mills for each county.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of $75,000,000, or so much of the sum as may be necessary, to the state water commission for the purpose of providing a loan to the western area water authority for a maximum term of twenty years at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Page 13, line 10, replace "**STATE WATER COMMISSION**" with "**LOAN AND**"

Page 13, line 10, remove "After"

Page 13, remove lines 11 and 12

Page 13, line 13, replace "shall" with "The western area water authority shall make payments on the loan provided in section 2 of this Act to the state water commission. The state water commission shall transfer the funds to the state treasurer for deposit of the principal in the permanent oil tax trust fund and deposit of the interest in the resources trust fund. Upon the repayment of the principal, the authority shall make payments in at least the amount of the principal payments to"

Page 13, line 14, after the period insert "In addition, upon repayment of the state water commission grant, the authority shall provide five percent of the net profits to the state water commission for deposit by the state treasurer in the resources trust fund until June 30, 2040."

Renumber accordingly

2011 HOUSE ENERGY AND NATURAL RESOURCES

CONFERENCE COMMITTEE

HB 1206

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB1206
4/12/2011
16549

☒ Conference Committee

Committee Clerk Signature Minutes

Minutes: no "attached testimony."

Rep. Keiser: We will call HB 1206 to order everyone is present. This is a very important piece of legislation what I hope we can do today is if anybody has any comments they would like to make we would be happy to hear them.

Senator Klein: What we did in the Senate after those seven hours and then 3 more hours and other small meetings we had the bill that went to the appropriations committee. We came up with what we believe is the final product that we will be talking to you about. To walk through this on the colored copy it made it easy for me when they engrossed it. Starting on page 2 what we attempted to do was to provide some sort of minimizing the impact on the private water sellers. We know that is an issue that is the 03012 version on the second page on the top knowing that we can't work completely around that. There was a lot of discussion as to representation on the authority. Senator Nodland worked on this; he worked with South West and felt there was a different way to craft this. We changed the makeup of the board providing for a county commissioner from each of the affected counties. At the back side you will see where we provided for in the case of a default the counties would have the opportunity to mill up to 5 mills to help pay for the cost of the loan.

We felt it was important to get the commissioners involved so they could be an elected official and have to explain to some people why they were going through this process. If you look at the bottom of page 2 we also added a change there. On line 29 where it says "the governor shall select one member of the State Water Commission as a voting member" my thought is "the governor should appoint the State Engineer or the designee" would be a better appointment. That is something that I caught as we were looking through this. We didn't make many changes then until page 6 where when we took out the bonding it does have a lot of red lined out areas. On page 8 where we made some changes and I also saw another issue on line 4 where it says the authorities shall comply with the policy on cost sharing. This project isn't in this realm that was standard language and we may have to change that. There was also some discussion on line 10 instead "for concurrence" it should say "for approval." The rest of the pages are all lined out until we get to the bottom of page 13 which provides that taxing authority and there was a lot of discussion as to the skin in the game discussion. There was a feeling this default shouldn't default counties that are most affected and the counties that are going to have the opportunity to

have a project to help pay for this thing in the case of a default. It comes out to about six thousand dollars a year. If they found they couldn't make their payments they could go back to their respective counties and ask for that mill levy. Line 29 under the appropriation they was a lot of discussion about just borrowing the money out of what we have rather than going through the process of the bonds. We have scaled this back to seventy five million in addition to the twenty five million that the Water Commission has in their budget which will be providing for a hundred million dollar project. The engineers would be able to have coffee for the crew and then build a little bit. The idea was to build this thing out to Watford or Ray. Whether that works for the engineering plan or not or does provide for nine depots plus we will have a build out. Instead of repaying for the bonds they would pay back to the permanent oil trust fund the principal and the interest at the rate of 5 % to the resources trust fund. On line 12 of the last page "upon repayment of the loan" the repayment of the grant that the Water Commission has made that the profits will be returned to the water commission and go into the resources trust fund. The only Water Commission involvement is the approval and also that membership of one of one voting members on the board.

Senator Wardner: I am representing the appropriations committee from the Senate side. As we take a look at this situation they need water. They need potable water as soon as possible. We need to keep in mind as we are doing this that we are going out of the ordinary and we are taking a chance of creating some other problems. I have had some people from other communities come to me and say "in our community we are doing this and this to provide water development and now the state is going to back them to do this." We must be very careful things that are out of the ordinary because then everyone else wants to do it. There is a great impact in that part of the state so that makes me think that we need to move forward and do the best we can. We had a problem with the bonding we really don't understand why we would pay some out state bond company all this revenue and we are backing them. If we have the resources why don't we finance the project and have some buy into it? I like the idea of putting the state engineer or his designee on the board to coordinate it and then the revenues that would have gone to the bond company would go into the resource trust fund. There would be a schedule to pay back the 25 million that we are talking about right now and the seventy five million back to the permanent oil trust fund or whatever it is going to be called when we get out of here. Any money into the future would also come back. We do believe that they need to be a part of the state and a part of the water system. The principal could be refined and they could still get it done in a timely manner and get water to these communities so they can grow.

Senator Schneider: The subject has been covered very well by my colleague; the Senator from Dickinson had some good observations on a board level. There is a serious need for quality drinking water in this part of North Dakota. This is taking a chance I like the idea of taking a hop of faith rather than a leap.

Senator Wardner: The city of Williston has the water rights, all of the discussions that we have gone through that is an issue on how that it all handled. They have the water treatment plant and they have the rights to the water. This is a factor in all of this that we are doing.

Rep. Keiser: The mayor from Williston would be happy to be with us if we so desire. Is there a limit on the seventy-five million?

Senator Klein: The presentation given to us by the firm that is doing the work gave us a plan. They had a face one and a face two and it came out to about one hundred million dollars and it was over the next two years. That is what we were working off of.

Rep. Keiser: Is there a maximum amount that can be borrowed from either of those funds.

Senator Klein: No just what we appropriate and that is all.

Rep. Keiser: Was there any discussion on the 5% versus the cost of bonding?

Senator Klein: I visited with the bonding expert to get an idea of what we were looking at as far as interest, would it be 3, 5, 6 it falls down in that 5% range.

Rep. Hofstad: In talking about the taxing authority back to the counties. Did you investigate where their cap is? And if they have to go back to the 5% will they have to go to the vote of the people?

Senator Klein: No we did not investigate that. The discussion was that we were trying to develop a comfort zone for members that are thinking that we are providing a whole bunch of stuff that no one is taking responsibility that was a trade off because there was certainly a lot of anxiety whether or not we should proceed and not have any responsibility for paying anything back in the case of a default. This was our way of saying in the case of a default we will give you guys some authority.

Rep. Kelsh: What was the focus of the discussion on scaling back the size of the project?

Senator Klein: We were all concerned about the leap of faith we kind of looked to the engineering firm and said "could you guys live with this" They felt comfortable that they could get a jump on this system and that we could have that built out. The next big chunk of cash is to redo the treatment plant and that is another forty million dollar ticket.

Senator Wardner: There isn't any more money left in that permanent oil trust fund. In the sheet that came out it tells us where are sitting, the seventy five million is in there after that it is below the line a little bit. We don't have that money, that oil money is put away and earmarked for projects and don't forget the roads took 142 plus 228 that is 370 million for the roads so there isn't a lot of money in the permanent oil trust fund.

Rep. Keiser: I agree I wonder if there will be a permanent oil trust fund when we get done. One of the reasons that we are looking at bonding as a strategy is that there is precedence. The pipeline authority and the transmission authority have been established using an approach like this. This is new in water development it is not a new concept so the bonding has been approved conceptually and statutorily in that format. One of the advantages of bonding is that it does require you to go to the market. That is a difficult hurdle. It gave us a sense of security in that it was giving us a different form of oversight. Was there any

discussion relative to that authority to oversight the fact that we had already done this in the two other cases?

Senator Klein: The combination of the bonding and the authority building it did not have a lot of traction in the Senate. There would be more of a comfort level if the Water Commission would build it, but then we run into a different issue. To try to get as many on board as we could we developed this plan that seemed to have people who were uncomfortable with the bonding and the Water Commission building it we split that up. I think the authority is still the can build it and can do it quickly. Not that the Water Commission couldn't build it as quickly but I still believe that this authority is looking to make some money as soon as they can and do everything they can.

Senator Schneider: What makes this palpable to the market is the states full faith in credit backing up this bond.

Senator Wardner: If the state is going to back them up and if the bonds are defaulted on the project is coming back to the state, the State Water Commission is going to have to run it. If it is going to come back and we have to run it anyway why don't we fund it up front with the loan the money is coming back? If it is as good as it was presented to us as far as the financial project we have nothing to worry about. We feel the state will get their money back.

Rep. Keiser: We will adjourn the first meeting of the conference meeting on HB 1206.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/14/2011
16586

☒ Conference Committee

Committee Clerk Signature

Minutes:

3 "attached testimony."

Rep. Kesier: We will call the conference meeting on HB 1206 to order all are present. After getting the input from the senators I summarized what the basic issues are. That is the source of the funding? We have two alternatives one the loan versus the bonding, second the amount of the funding and the scope whether to do the funding in two portions. I assume the amount of the funding over all stays pretty much the same with the exception of the interest. The third issue that came up during the last meeting was what kind of security and guarantee does the funding have. We have the authority to tax it at the local level and use mill levies versus the kind of security that we get by taking the issue to the market in the form of bond. The other issue is the Williston factor in which Williston has the water rights and is a major player in this thing. If we do phase it do we exclude some of the outlined partners? Do they come into the project if they are not in the original concept?

Senator Wardner: I would like you to go over the way we have outlined this.

Rep. Keiser: One is the source of funding. Then the amount of the funding the current house proposal was that the bond would go for the entire project. The senate proposal in terms of the amount of the funding that we can deal with at this point would have been the seventy-five million dollar appropriation plus the twenty-five million dollar that is in there. The third one which is the better approach for the state which gives us more security? The fourth is the partnership on the house side we had real concerns about that. Another I had is the difference of the cost if you face versus the bond.

Rep. Hofstad: I think we need to indentify the sources of funding and discuss them as we go. If there are any other funding opportunities that we can look at I think we need to do that during this process.

Rep.Keiser: On page 8 line 4 where we have "the authority shall report to" and then struck "report to" which I understand but comply with the policy on cost sharing what is the policy?

Senator Klein: That is the line that I suggested yesterday that needs to be struck. That would say "the authority shall comply with the requirements" and we would strike the words "policy on cost sharing" because that would not apply to this project.

Rep. Keiser: The next question I had was on page 13 the language that has been struck was relate to the bonding budget. It still has some relevance regardless of the source of financing because it was part of the definition of what the default is. If we loan them the money what is the definition of a default?

Senator Klein: I am not sure why the council deleted all of the language that is there but it still indicates the default that the state and the Water Commission would be the authority and the state would own this thing until we got it the way the earlier had indicated, that in case of a default on the bonds the state would own it.

Rep. Keiser: I agree we do want to take it over if there is a default but as I read the language it would have to be different language because it is alone this said that if the Legislative Assembly has to appropriate money because of the moral obligation then you are by definition by default. That worked for the bonding side and we struck it so now we have loan out there and payments aren't made on it. The concept is that we are becoming the lending institution. On page 14 line 12-14 a long term payment is based on the grant not the loan is based on 5% of the net profit until 2040 based on the twenty-five million grant.

Senator Klein: When we got what we believe were the proper amendments the idea was after the loan is paid back and the grant is paid back, we would ask for 5% of the net profit. That was to appease people who felt the Water Resources Trust Fund which normally the money comes back to the trust fund for new trust funds would get profit back. This is so that the state could recoup some of the dollars.

Rep. Wardner: They are still part of the team we are not hung up the number of 5% we need to move this bill and had to come up with something.

Dave Johnson: I am with A2S and work for McKenzie and other folks. We did do some research on the mill levy capacity and what the language in the bill would mean. We contacted the Association of Counties and as written the five mills would be an additional authorization that they could tag on so that it would not impose on their general fund limits. Right now they would be limited to 23 mills in the general fund. It would be an additional tax that they could add on. We did some research on the counties and how much there mill levies are I do have 4 of the 5 counties. I have the document for you. (See attachment 1)

Rep. Keiser: The way the language is structured they have current statutory authority for a certain mill levy this would provide the opportunity for an additional 5 mills by state statute. Would they have the authority to implement that without a vote?

Dave Johnson: That is correct.

Rep. Hofstad: Within this bill that gives those counties statutory authority to raise those mills?

Dave Johnson: According to the council that we got from the Association of Counties that is how we would interpret the writing in the bill.

Senator Schneider: It would not only be authority but requirement that they use it correct?

Rep. Keiser: Whoever they agree would be the authority. If there were a potential for a default on the loan however is the fine then this would automatically have to occur.

Rep. Kelsh: The figure coded yesterday that the 5 mills among the counties would raise the total to about six hundred thirty six thousand dollars. Is that accurate figure?

Dave Johnson: To the best of my knowledge that is close yes.

Senator Klein: The research that we did I have the breakdown of the counties and Burke would be ninety six hundred seventy four dollars. I will make copies for you.

Rep. Hofstad: A mill rate on a county wide basis I am wondering how equitable that rate is to the people that are affected by project itself? We talking about a water project within a county, does that water project cover everyone in that county so that all of the people that pay that mill rate have a direct benefit?

Senator Klein: Properly, not in visiting with members in these counties at one point Burke was not included but Burke wanted to be included and that is why we brought them into this mix. There is going to be a cost share some people who don't get benefits are going to get to participate as we have heard.

Senator Wardner: In some cases like in Burke and Mountrail where it does not go over the whole county in seems like as the lines come close by more people want the water.

Rep. Keiser: When you looking at the house funding proposal was there any discussion of an addition to applying in the name of the good faith of North Dakota to include in the requirement that the counties automatically have to assess this mill rate increase prior to the state coming in and backing the project.

Senator Klein: It certainly would. However the people involved in the project are very upbeat on this and we certainly didn't want to deter the communities to have extra on the front end. There is some discussion of the front end asking why we didn't add this on the front end also. There is a believe that the project is going to do well.

Rep. Keiser: That does bring skin to the game regardless whether it is the loan or the bonding.

Brent Bogar: Representing the City Commission of Williston. The Williston water treatment plan has a big part in this project. We had many discussions as a group working on this project and as a city we are willing to have the water treatment as part of this project. With the capacity, water permits and the water treatment plant it is a good fit for this project. We support it and our region. Williston has always been supportive of all of the communities in the region.

Senator Klein: I visited with the mayor yesterday to get his feeling on this. He feels good about how we have purposed this.

Senator Wardner: It has been brought to our attention that the city of Williston does not have an industrial permit use for their water. Is that an issue?

Senator Klein: My understanding is that it is not an issue. It is amending our current permit since we won't be asking for additional water with the Corp.

Rep. Keiser: Seventy-five million wasn't quite adequate if we go the route of phase 1. There would be an advantage to go to eighty-five million; we can ask them to share with you what they shared with me yesterday. I went to the appropriations people and said I understand the oil trust fund may not be there so where do we put it in this bill. They said "we don't have a place". They said there is no seventy-five or eighty-five million so we need to resolve that.

Senator Klein: The status sheet does have the seventy-five million in the permanent oil trust fund. When you go to the other side of the status sheet we are way below the line and a long way to go. You are right that if you are going to move money from the permanent oil trust fund to balance the general trust fund it is not going to be there. We would have to look for another source. We have thought about the Bank of North Dakota but they seem to have certain rules and we would have to get Mr. Hardmeyer over here to research that. I will tell you right up front the biggest thing I find in the senators is bonding, sending it out of the state when it could stay right here. We want some money to come back to the resource trust fund and this worked out pretty well.

Rep. Keiser: Eighty-five million is somewhat critical to make phase 1 work.

Dave Johnson: What I have in front of you is the phasing plan that was developed based on the Senates proposed facing of the project. (See attachment 2&3).

Senator Schneider: So for the extra ten million we would get everything in the red text.

Dave Johnson: For ten million you would get the rural water system extensions. You could not get is that expansion from the Williston water treatment plant and the line around Williston.

Rep. Kesier: So all of the black text would be covered by the one hundred million?

Dave Johnson: That is correct.

Rep. Keiser: The red text with the clouds would occur if we added the ten million to this project on phase 1?

Dave Johnson: That is correct.

Rep Hofstad: One hundred million dollars is a huge project. Are you confident that you can complete that and still get into that next ten million dollars. Does your construction schedule take you to that figure? How confident are you?

Dave Johnson: We are very confident that we can move forward with that. The question becomes are there enough contractors in the area. What we are seeing in Williston is because of the slowdown in the rest of the nation there are contractors everywhere up there.

Rep. Keiser: We will close the meeting and reschedule for later.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/14/2011
16622

☒ Conference Committee

Committee Clerk Signature Jeanette

Minutes: 3"attached testimony."

Rep. Keiser: We will call the conference meeting for HB 1206 to order everyone is present.

Dave Johnson: The comment I want to make is about the area around Williston and Williams Rural Water includes trading some territory. Williams Rural Water has agreed to give up some territory as there part of the skin in this game in exchange then is committed to expanding their territory. There is a unique twist to one of the rural areas here that is relatively important to make this whole thing go.

Rep. Keiser: How do we know where that is on the map?

Dave Johnson: It is in the cloud around the city of Williston.

Senator Wardner: What happens here? Is the city of Williston going to have some rural customers that are going to be part of their system?

Dave Johnson: No What happens is there are existing customers and now that the city is expanding and annexing in a bunch of these areas and so one of the agreements that has been made is the rural water system has stepped aside but the city of Williston has install fire protection and city services before they can take those customers over. In addition we have to get an equivalent number of customers for Williams Rural Water to keep them whole.

Rep. Kelsh: How critical is the red area in the text? How critical is it if that area is delayed until the next biennium. What are the projected inflationary costs of delaying that until the next biennium?

Dave Johnson: Delaying the exchange and expansion of customers with make Williams Rural Water nervous. We would have to come up with some way to expand their system. As far as the inflation we did some calculations on what happens if the second phase of this project gets delayed.

Rep. Keiser: If we go with the seventy-five million and you can't get out to those areas that you are talking about are those areas that are going to be delayed going to be willing to enter into this partnership? Have they committed to that?

Dave Johnson: The four entities met on this bill and wanted to express their desire to move forward with this ten million they have also agreed that if they had to live with the interim project they would. What we have on this sheet (See attachment1) is the top numbers of the original plan that was presented to the house. We are showing you the cost of the delays as this thing is moving forward.

Rep. Keiser: Is that what the bill does?

Dave Johnson: The bill does not specify any of those things.

Rep. Keiser: I hate to give you some bad news but that not the way the state works. They expect that to be capitalized.

Dave Johnson: That is a question we have about the bill.

Senator Wardner: I will have to say we would have to deal with these types of issues in the conference committee. This is something that I am not aware of.

Rep. Keiser: We need to have a brief discussion among the members on whether or not you believe that interest should be capitalized. If it is not I want to get a loan from that place.

Senator Wardner: I thought they would have to start making payments and paying interest at some point; I wasn't sure when that would be.

Rep. Keiser: The way it was structured was to borrow bonds for the original amount of the construction project plus the first 2 years of repayment. So it is an additional bonding just to have that security in there. They need to make the payments so we are requiring them to get the first 2 years of payment upfront as I recall.

Rep. Hofstad: Everything would certainly be on the table is it possible to bond with this project? Would it be possible for the state of North Dakota Legislature to guarantee a loan of any kind? Are these 2 possibilities that we could explore to fund this project or any other ideas that we could use and utilize the Bank of North Dakota?

Eric Hardmeyer: There are two different serials here, one you are talking about bonding versus a loan from the Bank of North Dakota. This would be a large size loan for us. Some of the things that would be issues for us would be because of the size of this seventy-five million and I am sure you would want a fixed rate on this project. I thought you would be more interested in a fixed rate for the full 15-20 years. We don't have readily deposits that are structured over 15-20 year period. We would need to go out and find a matching instrument similar to that to hedge the loan that we are making. We would have to find term money that we would go out and purchase that would offset the loan that we are going to make. We would use those funds to make the loan. We do that all the time this would be an advance that we would take from the Federal Home Loan Bank and it would be a 15 years amortizing structure.

Those rates today would probably be in the neighborhood of 430 to 440. That is our cost which means we would have to bump it up some. On the loan side that is what we are talking about. We have to hedge it that would drive up the cost a bit more than what a bonding serial might. That is a large loan for us. We have not said anything about the due diligence the whole credit risk side of it.

Rep. Keiser: What would be the best bonding format that we would use that would benefit the state and the residents of the state?

Tim Porter: I am the CFO at the Bank of North Dakota. If bonds are issued with the moral obligation of the state backing those bonds the bank provides a letter of credit for the time that you are out of session so that if there is a default on the payment the bank would step forward and make those payments and then come to the legislature to get that amount replenished. Considering the bonding side versus the loan side there are a couple of things to think about one of them is this is the type of project that qualifies for tax exempt financing.

Rep. Keiser: How much difference is there in interest on one-hundred million dollars?

Tim Porter: In the initial term it would be one million dollars. 1% difference would be one million dollars a year in dead service.

Rep. Keiser: The house position was to go the bonding route because we had some degree of confidence in going to the market and having the market approve this project. The senate's position that with the good faith of North Dakota behind the bond the market doesn't care because it has to guarantee it. How does that interplay work?

Tim Porter: When you talk about the state backing this it is a deal breaker if the state isn't involved because it turns into a bond issue that is below investment grade. Something that is based upon revenues and these revenues in this case you have the municipal revenues but then you also have the industrial revenues. The investors are going to look for some kind of unlined backing and that is where the state steps up.

Rep. Keiser: The market looks at all of the variables to see if they like it even if the state is involved Is that true?

Tim Porter: When this bond goes to market they will get rating attached to that.

Senator Klein: What is the downside for those guys?

Tim Porter: The risk of the buyers is that the state doesn't stand behind the moral obligation that it puts on the bond.

Senator Klein: Can we say we aren't as morally obligated as we were in 11? Once the states moral obligation is there they have a good package to go to the market.

Tim Porter: If the bonds are structured that way they would not be difficult to sell. The demand gets factored to the rate that it gets. When the state has a moral obligation behind the debt it is easy to sell.

Senator Wardner: You do bonding for local political subs right?

Tim Porter: The Public Finance Authority does.

Senator Wardner: I thought you were talking for that office. Would the state in your opinion dual bonding of this size? What would be the difference if the state did it as they were planning on doing it or having a bonding company from another part of the country do it?

Tim Porter: The difference between having the public finance doing it and a private company doing it is that they both needed the moral obligation of the state behind those bonds to be able to sell them.

Rep. Hofstad: We talked about a limit with the Public Finance Authority of seventy-five million dollars. Are we still up against that limit? Can we move it?

Karlene Fine: From the Industrial Commission. The seventy-five million dollar limitation we have with Public Finance Authority is self- imposed limit by the Industrial Commission.

Rep. Keiser: With there is a bill passed that goes above that then it becomes a limit that your group would use in issuing the bond?

Karlene Fine: Yes the Industrial Commission would deal with that number.

Senator Klein: Could the state do the bond work if needed them too?

Karlene Fine: The Public Finance Authority could do the bond work

Rep. Keiser: Does that mean you could issue the bonds and sell them?

Karlene Fine: The public Finance Authority could do that. They would still be going and dealing with an investment banker. These bonds are still going to be a story bond in which they talk to the investors and explain a little bit about them. You would have an investment firm selected to help sell the bonds and tell the story of these bonds.

Rep. Keiser: Is there an advantage in going through the Industrial Commission verses the bank?

Karlene Fine: If you are going to the market for a bond the Western Area Water Authority verses the Public Finance Authority one advantage is the Public Finance Authority has been out on the market and is more familiar with our paper.

Rep. Keiser: We will adjourn the conference meeting on HB1206 until 3:30.

Rep. Keiser: We are calling the conference meeting on HB 1206 back into order this is a continuation of the earlier hearing. I did ask Allen Knudson to come down because of the options of the senate version that we would appropriate the dollars and nobody that I know knows this better than Allen.

Allen Knudson: With the Legislative Council. I am here to provide information on the status of the budget. This is last week's budget status report. The report that will be out tomorrow will be very similar to this. The general fund is about 352 million in the red. The permanent oil trust fund is at 0 a negative 414 thousand in the hole. (See Attachment 2)

Senator Wardner: If we were looking at the Permanent Oil Trust Fund the minimum would be 341 million more in that bottom line?

Allen Knudson: That is correct either 341 million or 385 million depending on which amount you want to set aside for property tax relief.

Senator Wardner: We have it on the line it is accounted for as being a part of the Permanent Oil Trust Fund.

Rep. Keiser: What is projected for the two ending funds for the Permanent Oil Trust and for the General Fund?

Allen Knudson: On the bottom of page 3 you can see the governor a balance projected at 55.7 million is the General Fund and 231 million in the Permanent Oil Trust Fund.

Rep. Keiser: If we look at the current budget status you are showing again the General Fund and the Permanent Oil Trust Fund because the property tax hasn't been accounted for properly.

Allen Knudson: If you back out the property tax relief we would be at a negative 10 million dollars if you are setting aside the 385 or deposit of 35 million if you want to set aside the 341.

Rep. Keiser: That is where the funds will have to be figured out.

Rep. Kelsh: Does this bottom line account for some of the tax proposals that are working there way through?

Alllen Knudson: If you look on the first page HB 1289 toward the top is the individual income tax and cooperate tax reductions, we are reflecting the senate version which is 111.4 million of revenue reductions.

Rep. Keiser: Karlene what are the costs associated with issuing a bond and where do those dollars go?

Karlene Fine: I ran a copy of the dutch service schedule that our financial advisor for the Industrial Commission had prepared at the end of March. What this sheet shows you is the size of the bond issue if you wanted to get 75 million dollars in proceeds. (See attachment 3)

Rep. Keiser: Where do those dollars get held?

Karlene fine: They get held by the bond trustee.

Rep.Keiser: Would they earn any earnings off of that?

Karlene Fine: Yes there would be some interest earnings that are included in the calculation that you would be paying those bond holders.

Rep. Keiser: Nothing for us?

Karlene Fine: No and then there would be the cost of issuance and that the cost of hiring the bond attorneys, the financial advisor and the people that put the transaction together. Then there is the underwriters discount and that is for the local investment banker. They get a fee for selling those bonds for you. The Bank of North Dakota would provide a letter of credit because this is a moral obligation and you are only in session every two years. The bond holders want to be assured that they are paid even the legislature isn't in session. The cost of doing a bond issue is about a one million point eight dollars.

Senator Schneider: What kind of interest rate does this assume?

Karlene Fine: An interest rate of about 5% on a 20 year serial on a 10 year call which means in 10 years you could pay off the bond if you have additional proceeds.

Rep. Keiser: What happens if you never use the funds deposited in the capitalized interest? What happens to those dollars?

Karlene Fine: What you would probably do is take those monies and help reduce the debt service payments over the years. You don't make a principal payment until the fifth year so you would probably to your principal payment and reduce first payment that would have to come from the authority.

Rep. Keiser: But we couldn't prepay any additional?

Karlene Fine: No you could not prepay. Because they are tax exempt bonds under the IRS you couldn't invest them at a higher rate than the bond issue we would have to invest them at a lower rate.

Rep. Keiser: This is based on the senate bill?

Karlene Fine: Yes.

Rep. Keiser: If it was based on the house bill do you have a printout of that?

Karlene Fine: Yes I do. I do have it at the 150 million dollars I can get that down to the committee.

Rep.Keiser: If we were to use this approach and bond it what would we do in the second biennium what we need more money for the additional project?

Karlene Fine: You need about 41 million dollars for the expansion for the plant you would do another bond issue approximately that size which would be about 50-55 million dollar project.

Rep. Keiser: They don't believe there is going to be 75milllion available to us.

Senator Wardner: I can understand that we have got out mitts on it and it is set aside for this project and I do know the majority would like to do it this way.

Rep. Keiser: You can't bond it if the state isn't behind it. What is the committee's position on the 75 versus 80 million?

Senator Klein: We are also visiting with leadership and they tell us that 75 million that is in there they will make sure that stays for this project. During our process when we were trying to get in a position where we could get this sold to the senate when we reduced the project and we created a subcommittee that worked on this. I am disappointed that when that committee which gave them the numbers that they needed is where they settled on the 75 and the 25 which was 100. I am disappointed because that is why we went with the 75 because we thought we had a good two years of construction dollars available. At this point I am a little bit hesitant but certainly if there is 75 in the Permanent Oil Trust Fund there is probably 85 if there is nothing there is probably 85. That is up for discussion.

Rep. Kesier: The numbers that were run by the group and were provided this afternoon they weren't capitalizing the interest on the loan which I think we have to have that. I don't know who is going to lend 75 or 85 million and not expect to pay something on the interest that is going to accrue I don't know who is going to absorb the interest for that period of time and not get something on that interest.

Senator Wardner: I agree with you. That needs to be worked out; this committee needs to work that out. When you do the loan and after we work out the capitalization the thing that made it acceptable to many of the people on the senate side was the fact that the Resources Trust Fund was going to get it. As far as the Oil Trust Fund the money would be paid back there. There are a lot of people that need water that is the key thing whatever we do we need to make sure we take care of when the payments are going to start when the interest rate starts. The other thing is it important that there is some way there is money going back into the Resources Trust Fund.

Rep. Keiser: If you go to the bond market and use other people's money and this program has to pay them that does leave the argument take the 75 million and invest it and make some earnings off of it.

Senator Wardner: You could do that. If you get the same return that the bond companies are getting we would do quite well.

Rep. Keiser: Whatever we do with 75 million in the form of an investment we would not get a return on it. If it is anything similar to what the bond costs for the first 2 years they were operating on the assumption that someone would give them 75 million dollars to build with no expense with two years. That is a good deal. If we have a 75 million dollar issue and they have to capitalize the interest they may only have 60 million to build their project.

Senator Klein: The way we set it up was that the interest money would go to the Resources Trust Fund. Maybe the Resources Trust Fund wouldn't get anything for the first 2 years. They can't run any numbers until we tell them what the rules are.

Senator Schneider: We have more control over a direct loan than we would though the bond market. We would have more of an upside also.

Rep. Keiser: I would say take the 75 million and invest it and send the earnings to the Trust Fund and we can leverage 2 sets of money instead of one.

Rep. Hofstad: That is true if we have an opportunity to leverage that money it seems to me that is an important option. That money is still available for us to use to build projects in the state of North Dakota.

Rep. Keiser: We could say for this project there will interest assessed for the first 2 years or the payment could be delayed. The interest could be assessed and the payment would be delayed until you have the flow which is what the bond does.

Senator Wardner: If we were to let the State Water Commission do this the state would pick up all the cost on it.

Rep. Keiser: We asked them on our side can you do it and be online in 2 years without any more people, the answer was no. Does Williston buy into it? If I were Williston I am not sure I would.

Senator Wardner: I agree 100% on that my point being if that serial did happen they would get all the earnings above operations but it would take a long time to get that. We are going to get a big return even if we gave up a year or two of the interest to the Resources Trust Fund. The other thing need to look at is the 5% after the project is done what should be given back to the Resources Trust Fund? The way these water projects have come out they are like a team and I would expect them to be a member of the team.

Senator Schneider: We wouldn't have to give up 2 years of interest would we?

Rep. Keiser: That is the second option we could forgive it or delay it and build it back into the payment stream. We should find out where to capitalize it and what the cost would be.

Senator Wardner: I would like to talk about the partnership as we look at the partnership the city of Williston, Williams Rural Water District, McKenzie Water Resource District, R & T Water supply and the county commissioners from 5 counties and then we would have the state engineer from the State Water Commission that is what I would expect to be the partners. Is that what you are thinking?

Rep. Keiser: We stepped out of the box this is very different than with the private water folks out there. This is an opportunity for us to help those political subdivisions not only meet there current needs but to position themselves. This project will save the state of North Dakota a lot of money and it going to create a lot of opportunity for development.

Senator Klein: Maybe we can get off whether it is the bonding or the ????? Senator Wardner is very through he is filling in all of those blanks and when we talked about all of the authority we are just ?????? which is outside the money. We kind of left it the same but did add a few folks I think that is something we can talk about.

Rep. Keiser: I don't like large boards and this is getting very large. I support the senate on adding if we have the mill as backing the bonds or the project. If they are going to be online for the mills then they should have representation. If the mills aren't real valid for the backing for this project then they have a skin in the game and shouldn't have a seat at the table.

Senator Klein: With the authority not being the Water Commission but having the right of eminent domain the feeling was also with a commissioner on it you have an opportunity to talk to an elective official who you voted for, you can make noises. This is one more of an opportunity for an elected official to take the heat.

Rep. Kelsh: My thoughts are I am a family member of a county commissioner the portfolio was getting large for him and the time demands for being on the water authority would be more than that person could do. Would you be agreeable to a designee from each county that would answer to the county commission and has experience with water?

Senator Klein: I suggest we would say county commissioner or designee so the commissioner could send someone. Whether or not they know a lot about water or not it is my feeling that every one of these commissioners in every one of these counties is going to be interested in how that water project affects them.

Rep. Hofstad: I have been on the water boards for the most part the county commissioners were really not involved in the rural water project. That size of a board is cumbersome.

Senator Wardner: My question is this a authority considered political subdivision the reason I ask the South West Water Authority is a political subdivision they do receive a mill to help with the operations of the project. I didn't find it in the bill if it was considered to be a political sub the county commissioners wouldn't be as big a deal. There are people that are concerned about eminent domain because of the eminent domain issue I think it is important that there is an elected official on that authority.

Rep. Kelsh: On page 2 of the bill line 10 it says "the authority is a political subdivision on the state" so it does define it as that.

Senator Wardner: Are they elected and do they represent different parts of the area that makes up the authority?

Rep. Keiser: The proposed language and the amended version from the senate does keep the board the size isn't too large.

Rep. Hofstad: Back to the eminent domain issue I think regardless of who is on that board those individuals that are affected by that would have the same provisions regardless because they still have that same opportunity in court.

Rep. Keiser: We did have a lengthy discussion in our subcommittee on the eminent domain issue and what we were told is what Rep. Hofstad said and we do need the power of eminent domain if you are going to put in this project. What we do want is to have the right board that presents the committee so they can have some influence when appropriate.

Senator Klein: I am not sure how the law works somehow without an elected county official it would be difficult to have a taxing authority and have no representation. I think that is how we can to that resolution.

Rep. Keiser: If you want the mill levels in there.

Senator Klein: We were comfortable with the mill level in there in the event of a default.

Senator Schneider: Page 3 line 5 "the member entity may designate a alternate representative to attend meetings and to act on the members behave" I think that is sufficient.

Rep. Keiser: Regardless of whether you do a bond or a loan the provision of having the counties participate would if necessary with that mill obligation. I think it is a great idea.

Senator Schneider: That part of the bill was amended by a former county commissioner.

Rep. Keiser: It would be the first line of defense on a default the state would be the second. We would have to draft some language to that affect that would clearly state that provision is in first position unless they implemented prior to any alternative.

Senator Klein: The first provision of the authority would go to make sure that they could do what they could to raise the revenue amongst the membership. The second line of defense was to go to mills the authorities don't want to default. If we are going to allow the authority and not the State Water Commission to build it that this should be there skin.

Rep. Keiser: That is a given and bring us back to page 13 the definition of a default because if they are second or third when there is a default that mill kicks in. When need to define when do the 5 mills kick in?

Senator Klein: Karlene gave us some examples of what where we might be if no one is a default she provided 2 different serials that we could in the language that we can understand it.

Rep. Keiser: I don't have one we can get copies for the committee and then come back to that. Regardless of the way we finance that we need to know so whether the mills kick in or some other alternative what is happening.

Senator Schneider: I received an email from a county official there is a portion of mountrail county that would benefit and others wouldn't, he was concerned that the mills would be on the entire county perhaps we need to be explicit.

Rep. Keiser: We need to move forward on this. We will adjourn the conference meeting.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/15/2011
16650

☒ Conference Committee

Committee Clerk Signature

Minutes: 4 "attached testimony."

Rep. Keiser: We will open HB 1206 all are present. I asked if they would rerun the numbers on the loan as if it were comparable.

Dave Johnson: With Advanced Engineering yes we run those numbers.(see attachment1)

Senator Klein: Based on what we have been working on the 75million out of the Permanent Oil Trust Fund and ready to hand out some sheets on that.

Senator Wardner: I am going to hand this out. It has lots of details and we do have Karlene Fine working on some details. This is to give us a general direction in which we would like to go. (See attachment 2) The money would come from the Resources Trust, a grant of 25 million, Permanent Oil Trust 75million; we do have dips on the money on the status report. They would only take the money when they need it. Total repayment of that package would be 120 million.

Rep. Keiser: This is the senate model with some details plugged in?

Senator Wardner: That is correct.

Eric Hardmeyer: President of the Bank of North Dakota. Yesterday Senator Klein and I had a conversation about a different concept where you could utilize part of the Bank of North Dakota, part of the Permanent Oil Trust Fund Mr. Porter and I devised another serial using that strategy. What you have is a flow chart of how this might work. (See attachment 3)

Senator Wardner: If we did go that route and there was a default you wouldn't have to worry because the North Dakota General Fund is going to back it up and the state would take over the project.

Eric Hardmeyer: I was not aware that the state of North Dakota was going to backstop the project that may have been implied.

Rep. Hofstad: Does this still provide more lending opportunities as we enter that second phase or are we up against any limitations?

Eric Hardmeyer: This provides us additional capacity we have a lending limit of about 50 so it will give us some capacity in the future phases to do more financing.

Rep. Keiser: If the committee were to increase the amount in phase one it would split it 50-50?

Eric Hardmeyer: Yes.

Rep. Keiser: I have a question for the senate because we did not get much testimony on our side from the partnership group. Did you receive much input relative to commitments that they had made relative to water development in other communities throughout the state?

Senator Klein: I don't recall that. Our focus was on this project individually and that we understand there is some crossover because there are other water projects out there they have all come together as a partnership. The buy in on the commissioners on the mill levy was that the commissioners want a seat.

Senator Schneider: I don't think we heard from anybody in North- Western North Dakota saying if we do this the project is not going to get funded.

Rep. Kesier: Are you comfortable with us using those funds?

Denton Sucki: Chairman of the McKenzie County Water Resource District. We really appreciate the universal acceptance of the importance of this project and the necessity for the haste and that is evidence by the recent vote in the senate and the house. We came together we spent a lot of time on the structure of the board trying to make it not unyielding. We want to be a team player with all the rest of all the water projects in the state of North Dakota. Williams and McKenzie County are members of the Garrison Conservancy District we contribute a mill levy to them. We are members of the Water Coalition, the North Dakota Water Users Association, Rural Water Districts and Water Resource District Association. I have with me letters of support (See attachment 4) it is because of those relationships that we have with all of those other water projects that dictated how we structured this project. The way this project is structured we thought that it would generate dollars to the state for other water projects in the form of increased oil expiration and oil production. My family is a private water developer has been for many years not all private water developers are opposed to this project. We stand in support of this project.

Rep. Keiser: You said the way it was structured everybody was supportive. That was through bonding. The way the senate moved and even if we had this combination approach we would be using the Permanent Oil Trust Fund or some fund. Is everyone in support of that?

Denton Sucki: Yes they are all in support of this my understanding is that as long as we are not compromising other dollars for other projects and this generates dollars for other projects in the future.

Rep. Keiser: That is good to know.

Senator Wardner: Are there any feeling with the county commissioners being brought on the WAWS?

Denton Sucki: We would prefer that they weren't we have a close relationship with our county commissioners. The board would be a lot better if we could stick with the entities that are a part of the project.

Rep. Keiser: Can we talk about the membership on the board and the 5 mills? I thought it was a great idea and then somebody I can't remember who mentioned that only ½ of the county would benefit from this and is it right to tax everyone in the county? If we are going to put the mills in I support the concept that maybe there should be county commissioners on the board. If we don't put the mills in then they don't have their skin in the game.

Senator Schneider: I think with minor changes we could make it pretty clear that this county have to levy 5 mills or the equivalent through special assessments or other means.

Rep. Keiser: I think that language would work.

Rep. Hofstad: If we could make that work and binding I don't know what the equivalent would mean I did hear from some counties who have the resources to pay and wouldn't have to go to the mills.

Rep. Keiser: We could ask Michael to start drafting language in that section.

Rep. Hofstad: I am trying to think of way of how you would set up an assessment with those benefited individuals. I think that would be hard to do because in a water district you have people that benefit and people that don't benefit.

Senator Schneider: That is a good point this approach would give the county some flexibility if they couldn't do a special assessment district they could still levy 5 mills.

Rep. Keiser: Whatever 5 mills equals in value.

Senator Schneider: A special assessment district that would raise revenue equivalent to 5 mills of property in taxes.

Rep. Keiser: They are obligated to make a payment or default of that value to the fund.

Senator Schneider: They would be required to levy those 5 mills.

Senator Klein: It would be the counties responsibility is on the backside and that is the worst case serial.

Rep. Keiser: We want to do a better job on this then what was done on other water projects. On the financing side I did check with house appropriations and the Bank of North Dakota offer and they said there is no money in tax fund anymore so we will have to look at the Resources Fund. If we are going to do the combination of funding why don't we do the entire project?

Senator Wardner: That would be fine but we would like to make sure there is something back into that Resources Trust Fund. Under this plan that we are proposing the Resources Trust Fund would get all of the capitalization and interest coming back.

Rep. Keiser: on your end.

Senator Wardner: If we split with the bank then only half as much would end up and if we have the bank do it all we wouldn't get anything.

Rep. Keiser: I am not saying the bank do it all I am saying if we do the entire project the 110 and go 75, 75. 75 million dollars was available in the fund so we started there and then went to the developer and said can you work with 75 million dollars plus 25 million dollars.

jSenator Wardner: I don't believe it was I believe after we had the discussion they said 100 million dollars then it became evident in the senate that they wanted to use our own money and that is when we moved to the Permanent Trust Fund. Could Eric come up and tell us if that was possible?

Rep. Keiser: We could ask Eric to think about it. They are coming in as the first position the second place so they aren't spending any more for a quite a while if we go 50-50 and do the entire project. If that is the case why don't we do it all? If we do the proposal presented here either one of the proposals why is the good name in the faith of North Dakota involved? That was for bonding purposes.

Senator Wardner: That is a wrinkle we haven't gone quite that far we were keeping our minds to this biennium and not looking ahead thinking that whatever needed to be done next biennium would be taken care of then. Having the Permanent Trust Fund do 75 million dollars and the Bank of North Dakota do 75 million dollars I would have to think about that.

Rep. Keiser: The house position is let's do the project and we will bond for it and we have the funding. If you look at the time table we will be in the next biennium before this project is completed.

Senator Wardner: I have plenty to chew on between now and Monday.

Rep. Kelsh: How does the money shift around and what is available should that proposed amendment on that income tax pass that takes it from 110 million dollars to 149 million dollars. What does that do to our bottom line in this project?

Senator Wardner: on the status report it going to put the pressure on the front page where you have the general fund and there will have to be some cuts.

Rep. Keiser: Why would bonding be advantages I hope that oil prices stay high and the revenue from oil and sales tax stays positive. We will close the conference meeting.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/15/2011
16662

☒ Conference Committee

Committee Clerk Signature Kmcneth

Minutes: 2attached testimony."

Rep. Keiser: We will open the conference on HB 1206. Michael drafted an amendment we talked about and this will give you a chance to look at it. (See attachment 1) On page 1 it provides additional information relative to the default language and then on the second page it goes into providing flexibility for 5 mills or any option outside of that. We also have another handout which Karlene has prepared that I did request (See attachment 2) and that done on the house side already for the committee. This was a sources and uses of funds if we had gone for the bonding and that sort of thing.

Senator Klein: If you have a conference meeting and you have a conflict the majority leader will sit in your spot.

Rep. Keiser: We will close the conference meeting on HB 1206.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
16714
4/18/2011
☒ Conference Committee

Committee Clerk Signature Jmiller

Minutes:

Rep. Keiser: We will open the conference committee on HB 1206. All members present.

Sen. Wardner: We are still doing some detail work but we're still feeling that the State needs to come up with the financing of this. We feel that it is saving the project money and it's going to be good for the state because it brings money back into the Resources Trust Fund. I'm having Carleen get us some numbers. The plan would be, right now, $25 million dollar grant from the Resources Trust, $37.5 million from the Permanent Oil Trust Fund (or whatever the name of the Fund will be when we're done) and $37.5 million from the Bank of North Dakota. The way that would work out, the Bank would get their money first. They would have a variable rate; the estimated rate would be around 3%; they would be paid first. They would get the interest on their loan, but the interest on the Permanent Oil Trust Fund part of the principle would go to the Resources Trust. You would have two streams of interest coming at the same time; one going back to the Bank of North Dakota, to take care of their capitalized loan and one going back to the Resources Trust Fund. As soon as the Bank of ND is paid, there would be no payments to the Permanent Oil Trust Fund until the Bank of ND was paid off. Then it would start paying off the Permanent Oil Trust Fund, but the interest then would all go, whatever was left, would go to the Resources Trust Fund. At the end, after it is paid off over the 20 years; it would be on a 20 year schedule but they can pay it off early if they want to. Then we would take on the $25 million dollar grant from the Resources Trust Fund and the plan would be $5 million a year payments until it was paid off. They could pay it off all in one chunk; if they want to take five years they could. That's the general plan that we have. We think it frees up some money in the Permanent Oil Trust Fund for other things. We feel that this is a win situation. First of all, the State is getting something back. It's in the way of the Resources Trust Fund; not as much as if we take it all out of the Permanent Oil Trust and leave the Bank out. They are getting something. It is going to cost the project less to finance through the State of North Dakota in this combined package than to go out and sell those bonds. We need to protect that project too. We want it to be successful. There are other reasons than just the project alone, as we've talked about here and in other circles. If we can get those trucks off the road, or get them as close to the water as possible, so they aren't pounding all the roads, we are going to see a benefit in our road

dollars that we have to kick out of there. We think this will be a pretty good compromise and I will be honest with you, when you talk to the Senators and the people on the side of the Senate, they aren't crazy about bonding and somebody else getting all the money and we're backing it up and get nothing. That's kind of our feelings and our stand.

Rep. Keiser: If the bond were issued, is there anything to prevent the State from buying those bonds, if you want them to have the advantage of the interest.

Sen. Wardner: No, that would be something the State could buy the bonds. I don't see the advantage, but I would say that yes, the State could buy the bonds.

Rep. Hofstad: The idea of having the Public Finance Authority to do the bonding, would that be a little more palatable to the Senate or not because that is essentially our bonding company and again, we would receive the interest and the revenue off of that.

Sen. Wardner: I would have to see how it would work out. I think one of the areas that we're concerned about is bringing some revenue back to the Resources Trust Fund. If there's a proposal that we could work out and some money coming back so the Resources Trust Fund is still getting a return for other projects, we would truly look at that. I can't say absolutely yes, but I would think that our own bonding agency, they have to take care of their bonds and make sure that they do their due diligences as far as capitalization of those bonds. I don't know how that would work for sure.

Rep. Keiser: The other question I have, how do we implement Phase II.

Sen. Wardner: When it comes to Phase II, I think we're pretty comfortable on the other side, because now we'll see what happens. We're not putting everything on the table. We're putting a big part of it so that they can be successful. At the end of this biennium, we'll be in session before it is over. We'll get to look at the projects, see where they are at and react from there. It's like carrying a football, you have to know when to cut and when to sprint for the outside and that will give us an opportunity of how to react to what they've done. We're comfortable with that and we will look at that at that time. We know that there have been some commitments of $5 million out of the Resources Trust. I keep thinking that the way the activity is going out there, there might be more dollars available in the Resources Trust Fund that we might be able to dedicate out there as a grant. Maybe we don't have to borrow any more in the future. Maybe things go so well for them out there, and I'm being really optimistic, that they'll generate some money that they can put right back into building infrastructure. Now that's probably dreaming, but those are possibilities. We would be able to take a look at that at the end of this biennium or when we meet again.

Rep. Keiser: But that, in effect, is starting from scratch in looking at it. What kind of sense of comfort would you have as a developer. What commitment is there.

Sen. Wardner: I know the State of ND is behind me. I think that's better than some bonding company. Of course, they have to sell them all at one time.

Rep. Keiser: They are committed if they sell them all at one time.

Sen. Wardner: What would be the worst case scenario. They would still be selling water. Let's say that we don't give them a cent and say that they're on their own. They would still have a means to generate revenue. I realize that they would have a debt that they would be paying back to the State. Maybe they would be able to put some away and continue the project. However, I would think that the Resources Trust Fund is going to give them the $5 million and I think they are going to get something from the State. Keep in mind when the SW water pipeline was built, there were some years if they had $8 million dollars for a year, or a little more than that for an entire biennium, they were thrilled. Now it goes slower, there's no question about that; they had to prioritize. That's what I would see as the worst case scenario, it would slow the project down. We might not give them as much, but I think that will be a top priority for us, getting water out there so those communities can grow. If we get water, they will be able to build homes and people will come and live there, especially the people that are going to be left after the drilling and development are done. You are going to have to have people that support that industry. If you don't have water, there aren't going to be any homes built. I just keep thinking about our own community, where I'm from in Dickinson, if you take away the SW water pipeline, I don't see the Oil companies hanging around Dickinson. They are going someplace else because we were running out of water. We were going to bring it back from the third cell of the lagoon to keep water. Maybe we would have found a solution, I don't know. It would have restricted the growth of our community. I think that's a pretty top priority as far as the State goes, because the more people that are there, the more revenue we are going to receive as a State.

Rep. Keiser: Again, that's the House's position. If this is a good project, it's a good project and you do the project vs. creating a potential problem two years from now, because they can't fully implement the plan to maximize the return on the investment.

Rep. Hofstad: Just to piggyback on that, if you look at the chart that they supplied to us, that second Phase is those rural developments. If you cut to the chase, I think that is what this plan is all about. It's building rural ND. It looks to me like there are three rural phases that are part of the second phase of this project. As we go forward, it would certainly be important to me, and I think probably to the House's position that we make a commitment to that second phase.

Rep. Kaiser: As I understood it, we can accommodate that by increasing the $85 million. Is that your understanding.

Sen. Wardner: From the Senate's standpoint, if we can find the dollars, I think we would be fine with the $150 million in making sure that it was all committed. But right now, it's kind of an issue for us. We've tucked so much money away and earmarked so much money that we don't have enough laying there to commit to the $150 million. The only thing is that we could commit to it, but you can't commit the next session. They can undo everything that we've done.

Rep. Keiser: We had to argue for the bonding. That's why the House got to where they got.

Sen. Wardner: I think we're comfortable with seeing how it lays out and then we're ready to go. When you look at the cost of the bonding, you have to have insurance, you have to do due diligence; they got $2 million dollars on top of just the capitalization of this thing. We think that we're assisting the project by loaning the money.

Rep. Keiser: Again, we took the weekend to think this over. There are a couple of major issues that we're working on. The source of the dollars, the magnitude of the project, the organization of the board structure and other oversight issues that we have and I again checked on Saturday, when I was up, what is the source of dollars relative to the Permanent Oil Trust Fund, we're being told they aren't there. If they aren't there, and I know that you keep saying, well if you check on it and they are there, they are a line item. We're being told that ultimately they're not going to be there. So we need to find some other source of dollars just in case, I guess, if they're not there. So that brings up what are the other sources; the Resource Trust Fund is a possibility. I did have an amendment drafted that we would use dollars from that. I don't think there is much in there to utilize. Another thought that I had was to approach it as a construction loan and to allow a variable rate, but within certain limits from the Bank of ND and back it with the Resources Trust Fund dollars to secure it. That's another alternative that would keep all the money here, and wouldn't necessarily require the Resources Trust Fund dollars to be expended at any time until there is a default. I am also strongly committed to, if we're going to phase this at all, which I'm not overly supportive of, but it would not make sense not to do the $85 million based on the information that's been provided relative to reaching those communities in phase I. It can and should be done in my opinion. So those are the issues that we have. Any comfort level in asking the Bank of ND for a construction loan with limitations on the interest rate. I mean it's going to be variable.

Sen. Wardner: We would certainly take a look at it.

Rep. Keiser: We could back it with the Resources Trust Fund dollars, we expect there to be a bump; you can't spend it really, but you think it's going to be there. But

if this project ever did go south, where are you going to pay for it from. You only have a couple of options. Where's the Water Resources Trust Fund dollars come from, a significant proportion comes from Oil.

Sen. Wardner: Just remember, if it goes south and we bond, we're on the hook. It's ours and we have to pay those big dollars back on those bonds. Whereas if it's our money and I think we are being a little bit conservative if we use state dollars and we're willing to take a look at this construction type loan from the Bank of ND. We'll take a look at that and see how that would lay out as far as the project.

Rep. Keiser: I don't see there being much difference between bonding and borrowing if it goes south. If you put $200 million, with operating overhead, administrative costs to issue a bond and a two year prepaying, you put $200 million aside. You draw on that. First of all, you're going to draw on the payments. That money is sitting over in basically an escrow account earning money. Typically on a bond of that magnitude, where your draw is coming down the road, you will earn maybe enough to pay the majority of the first year's payment. That money is still sitting there. A year later, you have taken $80 million out. You still have those dollars over there. If the project were to stop, let's say the federal government intervene and said that fracking is no longer allowed, that's the end of Oil as we currently have it out there. This project isn't going to make much sense at that point. Then, you're still going to have the remaining amount of dollars sitting in that Fund to be paid out to the bond holders eventually. Now you have a 10 year call, if you're going to pay interest and there is going to be that associated debt. The trade-off is you're going to have the bond market having to approve this project. If you went to the Bank of ND on a construction loan, and you took $80 million out, plus accrued interest that was or wasn't paid and the project is dead, you're out $80 million. You're out $80 million either way. The difference really is on the call, the delayed call and the interest associated with that. There would be a differential but you would be obtaining the advantage of having the market approve the project as well. There's a reason and you wouldn't have leveraged any other dollars necessarily. At the point of a default, you would be leveraging dollars. You would be doing the same leveraging we'll do if we go through a construction loan or any other plan if it goes south.

Sen. Wardner: On any of those, during the time of the construction, the State really doesn't get anything out of it and we want to put money back into that Resources Trust Fund. So when you do that, that's out of the question. The same thing with a construction loan from the Bank of ND, they are going to want all of the capitalization coming back to them and nothing going over to the State. Even though we will take a look at it, one of the things that the Senate likes, is that there is money flowing into the Resources Trust Fund to continue to help other water projects throughout the State. It may not be a lot but it will be something. The fact that, if we're backing it anyway and it does go south, it will simply be that the State Water Commission will take over the project either way. We would still be in a better position I think by doing it ourselves than to do it with the bonds.

Rep. Keiser: Any comment relative to the $85 million, any feelings on that vs. the $75 million to get to those rural communities that are outlined in those little clouded areas.

Sen. Wardner: We had come up with a commitment to the $75 million. I don't want to speak for our chairman here, but I think we will surely consider it and talk about it. But we have no guarantees on that at this point. We need some time to look that over.

Rep. Keiser: Is the Bank of ND here. Does anyone want a comment from the Bank on a potential construction loan vs. bonding.

Tim Porter, CFO Bank of ND: If we're asked to do some kind of construction loan with a variable rate interest that is something that we would be prepared to do.

Rep. Keiser: Are there any limitations, restrictions on the Bank of ND in terms of the magnitude of a construction loan like this, or any other conditions other than due diligence on the loan.

Tim Porter: Not really, as long as we know that there is some kind of back stop at the end. Whether it's going to be bonding or some other method of repaying the Bank at the end of that construction period doesn't really matter.

Rep. Hofstad: Would you use collateral, or what kind of collateral would you use to guarantee that loan, just the good faith of ND or how would we guarantee that loan.

Tim Porter: Well it would be our understanding as we're going through the due diligence process that somehow that loan would be backed by either the bonding model or some other method of the State coming in and taking that out.

Sen. Wardner: The House is talking about the total project, $150 million. Didn't we talk the other day about what happens when you go over a certain amount, that then you need to have that London thing involved with it. Can you explain that. Wouldn't there be an increase to the interest rate and you have to have more security when you go over a certain amount.

Tim Porter: I think what we're talking about was our limit as far as our credit limit. Right now we have a self-imposed limit of right around $50 million dollars per loan. The London thing would be the Libeler rate which would be how we establish the interest rate on that loan.

Sen. Wardner: Would you have to go through more diligence if we go over the $50 million. Is there more to the process.

Tim Porter: We would have to take a close look at exactly what's the collateral is for the loan. We do have other ways of financing projects that go over $50 million dollars. We can bring in other participants on loans such as that as well.

Sen. Klein: The Bank, in the bill, would need to do due diligence under the bonding provisions the way it is set up. Is there a 100% guarantee then that would, under the bond provisions, would be able to say that this is a good deal. I'm trying to look for a comfort level. Isn't there a little more comfort with the State borrowing the money vs. when you are doing due diligence, there is no 100% guarantee that at the end of the day that the Bank's going to say, you bet, go for it. I'm looking for this comfort zone.

Tim Porter: We'd be looking for that same level of comfort. If the public finance authority is obligated to issue debt at some point, that's backed by the moral obligation of the State. That certainly would provide more comfort, if we were to do a construction loan, that they were going to take that construction loan out. But that can all be written into the legislation too.

Sen. Klein: But as the policy makers here, if we say we are going to borrow the money from the State or the Bank, the project is pretty much going to go forward vs. whether or not you are going to do due diligence on a bond that we aren't sure that it's going to move forward. Don't we have a better guarantee by approaching it as borrowing from the State direction.

Tim Porter: If the public finance authority is given the authority to issue debt on this, they would have to go through the due diligence process also. There would be the possibility, if they went through that and said that it wouldn't be a bondable deal, that we would be hanging out there, if that's what you are asking vs. going through a different Fund.

Sen. Klein: My thought is that when you do due diligence on a bond that the State is morally obligated for $150 million, for example at the beginning. There has to be a little more due diligence than if we borrowed $37.5 million from the Bank; just saying that you set the parameters, is there not.

Tim Porter: Either way, we would want some kind of commitment that the bonding was done. So, whether or not, the public finance authority would have to do the due diligence upfront and provide us some type of guarantee that it's a bondable project. That is something that we would look at as we're doing our own due diligence, as what is backing this.

Rep. Keiser: Just a follow-up on Sen. Klein's question. I don't know if you quite answered it. Do you do better due diligence if it's a $100 million vs. $35 million.

Tim Porter: We would do the same due diligence. We would have to make sure on a $100 million dollars project that the revenues and whatever else is backing that bond, are in place. We would need more guarantees on a $100 million project than

a $37.5 million dollar project. Of course, we would do the same level of due diligence either way.

Rep. Keiser: If the Resources Trust Fund were the back stop, would that give more comfort to the construction loan approach, or the loan approach either one.

Tim Porter: If it's the Resources Trust Fund and you put that into the legislation, that's the back stop and that certainly gives us a lot of comfort. If it's the bonding side, we would have to make sure that it is a bondable project; so that takes that level of due diligence one step further, but once that due diligence is done and in place and they have authority to bond, we can get that level of comfort as well.

Rep. Hofstad: If we go to a construction loan, will you need a dedicated Fund to guarantee that loan from an Oil Trust Fund, etc. Will you need some instrument to guarantee that.

Tim Porter: We will need something at the end of the construction period to pay that off. So whatever is decided is going to be that source of revenue. I don't think this project, the way it's structured, without any kind of State back-stop, would support that construction loan without having the permission to either bond or tap one of the other Trust Funds.

Sen. Wardner: What would be the difference do you think between the public finance authority did the bonding or a bonding company that's out-of-state that was planning on bonding the project. What's the difference.

Tim Porter: The public finance authority obviously already has the moral obligation of the State so there wouldn't have to be any additional language added to the bill to give them that authority. Everything else would pretty much be the same, the public finance authority may have some additional costs as far as that agency in issuing debt, but I think they have a cap of $7,000 that they can charge a project. So it's not a significant amount.

Rep. Keiser: I'm just trying to explore the options with the Bank of ND. Typically when you build a house, you get a construction loan, and then you transition it into a long-term mortgage. If we were to phase this project into a phase 1, is over a two year period, so that's the period of the construction loan, and then there's not going to be the revenue to pay off the construction loan, unless you tap one of the other Funds. What the feasibility of a construction loan that evolves into a long-term loan at the Bank of ND; a 15 or 20 year loan based on the phase.

Tim Porter: You're asking the Bank of ND to do that long-term loan...

Rep. Keiser: With the back-stop from some Fund, if necessary.

Tim Porter: At some kind of a floating rate or a fixed rate option.

Rep. Keiser: We would like the option of a floating rate that could not exceed a certain amount or a fixed option.

Tim Porter: Under either of those options, we would be required to do some form of hedging if we put a cap in place or if we do a 15 year fixed, we would have to go out and hedge that, because our Funding base is a variable Funding base. We don't have any kind of deposits that are structured for that 15 year term that we could kind of pair off against this. We wouldn't want to absorb that interest rate risk. That would increase the interest rate, initially at least, quite substantially; and higher than what it would cost to bond for the project and that goes back to what I explained the other day about the tax exempt vs. taxable Funding.

Rep. Keiser: Is there an option to put in and use a variable rate but apply a fixed rate for the first two years, and if the variable rate exceeds the fixed rate, that that interest would accrue so the balance of the loan would become payable once they had cash flow moving.

Tim Porter: A short term commitment like that would be more doable, to do a fixed rate. We would prefer to tie it to a Liebur because Liebur kind of follows that Fed Funds Market, which is a good index to use vs. our deposits.

Rep. Keiser: Thank you. We will adjourn until 10:30 a.m.

Rep. Keiser: We will reopen the conference committee on HB 1206. All members present.

Sen. Wardner: I have something else at 11:00 a.m.

Rep. Keiser: At one point, Sen. Andrist came up and said, "Lynn is saying that we have $45 million dollars a month coming into the Oil Trust Fund, so why aren't we using that money because it's going to be there for the short term. There's not anything bad that's going to happen short term". So I talked with our appropriation committee and they said, right now the rules are that you have to use the revenue forecasting. You cannot spend beyond what the revenue forecast is, and of course, that gets adjusted. The revenue forecast, and Allan went through this with us the other day, is $617 million for the Oil Trust Fund; $71 million goes into the general Fund that's already been accounted for. The remainder goes into the Permanent Oil Trust Fund and that the Permanent Oil Trust Fund does have in it currently, the language from the Senate amended version of the bill with the $75 million, leaving an ending Fund balance of $35 million. However, we currently are $110 million dollars short. That doesn't mean that we're going to end up $110 million dollars short, but if you were to close down the session today, based on the current analysis, we would be. So they said that we are going to need some of those dollars. And I told them that we're going to have this tremendous income flow into

the Permanent Oil Trust Fund. So why can't we use it or even set up a trigger. The comment to me was that you can't do it because we've already appropriated it for the coming biennium based on the forecast. Although we may have projected a lower rate than the actual rate, that's the rate that we have to operate with. That's my understanding.

Sen. Wardner: You're right, we have to use what the estimates are in the budgets. We can't pretend that there is anything more coming in even if we know for sure that more is coming in. That is a correct statement. The only thing is that I realized we're coming down to crunch time and as far as that ending Fund balance, and you have to be careful, are we talking about the Permanent Oil Trust Fund or the general Fund. I think leadership on both sides are looking at melding them together. I'm not sure that I agree that it's a $130 million but we're in that ballpark. The $75 million is on the line and was committed as far as the calculations by LC. There are some other things out there that are still up in the air and whether they are going to put more money in or take more out, I don't know. The way the status sheet is right now, I was told that we are $3 million dollars below the line. That was one person's view of it. I realize that somebody else has different ideas on different bills and says we're going to spend this and somebody else said no, we probably wouldn't and so that's why you get the different in there. I don't have any problem with that. I think that the hybrid, between the Bank of ND and the Permanent Oil Trust Fund, frees up some more dollars for flexibility in the ending Fund and I think it saves the projects money and is something that will give the project money right now. As soon as we pass this bill and the Governor signs it, they can go right to work. If we do bonding, they are going to have to wait until those bonds are all processed and sold. As far as what you were saying, that is correct. We might quibble about the money that's left, but it's all in perspective of those who are doing it. There are different opinions and I grant that.

Rep. Keiser: One other idea that was floated, it wasn't mine but I will share it with the committee for your reaction, was that we could certainly, using the Bank of ND as the source of the dollars originally, have a payment restructure based on a combination of factors, kind of like the hybrid but different from the hybrid that was proposed. The Resources Trust Fund had its projects approved and they have been granted the authority to spend anything over that amount that might be received on projects they may wish to spend the money on. We could commit any dollars over that amount to this project. Because, once again this is, in part, an Oil project and that's where the dollars come from. The other factor is that we could request that if we are forecasting $617 million in Oil tax revenues that any amount over that could be applied against the loan and then the entity putting this package together again would be paying the Bank of ND interest on the Liebur rate right from the get-go and then would be accruing interest to any entities which were coming in on the back side to pay down the loan. In both cases, it would be a form of triggering payments without having to worry about all the projected uses that may be occurring right now. As Sen. Andrist suggested, I think the Oil revenue, hopefully, will be significantly above $617 million. Again, we can't apply it other than to say that it would have to

be applied in the biennium, any excess over that amount, would be applied to this loan.

Sen. Wardner: You're saying that they would get the $25 million grant from the Resources Trust Fund.

Rep. Keiser: Correct.

Sen. Wardner: Then the Bank would loan $37.5 million...

Rep. Keiser: I'm fairly committed personally again to the $85 million, I would go to the $85 million on a construction loan, and then convert that with the variable rate to a long-term 20 year loan, but that payments during the biennium would be made on any excess over the amount appropriated for specific projects to the Resource Trust Fund and then also by any amount over $617 million from the Oil revenue stream would be applied there and interest would then be paid to the State and to the Resources Trust Fund as well.

Sen. Wardner: So we would say that the half that goes to the Resources Trust Fund would be triggered, so at $42 million, any revenues that would come in over the forecast into the Resources Trust Fund would be triggered into this account for the project to use.

Rep. Keiser: Actually it would be triggered and be used to apply against the principle of the loan, to the Bank.

Sen. Wardner: So you're saying take it all out of the Bank...

Rep. Keiser: Yes, as a construction loan and converting it...

Sen. Wardner: I understand. You would have the construction loan at $85 million, and then if Resources Trust Fund goes over estimates, it would trigger those dollars to go automatically to buy down the principle right away.

Rep. Keiser: The same for the Oil Fund. The current biennium forecast that they are using is $617 million revenue.

Sen. Wardner: You're also using the Permanent Oil Trust Fund and the Resources Trust Fund, any amount over that...

Rep. Keiser: It would be the Bank, then the Resources Trust Fund, then the Oil Trust Fund. We might be able to get the Bank of ND out of this very early, and then start making payments to those Funds, the principle and interest, so they get some earnings on this thing.

Sen. Wardner: We will consider it and look at it. We appreciate your ideas.

Rep. Hofstad: The split between the Permanent Oil Fund and the water Resource Fund, how is that split.

Rep. Keiser: Again, I don't have the exact numbers. The Resources Trust Fund has an amount already tentatively approved, and I don't think the bills have passed the Floor yet; but it has been tentatively approved for the biennium based on revenues. If the revenues go above that, the current language has given them the authority to use those dollars for water projects within their discretion. This would lock those excess dollars up and it would come to this water project and they would come in first whatever those amounts were and then any earnings in excess during the biennium on the Oil side and I think they will be there, would come in and be applied against the principle here and that makes this project really go. The State gets the benefit. I'm trying to find a way to resolve the concerns that the State get the benefit of the investment and the risk.

Rep. Hofstad: Then, at the end of the project, would you increase that percentage back to the State or....

Rep. Keiser: I mentioned the 5% through 2040 and the response from one of the individuals is, "are we asking for 5% for every water project in the state". I said that I didn't know. I don't think so, but I don't know that.

Sen. Wardner: It's my understanding that the other projects, the Water Commission builds them and, like in the southwest, after operations are paid for, the rest of the profits come back to the State Water Commission, to the Resources Trust Fund to be used again.

Rep. Keiser: I don't think that there are significant profits that come back but I could be wrong. I think they are operated on a break-even basis; to maintain and keep rates low. As a result, there is really no return to the State on those projects. This is different; these are political subdivisions that are a part of us. If we can benefit them and save money on roads and win on some other areas, economic development, sales tax growth, etc. This is an economic development opportunity. But we could have a return because they are going to be paying interest on those dollars either to the Bank of ND or these other sources if we were to approve something like this.

Sen. Wardner: You're right, it isn't a huge amount of dollars, when you take a look at the investment, but as they complete and start selling water to the ethanol plant, all of a sudden that upped revenues a little bit and there may be some selling of water to the Oil industry for the southwest. Up until now, there hasn't been a big return but whatever profits they end up with after operations, it does come back. There hasn't been an interest rate as such. However, in this situation, the numbers that I have and they may have changed it, but I had $608 million was the projected estimated revenue for the Permanent Oil Trust Fund. The Resources Trust Fund is expected to pick up $200 million. It was $199.8 million, we'll just make it $200

million. So you're saying that any dollars that come in over that estimate and we'd have to estimate what it would be out two months, three months, etc. so it's on par. Anything that comes in over that then would go over to pay that construction loan.

Rep. Keiser: Yes.

Sen. Wardner: The only thing that's been a stumbling block, a primary concern of ours has been the fact that we wanted to get some money back to the Resources Trust Fund. This does not do that.

Rep. Keiser: It gets the interest if they loan the money, and you can certainly continue the provision that it goes through a period of time.

Sen. Wardner: But the project would have to take care of the Bank first.

Rep. Keiser: But they would be accruing interest on any dollars that they send forward, much like...

Sen. Wardner: So they would accrue it...

Rep. Keiser: I think people should pay interest for money they receive.

Sen. Klein: Does that take the $200 million off the table for other projects as it needs to be there to service the debt, or how would you envision that. The $200 million that is projected to be in the Resources Trust Fund.

Rep. Keiser: No the $200 million dollars is approved, that's out there. It would be the excess over and above that projected revenue. The water folks around the State, have been looking longingly at that excess and wanting to do something with it, I'm sure. I'm certain that they would not be overly excited but the reality is that this is a water project, a big water project.

Sen. Wardner: Just so the committee is aware, there was money left in, there will be money left in the Resources Trust Fund to my understanding of about $128 million and you add that to the $200 and you have the $328 million, which is committed. I have $235 million here, I better check those figures again, but there is $235 million that's been committed.

Rep. Keiser: This is a new strategy, but I think we are making some progress and moving in a direction that hopefully we can find a satisfactory solution.

Sen. Wardner: Just to make sure I understand, you have the Permanent Oil Trust, the Resources Trust Fund putting money into the Bank of ND, so the minute they do, then interest starts accruing on that money and we would wait until the Bank is taken care of before we start paying the interest back.

Rep. Keiser: Then they would pay principle and interest on the loan, back on those Funds. It's the same amount of interest long term, either way on the deal. We will adjourn. We'll schedule something for this afternoon.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/18/2011
16742

☒ Conference Committee

Committee Clerk Signature Emmett

Minutes: 3attached testimony."

Rep. Keiser: We will open the conference on HB 1206 everyone is present. They still think the bonding was the better route. I suggested to them that at least from the senate side bonding was not a possibility phasing was critical and that what we are looking at was 85-25 million dollars at this point followed up by the balance to be deliberated on in the next session.

Rep. Hofstad: That sums it up.

Rep. Keiser: Not that we have to do that.

Senator Wardner: I would like to put some numbers in and see if I am thinking the same way you are. You are talking about a total of 110 million dollars. 25 million dollars would be the grant from the Resources Trust and the other 85 million dollars would be between the two funds. So we have 85 million dollars and we get a construction loan from the Bank of North Dakota. The Permanent Oil Trust Fund estimated at 6.10 million dollars anything that would come in over the 6.10 million dollars would go to pay off that construction loan as it comes in. We wouldn't take it until it is over that amount. We would wait until it was actually over then it would trigger it.

Rep. Keiser: That was my plan.

Senator Wardner: We will say 80 million dollars and amount in the Resources Trust Fund would be 200 million dollars when 200 million is in the Resources Trust Fund anything over that would go in. If those two things happen we could pay off the loan and it would belong to the state just like we are proposing now.

Rep. Keiser: It would not belong to the state. It would belong to them but those people would have to pay those funds off.

Senator Wardner: We start at some point with interest accruing.

Rep Keiser: The minute you start borrowing money the interest would accrue.

Senator Wardner: In the next biennium 2013- 2015 the first 50 million dollars it might increase would come out of the Resources Trust Fund. It would go right to the project. The other projects would have to wait until that had accrued before they get theirs.

Rep. Keiser: That was what I had talked about. We are talking about 2 options that are somewhat similar. The Bank of North Dakota would do the construction loan and then the way we would transfer the loan from the Bank of North Dakota either to the Resource Fund or to a combination of the Resource Fund and the Oil Fund. They would maintain the loan status. 100% plus the principal plus interest would be paid to those funds.

Senator Wardner: So you are saying in this biennium we are not worrying about the Permanent Oil Trust Fund that would be off the table. We would take from the Resource Trust Fund in the second proposal. In the 13-15 biennium we would take whatever we need.

Rep. Keiser: The Devils Lake project in this biennium has about 120 million dollars which is in theory a onetime spending allocation. That would leave those dollars available for a onetime spending as a loan in the next biennium to make up the balance of phase one and phase two.

Senator Schneider: Could we get that proposal in a format so that we could take a look at it.

Rep. Keiser: I would be happy to try and outline that with this flow sheet. The third option is to go to the bond market and leverage those dollars and recognize that if you have a moral obligation you are still potentially going to obligating something if there is a default. The way we had it structured on the house side, they did not require us at this point to allocate and dedicate those dollars and take them out of circulation from either of those funds.

Senator Wardner: That 25 million dollar grant that would not be interest?

Rep. Keiser: When we first designed it we had a repayment schedule on those 25 million dollars. It was at the tail of this project I am not certain why we should be giving a grant without interest accruing on the grant. A grant doesn't have an interest accruing. This is not a commercial project this is a political subdivision project that the state is taking the moral obligation out. We concur with the senate there should be some return to the state for taking that position.

Senator Wardner: We are working on a little proposal too we are not ready yet. We will take a look at this. The only thing I will say is it does take money off the table for other water projects. We will investigate it and see just how critical that is.

Senator Wardner: We also have a proposal that was handed to us.

Senator Schneider: Last week our clerk drafted an amendment dealing with the mandatory levying of property mills or getting that revenue from another source. I don't know if we

want to draft the big issues first and work our way down or discuss that while we are here. (See attachment 1) it has the default amendment in there.

Rep. Keiser: One clarified the default situation we can get copies right now (see attachment 2-3) They all interplay if the state is making the loan and you want them to have the requirement for the repayment to levy up some forms that is reasonable. Would you review those 3 from your legal prospective and kind of recommend to the committee what combination if any we should be dealing with. I did receive from Mike Dwyer a very summary paragraph of how projects are funded. If other state water projects want to do that we could always incorporate that as an amendment for all water projects. That would be paid back with interest but I don't think that is the intent of what this was. We will close the conference meeting.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
16766
4/19/2011 AM
☒ Conference Committee

Committee Clerk Signature

Minutes:

Rep. Keiser: We will open the conference committee on HB 1206. All members present. We have four new proposed models of financing. Based on the information given yesterday, I did ask the Bank of ND if they would create a visual for the two proposals which I suggested yesterday on financing. The Bank of ND did that for us. I think they put together one more for the Senate. We'll start with these and go from there.

Tim Porter, CFO, Bank of ND: The two options that you see in front of you were put together yesterday, after yesterday's meeting to reflect the House version of HB 1206. The first option is the $110 million dollar option without the Permanent Oil Trust Fund on it. You can see the Resources Trust Fund doing the $25 million or MRNI doing the $25 million as the first (off to the right hand side). The Bank of ND would do the construction loan of $85 million dollars. So the total project is $110 million dollars, so that reflects the $10 million dollars being added back in. The repayment on this plan is, of course, the project revenues and then the Resource Trust Fund will begin to pay the Bank of ND back when it collects in excess of $237 million dollars during the 2011-2013 biennium; so you can see that arrow coming up to Bank of ND. That is in the form of a loan to the Western Area Water Supply Authority. In addition to that, to fund Phase II and also to take the Bank completely out of that project, the remaining amount would be added into the 2013-2015 budget for the Resources Trust Fund. Once again, that would be in the form of a loan to the Western Area Water Supply Authority. When we looked at the financing for the Bank of ND, we talked about some type of variable rate financing based upon Leibur, plus a spread between 175 or 200 basis points over the Leibur; right now that would be anywhere from 2 to 2.25 for a rate. The estimated cost using a 3% debt schedule for interest would be about $2.5 million dollars in that first year, and of course, that would go down from that point forward.

Rep. Keiser: Let's label this option 2 (see attached). Option 1 would be the original handout that you had earlier.

Tim Porter: The next option was very similar to the first option, except that the Permanent Oil Trust Fund is added in there. In this case, they would also be on the hook for any revenues collected in excess of the $671 million during the 2011-2013

biennium. So you can see where they get added in to pay off the BND construction loan. On top of that, we still have the projected budget, any additional remaining to BND and to fund Phase II. The remaining $50 million of this project would be added to the 2013-2015 budget for the Resources Trust Fund.

Rep. Keiser: Let's label that option 3 (see attached). Are you prepared for your option 4?

Sen. Wardner: We are.

Eric Hardmeyer, Bank of ND: I have option 4 for you. This is a result of a meeting I had yesterday with the Senators and the Governor. In the Senate option 4 (see attached), is a project of $100 million dollars funded from three parts. We have the Resources Trust Fund grant of $25 million, Resources Trust Fund loan of $10 million, and the BND loan of $65 million. As you look at the light arrows there you will see the money coming in first, comes from the $25 million grant, the second comes from the Resources Trust Fund loan of $10, and the third comes from BND. We would propose that we be the agent that would provide all the financing for this as the monies were needed. As you see repayment on this, it would be in the form of the dark arrows there, where BND would be paid back first. The loan to the Resources Trust Fund would be second, and then the grant would be third. Over on the bottom left-hand side, you'll see some of the discussion points that we talked about yesterday. Of course, we are talking about the $65 million dollar loan funding the construction, which would be at Leibur plus a spread. Today we would look at that spread being similar to any other state agency, Leibur plus 1.75, which would be around 2%. We've estimated for it to be about 3% just to give us a little bit of room there. Interest costs would be about $1.9 million a year. Repayment from the project would come from the cash flow from the project. The second bullet there is excess revenue sweep, that's a common thing that bankers use. We've used that a lot in the ethanol industry. So revenue over and above expenses and debt service would come back and we would sweep that out and reduce the debt earlier. Third, this would be the big difference that we talked about before, it would be a moral obligation from the State of ND; similar to the way that the Public Finance Authority is handled. Over on the right-hand side you will see the Resources Trust Fund notes. The bottom one would be the $10 million loan, interest only. When BND is in repayment, we figured it at 5% and then you go into schedule P/I when BND's repayment is finished. At that point, you can decide what you want to do with the $25 million grant, how you want to handle that. That's basically the discussion we had yesterday.

Rep. Keiser: There was at least some sentiment on my part to raise this to $110 million, so that we could get those three rural areas in the first phase. Is there some reason you chose not to use $110 million, are you sticking to the $100 million or do you support the $110 million?

Sen. Wardner: In reviewing all the information that we've gotten, we thought $100 million was fine. In looking at the revenues and the attempts to get all of the dollars that we thought were necessary, we just feel comfortable that the $100 million dollars will do the trick. That's what we were basing it on. You might wonder where the other $10 million came from. We visited with Sen. Fischer, who is chairman of the conference committee on the Water Commission and some of those projects are not going to happen. We respect him because there isn't anyone in the Legislature that knows more about the water projects in the State of ND than he does. He felt that we could pick up $10 million more from the Resources Trust Fund; however, we felt that had to be treated as a loan and not a grant. As far as the $65 million, we want this project to succeed, so we're being a little conservative and so that's why we feel that the project funding of $65 million is about as far as we should go with the BND.

Rep. Keiser: The Bank is unwilling to go to $75 million.

Eric Hardmeyer: I wouldn't say that's the case. This was the scenario that was put forth to us.

Rep. Keiser: Mike Dwyer met with Rep. Hofstad and me and suggested this option.

Mike Dwyer: This is just some information. The Resources Trust Fund has $5 million dollars that was dedicated for the Red River Valley Water Supply Project that looks like it's not going to be able to be spent there. That's why we used the $30 million. This still looks at the Permanent Oil Tax Trust Fund. The thing that I communicated to Rep. Keiser and Rep. Hofstad was that the State Water Commission does have the very same bond capability and authority as the Public Finance. If bonding becomes part of the equation, then that is something that could be looked at. In 2013-2015, that was kind of the main focus of the discussion was that Gov. Hoeven, a number of times, assured projects that they would receive the money when it was needed. We feel that the money for the Phase II would be available in the Resources Trust Fund in the 2013-2015 biennium and that there would be support for that. The sheet that I gave you has two sides. One is for $100 million and the other one is $110 million, because that's the discussion that you are all having, not I. Whether it was $40 million or $50 million next biennium, we're certain that the Resources Trust Fund would be able to support that; that was the main topic we discussed. We've actually used in legislation, legislative intent that next session is the preference, it's not a commitment on the legislature's part because you can't do that, but it's just a statement that if it were our choice, this is where we would like to see the money go. You can use all kinds of combinations of what you have come up.

Sen. Schneider: Have you see what we're calling proposal 4, we're drawing $10 million dollars of the Resource Trust Fund as a loan. Do you see that having any impact on scheduled water projects?

Mike Dwyer: We obviously would be concerned about the idea of taking the excess revenue from the Resource Trust Fund to make payments, but there likely will be some excess revenues. Whether it is $25, $30 or $35 million, Sen. Fischer's probably right, it is something that could be accommodated.

Sen. Wardner: If the project is under another's control, the State Water Commission still could bond it. Is that still a possibility?

Mike Dwyer: The State Water Commission, I think that Karleen would verify this, has bond authority and it has used that bond authority for a number of projects. Projects that it's built, projects that it hasn't built, where it has just granted out the money. The State Water Commission bonded for the Grand Forks flood control; it sent the money out the door to the Grand Forks Flood Control project and then those bonds are being paid by the Water Development Trust Fund. The statutes are all there, they've been to the market, they are experienced in bond issues. They have a limit, so the legislature would have to raise that if bonding was going to become a component of this package. Certainly, they are capable of doing it and have done it and not just for their own projects that they built. So you have the Resource Trust Fund, you have the Bank of ND, you have the Permanent Oil Tax Trust Fund, a possible bond issue if that's going to be a part of it, and then you have the next Phase II, which I'm saying that I think that there would be support for and money available in the Resource Trust Fund.

Rep. Hofstad: Can you tell me what the difference is between having the State Water Commission physically do that bonding, the BND, or a private company. What are those differences, if there are any, to the State?

Mike Dwyer: That's above my pay grade; you will have to ask Karleen.

Sen. Klein: Then under your scenario, if the Water Commission handled the bonding; would the Water Commission run the project because they have a bigger chunk of cash in the game.

Mike Dwyer: In the Senate plan, all the money was appropriated to the Water Commission. The Water Commission wasn't going to build the project but they had all the money so I am assuming that they would enter into an agreement with the local sponsor, and that agreement would include some provisions like review of the plans, the legislation that you passed as concurrence and I know there were some comments that it should be approval. It is not envisioned that the Water Commission would build the project; it would envision t he same thing as the Senate passed which is that the money would go through the Water Commission, and the Water Commission would, to whatever extent that the legislature dictated, would review, approve, supervise (whatever that might be).

Rep. Kelsch: Are the bonds that are issued from the State Water Commission, also backed by the moral obligation of the State of ND.

Mike Dwyer: You would have to ask Karleen that, but I am certain that would be case or if there was another funding source, or both.

Rep. Keiser: Perhaps we can have Karleen come up and answer a couple of those questions that have been raised relative to the bonding issue.

Karleen Fine, ND Industrial Commission: First of all, to the comment about whether the moral obligation is behind the State Water Commission. No, it is not the same. Not to say that you couldn't add it to their authority, but currently they do not have a moral obligation. They do have authority to issue bonds, up to a certain limit, and as you know, the tobacco income that comes in is committed to that project through that. That is where there limitation comes in, using those kinds of funds that are available. Another question is which would be more advantageous to the State, which process. It kind of depends. If you doing a loan with the BND, you have more flexibility than if you were going to the bond market. The bond market, you have the funds that are become available at a certain time, you have a certain debt schedule, and you can only call the bonds at whatever you stated in your agreement with the bond holders. With the BND loan, you have a little bit more flexibility, you can have a construction loan, you could perhaps pay that off early. Those sorts of things can be done. It depends on where you want to be and what funding sources you want to identify.

Sen. Klein: Would it be difficult in the Senate version, for example, that we put the moral obligation of the state; have we done that for any other Bank of ND loans and is it a problem.

Karleen Fine: I prepared some information on the moral obligation (see attached 4). The current law for moral obligation is really geared for bond issues. You can see in the top paragraph that I took a provision of the law that we have for moral obligation on the transmission authority and so you can see the background that we use for moral obligation for bond issues. So under Option A, is just a portion of that language that you might want to look at as "moral obligation" on a Bank of ND loan. Under A, there is a moral obligation that you will pay the entire amount of the construction loan in one biennium. Under the "OR" you would just pay the debt service that is due during the upcoming biennium. On other loans that the BND is asked to provide for short-term financing, you have statements frequently in your statute that says that the Dept., in this case the Water Commission would request funding for the next legislative session. It isn't saying that you "shall" but they will make the request; which is similar to what you have in the moral obligation. Again, there I have it in two different versions, 1) if you are asking for the entire construction loan repayment or 2) if you are just asking what the debt service would be for that one biennium. We have not done a moral obligation on the BND loan as you have seen in similar language for bond issues, but you have made statements in the past on loans that you will seek a deficiency appropriation or you will request funding at the next legislative session.

Rep. Keiser: If I could go back to Option 4, which is the option you presented. The House perspective, and let me use an analogy of the Heritage Center expansion. Last session the Heritage Center came forward and thought that they could not get all of their funding, so they phased it in two pieces. At the end of the day, it just didn't make sense; either we were going to do the project or not. We understand that it takes time, that not all parts get done in the first year, that it takes time. So they approved the entire project. As you will note in the options that were presented, even option 5, options 2 and 3 had a provision in there that in the next biennium we would be formally making a request for the balance of that funding. I assume that would be part of your option 4, so that we're committing to the project.

Sen. Wardner: We would, yes.

Rep. Keiser: It's not here, but I just assumed that would be part of it. We do have some funding options that have been presented to us.

Rep. Hofstad: As far as either of these options, in looking at the flow of that money, can that money flow to the State Water Commission for them to release to the Authority or do you envision that money going directly to the Authority, or exactly how does that money flow once the construction loan is made.

Eric Hardmeyer: I guess we haven't figured out exactly how that would work. I guess there would be flexibility in how we wanted it to work. I can't give you a specific answer on that.

Rep. Keiser: With the option 4 proposal, the first source of money would be the $25 million RTF grant; the second source of money would the $10 million, so $35 million dollars of the project goes in. Then the BND comes in, either at $65 or $75 million. That makes the BND more than just a construction loan. This is now finishing financing construction but obviously the repayment, you're first to be repaid. But this is now beyond the construction period for how many years, projected.

Eric Hardmeyer: We were envisioning that this would go from a construction loan into a permanent financing type of structure, and it would be 15-20 year repayment. We have various schedules based on either one of those.

Rep. Keiser: That's one of the differences between those plans, on 2 and 3, the BND is really in for a construction loan, and then we were taking the BND out with alternative sources of money.

Eric Hardmeyer: Yes.

Rep. Keiser: We will recess the conference committee.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
04/19/2011
16774

☒ Conference Committee

Committee Clerk Signature Emnette

Minutes: 0attached testimony."

Rep.Kesier: We are bringing the conference for HB 1206 to order. All are present. Does everyone have a full set of the various funding options? Let's have a discussion without a formal motion and answer 3 questions. Whether or not you are committed to going to 110 million dollars versus 100 Million dollars. Looking at the funding proposals themselves are there any that we can take out of the mix at this point and then focus and then we will have to make some decisions relative to that. (See attachments)

Rep. Hofstad: I support the 110 million dollars I think that it is important that we built the rural districts. The extra 10 million does that.

Rep. Kelsh: I am in agreement with that assessment.

Senator Klein: We started with 100 million dollars and that was good. We have to live within our means and so we settled on 100 million dollars.

Senator Wardner: I really wasn't in on the ground floor however as we come to the end and we are looking at a proposal 65 million is the proposal that we are going to be pushing and we will see what happens. Keeping the amount down from the Bank of North Dakota is important so that is one reason why I would like to stay with 100 Million Dollars.

Senator Schneider: I agree with the sentiment of the house providing the rural water is the most important that we do with this project. There is an opportunity to look and see if this financing will work two years from now. Where do you see the extra 10 million dollars coming from? Would that be the Bank of North Dakota?

Rep. Keiser: No the 2 proposals we put out which we put out are option 3 and option 4. Option 3 had the 110 million dollars and option 2 did also.

Senator Schneider: If we were to go with something along the lines of option 4 which came from the senate side would you see the 10 million come from the Bank of North Dakota.

Rep. Keiser: From my perspective it would be extending the Bank of North Dakotas exposure or increasing the Resource Trust Fund loan to 20 million dollars. They are in the second position and I think they will find that they have the 20 million dollars capacity to make the loan in this biennium. The other issue was option 2 and option 3 we had used the approach of a construction loan on the part of the Bank of North Dakota and backing it with dollars. The reason I say 110 million dollars is that this a moving target as we have met in our original committee and our subcommittee and now in this conference this information is provided. If you do 100 million dollars then phase 2 becomes the next 10 to take it out to the rural water areas. If we continue to work with option 4 the only sources I see is increasing the Resource Trust Fund amount or the Bank of North Dakota amount or to splitting it.

Senator Wardner: Let's take a look at option 3 we have 2 funds one of them we don't even know if it is going to be in existence which might be the general fund. I don't know if there will be a Permanent Oil Trust Fund. I find that is going to be a lot of resistance especially when we mess around Resources Trust Fund. If we want to be more upfront when we take it out when it is there that is one thing but when you start taking funding that is in the future I think we don't know that it is going to be there and second I think you created a lot of problems with the water users in the state of North Dakota for those that are still looking to do projects. I think we are involved in too many pots so to speak in that one. I have a problem with that one.

Senator Klein: As strongly as your leadership feels about your approach our leadership also has their strong feelings. We have been keeping them in the loop after the meetings and are comfortable about our approach and want us to stay that way because we are in it for moral obligations and want to keep it that way. We are trying to come up with something reaches a comfort level that the senate is in agreement on.

Rep. Hofstad: I reach those same thoughts because if you look at the water Resource Trust Fund I know and understand from being involved there are a lot of comments out there. There are lots of needs and most of those people have been to the table and expressed their needs. The Permanent Oil Fund or whatever we are going to call it we have a considerable amount of property tax relief on the table. I know at the interim committee as we look at the study to look at infrastructure across the state of North Dakota that to will require a significant amount of expenditures when we come back. We are obligating ourselves to something that might or might not be there.

Senator Wardner: When we started this we wanted this project to be successful otherwise we don't care for the bonding and I felt the house had problems with the Permanent Oil Trust Fund and taking it out of there because there are other needs for it. It can get killed on one side or the other depending what amendments we put on. I am committed to getting water to the people out there and I realize that are some things that we have to deal with and so when you start when you start dealing with those funds there is no question I don't want it to fail. On the project itself when we started we were to go with the state of North Dakota doing a moral obligation on a bonding that was going to be bonded with someone outside the state. In option 4 we are saying we are still going to do the moral

obligation but we are going to use the Bank of North Dakota. We have given on our side because we would have just as soon taken it out of the Permanent Oil Trust Fund. I feel we are treading a little bit on dollars that people have been involved in water may feel are rightfully theirs. We didn't dream those dollars up out of the blue we visited with the chairman of the conference committee on the water commissions budget and someone who we respect that has knowledge of the projects out there we felt we could go 10million dollars and then the idea was to bring the loan at the Bank of North Dakota because we don't want it to get to high. We have some concerns about it also. I think the Bank of North Dakota is alright not because we worked it to find ways to make it work we hope you guys would agree with it. We can debate the 10 million dollars that is still on the table but as far as how we handle this thing I think keeping it to as few funds as possible is best.

Rep. Keiser: I am all prepared to take something out and see what happens. If we were to proceed with option 4 could we increase the amount to 110 million dollars? Would it be unreasonable to split it and go 70 million dollars from the Bank of North Dakota and 15 million dollars from the Resources Trust Fund and then the provision that the 40 million dollars would be placed in the position for the next biennium from the governor's request for the Resource Trust Fund to do that after the Devils Lake dollars get freed up and than if we could agree on something like that we could start drafting the amendments.

Senator Wardner: I think that is fair we would need a recess here because we want to check about taking another 5 Million dollars out of the Resources Trust Fund. To see if that is something that we can do. When we went to 10 million dollars we were pushing a little bit and then whether we would even do the 10 million dollars. Putting the 5 million dollars to the Bank of North Dakota or putting 10 with the Bank of North Dakota if we decided to go and leave the Resources Trust Fund alone. We need to confer.

Rep. Hofstad: Could we make that number 15 million dollars if funds are available or if revenue exceeds expectation? Can we draft language of that nature?

Rep. Keiser: I am not sure where you are getting the 10 million dollars from because they have gone through the process of allocating dollars. We could draft the amendment so that if would come from the Bank of North Dakota with the provision that if the excess reaches a certain point then 5 million dollars would be transferred from the Resources Trust Fund into the into the Bank of North Dakota to reduce that.

Rep. Kelsh: On option 4 it has the Resource Trust Fund grant of 25 million dollars and yet it shows it repaid.

Rep. Keiser: We put that on the house side it is a grant at the offset and whether or not it would have interest associated with it until the repayment schedule started we might want to say it is in third position to be repaid and at that point when repayment occurs then it would seem reasonable to start charging interest.

Senator Wardner: I guess that is up for debate I thought the word "grant" is not a good term but we would be granting it and they would have to repay the principal and have always calculating as repayment of the principal but no interest.

Rep. Keiser: That is a zero interest loan.

Senator Klein: If this carries over from the original language and it seemed to us that there would be repayment of the 30 million dollars I don't recall that showing any interest being factored in there.

Senator Wardner: First we need to decide whether we want to go with the extra 10 million dollars and then we can ----.

Rep. Keiser: You have to make your own decision.

Senator Klein: We can give that try.

Rep. Keiser: We will reconvene and then adjourn on HB 1206.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
April 20, 2011
16798

☒ Conference Committee

Committee Clerk Signature Carmen Hart

Minutes:

Rep. Keiser opened the conference committee meeting on HB 1206. When we adjourned yesterday, we were going back to each of our respective chambers taking the various plans forward. You have something new that you want to add?

Senator Wardner: It is not a whole lot different than the one we were considering when we left. It is really option 1. **Attachment 1.** The next draw would be from the general fund, $37.5 million. The third draw would come from the Bank of North Dakota, $37.5 million. We would still leave the $10 million that we received from the resources trust fund, but it would be at the very end. As soon as they start drawing it, they would have to accrue 5%, and I think we are staying with 5% on the general fund dollars. However, the Bank of North Dakota would be a variable rate. That comes to a $110 million for this Phase 1 and 2. That last $10 million, they would pay interest on it when they draw it. That is the general plan. They want a seven-year payback to the Bank of North Dakota. When it came to paying back, Bank of North Dakota would be first. Then it would be our general fund. We think that if we go seven years to the Bank of North Dakota, seven years to the general fund, and then tag those other two, the 25 with no interest, and the 10 with interest on the end of that. We kind of like that because there would be money coming into the resources trust fund. The interest on the 37.5 that was general fund dollars goes to the resources trust fund. If they get to that 10 where we are asking for interest to accrue, the interest from that 10 and the resources trust that we are taking out of there at the end would go back to the resources trust fund. There would be dollars coming back into the resources trust fund for projects that other people have that are in the cue that want that.

Senator Schneider: In terms of the payback, it would be BND, first, general fund, second, and would the 10 million resource trust fund loan be paid back before the 25 million, no interest?

Rep. Keiser: Yes.

Rep. Kelsh: Looking back at our budget schedule that we had received that was dated April 7, 37 million out of the general fund leaves us with what?

Senator Klein: I don't know. The 75 listed on the permanent oil trust fund side, but whatever we decide to call it and I know that conference committee is currently working on

that as the majority leader on the senate side is on that conference committee, he said we are going to call it general fund money and this is how we are going to move this forward.

Senator Wardner: If you take today's budget status summary and take the numbers the way they are, we would have approximately 15 million, and that is merging permanent oil trust and general fund together. There are moving targets out there and that is going to change.

Rep. Kelsh: If it is a moving target and there are things that are going to be changing and we are committing $37 million from the general fund and suddenly another tax bill passes and we don't have it anymore, we have to come back and readdress this.

Senator Wardner: 111.4 million is in the figures.

Rep. Keiser: If it doesn't balance out, we can have the Bank of North Dakota as the fallback position. The Bank of North Dakota could just take a bigger loan as we had on option 4.

Rep. Hofstad: Is the $10 million in the resource trust fund money that you would put in their budget or would you attach this to any excess revenue that comes into that fund?

Senator Wardner: It is at the end because they are going to have it there. There are some monies that are dedicated now to a project that is not going to happen. If revenues come in over prediction, it will be there. It will be there without interfering with any of the water projects that are ongoing this next biennium.

Rep. Keiser: Where did the 7 years versus 10, 15 come from?

Senator Klein: That was the number that was hollered at me as I was walking out the door. I think he said ten and I said well, we were thinking seven. It is to keep it to more of a short term.

Rep. Keiser: Not on this option but on some of the other options, we had the provision that the Bank of North Dakota could sweep the fund. We have to be realistic in putting back a payment schedule that works with the recognition that if this project does what some of us think is going to really happen out there, the sweep is going to pick up all the early payment without us having to bind somebody. From my perspective I don't have a problem with the 15 year loan providing we have the sweep provision.

Senator Klein: It was my understanding that the concern would have come from the house side and the extensions so if you could work that out, it would be helpful.

Rep. Keiser: We all want this bill to work. Now we have to be realistic.

Senator Wardner: I agree. That is still a debatable number. We are not locked in on it.

Rep. Keiser: I am uncomfortable with seven. It just doesn't make sense to me, and I suspect that the house leadership is uncomfortable with 20. I am not sure that they realize the sweep provision that was in the other options so I might suggest 15 year payback.

Senator Wardner: The seven wouldn't start until after the construction phase.

Rep. Keiser: We have to clarify what that means. When you say seven years, you are proposing a five year with cash flow. The monies that are accruing interest are payable, and we need to look at a time period.

Rep. Kelsh: Is the 25 million up front from the resources trust fund in this proposal planned to be paid back too?

Rep. Keiser: It is the last one to be paid back with 0 interest which makes it a little different than all the other grants to water projects.

Senator Wardner: That is correct. When the schedule was made up on the one that we have, it was three years where there were no payments and then when she kicked in—we'll visit about that.

Rep. Keiser: We feel very strongly about the 40 million commitment where we put that language in this bill saying that the governor will put as the first priority in the water commission budget from the resources trust fund a payment of the last 40 million.

Senator Schneider: I am wondering what the committee thoughts would be about rather than taking a $10 million loan from the resource trust fund, having it come from the land and minerals trust fund. It is my understanding there is about $19 to $20 million in that fund. We wouldn't be competing with any other projects. It basically would just come out of the ending balance.

Senator Wardner: I am one of these people who don't like too many pots out there.

Rep. Hofstad: I understand where Senator Schneider is coming from because the MRI program was somewhat shorter in this budget cycle and I think they are waiting for those revenues. If that is the feeling of the committee, maybe moving that $10 million to the bank rather than look for another source could be discussed too. One thing I certainly am encouraged about is this project is going to continue because we can prioritize this project as it continues with the water resource trust fund.

Rep. Keiser: Any thoughts about increasing the bank? In Option 4 we had them at 75 and it would take them down to 45.

Senator Klein: We would have to think more about it. The senate is still firm in the fact that we don't think that 10 million was necessary. At this point, we are pretty much committed to these numbers, and we would like to work with that if we could and see with what we have here, move this thing forward.

Senator Wardner: I would like to make a comment on the seven years. In the sheet that Karlene had run for us on that 37.5 loan from the bank and 37.5 from the permanent oil trust, she had three years, no payments during the construction. She had the bank paid off in six. It was a payment of 7.3 million a year.

Rep. Keiser: Again, the bank could be paid off in one year. Just put in 100 million. The numbers are great, but you have to have the revenue. What if you don't have 7.3 million? Then we have a default and that is not something we want. When we come back this afternoon, we might want to hear from anybody in the audience relative to Karlene, the bank, or the project folks on what they would recommend for a repayment period.

Senator Wardner: That is fair. I just was pointing out that if you did 3 and 7, that is a total of 10 years because they will start generating some earnings before the end of the 3 years.

Rep. Keiser: With that sweep provision, you will pick them up without putting the program in jeopardy.

The meeting was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/20/2011
16808

☒ Conference Committee

Committee Clerk Signature

Minutes: "2 attached testimony."

Rep. Keiser: We will call the conference on HB 1206 to order all are present.(see attachment 1)

Tim Porter: I am the CFO at the bank of North Dakota. We did get a call from the Legislative Council on wording on how to put liability or a plus spread. How do you describe spread? The excess revenue sweep how do we describe that in the legislation? What we would prefer to do is to keep that language out of the legislation and have that language addressed in the loan documents for the purposes of the legislation we will say the terms will as agreed upon between the borrower and Bank of North Dakota.

Rep. Keiser: That gives them the flexibility as it was presented to us. We were going to specify exactly was the terms were. When it comes to financing what is the strict definition of revenue sweep? The other thing that we added was the box that stands along for phase two the 40 million dollars to complete the project and that would be in the first position on the 2013-15 budget for the Resource Trust Fund so that would be there.

Senator Wardner: We talked a little bit about the seven year pay back I think the schedule that Karlene had that was one that we had done previously we had it in 6 years no payments 3 years no payments and then in 6 years and it was paid off. Is that normal? I think that the authority thinks they can handle those payments without a problem.

Tim Porter: the 6 year pay back was based on the taking the entire project at the rate we could bond at getting that payment and taking that payment and seeing how long it would take to pay the bank off. That 7.2 million was what we had assumed would be the bond payment at time. We converted that over to a direct payment to the Bank of North Dakota and so it could get paid back a little quicker. I believe we supplied Karlene with some numbers this afternoon that did a seven year debt schedule as you discussed this morning and then on the tail end of that looked at the subsequent 8 years for pay back for the general fund loan and the Resource Trust Loan.

Rep. Kesier: That makes sense if you want to structure these as separate entities you could extend the time based on the entity that is being paid off.

Tim Porter: We would be available to be in a first in position and then a first out position based upon the interest rate structure now and the interest environment we could do that on the floating rate at fairly low rate versus the 5% fixed that is proposed for the General Fund and the Resources Trust Fund.

Rep. Keiser: Keep this in mind Rep. Hofstad did have some concerns about the 10 million dollar loan from the Resource Trust Fund on the right hand corner and we talked about leaving it just as ---- the bank could manage the additional 10 million dollars.

Rep. Hofstad: Tim speak to me about the mechanics of how we pay as the project is constructed. A pay as you go as the project is built I assume you would pay the authority. The authority would make a request to the bank and there is some language in the legislation that speaks to the authority shall apply with the policy and cost sharing. I am kind of wondering how that cost sharing policy would be coordinated between the bank, the authority, and the state Water Commission. I am confused about how the process would work.

Tim Porter: I am not familiar with the cost sharing verbiage in the draft.

Senator Klein: That was part of the senate amendments. The cost sharing language has to come out.

Rep. Hofstad: Would the authority make the request to the bank for the payment and then you would make payment to the authority on bases as the project is built?

Tim Porter: At the beginning of this they would send an application in for this project. We would go through the due diligence and establish a line of credit then they would make requests to draw on that line of credit as they the funds.

Rep. Keiser: That would be for your funds.

Tim Porter: That is correct.

Rep. Keiser: What about the other funds since we have in the first position the 25 million dollar loan with no interest and that is the first dollars to be used.

Tim Porter: It is my understanding that would be drawn from the state Water Commission.

Rep. Keiser: And so for the state Water Commission we have language in there that they have some degree of over sight and approval prior to the monies being released.

Rep. Keiser: If this gets passed and they begin to operate they can use up to 25 million dollars with no interest as the first money they get the project off and running they are purchasing whatever the state Water Commission will overseeing. Following that they are going to go to the General Fund Loan and who is going to oversee that?

Tim Porter: That would more than likely go through OMB and if they wanted the bank to service that we could set it up on our loan system. I can't speak for them but since it is General Fund dollars it would go through OMB.

Rep. Keiser: It seems like we are not doing due diligence in setting up the reasonable flow request for money and transfer of funds so that could be transferred to the bank and the bank could manage the release of those dollars?

Tim Porter: Yes if we were directed by OMB to manage that process we could do that.

Senator Wardner: Mr. Hardmeyer did indicate in one of the discussions that the bank could handle it all, if everybody transferred the money and it would come from one place. That can be worked out.

Rep. Keiser: That makes sense. I wanted to have the discussion here so that we know how that is going to work.

Senator Klein: I am not sure even in the existing language I am not sure how the 25 million went to the project that was language we that didn't tweak much.

Rep. Keiser: We all understood that eventually we need to be sure we have a seamless and utilization of the dollars.

Rep. Hofstad: I am not sure that the General Fund Loan the 5% where is that paid back?

Senator Wardner: The way that it has been laid out is that the money from the General Fund the principal would be paid back to the General Fund, but any interest would go to the Resources Trust Fund. If we happen to end up with the one where the bank does the full 75 million dollars and that is not the case it all goes to the bank there are no General Fund dollars at all.

Rep. Keiser: The bank would get the interest that is being charged. The General Fund dollars it is my understanding that 5% does get placed in the Resources Trust.

Senator Wardner: I don't know if Karlene has run new sheets or not on that she was going to attempt to do it.

Rep. Keiser: Let's go back on how the money is going to flow. What are the periods of time when these various entities are going to be paid off?

Tim Porter: Going back to the discussion this morning with the bank of North Dakota being the first once out we assume that would occur in the first 7 years of repayment. So that is starting after 3 years. I am guessing there will be some type of language that during those first 2 years instead of accumulating debt if they do have excess revenues that would go to pay off the project which would push that up. We assume we would be paid off in the first 7 years. We assume that the General Fund and the Resource Trust Fund loan would get paid out in the next 8 years. The payments don't begin until the end of the construction period in our assumptions 2014.

Senator Schneider: The liability plus spread for the Bank of North Dakota rate what do you estimate that to be?

Tim Porter: We ran our debt service at 3% just to assume an average rate. Right now if we were to be at the 175-2% spread that we normally for projects like this it would be in the neighborhood of 2-23/4%.

Rep. Keiser: Going back to these pay outs. The original Resources Trust Loan for the 25 million dollars would come in what timeframe after the second pay off?

Tim Porter: If you have the 3 years of nonpayment to 2014 and then 15 years of payments, 7 to the bank and then 8 it would come in after the 18th year.

Rep. Keiser: Do we want to put a timeframe on?

Tim Porter: As far as how long we did not run a debt schedule for that.

Rep. Keiser: I don't know if we needed that schedule from a policy standpoint we need to answer the question whether we want a debt schedule in the law for that pay back. I would just as soon specify what our expectations are.

Senator Wardner: The way we had it laid out was that the Bank of North Dakota would get paid then the General Fund with the interest going to the Resources Trust Fund. When those are done then they would take care of the debt on the Resources Trust Fund probably doing the 10 million dollars first then the one without interest. In the example we had we used 5 million dollars a year for 5 years and then if you throw the 10 million dollars with interest they would do a couple of years and get that one taken care of. I do believe with that sweep in there they will try and get that cleaned up a lot faster than what is laid out here.

Senator Klein: During my discussion with Tim Dawson when we were drafting the 5% on that Permanent Oil Trust Fund money my question was "do they determine that it is not time to pay the grant back" he implied that when it is available it will be paid.

Rep. Keiser: That is unacceptable to me. I want to know the terms of the loan.

Senator Klein: What were the terms under the bonding provision?

Rep. Keiser: That was a 20 year bond.

Senator Klein: The bond was but what was the repayment to the grant?

Rep. Keiser: That was up to this committee to decide.

Senator Klein: So it was up to this committee to decide.

Rep. Keiser: That was our intention to take it after the 20 years.

Senator Schneider: The revenue sweep is it that permissive or mandatory?

Tim Porter: The revenue sweep is something that would be implemented into the loan documents and do it would be a mandatory a provision of the loan documents and if something occurred that was out of the ordinary where they wouldn't be able to make that revenue sweep there would have to be some form of exception granted.

Senator Schneider: If there is money it will go to pay off the loan?

Tim Porter: That is correct.

Rep. Keiser: The order in which they are listed the excess revenue will be applied.

Tim Porter: That is correct and there would have to be a definition of what that access revenue is and what other expenses come in front of that revenue sweep beyond of the principal and interest of the normal note.

Karlene Fine: These are very rough the bank of North Dakota ran these as a typical loan structure as so what we are focusing on is a level debt service. (See attachment 2) The total debt is about 146 million dollars.

Rep. Keiser: This is very helpful.

Senator Wardner: It gives us an idea. The big thing about this is we had some informal discussions where the early years are the years where it takes time to gear up and make money but by the time we get to 2020 they should be making money and be staple. If things work out it might be all paid up.

Rep. Keiser: Did you work with the people working with this program if they were comfortable with these numbers?

Karlene Fine: No they haven't had a chance to see these at all.

Rep. Keiser: We appreciate this and this is a good place to start.

Senator Wardner: She has a 5 instead of 8 years for the General Fund.

Karlene Fund: That is because I was trying to back to the principal of 37.5 million dollars it really shortens the General Fund up.

Rep. Keiser: If they can live these numbers then we can adjust that we want to make this a success and clear things up early.

Senator Wardner: This gives us a look at what the numbers like.

Rep. Keiser: I need to think about this some more.

Rep. Kelsh: I am looking at the column general fund principal and at the top it says General Fund 5%. Are those interest payments rolled into the principal?

Karlene Fine: No that is why I was saying that column might need to be changed.

Rep. Keiser: We will close the conference meeting HB 1206.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/21/2011
No number

☒ Conference Committee

Committee Clerk Signature *Minutes*

Minutes:

0 "attached testimony."

Rep. Keiser: The meeting is open for HB 1206. Three members are absent the meeting will adjourn until tomorrow morning April 22, 2011

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
4/22/2011
16844

☒ Conference Committee

Committee Clerk Signature Lynnette

Minutes: 4 attached testimony."

Rep. Keiser: We will open the conference on HB 1206 all are present. I did hand out copies of the amendments and we can keep them together. (See attachment 1-2-3) They are comfortable with a fixed rate for a short term but variable for the long term for a portion of the money because they are not sure where the market will go. The Resource Trust Loan and the second Resource Trust Loan stay in position on that the third one is really what we called option 7 that was the medication of option 6 the difference here is that tail got transferred up to the Bank of North Dakota so they wouldn't have that tail at the end. What they have done at our request was put together graphically three options which we had discussed and had been moving towards a little bit. We were given the green light the 37.5 million dollars is there. There is resistance on the house side on having the bank of North Dakota assuming the 75 million dollars.

Senator Wardner: We like option number 6 also. If my chairman hasn't any comments we are ready to proceed with that development.

Rep. Keiser: What I would like to propose then we could read through the bill. (See attachment 4) We also have some additional issues to address that aren't on this diagram like the provisions as well as the definition of a default and that Bank of North Dakota has all of the funds. The title is o.k. On legislative declarations we didn't change anything until we got on page 2 line 3-5 the " the Western Area Water Authority shall consider in the process of locating the industrial water depots the location of private water sellers so as to minimize the impact on private water sellers." That is new language.

Rep. Hofstad: In you discussions on what that means it is ambiguous can you articulate what you were thinking?

Senator Klein: It is ambiguous the thought is to provide some legislative intent. We don't want to run roughshod over the dependence.

Rep. Keiser: The legislative intent was that they consider it and make adjustments when possible to not negatively impact the project.

Senator Schneider: I think they used economic reality to.

Rep. Keiser: The next section we are getting into the money Tim why are we bringing the 25 million dollars into there is it because it is in the Water Commission budget?

Tim Dawson: Chairman Keiser you are looking at page 2 line 18 that has to do with the participating member entities not being able to withdraw from the project until the last money is out of the project and last money in the plan is the 25 million dollars 0% loan. Before it talked about a loan less than 30 million so I was more particular in the defining that last money.

Rep. Keiser: On the Board of Directors we have the commissioners being added to the board.

Tim Dawson: Chairman Keiser that is the same. That is the senate language.

Rep. Keiser: On page 3 we are adding a State Water Commission Member and the County Commissioner on to the board. I support the state Water commission. The next new language is on page 8?

Tim Dawson: Correct.

Rep. Keiser: Was this one of the areas that we needed to ---

Rep. Klein: I didn't pay attention.

Rep. Keiser: On the oversight comply with the policy of the State Water Commission.

Senator Klein: Yes I believe you removed the words on cost sharing which was a bad--- it didn't apply to this so it was a good move that we agreed on. There was a question as we discussed this whether or not we should leave in line 12 " the authority shall present the overall plan and specifications we crossed that out for discussion. Is it important that in relation to initial construction of the system and get repayment.

Rep. Keiser: On the house side we thought that this was a very important part of the oversight which the State Water Commission could be bringing to the project.

Senator Klein: I move to remove the overstrike on the initial construction of the system and then after the words plan and it says and contract plans maybe and construction plans and specifications.

Senator Wardner: Second.

Rep. Keiser: We have a motion to remove those overstrikes appearing on page 8 lines 11, 12, and 13. All those in favor motion carried.

Rep. Schneider: There was some discussion earlier about concurrence versus approval. I am not sure what the distinction is between those 2 words is.

Rep. Keiser: Approval requires them to go in significant levels of debt. Concurrence means they can look it over.

Senator Schneider: How can you concur with something and not approve it?

Rep. Keiser: I can concur with what you just said but if you want me to sign in an affidavit then I do more diligence. The 25 million dollar 0% interest loan comes back in here. On page 12 that a technical amendment that you put in on line 11.

Tim Dawson: Yes the caption has no legal significance.

Senator Klein: On page 12 line 3 there was also some discussion whether or not the terminology shouldn't say easement granted for pipelines and pertinent facilities on any public land which apparently is Water Commission language, I wasn't able to confirm that but they said it was in line of what it should be.

Rep. Keiser: And what would that language be?

Senator Klein: Easement granted for pipelines and pertinent facilities appurtenant facilities and then leave on any public lands That is also just a terminology language.

Tim Dawson: I can make that change on my own.

Rep. Keiser: That is a motion do we have a second?

Senator Wardner: Second.

Rep. Keiser: We have a motion and a second is there further discussion? All those in favor; motion carried the amendment is approved.

Rep. Keiser: On page 13 we get into the heart of the financing lets go back to line 13 on page 13 and talk about default and I am not sure that it reads correctly?

Tim Dawson: If you read at a faster clip it does. "If the authority is in default and the budget section determines that the authority is unable to reimburse the state" is the way it reads.

Rep. Keiser: When the state takes possession and ownership of the water system of the authority what happens to the liabilities? I would say it takes possession and ownership of assets of and liabilities. Do we have a motion for that form of amendment?

Senator Wardner: I so move.

Rep. Kelsh: Second.

Rep. Keiser: Is there any further discussion all those in favor of adopting the language of the amendment motion carried the motion is adopted on the amendment.

Senator Schneider: Would the committee give some consideration on requiring or specifying who will insure the authority? Do we need to specify somewhere in statute that the authority will be required to take an adequate amount of liability insurance? These water projects are subject to law suits on occasion.

Rep. Keiser: This would not come under the default section but I think it is a very important point. Let's work through it and then come back to that.

Rep. Hofstad: I wonder if it that is not covered under page 8 line 8 "where the authority shall comply with the policy of the State Water Commission as the policy relates to bidding planning and construction. I don't know if that would part of that policy.

Senator Schneider: That's a good question I think we need to answer that.

Rep. Keiser: We can be specific and add "must obtain and comply approved insurance coverage for the project."

Senator Schneider: I can work with Tim on that.

Rep. Keiser: I think that would work in that section.

Senator Wardner: I agree I do think it is there, putting it in there specifically does not hurt it.

Rep. Keiser: I don't want to question in court who is liable and then to default because we didn't have coverage and then the state takes it and owns the liability of the problem. On page 13 explain what we are doing on the blue section Tim.

Tim Dawson: I don't do this by a fancy different table since I don't have fancy arrows. We will fill in the blocks so that you know what is in the bill. In section 2 you can see there is a loan 37.5 million dollars to the Western Area Water Authority from the Bank of North Dakota. The term and conditions of the loan must be negotiated between the two parties. Under rate put negotiated however this is complex as we go through here and it may require some find tuning if I did not get the years correct because I went by what was scratched on different sheets of paper and in my notes. This go under the column of term and it says the term of the loan says "the term of the loan is a maximum of seven the initial construction.

Rep. Keiser: I am uncomfortable with "after construction" I think we should put some dates in versus after construction.

Senator Wardner: We are alright with that because all of the documents we have had the first payment coming due June 30, 2014.

Rep. Keiser: so we could put beginning July 1, 2014 and then going for seven years.

Tim Dawson: The State Water Commission shall make available from funding appropriated to the commission for this biennium 25 million dollars as an interest loan and the Bank of North Dakota shall manage this loan so you have the Resource Trust Fund SWC loan 25

million dollars 0 for the interest rate and in the other I put bank manages loan. The maximum term of this loan is 5 years from the completion of the 10 million dollar loan from the Resources Trust Fund which we haven't gotten to because it is in the next section but in the blank under term you can put 5 years from Resource Trust Fund loan. The next section is another appropriation and that is from the General Fund and it is to the Bank of North Dakota for 37.5 million dollars. This is 8 years from the completion of the Bank of North Dakota loan. Since these time tables could change because of prepayment it is difficult to put exact years so that is so that these time periods can shift and then have the period of time in which a particular loan can be paid and this is at 5% interest.

Rep. Klein: In that 5% our thought was that it would be returned to the Resources Trust Fund is that in there somewhere?

Tim Dawson: In this draft yes in some other drafts no. The principal goes to the General Fund and the interest goes to the Resources Trust Fund.

Senator Wardner: We would like it.

Rep. Keiser: As I understand it that is the way the senate likes but word that I got this morning was "who is loaning the money" the General Fund why isn't the General Fund getting the return?

Senator Wardner: Because this project is moving out of protocol from water projects in the state of North Dakota and we have been careful of not getting in the cue of this project to those people that are out there that have been promised. I guess to me this is one way to help take of those people and is way down the line it is not going to happen right away. They are not going to see revenue come in right away. It is to let the people that are out there with water projects that are in the cue for the Water Commission that we appreciate that we get this extra attention and we can move this ahead. It is a positive for the state it could easily go back to the General Fund it is going to be a positive by going back to the Water Commission.

Rep. Keiser: We will leave it but that may be one of the points that may be negotiated.

Tim Dawson: Section 4 appropriation if I am correct there is appropriation of10 million dollars out of the Resources Trust Fund to the Bank of North Dakota for providing a loan for 2 years at 5% interest. Under the Resource Trust Fund loan you can put 10 million dollars rate 5% 2 years after the General Fund loan.

Rep. Keiser: We might want to be very specific in these sections where we are created the loan lets specific where the interest is going to be deposited. Maybe you cover that later but it seems to me for example section 4 if we are going to take 10 million dollars out of the Resource Trust Fund and pay 5% interest we should make it very clear that 5% goes to that fund.

Tim Dawson: That is in section 5.

Rep. Keiser: The other question I have is we have operated under the assumption that there would be a sweep and that these funds could be paid early without penalty. Do we have any language other than we say the Bank of North Dakota shall negotiate rules but on loan documents if you prepay early without penalty it is specified?

Tim Dawson: On the bottom of page 14 and the top of page 15 it says the Western Area Water Supply Authority shall repay the loan for the project from the project and the authority may prepay loans within the propriety without penalty. Section 5 it is easiest if you go to the table that you are making and then in priority in start at the top with the Bank of North Dakota loan and put 2 there and then in the General Fund loan put a 3 and the Resource Trust Fund SWC loan put a 1 and the Resource Trust Fund loan put a 4 and the Resource Trust Fund next biennium put a 5. For priority out put it would go 1 then 2 then 5 then 3 then 4. The reason for that is if that loan comes in next biennium for 40 million dollars it seemed from I took it should take priority before the 0 interest loan from the Resources Trust Fund so it has to come in there and slip into that spot. In that section 5 you can see that line 27 and 28 second repayment the 37.5 million dollars from the General Fund for deposit principal in the General Fund and interest in the Resources Trust Fund. Section 6 it has a seven year term on it. When you look at the term you can see that it goes 7, 8,5,2,7 and if those aren't the correct terms they can easily be changed.

Senator Wardner: I agree with you.

Rep. Keiser: Let's go to page 2 to the Board of Directors and have the discussion. Do we have in here up to 5 mills? Is that in that section?

Tim Dawson: The 5 mills have been removed.

Rep. Keiser: That is something that we have to decide on whether to put the 5 mills in there as the backstop and also membership of the board currently we have the county commissioners in there.

Senator Klein: I guess I am not sure but I think we may have to put them back in. The idea with the commissioners was twofold and I think we have talked about it before. The second think was the concern that we have had a few who are concerned with the authority having eminent domain and quick take and the fact that we felt that with the commissioner it would provide for those individuals to have an opportunity to visit with someone who they feel is an elected official on that issue.

Rep. Keiser: I understand and it may be of value the bottom line is we have given them the authority of the quick take. Putting someone in there that can't do anything about can create as many problems as it could solve problems.

Rep. Hofstad: I think there are water utility boards out there that also have quick take although they are elected by the memberships. I am struggling about the county commissioners on the board too.

Senator Wardner: the 5 mills I think is important I think that the local area to be able to levy the amount to pay in case of default it will not come into play unless there is a default if we

are going to do that we have to have some county commissioners on it or there designee. On the senate side we are talking 10 people that includes someone from the State Water Commission or the State Engineer or their designee rather than a commission member? That is something we need to visit about to.

Senator Klein: I agree the state is taking a leap of faith I think the mandatory mill requirement is important.

Rep. Kelsh: We have had some discussion about the 5 mills so that the areas in the county that weren't impacted by the county wouldn't have to be paying an additional 5 mills for a project that is not receiving a benefit from.

Senator Schneider: we had an amendment drafted and are ready for it. (See attachment 5) On the bottom of page 2 it should not say "one member of the State Water Commission it should say "State Engineer or designee" is what we talked about earlier.

Senator Klein: I move that change. Line 30 page 2 to "the governor shall select one member in addition to the State Engineer or designee and will be a voting member.

Rep. Keiser: On page 2 it would be in addition to the State Engineer or his designee?

Senator Wardner: Second it would no longer be; a member of the State Water Commission or would State Engineer or a designee.

Rep. Keiser: Shall serve as a voting member so that would be at the bottom of page 2 line 30 and then on page 3 line 1 where we are going to strike the "governor shall select one member of the State Water Commission as a member" it will be "the State Engineer or designee will be a voting member. All those in favor, motion carried on the amendment.

Tim Dawson: I will make the change.

Senator Klein: I agree to that.

Rep. Keiser: I didn't realize that we were taking the 5 mills off of this thing.

Senator Klein: This is one of those things we knew we needed to discuss. Whether it is of or not we need to discuss whether we need to put it on. That was our thought to have them provide that. I am inclined to leave that in if we could.

Rep. Keiser: Up to 5 mills would generate how much?

Rep. Hofstad: $636,000.

Rep. Keiser: That would be a sufficient portion of the interest payment without principal payment.

Senator Schneider: The amendment before you is what we were discussing and the operative language here in addition to resorting the 5 mill mandatory requirement would be

the language at the end of the sentence or provide an equivalent amount through other sources of revenue.

Rep. Keiser: Do we have a motion to adopt this amendment?

Senator Schneider: I move to adopt this amendment.

Senator Wardner: Second.

Rep. Keiser: This was a little bit different because of the house and senate's positions do very on this one a little bit so we will have a roll call.

Rep. Hofstad: I am assuming that this amendment kind of goes along with retaining the county commissioners on the board?

Rep. Keiser: If you approve this the county commissioners get a position on the board.

Senator Klein: If we approve this we are possibly approving the 5 mills. That is maybe up for discussion. I may need to have more discussion with – this goes with the 5 mills

Rep. Keiser: This will be the 5 mills amendment. Roll call taken the motion to add this to the amendment failed. It is my intention to have Tim redraft this amendment and put it color form. I have a reservation about taxing people about who don't have benefit.

Rep. Hofstad: As residents we choose to go where the 1% has been added for something that is benefiting the community but at the end of the day we are looking as benefiting the entire state and I guess we were coming from.

Senator Schneider: I am deeply concerned if the locals have no risk here and they won't put themselves on the line that makes me question whether we should be.

Rep. Kelsh: We had another draft amendment about what the definition of default was I am not seeing it here but that could be added for when we come back.

Rep. Keiser: We are going to work on that default section the State Water Commission takes over assists and liability as well. This amendment reads for the purpose of the chapter of the defaults shall be failure to make a loan payment or grant repayment we don't have a grant repayment any more as required by the State Water Commission the Authority is unable to make a loan payment of the principal or interest on the loan authorized in section 2 is to repay the State Water Commission.

Senator Klein: I believe the question there was the liability who has the liability on this?

Senator Wardner: On section 6 page 15 the only thing that we wouldn't be in favor committing the governor would have to take 40 million dollars out of the Resources Trust Fund. To tag it to that fund we are not in favor of that.

Rep. Keiser: Maybe you guys are keeping conversations, on the side it was my understanding that the Resources Trust Fund would have no problem with the 40 Million dollars in the next biennium because of the 100 million going to Devils Lake on the one time bases.

Senator Wardner: We are not saying that it might not go there but we want to wait until 2 years from now to see what is available out there.

Rep. Keiser: We just want the language and the governor's budget and this is in there so we can say we have done the best that we can.

Senator Schneider: The governor shall make this available. The governor will have something to say about that.

This is the language that we have been told is the traditional language and if not we can change it to make it conform.

Senator Schneider: It is critical for it to stay in but we need to soften the language.

Rep. Keiser: We will have it in the form of other legislation in terms of what the governor shall or will do.

Senator Schneider: I don't mind telling the Legislative Council what to do since they are working for us.

Rep. Keiser: we will ask Tim and Senator Schneider again to work with Tim on that and other issues. The meeting was adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
April 25, 2011(AM)
16860

☒ Conference Committee

Committee Clerk Signature Carmen Hart

Minutes:

Rep. Keiser opened the conference committee on HB 1206. The Bank of North Dakota redrafted this flow chart putting the $50 million into the Bank of North Dakota. **Attachment 1.** That would be the first money out but second money in. The RTF loan for 0%, 25 million first in, last out. The general fund loan was reduced to 25 million at a 5% fixed rate. It is third in, second out. The RTF loan with the 10 million, 5% fixed, fourth in, but third out. The Bank of North Dakota loan repayment doesn't begin until 6-30-2014. Then there is the schedule to pay them off. That is at the $50 million rate so obviously the numbers go up. That is over a seven year period. It shows the accrual of interest, etc. At some point we need to make sure the group putting this together says they could live with these kinds of payments based on their projections. I have also handed out draft 030201. That is the draft that matches this model. This would be amendment 3022, the one that would follow this. The only difference is that the last 10 million would be coming from the strategic investment and improvements fund in the state treasury. Perhaps we could just outline the issues. I would love to see resolve today. If we did them, we would be done. One is the final financing strategy. I know that committee members from the senate came down saying that you talked to your leadership and that 10 million was to come out of that new trust. I talked with our leadership this morning, and they said no way.

Senator Klein: This morning we verified that just like your drawing indicated, we don't need to talk about that. That will come out of the resources trust fund.

Rep. Keiser: The other issue we had was the 5 mills in case of a default. What really goes with that is the county commissioners on the board. I have been reassured that the money will be there. I know the senate wants to see some skin in the game. In the case of a default, the assets go to the State Water Commission. I am not sure if it is clear enough whether we have stated in an adequate form or not. My original understanding was that the assets go back. That would include the current assets that are available to this project that would not be funded by this project. That is a point of clarification that I think we need to resolve. If that is true, they have skin in the game. By current assets there are two elements that I am aware of. One is the current Williston water treatment plant and what is there or not there and how much they own versus how much they are paying off in debt. There is also at least pipeline. Do you think you are going to lose those in the case of a default?

Brent Bogar, City Commissioner of Williston: It is our understanding and that has been the commitment of Williston that the water treatment plant will become part of the authority. In the event of a default, that would go back to the State Water Commission.

Rep. Keiser: What is the status of the water treatment plant?

Brent Bogar: We are currently at about a $35 million depreciated value of the pipelines and the assets that are there. Replacement cost was roughly $84 million for the existing assets. That is after the debt has been paid off.

Rep. Keiser: How much debt is there on it?

Brent Bogar: About 20 million. That is subtracted already out. It would be about 55 million of depreciated cost, but then you take the 20 million off of the existing debt, and that is where we have the 35 million.

Rep. Keiser: That is the current water treatment plant?

Brent Bogar: Current water treatment plant as well as the pump stations and the pipeline.

Rep. Keiser: What pipeline is that?

Brent Boger: Pipeline that is being built to McKenzie County right now that has already been approved.

Rep. Keiser: It is under construction?

Brent Boger: It is under design. As soon as they can actually start digging out, it will be under construction.

Rep. Keiser: What form of debt service do you have on that?

Brent Boger: I refer to Dave on that since it is a McKenzie County project.

Dave Johnson: There are two pipelines that Brent is talking about. One goes down into McKenzie County. It is an $11.5 million project of which you are going to have $3.5 million worth of grant and the remainder would be a loan. There is $3.5 million of asset there that we are offering up. The other pipeline goes from the Ray-Tioga area up towards Wild Rose which will be continuing on to Burke, Divide, Williams. It is a smaller number. We can get those actual numbers to you if you want. When we tallied up all of those total assets including the water treatment plant, the replacement value was roughly $84 million. Depreciated value was $36 million. That did not include the value of the water permit and access to the lake.

Rep. Hofstad: Would you give me the figure again of the debt that this new water authority will assume?

Dave Johnson: The water authority is not going to assume those per say. Those communities are still going to have that debt loan. What we have in our projections for the revenue was to pay those back. We were not going to restructure those if we didn't have to.

Rep. Hofstad: But in the case of default, we will assume that debt, will we not?

Dave Johnson: In the case of default, yes, you would. You would end up assuming those debt loans.

Rep. Hofstad: What is that figure?

Rep. Keiser: It is approximately $20 million?

Dave Johnson: Approximately 20 million. The numbers we gave you on the depreciative value of these assets were the value of the asset less the depreciation less the debt service. The actual value that is left over is at a minimum of $35 million.

Senator Schneider: What would the practical impact be of the state taking ownership over Williston's water treatment plant? How would that be different for the citizens of Williston who are paying for water?

Dave Johnson: The effective difference would be they would be giving up their rights to establish the rates and determine how that would go. Effectively in default, the State Water Commission is going to be able to dictate how much these people have to pay for their water. That is a substantial risk that they are taking.

Senator Wardner: Is the funding for the pipeline going into McKenzie County? Did that come from the State Water Commission or was that a loan?

Dave Johnson: Yes, that project has actually been on the books for approximately two years. They got approval for that part of this project, and the Water Commission gave them a $3.5 million grant to pay for that. It has taken that long to get through the permitting and the bare amount of assessments. Contracts have been offered. Bids have been taken. They should start construction here in a week.

Senator Schneider: How much could the state expect to recover in the event of default through the form of increased rates?

Dave Johnson: When we started this process at the beginning of the session, we talked about the domestic demands being at 20% at a minimum of this project. Twenty percent of a roughly $13 million debt load is $2.5 million a year.

Rep. Keiser: How are these communities currently servicing the debt?

Dave Johnson: They are currently serving them through their water rates. Williston, on occasion, has used sales tax to offset to keep their rates artificially low.

Rep. Keiser: The question is this. Is there skin in the game? They are bringing assets to the table that they are putting on into the project that are in the case of default. We are spending a lot of time on default. I want it clear when it occurs or if occurs that what happens? To me, if they were bringing $35 million in, that is a whole lot more than 5 mills even would generate. It gets to the users through the rates. They are funding it. They think they can do it at that rate and create the full asset value. To me, that is enough skin in the game and that would allow me the comfort level.

Senator Klein: My thought is this 5 mills is like a deposit that we probably will never have to pay. I don't know if people would understand that we are now going to own a water treatment plan, but they understand that 5 mills equals $632,000. I am looking at it as more of a comfort zone. I think it is insignificant $630,000 on a $12 million note. Yet, a little bit of something that I can go back and say there is a commitment from those communities and it is not just the fact they have an asset which is huge. It will be past 2014 before I think we ever see whether or not.

Rep. Keiser: I can go one of two ways, but I can't go both. If you want the 5 mills, then I think we should have the language that they keep those assets.

Senator Wardner: We need to look at this going forward.

Rep. Keiser: Bob Harm sent an email on other issues that he would like the committee to discuss. I sent it to the printer, but they didn't deliver it to me before I had to walk down here.

Senator Klein: The one issue that he always has at the top of his list is approval versus concurrence. It is probably one issue that I could maybe agree with it that we could take a look at.

Rep. Keiser: I am trying to understand what the difference is.

Rep. Hofstad: That, too, is of concern to me because when we speak of default and if this thing doesn't go right, we have this entire project back on the state engineer and on us. If we do get this project back, we have had a part of the process as it goes forward.

Rep. Keiser: It would apply with either one of those words. We haven't addressed what happens if there is a disagreement as that project moves forward and you don't get concurrence or approval.

Senator Schneider: You would have to get approval for the project to go forward and so you would have to resolve a disagreement. What you do in the instance where you can't possibly have an agreement, I don't know.

Rep. Keiser: We can certainly get it drafted or amend it to 03021. That would be on Line 13, Page 8?

Senator Klein: It is my understanding it is.

Rep. Keiser: We will add that to the draft. We should have a vote on that.

Senator Klein: I move that we change the word concurrence on Page 8, Line 13, to approval.

Senator Schneider seconded the motion.

A voice vote was taken. Motion carried.

Senator Klein: There might still be some discussion on Section 6. That would be separate from the financing?

Rep. Keiser: The house sees it as having things in the place, the plan for financing.

Senator Wardner: We are talking about addition to a treatment plant. There are a lot of possibilities out there as far as funding. I hate to be locked into the resources trust fund. There are a lot of groups who have already lined up for the revenues that are coming in for projects around the state. It places the laws ahead of them. It think it creates problems. Right now some general language that says we are going to address it but not be specific or just leave it out. We are going to do it. We are not going to leave this project hanging.

Senator Schneider: I agree with the sentiments expressed by the other senators. I don't know where we are going to be in two years in terms of water needs. Devils Lake, obviously, could change very quickly. The notion that we are going to bind the governor and tell him what to include in his budget two years from now is something we don't need to do in this legislation.

Rep. Hofstad: Part of the reason why we are here is that we have never had an opportunity to be involved. I know that we have some legislation that takes the water topics over B committee and works through that prioritization process. I think that is an important process. When we get to this body, there is some sense of where we are and where we are together as a water community. As we go forward, if we want to soften that language, I don't have a problem with that. It is important that we get involved in this prioritization process and in the future I don't think we will have all the problems that we are having with projects like this.

Rep. Keiser: I will again share with you the house's position. The house wanted to fund this whole project right up front through bonding, one source, clean and simple. We now have a plan we find, in large part, acceptable. I cannot speak for the other house committee members. From leadership's perspective, we have absolutely no problem with the governor putting this in his budget. Ultimately, the legislature approves the budget, even the water commission's or the resources trust fund budget. We don't typically have the ability to say right up front we are going to fund this project. We are going to identify the source, but keep in mind, this isn't cast in stone. If the sweep comes through, we want the governor to put it in the budget. We were told by people from the water community that this wasn't a problem to make this kind of commitment and concept. I think they have changed their position on this, but I am not certain. We will reschedule as soon as we can. The meeting is adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1206
Job #16874
04/25/2011
☒ Conference Committee

Committee Clerk Signature Pe Mae Kuch

Minutes:

Representative Keiser, Conference Committee Chairman: We are working on amendment #.03021. (Attached #1)

This morning on page 8, line 13 we did have a motion to change the first word "concurrence" to "approval." That motion was made and accepted to this set of amendments. We are having discussions about membership on the board and the $40 million on the tail side of the project.

Senator Wardner: I have clean up. On page 13 of version #.03021 of the bill, go down to line 23, strike "from the sixty-third legislative assembly" and also strike "due during the 2013-15 biennium." This has to do with the moral obligation which is for one biennium only. It comes at the request of the Bank of ND. If we take that out, then the moral obligation is for the duration of the loan.

Senator Wardner: Moved above as an amendment.

Senator Klein: Seconded the motion.

Voice Vote taken on amendment. Motion carried. (Vote #1)

Senator Klein: On the second page, line 3, after "authority" insert a comma and "may construct water depots to provide unmet needs for industrial water for oil and gas development."

Chairman Keiser: How do we define an "unmet need"? I see this language as a haven for attorneys.

Representative Kelsh: Senator Klein, what are you trying to get at?

Senator Klein: This came from the independent water producers. It was one of their suggestions to help minimize the impact. Moved to adopt language suggested.

Senator Wardner: Seconded the motion.

Roll call vote was taken. (Vote #2) **Yes:** 3 **No:** 3. **Motion failed.**

Representative Hofstad: I have some language for Section 6. (See attached #2) Then if we need the repay language, that would follow. I think it gives us the opportunity to get into that budget. It gives the water commission along with the water topics overview committee and the water coalition an opportunity to come to the table and look at that water prioritization.

Chairman Keiser: Does anyone else have a proposal for the wording on this section?

Senator Klein: I did but he stole a sentence or so out of it. (See attached #3) He has taken it one step farther and the commission along with the state overview committee would take a look at it.

Representative Hofstad: There are two entities now--the state water commission and the water coalition is the group compiled of all the water groups within the state of North Dakota that really prioritize these projects. If we are going to look at prioritizing this project and putting it in that budget, that is who needs to look at it along with the state water commission along with a committee of this legislative body.

Chairman Keiser: In both cases the language is "they shall consider a request." There is no obligation? Is that the intent of the amendment?

Senator Schneider: Whatever we do we are not obligating anyone whether it is the governor or future legislative assemblies. It may as well be "shall consider" because that is what will happen.

Chairman Keiser: The reason I have been a strong supporter of the original language is it does obligate the governor to put it in his budget. There is no option for the governor but there is still the option for the legislature.

Senator Schneider: I guess the governor could exercise his prerogative to say "no."

Chairman Keiser: Compares proposed amendments #2 & 3. They are similar. Representative Hofstad's includes the water coalition and the water topic overview committee.

Representative Hofstad: As that budget will be put together and as that prioritization will take place, the water commission and the water coalition groups will work to build that budget anyway. I think we are saying something that is going to happen anyway. I'm just adding the water topics overview committee which includes this legislative body. I think that is important.

Senator Schneider: At the end of the first sentence should we include "for the purposes of completing the final phase of the project"?

Chairman Keiser: We should have some language as we had in the original that this comes in at the end of phase for funding.

Senator Klein: I am very favorable to the Hofstad language.

Chairman Keiser: We will get that drafted so we can see it for our meeting later today. Any progress on the governance?

I do have an amendment following our last meeting #11.0390.03023. (Attached #4)

Tim Dawson: We are always amending the engrossed version as it came out of the House. What you have in front of you is the Senate version with the Senate amendments. So these will never match up. What this amendment does is say there are two representatives from each of the Williams Rural Water District, McKenzie County water resource district, the city of Williston, BDW water system association, and the Ray & Tioga water supply association. It then removes all of the county commissioner members. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. The language after that relates to having the state engineer as the designee instead of the representative from the water commission.

On page 3, line 8 we will get rid of the reference to county commissioners.

Chairman Keiser: What does this achieve?

Tim Dawson: It removes the county representation on the board, doubles the representatives from the other entities and requires their representation to be a water user of the member entity.

Chairman Keiser: So it can't be anybody but a water user.

Senator Schneider: How many board members are remaining after this change would be directly elected by voters?

Tim Dawson: It depends. They would have to be a water user of one of those groups. So it could be zero or it could be some.

Chairman Keiser: On page 3, number 2 there is a provision for adding people.

Senator Schneider: We'd be giving eminent domain authority to a board that may potentially have no elected officials on it with this change?

Senator Wardner: However, they would be appointed by someone.

Chairman Keiser: It appears to me that in all cases there is an election that qualifies you then to be appointed.

Representative Hofstad: A rural utility board has condemnation power for people that really have no benefit from that particular system.

Senator Schneider: I understand, too, the pipelines come through the state and have that authority as well.

Senator Klein: These appointed members could be appointed by the commissioners for example.

Representative Hofstad moved amendments #.03023.

Representative Kelsh: Seconded the motion.

Chairman Keiser: We are trying to get to the same place. There will be this authority that will have significant power. They are going to implement a major development system. They have to be given some authority but there will be opportunity for representation.

Senator Klein: That was the idea behind the commissioners being on it because it is a big project. There is going to be some pain. This seems like a compromise that I could support.

Representative Kelsh: Are we dealing with the mill levy issue yet? I would want to decide that before we take the county commissioners off.

Chairman Keiser: Not yet. We'll withdraw the motion and the second if that is acceptable.

Now to the mill levy issue. It is not in here now so we would have to get an amendment drafted.

Senator Schneider: I would respectively like to know what's changed. I moved an amendment last week and it failed 4-2, regarding the mill levy. It there is an alternative approach that more workable I would certainly be happy to take a look at that.

Representative Hofstad: Just wondering, because if this thing goes to default and the water commissioner comes back and assumes responsibility for this thing, their fix is probably going to be water rights. If someone were to give us an idea that $630,000, what is the equivalent water increase rate to match that. That would be an important piece of information for me. Is there someone who could give me that information?

Chairman Keiser: Anyone in the audience who can answer that?

Senator Klein: We must know how many gallons that we are pumping? If it goes into default, obviously they aren't selling as much water that they have intended, if could be a lot. That would be a point where you can't charge the users anymore than what would be reasonable. The fall back to that was not only were we going to charge more for the water, but we are also tap them for some mills to help make the payment. I know we continue to look back at the default side because it's a major thing. I'm trying to be optimistic, we are moving this along as quickly as we can and certainly take advantage of the expansion of the water needs out there in the West.

Representative Hofstad: Just understand that there are two different components. One is that commercial component and the other is the component to provide water for our rural citizens. Looking down the road after the oil industry has gone away, we need to have an

infusion of dollars into this project. If those dollars were to come from our rural users, just wondering what that trade off would be?

Senator Schneider: I'm wondering if the word "ownership" is sufficient to confer on this rate making authority in the event of default. I think that might be worth specifying. I'm looking on .030021, the colored copy, page 13, line 19, where "the state has taken possession and ownership of the water system of the authority and the liabilities of the authority." Can we insert, "including the abilities to set rates"? Maybe we can get clarification if that's necessary or not. If there was a default, I'm guessing Williston would want to fight over that with the language as it is.

Chairman Keiser: Right. If they take ownership, they set the rate but if we need to specify it, I don't know. In every case where they have the ownership, who sets the rates?

Senator Schneider: Maybe saying ownership and powers over the water system. We can work on finding the right technical language but specifying that couldn't hurt and potentially help.

Chairman Keiser: It wouldn't hurt to have any clarification but I think it's implied.

Representative Kelsh: If the consensus is that we are not going to include mill levies in the bill, than I would go ahead and move the amendment .03021. (Attached #1)

Chairman Keiser: I don't that we have that consensus yet. Senator Schneider has asked "what has changed"? It's hard to step outside the box to deal with the differences and similarities between this project and our traditional water projects. No project pays interest as this has been structured to do. If there is a default, other projects kind of start at ground zero and build forward. This one isn't starting at ground zero. It's starting with a 35 or 85 million dollar asset out there. It's much like having the Civic Center that's paid for and then building a hotel next to it and wanting as equity on the transaction, give me the Civic Center if there is a default because it will help me make it financially. If we want to charge them the interest plus what I see is a penalty for a default, when we get to own the project, then they should keep the original asset upon default which isn't very practical from my perspective.

Senator Wardner: There was one other issue that we haven't talked about and that was the 5% after the project is all paid for.

Chairman Keiser: If we want to put that on all water projects, I will be happy to so amend it.

Senator Wardner: The only thing I'm going to tell you is that we are moving this one ahead of everybody else and we are going out of our way to help them.

Chairman Keiser: They are paying it back is the only thing I'm going to tell you. If everybody else want to pay it back and pay interest, I'm all for it.

Senator Wardner: I realize the Southwest belongs to the state but everything over the operation and maintenance comes back into the resources, the Trust Fund.

Chairman Keiser: I understand that.

Senator Wardner: We are putting them on the fast track.

Chairman Keiser: No question about that. Again, I want to emphasize, we are putting them on the fast track because it benefits them. I might argue that it benefits the state of North Dakota perhaps even more. I've enjoyed the revenues that have come into the state and I would love to see the reduction to the damage to the roads out there as well as the economic development that might occur in Northwestern.

Chairman Keiser: Are these your projected water rates for your financial analysis?

Dave Johnson: The questions was: What does it take in water rates to create $630,000? With today's population of roughly 25,000 people with an average water rate 125 gallons per capita per day works out to about 58 cents per thousand gallons which would be about $3 per person for that 25,000 people or per hook up per month to raise that $630,000.

Representative Hofstad: So that $3 is to the people that we are providing water for?

Dave Johnson: That is correct. Repeating the numbers again, if you assume that it serves 25,000 people and on average they use 125 gallons per month per person that equates to 58 cents per thousand gallons. The average user uses approximately 6,000 gallons. So it takes $3.48 per household to raise the $630,000.

Senator Wardner: I would like to think that if they run short of dollars, they are not going to want the state to take over the project. They are going to do everything they can to keep it which means they might even go into levying mills of property tax in their districts to get it done. Maybe we are overreaching here. If it were me, I would do everything I could to keep the project local.

Senator Schneider: Williston has a huge incentive for this thing not to go south. Without the mills, does Mountrail County, Burke, Divide have an incentive to play well together when the negative ramifications are going to fall on Williston and to a lesser extent the state.

Chairman Keiser: I agree with the argument on the one side but if you want me to kill this project, make it so threatening that they don't make it work. With access to good water after years of the alternative, they will do whatever they need to do to keep it.

Senator Wardner: Keep in mind that if the State Water Commission takes it over, they might set it up similar to the Southwest in which they do collect one mill to help support the project.

Senator Klein: I would agree with Senator Wardner that they will work hard to make this go. I would forego the 5 mills. The next legislature can look at how they will help with the additional funding. I think the 5% was an important part on the Senate side to offset that concern that the Water Commission has minimal authority in this. It is an opportunity to

have risk from the state but no return other than the fact how do you measure what returns to that part of the state. That is where the 5% came from. We thought that was minimal in the year 2039. I think we can forego the mills but we still have to look at the 5%.

Chairman Keiser: That language was deleted from this draft? So we would have to have that reinserted. That is 5% beginning when?

Senator Klein: I think it was after everything was paid up.

Chairman Keiser: That was based on their net profit. They will run much like the other water projects where they handle operating expenses and maintenance and then keep rates low.

Senator Klein: They want to keep the rates reasonable. There is a lot of upkeep.

Moves to reinstate the 5% loan before Section 6.

Senator Schneider: Seconded the motion.

Voice vote was taken. Motion carried. (Vote #3)

Chairman Keiser: The other motion made by Representative Hofstad and Kelsh on .03023.

Voice vote was taken. Motion carried. (Vote #4)

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB1206
4/26/11
16890

☒ Conference Committee

Committee Clerk Signature Jeanette

Minutes: 3 "attached testimony."

Rep. Keiser: We will open the conference meeting on HB 1206 all are present. What I have handed out to you is a new visual diagram; I do want to run through it just to make sure that everybody is in. The total project is 110 million dollars in phase one. (See attachment1) the Bank of North Dakota will manage all cash flows and service the loans. After repayment of 0% Resource Trust Fund loan the authority is to remit 5% of the net profits to the Resource Trust Fund until June 30, 2040. I hope that this graph covers it because when I go to the floor I will have copies of this graph to give to people.
I hope you had a chance to view the new Engrossed House Bill (See attachment 2) the one area that I indentified that I would like to put in an additional amendment is on page 13 you may have some as well. We are now working of off 03024 turn to page 13 I think we need some additional clarification on line 23 the State Water Commission shall request funding to repay the principal and interest due. Who do they request funding from? It was not clear what I would offer as an amendment to this is request funding from the Legislative Assembly just so we have clarified that so it doesn't come back and they request that change. It could have been other sources but ultimately we are going to have to make that decision so if there is no objection I ask someone to move that following funding we add the language Legislative Assembly.

Senator Klein: I make a motion to add the language.

Rep. Hofstad: Second.

Rep. Keiser: We have a motion by and a second to add that language is there further decision? All those in favor motion carried. 024 is further amended as indicated. If members have had a chance to read through it I think the language is there that does everything that is the flow chart and the other area that we haven't taken up is the private water users have sent out lots of additional things to all committee members. I do have copies of one additional thing; it not that I offering that we should do anything additional I want the record to show that we did receive it and we had consideration of it. Senator Klein did make a motion yesterday which failed to address parts of this we did make a motion which passed which moved from concurrence the approval by the State Water Commission. I believe that put the proper controls in but at this the chair would entertain

any request by committee members if they want anything additional other than that we do back to the 024 version and decide whether or not to take further action.

Senator Klein: I run that one issue that was something that we needed to discuss it failed, I guess that is how things work.

Rep. Keiser: We have considered this issue unless there are any other comments.

Senator Schneider: I do feel strongly that the final 10 million loan should not come from the Resources Trust Fund rather the strategic Investment and Improvement Fund. And I so move that.

Rep. Keiser: We have a motion to if you look at the flow chart this fourth piece rather than the Resource Trust Fund Loan the 10 million to come with the 5% fixed to come from the Strategic Investment and Improvement Fund is there a second?

Rep. Kelsh: Second.

Rep. Keiser: Is their further discussion? Nothing that I have suggested to the appreciations committee on the house side and the leadership on the house side has created more resistance on that concept. We don't even have a fund yet and now they are attaching dollars to it so I won't be supporting it.

Senator Klein: I won't be supporting it either but I think if we look at the entire project and the fact that we have designated some interest dollars to go into those funds to help with the money we are setting aside it the last money to go in certainly hoping that they can figure out a way to utilize those dollars and move them around as best they can but I think it isn't often where the Resource Trust Fund sends out 10 million dollars and hopes to get it back with interest and that to me is probably a reason why we should feel o.k. about how we are doing this.

Rep. Hofstad: In principal I support Senators Schneiders thought process but I too believe that we will never get there. I some problems taking out of that fund because that fund will probably be used for MRI projects hoping we won't get to that dollar draw so rather than confuse this think any further I will not support the motion.

Senator Schneider: I can see where this is going there are about 19 million dollars in that fund right now that will go to the General Fund could be any balance not the General Fund balance and it wouldn't crowd out any other water projects. I think it is a pretty good idea.

Rep. Keiser: Is there further discussion? Roll call taken on the motion to replace the final 10 million dollars Resources Trust Fund with the new Strategic Investment and Improvement Fund. Motion failed.

Rep. Keiser: With that we have a proposed model bill here 024 it there a motion form the committee?

Senator Wardner: I move the senate recede from the senate amendments and further amend HB 1206 as stated in the 024 version.

Rep. Kelsh: Second.

Rep. Keiser: Is there any further discussion? Roll call Motion carried.

YES 6 NO 0 ABSENT0 Carrier Rep. Keiser.

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. 1206 as (re) engrossed

Date: 4-22-11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Klein Seconded by: Senator Wardner

Representatives	Yes	No	Senators	Yes	No
Chairman Keiser			Senator Klein		
Rep. Hofstad			Senator Wardner		
Rep Kelsh			Senator Schneider		

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment voice vote taken for Easement granted for pipelines + pertinent facilities motion carried

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. _____ as (re) engrossed

Date: 4-22-11

Roll Call Vote #: 2

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Wardner Seconded by: Rep. Kelsh

Representatives	Yes	No	Senators	Yes	No
Chairman Keiser			Senator Klein		
Rep. Hofstad			Senator Wardner		
Rep Kelsh			Senator Schneider		

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

voice vote taken possession and ownership of assets + liabilities motion carried

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. _____ as (re) engrossed

Date: 4-22-11

Roll Call Vote #: 3

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____ - _____

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Klein Seconded by: Senator Wardner

Representatives				Yes	No		Senators				Yes	No
Chairman Keiser							Senator Klein					
Rep. Hofstad							Senator Wardner					
Rep Kelsh							Senator Schneider					

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

voice vote taken motion carried Change from of the State Water Commission to State Engineer or designee - Amendment

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. _____ as (re) engrossed

Date: _____

Roll Call Vote #: 04

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Schneider Seconded by: Senator Wardner

5 mills Vote

Representatives	4-17	4-23	4-23	Yes	No		Senators	4-17	4-23	4-23	Yes	No
Chairman Keiser	✓	✓	✓		✓		Senator Klein	✓	✓	✓	✓	
Rep Hofstad	✓	✓	✓		✓		Senator Gardner	✓	✓	✓	✓	
Rep Kelsh	✓	✓	✓	✓			Senator Schneider	✓	✓	✓	✓	

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Amendment - 5 mills vote motion failed

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy & Natural Resources

Bill/Resolution No. 1206 as (re) engrossed

Date: 4-25-11

Roll Call Vote #: _____

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Klein Seconded by: Schneider

Representatives	4-25			Yes	No		Senators	4-25			Yes	No
Chairman Keiser	✓						Senator Klein	✓				
Rep. Hofstad	✓						Senator Wardner	✓				
Rep Kelsh	✓						Senator Schneider	✓				

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Voice vote to change approval motion carried Word Concurrence to on Pg 8, line 13.

4-27-11 1030

Attachment 2

11.0390.03024
Title.

Prepared by the Legislative Council staff for
Representative Keiser
April 25, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

That the Senate recede from its amendments as printed on pages 1517-1519 of the House Journal and pages 1317-1320 of the Senate Journal and that Engrossed House Bill No. 1206 be amended as follows:

Page 1, line 2, replace "grant repayment by the authority" with "appropriations; to provide for loans and loan repayment"

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 11, replace the first underscored comma with "or"

Page 2, line 11, remove ", or bond revenue"

Page 2, line 13, remove "or bond"

Page 2, line 14, remove "revenue"

Page 2, line 14, remove the underscored comma

Page 2, line 14, remove "any bonds or refunding bonds issued under this chapter remain"

Page 2, line 15, replace "outstanding or a grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 22, after "board" insert "who are water users of the member entity"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed."

Page 2, line 24, replace "2." with "2."

Page 2, line 30, after the underscored comma insert "except for the state engineer or designee,"

Page 5, line 24, remove "Issue and sell revenue bonds, including notes, certificates, leases, or other evidences"

Page 5, remove lines 25 through 31

Page 6, remove lines 1 through 16

Page 6, line 17, remove "17."

Page 6, line 19, replace "bonds" with "obligations"

Page 6, line 21, replace "18." with "13."

Page 12, line 27, replace "**60-40-18.**" with "**61-40-09.**"

Page 12, line 29, remove ", if the legislative assembly has appropriated"

Page 12, line 30, remove "moneys to restore the reserve fund for the obligation in default under this chapter."

Page 13, line 3, after the first "authority" insert "and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding to repay the principal and interest due"

Page 13, after line 9, insert:

"**SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER COMMISSION.** The Bank of North Dakota shall provide a loan of $50,000,000 to the western area water supply authority for construction of the project. The terms and conditions of the loan must be negotiated by the western area water supply authority and the Bank of North Dakota. However, the term of the loan is a maximum of seven years after June 30, 2014. The state water commission shall make available from funding appropriated to the commission for the 2011-13 biennium $25,000,000 as a zero interest loan to the western area water supply authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan is five years from the completion of the $10,000,000 loan from the resources trust fund.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $25,000,000 or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of eight years from the completion of the $50,000,000 loan from the Bank of North Dakota and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of $10,000,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of two years from the completion of the $25,000,000 loan from the general fund and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Page 13, line 10, replace "**STATE WATER COMMISSION GRANT**" with "**LOAN FUNDING AND**"

Page 13, line 10, replace "**OBLIGATION**" with "**PRIORITY**"

Page 13, line 10, remove "After"

Page 13, replace lines 11 through 14 with "Funding from sections 2, 3, and 4 of this Act must be structured so that funding is provided, as needed, first from the $25,000,000 zero interest loan from the state water commission, second from the $50,000,000 loan from the Bank of North Dakota, third from the $25,000,000 loan from the general fund, and last from the $10,000,000 loan from the resources trust fund. Repayment of loans must be structured so that repayment is first of the $50,000,000 loan from the Bank of North Dakota, second of the $25,000,000 loan from the general fund for deposit of the

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. _____ as (re) engrossed

Date: 4-24-11 1030

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Klein Seconded by: Rep. Hofstad

Representatives	4-24-11			Yes	No		Senators	4-24-11			Yes	No
Chairman Keiser	✓						Senator Klein	✓				
Rep. Hofstad	✓						Senator Wardner	✓				
Rep Kelsh	✓						Senator Schneider	✓				

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

voice vote taken to Adopt 03024 motion carried

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy and Natural Resources

Bill/Resolution No. _____ as (re) engrossed

Date: 4-22-11

Roll Call Vote #: 2

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____ -- _____

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Schneider Seconded by: Rep Kelsh

Representatives	Yes	No	Senators	Yes	No
Chairman Keiser		✓	Senator Klein		✓
Rep. Hofstad		✓	Senator Wardner		✓
Rep Kelsh	✓		Senator Schneider	✓	
	✓				

Vote Count Yes: 2 No: 4 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

to replace final 10 million from the Lewis and Clark fund to the Strategic investment and improvement fund.
motion failed

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. _____ as (re) engrossed

Date: 2-22-11

Roll Call Vote #: 3

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☒ SENATE recede from Senate amendments and amend as follows 1206 as presented 03024 fu

House/Senate Amendments on HJ/SJ page(s) _____

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by Senator Wardner Seconded by: Rep. K. Koch

Representatives	Yes	No	Senators	Yes	No
Chairman Keiser	✓		Senator Klein	✓	
Rep. Hofstad	✓		Senator Wardner	✓	
Rep Kelsh	✓		Senator Schneider	✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

motion passes

#1 – 4-25-11 230

11.0390.03021
Title.

Prepared by the Legislative Council staff for
Representative Keiser
April 22, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

That the Senate recede from its amendments as printed on pages 1517-1519 of the House Journal and pages 1317-1320 of the Senate Journal and that Engrossed House Bill No. 1206 be amended as follows:

Page 1, line 2, replace "grant repayment by the authority" with "appropriations; to provide for loans and loan repayment; budget priority"

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 11, replace the first underscored comma with "or"

Page 2, line 11, remove ", or bond revenue"

Page 2, line 13, remove "or bond"

Page 2, line 14, remove "revenue"

Page 2, line 14, remove the underscored comma

Page 2, line 14, remove "any bonds or refunding bonds issued under this chapter remain"

Page 2, line 15, replace "outstanding or a grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 2, line 18, remove "two"

Page 2, line 19, replace "representatives" with "one representative"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, after "association" insert ", and one county commissioner each from Burke County, Divide County, McKenzie County, Mountrail County, and Williams County"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 21, replace "two representatives" with "the representative"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed."

Page 2, line 30, after the underscored comma insert "except for the state engineer or designee and the county commissioners on the board,"

Page 5, line 24, remove "Issue and sell revenue bonds, including notes, certificates, leases, or other evidences"

Page 5, remove lines 25 through 31

Page 6, remove lines 1 through 16

Page 6, line 17, remove "17."

Page 6, line 19, replace "bonds" with "obligations"

Page 6, line 21, replace "18." with "13."

Page 6, line 24, replace "19." with "14."

Page 6, line 25, remove "other than bonded indebtedness"

Page 6, line 27, replace "20." with "15."

Page 6, remove lines 29 and 30

Page 7, remove lines 1 and 2

Page 7, line 3, replace "22." with "16."

Page 7, line 4, replace "23." with "17."

Page 7, line 9, replace "24." with "18."

Page 7, line 17, replace "25." with "19."

Page 7, line 22, replace "26." with "20."

Page 7, line 27, replace "report to" with "comply with the policy of"

Page 7, line 27, replace "on the" with "as the policy relates to"

Page 7, line 27, after the second underscored comma insert "and"

Page 7, line 28, replace the first underscored comma with "of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the"

Page 7, line 28, remove the second comma

Page 8, line 1, replace "bonds issued by the authority utilize section 61-40-17 or a grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 8, remove lines 6 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 17

Page 11, line 18, replace "**61-40-15.**" with "**61-40-07.**"

Page 11, line 18, replace "**ditches, canals, tramways, and transmission lines**" with "**pipelines and appurtenant facilities**"

Page 11, line 26, replace "**61-40-16.**" with "**61-40-08.**"

Page 11, line 26, after "**to**" insert "**judicially**"

Page 11, line 26, remove "**judicially**"

Page 11, line 27, remove ", issuing bonds,"

Page 12, remove lines 1 through 26

Page 12, line 27, replace "**60-40-18.**" with "**61-40-09.**"

Page 12, line 29, remove ", if the legislative assembly has appropriated"

Page 12, line 30, remove "moneys to restore the reserve fund for the obligation in default under this chapter,"

Page 13, line 3, after "authority" insert "and the liabilities of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the sixty-third legislative assembly to repay the principal and interest due during the 2013-15 biennium"

Page 13, after line 9, insert:

"**SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER COMMISSION.** The Bank of North Dakota shall provide a loan of $37,500,000 to the western area water supply authority for construction of the project. The terms and conditions of the loan must be negotiated by the western area water supply authority and the Bank of North Dakota. However, the term of the loan is a maximum of seven years after June 30, 2014. The state water commission shall make available from funding appropriated to the commission for the 2011-13 biennium $25,000,000 as a zero interest loan to the western area water supply authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan is five years from the completion of the $10,000,000 loan from the resources trust fund.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $37,500,000 or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of eight years from the completion of the $37,500,000 loan from the Bank of North Dakota and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of $10,000,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of two years from the completion of the $37,500,000 loan from the general fund and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Page 13, line 10, replace "**STATE WATER COMMISSION GRANT**" with "**LOAN FUNDING AND**"

Page 13, line 10, replace "**OBLIGATION**" with "**PRIORITY**"

Page 13, line 10, remove "After"

Page 13, replace lines 11 through 14 with "Funding from sections 2, 3, and 4 of this Act must be structured so that funding is provided, as needed, first from the $25,000,000 zero interest loan from the state water commission, second from the $37,500,000 loan from the Bank of North Dakota, third from the $37,500,000 loan from the general fund, and last from the $10,000,000 loan from the resources trust fund. Repayment of loans must

be structured so that repayment is first of the $37,500,000 loan from the Bank of North Dakota, second of the $37,500,000 loan from the general fund for deposit of the principal in the general fund and interest in the resources trust fund, third from the $10,000,000 loan from the resources trust fund for deposit in the resources trust fund, and last of the $25,000,000 zero interest loan from the state water commission for deposit in the resources trust fund. The western area water supply authority shall repay the loans for the project from revenues from the project, and the authority may prepay loans within the priority without penalty.

SECTION 6. 2013-15 BIENNIUM BUDGET PRIORITY. The governor shall make available in the 2013-15 biennium executive budget $40,000,000 from the resources trust fund for providing a loan to the western area water supply authority with repayment priority of being directly after the $10,000,000 loan from the resources trust fund and under the same terms as section 4 of this Act, except with the maximum term of seven years after the repayment of the $10,000,000 loan from the resources trust fund."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. HB 1206 as (re) engrossed

Date: 4/25/11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator J. Wardner Seconded by: Senator Klein

Representatives	4/25			Yes	No		Senators	4/25			Yes	No
Chairman Keiser	✓						Senator Klein	✓				
Rep. Hofstad	✓						Senator Wardner	✓				
Rep Kelsh	✓						Senator Schneider	✓				

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Please note Lake page 13, line 23 (colored Version)

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. HB 1206 as (re) engrossed

Date: 4/25/11

Roll Call Vote #: 2

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Klein Seconded by: Senator Wardner

Representatives	Yes	No	Senators	Yes	No
Chairman Keiser		✓	Senator Klein	✓	
Rep. Hofstad		✓	Senator Wardner	✓	
Rep Kilsh		✓	Senator Schneider	✓	

Vote Count Yes: 3 No: 3 Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

motion failed

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy & Natural Resources

Bill/Resolution No. HB 1206 as (re) engrossed

Date: 4/25/11

Roll Call Vote #: 3

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Klein Seconded by: Senator Schneider

Representatives				Yes	No		Senators				Yes	No
Chairman Keiser							Senator Klein					
Rep. Hofstad							Senator Wardner					
Rep Kelsh							Senator Schneider					

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Voice vote taken passed

To reinstate the 5% floor before Section 6.

4 - 4-25-11 #30

11.0390.03023
Title.

Prepared by the Legislative Council staff for
Representative Keiser
April 25, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

That the Senate recede from its amendments as printed on pages 1517-1519 of the House Journal and pages 1317-1320 of the Senate Journal and that Engrossed House Bill No. 1206 be amended as follows:

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 22, after "board" insert "who are water users of the member entity"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed."

Page 2, line 24, replace "2." with "2."

Page 2, line 30, after the underscored comma insert "except for the state engineer,"

Renumber accordingly

11.0390.03026
Title.06000

Prepared by the Legislative Council staff for
Representative Keiser
April 26, 2011

VR
4/26/11
1 of 4

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

That the Senate recede from its amendments as printed on pages 1517-1519 of the House Journal and pages 1317-1320 of the Senate Journal and that Engrossed House Bill No. 1206 be amended as follows:

Page 1, line 2, replace "grant repayment by the authority" with "appropriations; to provide for loans and loan repayment"

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 11, replace the first underscored comma with "or"

Page 2, line 11, remove ", or bond revenue"

Page 2, line 13, remove "or bond"

Page 2, line 14, remove "revenue"

Page 2, line 14, remove the underscored comma

Page 2, line 14, remove "any bonds or refunding bonds issued under this chapter remain"

Page 2, line 15, replace "outstanding or a grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 22, after "board" insert "who are water users of the member entity"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed."

Page 2, line 24, replace "2." with "2."

Page 2, line 30, after the underscored comma insert "except for the state engineer or designee,"

Page 5, line 24, remove "Issue and sell revenue bonds, including notes, certificates, leases, or other evidences"

Page 5, remove lines 25 through 31

Page 6, remove lines 1 through 16

Page 6, line 17, remove "17."

Page 6, line 19, replace "bonds" with "obligations"

Page 6, line 21, replace "18." with "13."

Page 6, line 24, replace "19." with "14."

Page 6, line 25, remove "other than bonded indebtedness"

Page 6, line 27, replace "20." with "15."

Page 6, remove lines 29 and 30

Page 7, remove lines 1 and 2

Page 7, line 3, replace "22." with "16."

Page 7, line 4, replace "23." with "17."

Page 7, line 9, replace "24." with "18."

Page 7, line 17, replace "25." with "19."

Page 7, line 22, replace "26." with "20."

Page 7, line 27, replace "report to" with "comply with the policy of"

Page 7, line 27, replace "on the" with "as the policy relates to"

Page 7, line 27, after the second underscored comma insert "and"

Page 7, line 28, replace the first underscored comma with "of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the"

Page 7, line 28, remove the second underscored comma

Page 7, line 31, replace "concurrence" with "approval"

Page 8, line 1, remove "bonds issued by the authority utilize section 61-40-17 or a"

Page 8, line 2, replace "grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 8, remove lines 6 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 17

Page 11, line 18, replace "**61-40-15.**" with "**61-40-07.**"

Page 11, line 18, replace "**ditches, canals, tramways, and transmission lines**" with "**pipelines and appurtenant facilities**"

Page 11, line 26, replace "**61-40-16.**" with "**61-40-08.**"

Page 11, line 26, after "**to**" insert "**judicially**"

Page 11, line 26, remove "**judicially**"

Page 11, line 27, remove ", issuing bonds,"

Page 12, remove lines 1 through 26

Page 12, line 27, replace "**60-40-18.**" with "**61-40-09.**"

Page 12, line 29, remove ", if the legislative assembly has appropriated"

Page 12, line 30, remove "moneys to restore the reserve fund for the obligation in default under this chapter,"

Page 13, line 3, after the first "authority" insert "and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due"

Page 13, after line 9, insert:

"**SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER COMMISSION.** The Bank of North Dakota shall provide a loan of $50,000,000 to the western area water supply authority for construction of the project. The terms and conditions of the loan must be negotiated by the western area water supply authority and the Bank of North Dakota. However, the term of the loan is a maximum of seven years after June 30, 2014. The state water commission shall make available from funding appropriated to the commission for the 2011-13 biennium $25,000,000 as a zero interest loan to the western area water supply authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan is five years from the completion of the $10,000,000 loan from the resources trust fund.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $25,000,000 or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of eight years from the completion of the $50,000,000 loan from the Bank of North Dakota and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of $10,000,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of two years from the completion of the $25,000,000 loan from the general fund and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Page 13, line 10, replace "**STATE WATER COMMISSION GRANT**" with "**LOAN FUNDING AND**"

Page 13, line 10, replace "**OBLIGATION**" with "**PRIORITY**"

Page 13, line 10, remove "After"

Page 13, replace lines 11 through 14 with "Funding from sections 2, 3, and 4 of this Act must be structured so that funding is provided, as needed, first from the $25,000,000 zero interest loan from the state water commission, second from the $50,000,000 loan from the Bank of North Dakota, third from the $25,000,000 loan from the general fund, and last from the $10,000,000 loan from the resources trust fund. Repayment of loans must be structured so that repayment is first of the $50,000,000 loan from the Bank of North

Dakota, second of the $25,000,000 loan from the general fund for deposit of the principal in the general fund and interest in the resources trust fund, third from the $10,000,000 loan from the resources trust fund for deposit in the resources trust fund, and last of the $25,000,000 zero interest loan from the state water commission for deposit in the resources trust fund. The western area water supply authority shall repay the loans for the project from revenues from the project, and the authority may prepay loans within the priority without penalty. Upon repayment of the state water commission zero interest loan, the authority shall provide five percent of the net profits to the state water commission for deposit by the state treasurer in the resources trust fund until June 30, 2040.

SECTION 6. SECOND PHASE ANTICIPATED FUNDING. At the request of the western area water supply authority, the state water commission shall consider a loan of $40,000,000 from the resources trust fund for inclusion within the state water commission's budget. The state water commission shall consult and work cooperatively with the water-related topics overview committee in setting the priority of the loan within the budget."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. HB 1206 as (re) engrossed

Date: 4/25/11

Roll Call Vote #: 4

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) ____--____

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Hofstad Seconded by: Rep. Kelsh

Representatives				Yes	No		Senators				Yes	No
Chairman Keiser							Senator Klein					
Rep. Hofstad							Senator Wardner					
Rep Kelsh							Senator Schneider					

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Voice vote taken - passed on amendment H-03023

REPORT OF CONFERENCE COMMITTEE

HB 1206, as engrossed: Your conference committee (Sens. Klein, Wardner, Schneider and Reps. Keiser, Hofstad, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1517-1519, adopt amendments as follows, and place HB 1206 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1517-1519 of the House Journal and pages 1317-1320 of the Senate Journal and that Engrossed House Bill No. 1206 be amended as follows:

Page 1, line 2, replace "grant repayment by the authority" with "appropriations; to provide for loans and loan repayment"

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 11, replace the first underscored comma with "or"

Page 2, line 11, remove ", or bond revenue"

Page 2, line 13, remove "or bond"

Page 2, line 14, remove "revenue"

Page 2, line 14, remove the underscored comma

Page 2, line 14, remove "any bonds or refunding bonds issued under this chapter remain"

Page 2, line 15, replace "outstanding or a grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 22, after "board" insert "who are water users of the member entity"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed."

Page 2, line 24, replace "2." with "2."

Page 2, line 30, after the underscored comma insert "except for the state engineer or designee,"

Page 5, line 24, remove "Issue and sell revenue bonds, including notes, certificates, leases, or other evidences"

Page 5, remove lines 25 through 31

Page 6, remove lines 1 through 16

Page 6, line 17, remove "17."

Page 6, line 19, replace "bonds" with "obligations"

Page 6, line 21, replace "18." with "13."

Page 6, line 24, replace "19." with "14."

Page 6, line 25, remove "other than bonded indebtedness"

Page 6, line 27, replace "20." with "15."

Page 6, remove lines 29 and 30

Page 7, remove lines 1 and 2

Page 7, line 3, replace "22." with "16."

Page 7, line 4, replace "23." with "17."

Page 7, line 9, replace "24." with "18."

Page 7, line 17, replace "25." with "19."

Page 7, line 22, replace "26." with "20."

Page 7, line 27, replace "report to" with "comply with the policy of"

Page 7, line 27, replace "on the" with "as the policy relates to"

Page 7, line 27, after the second underscored comma insert "and"

Page 7, line 28, replace the first underscored comma with "of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the"

Page 7, line 28, remove the second underscored comma

Page 7, line 31, replace "concurrence" with "approval"

Page 8, line 1, remove "bonds issued by the authority utilize section 61-40-17 or a"

Page 8, line 2, replace "grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 8, remove lines 6 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 17

Page 11, line 18, replace "**61-40-15.**" with "**61-40-07.**"

Page 11, line 18, replace "**ditches, canals, tramways, and transmission lines**" with "**pipelines and appurtenant facilities**"

Page 11, line 26, replace "**61-40-16.**" with "**61-40-08.**"

Page 11, line 26, after "**to**" insert "**judicially**"

Page 11, line 26, remove "**judicially**"

Page 11, line 27, remove ", issuing bonds,"

Page 12, remove lines 1 through 26

Page 12, line 27, replace "**60-40-18.**" with "**61-40-09.**"

Page 12, line 29, remove ", if the legislative assembly has appropriated"

Page 12, line 30, remove "moneys to restore the reserve fund for the obligation in default under this chapter,"

Page 13, line 3, after the first "authority" insert "and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due"

Page 13, after line 9, insert:

"**SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER COMMISSION.** The Bank of North Dakota shall provide a loan of $50,000,000 to the western area water supply authority for construction of the project. The terms and conditions of the loan must be negotiated by the western area water supply authority and the Bank of North Dakota. However, the term of the loan is a maximum of seven years after June 30, 2014. The state water commission shall make available from funding appropriated to the commission for the 2011-13 biennium $25,000,000 as a zero interest loan to the western area water supply authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan is five years from the completion of the $10,000,000 loan from the resources trust fund.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $25,000,000 or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of eight years from the completion of the $50,000,000 loan from the Bank of North Dakota and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of $10,000,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of two years from the completion of the $25,000,000 loan from the general fund and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Page 13, line 10, replace "**STATE WATER COMMISSION GRANT**" with "**LOAN FUNDING AND**"

Page 13, line 10, replace "**OBLIGATION**" with "**PRIORITY**"

Page 13, line 10, remove "After"

Page 13, replace lines 11 through 14 with "Funding from sections 2, 3, and 4 of this Act must be structured so that funding is provided, as needed, first from the $25,000,000 zero interest loan from the state water commission, second from the $50,000,000 loan from the Bank of North Dakota, third from the $25,000,000 loan from the general fund, and last from the $10,000,000 loan from the resources trust fund. Repayment of loans must be structured so that repayment is first of the $50,000,000 loan from

the Bank of North Dakota, second of the $25,000,000 loan from the general fund for deposit of the principal in the general fund and interest in the resources trust fund, third from the $10,000,000 loan from the resources trust fund for deposit in the resources trust fund, and last of the $25,000,000 zero interest loan from the state water commission for deposit in the resources trust fund. The western area water supply authority shall repay the loans for the project from revenues from the project, and the authority may prepay loans within the priority without penalty. Upon repayment of the state water commission zero interest loan, the authority shall provide five percent of the net profits to the state water commission for deposit by the state treasurer in the resources trust fund until June 30, 2040.

SECTION 6. SECOND PHASE ANTICIPATED FUNDING. At the request of the western area water supply authority, the state water commission shall consider a loan of $40,000,000 from the resources trust fund for inclusion within the state water commission's budget. The state water commission shall consult and work cooperatively with the water-related topics overview committee in setting the priority of the loan within the budget."

Renumber accordingly

Engrossed HB 1206 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1206

#1

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Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

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SOURCES AND USES OF FUNDS

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

Dated Date	08/01/2011
Delivery Date	08/01/2011

Sources:	
Bond Proceeds:	
Par Amount	231,750,000.00
Net Premium	8,244,452.55
	239,994,452.55

Uses:	
Project Fund Deposits:	
Project Fund Deposit	128,376,990.31
Other Fund Deposits:	
Debt Service Reserve Fund	61,808,725.00
Capitalized Interest through 4/1/2015	46,329,775.96
	108,138,500.96
Delivery Date Expenses:	
Estimated Costs of Issuance (1.5%)	3,476,250.00
Other Uses of Funds:	
Contingency	2,711.28
	239,994,452.55

BOND DEBT SERVICE

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

Dated Date	08/01/2011
Delivery Date	08/01/2011

Period Ending	Principal	Coupon	Interest	Debt Service
08/01/2012	-	-	12,767,837.50	12,767,837.50
08/01/2013	-	-	12,767,837.50	12,767,837.50
08/01/2014	-	-	12,767,837.50	12,767,837.50
08/01/2015	18,135,000	5.000%	12,767,837.50	30,902,837.50
08/01/2016	19,040,000	5.000%	11,861,087.50	30,901,087.50
08/01/2017	19,995,000	5.500%	10,909,087.50	30,904,087.50
08/01/2018	21,095,000	5.500%	9,809,362.50	30,904,362.50
08/01/2019	22,255,000	5.500%	8,649,137.50	30,904,137.50
08/01/2020	23,475,000	5.500%	7,425,112.50	30,900,112.50
08/01/2021	24,770,000	5.500%	6,133,987.50	30,903,987.50
08/01/2022	26,130,000	5.750%	4,771,637.50	30,901,637.50
08/01/2023	27,635,000	5.750%	3,269,162.50	30,904,162.50
08/01/2024	29,220,000	5.750%	1,680,150.00	30,900,150.00
	231,750,000		115,580,075.00	347,330,075.00

NET DEBT SERVICE

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

Period Ending	Principal	Interest	Total Debt Service	Debt Service Reserve Fund	Capitalized Interest through 4/1/2015	Net Debt Service
08/01/2012	-	12,767,837.50	12,767,837.50	-	(12,767,837.50)	-
08/01/2013	-	12,767,837.50	12,767,837.50	-	(12,767,837.50)	-
08/01/2014	-	12,767,837.50	12,767,837.50	-	(12,767,837.50)	-
08/01/2015	18,135,000	12,767,837.50	30,902,837.50	-	(8,511,891.67)	22,390,945.83
08/01/2016	19,040,000	11,861,087.50	30,901,087.50	-	-	30,901,087.50
08/01/2017	19,995,000	10,909,087.50	30,904,087.50	-	-	30,904,087.50
08/01/2018	21,095,000	9,809,362.50	30,904,362.50	-	-	30,904,362.50
08/01/2019	22,255,000	8,649,137.50	30,904,137.50	-	-	30,904,137.50
08/01/2020	23,475,000	7,425,112.50	30,900,112.50	-	-	30,900,112.50
08/01/2021	24,770,000	6,133,987.50	30,903,987.50	-	-	30,903,987.50
08/01/2022	26,130,000	4,771,637.50	30,901,637.50	-	-	30,901,637.50
08/01/2023	27,635,000	3,269,162.50	30,904,162.50	-	-	30,904,162.50
08/01/2024	29,220,000	1,680,150.00	30,900,150.00	(61,808,725)	-	(30,908,575.00)
	231,750,000	115,580,075.00	347,330,075.00	(61,808,725)	(46,815,404.17)	238,705,945.83

BOND PRICING

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Premium (-Discount)
Serial Bonds:						
	08/01/2015	18,135,000	5.000%	3.170%	106.824	1,237,532.40
	08/01/2016	19,040,000	5.000%	3.530%	106.684	1,272,633.60
	08/01/2017	19,995,000	5.500%	3.920%	108.375	1,674,581.25
	08/01/2018	21,095,000	5.500%	4.340%	106.938	1,463,571.10
	08/01/2019	22,255,000	5.500%	4.680%	105.419	1,205,998.45
	08/01/2020	23,475,000	5.500%	4.960%	103.882	911,299.50
	08/01/2021	24,770,000	5.500%	5.210%	102.238	554,352.60
		148,765,000				8,319,968.90
Term Bond:						
	08/01/2022	26,130,000	5.750%	5.760%	99.909	(23,778.30)
	08/01/2023	27,635,000	5.750%	5.760%	99.909	(25,147.85)
	08/01/2024	29,220,000	5.750%	5.760%	99.909	(26,590.20)
		82,985,000				(75,516.35)
		231,750,000				8,244,452.55

Dated Date	08/01/2011	
Delivery Date	08/01/2011	
First Coupon	02/01/2012	
Par Amount	231,750,000.00	
Premium	8,244,452.55	
Production	239,994,452.55	103.557477%
Underwriter's Discount	-	-
Purchase Price	239,994,452.55	103.557477%
Accrued Interest	-	
Net Proceeds	239,994,452.55	

BOND SUMMARY STATISTICS

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

Dated Date	08/01/2011
Delivery Date	08/01/2011
Last Maturity	08/01/2024
Arbitrage Yield	5.059554%
True Interest Cost (TIC)	5.059554%
Net Interest Cost (NIC)	5.182041%
All-In TIC	5.270895%
Average Coupon	5.580074%
Average Life (years)	8.938
Duration of Issue (years)	7.095
Par Amount	231,750,000.00
Bond Proceeds	239,994,452.55
Total Interest	115,580,075.00
Net Interest	107,335,622.45
Total Debt Service	347,330,075.00
Maximum Annual Debt Service	30,904,362.50
Average Annual Debt Service	26,717,698.08

Bond Component	Par Value	Price	Average Coupon	Average Life	Average Maturity Date	Duration	PV of 1 bp change
Serial Bonds	148,765,000.00	105.593	5.422%	7.209	10/15/2018	6.057	92,561.15
Term Bond	82,985,000.00	99.909	5.750%	12.037	08/14/2023	8.837	75,516.35
	231,750,000.00			8.938			168,077.50

	TIC	All-In TIC	Arbitrage Yield
Par Value	231,750,000.00	231,750,000.00	231,750,000.00
+ Accrued Interest	-	-	-
+ Premium (Discount)	8,244,452.55	8,244,452.55	8,244,452.55
- Underwriter's Discount	-	-	
- Cost of Issuance Expense		-	
- Other Amounts	-	(3,476,250.00)	-
Target Value	239,994,452.55	236,518,202.55	239,994,452.55
Target Date	08/01/2011	08/01/2011	08/01/2011
Yield	5.059554%	5.270895%	5.059554%

PROJECT FUND

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

Project Fund Deposit (PROJ)

Date	Deposit	Interest @ 0.5%	Principal	Scheduled Draws	Balance
08/01/2011	128,376,990.31	-	-	-	128,376,990.31
10/01/2011	-	106,980.83	(106,980.83)	-	128,483,971.14
01/01/2012	-	-	13,837,784.33	13,837,784.33	114,646,186.81
04/01/2012	-	303,912.70	20,620,076.76	20,923,989.46	94,026,110.05
07/01/2012	-	-	23,221,167.12	23,221,167.12	70,804,942.93
10/01/2012	-	206,038.82	23,015,128.30	23,221,167.12	47,789,814.63
01/01/2013	-	-	10,454,931.51	10,454,931.51	37,334,883.12
04/01/2013	-	106,405.87	10,348,525.64	10,454,931.51	26,986,357.48
07/01/2013	-	-	10,454,931.51	10,454,931.51	16,531,425.97
10/01/2013	-	54,397.23	1,234,593.60	1,288,990.83	15,296,832.37
01/01/2014	-	-	5,518,810.48	5,518,810.48	9,778,021.89
04/01/2014	-	31,343.57	3,242,527.05	3,273,870.62	6,535,494.84
07/01/2014	-	-	3,273,870.62	3,273,870.62	3,261,624.22
10/01/2014	-	12,246.40	3,261,624.22	3,273,870.62	-
	128,376,990.31	821,325.42	128,376,990.31	129,198,315.73	

Yield To Receipt Date:	0.5000228%
Arbitrage Yield:	5.0595542%
Value of Negative Arbitrage:	7,100,005.02

Note: Construction draws shown here are net of a total of $30 million of State grants.

CAPITALIZED INTEREST FUND

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort. 10-Year Par Call, 2x MADS DSRF, Rated BBB-)

Capitalized Interest through 4/1/2015 (CAPI)

Date	Deposit	Interest @ 0.5%	Principal	Scheduled Draws	Balance
08/01/2011	46,329,775.96	-	-	-	46,329,775.96
02/01/2012	-	115,824.44	6,268,094.31	6,383,918.75	40,061,681.65
08/01/2012	-	100,154.20	6,283,764.55	6,383,918.75	33,777,917.10
02/01/2013	-	84,444.79	6,299,473.96	6,383,918.75	27,478,443.14
08/01/2013	-	68,696.11	6,315,222.64	6,383,918.75	21,163,220.50
02/01/2014	-	52,908.05	6,331,010.70	6,383,918.75	14,832,209.80
08/01/2014	-	37,080.52	6,346,838.23	6,383,918.75	8,485,371.57
02/01/2015	-	21,213.43	6,362,705.32	6,383,918.75	2,122,666.25
08/01/2015	-	5,306.67	2,122,666.25	2,127,972.92	-
	46,329,775.96	485,628.21	46,329,775.96	46,815,404.17	

Yield To Receipt Date:	0.5000000%
Arbitrage Yield:	5.0595542%
Value of Negative Arbitrage:	4,099,209.40

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SOURCES AND USES OF FUNDS

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, 1xMADS DSRF, Rated A+)

Dated Date	08/01/2011
Delivery Date	08/01/2011

Sources:	
Bond Proceeds:	
Par Amount	173,980,000.00
Premium	11,106,095.20
	185,086,095.20

Uses:	
Project Fund Deposits:	
Project Fund Deposit	128,376,990.31
Other Fund Deposits:	
Debt Service Reserve Fund	22,533,750.00
Capitalized Interest through 4/1/2015	31,565,464.48
	54,099,214.48
Delivery Date Expenses:	
Estimated Costs of Issuance (1.5%)	2,609,700.00
Other Uses of Funds:	
Contingency	190.41
	185,086,095.20

BOND DEBT SERVICE

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, 1xMADS DSRF, Rated A+)

Dated Date	08/01/2011
Delivery Date	08/01/2011

Period Ending	Principal	Coupon	Interest	Debt Service
08/01/2012	-	-	8,699,000	8,699,000
08/01/2013	-	-	8,699,000	8,699,000
08/01/2014	-	-	8,699,000	8,699,000
08/01/2015	13,830,000	5.000%	8,699,000	22,529,000
08/01/2016	14,525,000	5.000%	8,007,500	22,532,500
08/01/2017	15,250,000	5.000%	7,281,250	22,531,250
08/01/2018	16,015,000	5.000%	6,518,750	22,533,750
08/01/2019	16,815,000	5.000%	5,718,000	22,533,000
08/01/2020	17,655,000	5.000%	4,877,250	22,532,250
08/01/2021	18,535,000	5.000%	3,994,500	22,529,500
08/01/2022	19,465,000	5.000%	3,067,750	22,532,750
08/01/2023	20,435,000	5.000%	2,094,500	22,529,500
08/01/2024	21,455,000	5.000%	1,072,750	22,527,750
	173,980,000		77,428,250	251,408,250

NET DEBT SERVICE

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, 1xMADS DSRF, Rated A+)

Period Ending	Principal	Interest	Total Debt Service	Debt Service Reserve Fund	Capitalized Interest through 4/1/2015	Net Debt Service
08/01/2012	-	8,699,000	8,699,000	-	(8,699,000.00)	-
08/01/2013	-	8,699,000	8,699,000	-	(8,699,000.00)	-
08/01/2014	-	8,699,000	8,699,000	-	(8,699,000.00)	-
08/01/2015	13,830,000	8,699,000	22,529,000	-	(5,799,333.33)	16,729,666.67
08/01/2016	14,525,000	8,007,500	22,532,500	-	-	22,532,500.00
08/01/2017	15,250,000	7,281,250	22,531,250	-	-	22,531,250.00
08/01/2018	16,015,000	6,518,750	22,533,750	-	-	22,533,750.00
08/01/2019	16,815,000	5,718,000	22,533,000	-	-	22,533,000.00
08/01/2020	17,655,000	4,877,250	22,532,250	-	-	22,532,250.00
08/01/2021	18,535,000	3,994,500	22,529,500	-	-	22,529,500.00
08/01/2022	19,465,000	3,067,750	22,532,750	-	-	22,532,750.00
08/01/2023	20,435,000	2,094,500	22,529,500	-	-	22,529,500.00
08/01/2024	21,455,000	1,072,750	22,527,750	(22,533,750)	-	(6,000.00)
	173,980,000	77,428,250	251,408,250	(22,533,750)	(31,896,333.33)	196,978,166.67

BOND PRICING

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, 1xMADS DSRF, Rated A+)

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Yield to Maturity	Call Date	Call Price	Premium (-Discount)
Serial Bonds:									
	08/01/2015	13,830,000	5.000%	2.270%	110.382	-	-	-	1,435,830.60
	08/01/2016	14,525,000	5.000%	2.630%	111.036	-	-	-	1,602,979.00
	08/01/2017	15,250,000	5.000%	3.020%	110.791	-	-	-	1,645,627.50
	08/01/2018	16,015,000	5.000%	3.440%	109.631	-	-	-	1,542,404.65
	08/01/2019	16,815,000	5.000%	3.780%	108.355	-	-	-	1,404,893.25
	08/01/2020	17,655,000	5.000%	4.060%	107.027	-	-	-	1,240,616.85
	08/01/2021	18,535,000	5.000%	4.310%	105.557	-	-	-	1,029,989.95
	08/01/2022	19,465,000	5.000%	4.580%	103.339 C	4.610%	08/01/2021	100.000	649,936.35
	08/01/2023	20,435,000	5.000%	4.750%	101.971 C	4.782%	08/01/2021	100.000	402,773.85
	08/01/2024	21,455,000	5.000%	4.910%	100.704 C	4.926%	08/01/2021	100.000	151,043.20
		173,980,000							11,106,095.20

Dated Date	08/01/2011	
Delivery Date	08/01/2011	
First Coupon	02/01/2012	
Par Amount	173,980,000.00	
Premium	11,106,095.20	
Production	185,086,095.20	106.383547%
Underwriter's Discount	-	-
Purchase Price	185,086,095.20	106.383547%
Accrued Interest	-	
Net Proceeds	185,086,095.20	

BOND SUMMARY STATISTICS

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, 1xMADS DSRF, Rated A+)

Dated Date	08/01/2011
Delivery Date	08/01/2011
Last Maturity	08/01/2024
Arbitrage Yield	4.113757%
True Interest Cost (TIC)	4.122209%
Net Interest Cost (NIC)	4.282814%
All-In TIC	4.322206%
Average Coupon	5.000000%
Average Life (years)	8.901
Duration of Issue (years)	7.262
Par Amount	173,980,000.00
Bond Proceeds	185,086,095.20
Total Interest	77,428,250.00
Net Interest	66,322,154.80
Total Debt Service	251,408,250.00
Maximum Annual Debt Service	22,533,750.00
Average Annual Debt Service	19,339,096.15

Bond Component	Par Value	Price	Average Coupon	Average Life	Average Maturity Date	Duration	PV of 1 bp change
Serial Bonds	173,980,000.00	106.384	5.000%	8.901	06/25/2020	7.262	122,170.75
	173,980,000.00			8.901			122,170.75

	TIC	All-In TIC	Arbitrage Yield
Par Value	173,980,000.00	173,980,000.00	173,980,000.00
+ Accrued Interest	-	-	-
+ Premium (Discount)	11,106,095.20	11,106,095.20	11,106,095.20
- Underwriter's Discount	-	-	
- Cost of Issuance Expense		-	
- Other Amounts	-	(2,609,700.00)	-
Target Value	185,086,095.20	182,476,395.20	185,086,095.20
Target Date	08/01/2011	08/01/2011	08/01/2011
Yield	4.122209%	4.322206%	4.113757%

PROJECT FUND

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, 1xMADS DSRF, Rated A+)

Project Fund Deposit (PROJ)

Date	Deposit	Interest @ 0.5%	Principal	Scheduled Draws	Balance
08/01/2011	128,376,990.31	-	-	-	128,376,990.31
10/01/2011	-	106,980.83	(106,980.83)	-	128,483,971.14
01/01/2012	-	-	13,837,784.33	13,837,784.33	114,646,186.81
04/01/2012	-	303,912.70	20,620,076.76	20,923,989.46	94,026,110.05
07/01/2012	-	-	23,221,167.12	23,221,167.12	70,804,942.93
10/01/2012	-	206,038.82	23,015,128.30	23,221,167.12	47,789,814.63
01/01/2013	-	-	10,454,931.51	10,454,931.51	37,334,883.12
04/01/2013	-	106,405.87	10,348,525.64	10,454,931.51	26,986,357.48
07/01/2013	-	-	10,454,931.51	10,454,931.51	16,531,425.97
10/01/2013	-	54,397.23	1,234,593.60	1,288,990.83	15,296,832.37
01/01/2014	-	-	5,518,810.48	5,518,810.48	9,778,021.89
04/01/2014	-	31,343.57	3,242,527.05	3,273,870.62	6,535,494.84
07/01/2014	-	-	3,273,870.62	3,273,870.62	3,261,624.22
10/01/2014	-	12,246.40	3,261,624.22	3,273,870.62	-
	128,376,990.31	821,325.42	128,376,990.31	129,198,315.73	

Yield To Receipt Date:	0.5000228%
Arbitrage Yield:	4.1137565%
Value of Negative Arbitrage:	5,682,672.09

Note: Construction draws shown here are net of a total of $30 million of State grants.

CAPITALIZED INTEREST FUND

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, 1xMADS DSRF, Rated A+)

Capitalized Interest through 4/1/2015 (CAPI)

Date	Deposit	Interest @ 0.5%	Principal	Scheduled Draws	Balance
08/01/2011	31,565,464.48	-	-	-	31,565,464.48
02/01/2012	-	78,913.66	4,270,586.34	4,349,500.00	27,294,878.14
08/01/2012	-	68,237.20	4,281,262.80	4,349,500.00	23,013,615.34
02/01/2013	-	57,534.04	4,291,965.96	4,349,500.00	18,721,649.38
08/01/2013	-	46,804.12	4,302,695.88	4,349,500.00	14,418,953.50
02/01/2014	-	36,047.38	4,313,452.62	4,349,500.00	10,105,500.88
08/01/2014	-	25,263.75	4,324,236.25	4,349,500.00	5,781,264.63
02/01/2015	-	14,453.16	4,335,046.84	4,349,500.00	1,446,217.79
08/01/2015	-	3,615.54	1,446,217.79	1,449,833.33	-
	31,565,464.48	330,868.85	31,565,464.48	31,896,333.33	

Yield To Receipt Date:	0.5000000%
Arbitrage Yield:	4.1137565%
Value of Negative Arbitrage:	2,245,071.07

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SOURCES AND USES OF FUNDS

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, State-Funded 2xMADS DSRF, Rated A+)

Dated Date	08/01/2011
Delivery Date	08/01/2011

Sources:	
Bond Proceeds:	
Par Amount	148,005,000.00
Premium	9,447,736.60
	157,452,736.60

Uses:	
Project Fund Deposits:	
Project Fund Deposit	128,376,990.31
Other Fund Deposits:	
Capitalized Interest through 4/1/2015	26,852,779.44
Delivery Date Expenses:	
Estimated Costs of Issuance (1.5%)	2,220,075.00
Other Uses of Funds:	
Contingency	2,891.85
	157,452,736.60

Note: Assumes State funding of a 2x maximum annual debt service reserve, and a total of $30 million of construction grants.

BOND DEBT SERVICE

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, State-Funded 2xMADS DSRF, Rated A+)

Dated Date	08/01/2011
Delivery Date	08/01/2011

Period Ending	Principal	Coupon	Interest	Debt Service
08/01/2012	-	-	7,400,250	7,400,250
08/01/2013	-	-	7,400,250	7,400,250
08/01/2014	-	-	7,400,250	7,400,250
08/01/2015	11,765,000	5.000%	7,400,250	19,165,250
08/01/2016	12,355,000	5.000%	6,812,000	19,167,000
08/01/2017	12,975,000	5.000%	6,194,250	19,169,250
08/01/2018	13,620,000	5.000%	5,545,500	19,165,500
08/01/2019	14,305,000	5.000%	4,864,500	19,169,500
08/01/2020	15,020,000	5.000%	4,149,250	19,169,250
08/01/2021	15,770,000	5.000%	3,398,250	19,168,250
08/01/2022	16,555,000	5.000%	2,609,750	19,164,750
08/01/2023	17,385,000	5.000%	1,782,000	19,167,000
08/01/2024	18,255,000	5.000%	912,750	19,167,750
	148,005,000		65,869,250	213,874,250

NET DEBT SERVICE

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, State-Funded 2xMADS DSRF, Rated A+)

Period Ending	Principal	Interest	Total Debt Service	Capitalized Interest through 4/1/2015	Net Debt Service
08/01/2012	-	7,400,250	7,400,250	(7,400,250)	-
08/01/2013	-	7,400,250	7,400,250	(7,400,250)	-
08/01/2014	-	7,400,250	7,400,250	(7,400,250)	-
08/01/2015	11,765,000	7,400,250	19,165,250	(4,933,500)	14,231,750
08/01/2016	12,355,000	6,812,000	19,167,000	-	19,167,000
08/01/2017	12,975,000	6,194,250	19,169,250	-	19,169,250
08/01/2018	13,620,000	5,545,500	19,165,500	-	19,165,500
08/01/2019	14,305,000	4,864,500	19,169,500	-	19,169,500
08/01/2020	15,020,000	4,149,250	19,169,250	-	19,169,250
08/01/2021	15,770,000	3,398,250	19,168,250	-	19,168,250
08/01/2022	16,555,000	2,609,750	19,164,750	-	19,164,750
08/01/2023	17,385,000	1,782,000	19,167,000	-	19,167,000
08/01/2024	18,255,000	912,750	19,167,750	-	19,167,750
	148,005,000	65,869,250	213,874,250	(27,134,250)	186,740,000

BOND PRICING

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, State-Funded 2xMADS DSRF, Rated A+)

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Yield to Maturity	Call Date	Call Price	Premium (-Discount)
Serial Bonds:									
	08/01/2015	11,765,000	5.000%	2.270%	110.382	-	-	-	1,221,442.30
	08/01/2016	12,355,000	5.000%	2.630%	111.036	-	-	-	1,363,497.80
	08/01/2017	12,975,000	5.000%	3.020%	110.791	-	-	-	1,400,132.25
	08/01/2018	13,620,000	5.000%	3.440%	109.631	-	-	-	1,311,742.20
	08/01/2019	14,305,000	5.000%	3.780%	108.355	-	-	-	1,195,182.75
	08/01/2020	15,020,000	5.000%	4.060%	107.027	-	-	-	1,055,455.40
	08/01/2021	15,770,000	5.000%	4.310%	105.557	-	-	-	876,338.90
	08/01/2022	16,555,000	5.000%	4.580%	103.339 C	4.610%	08/01/2021	100.000	552,771.45
	08/01/2023	17,385,000	5.000%	4.750%	101.971 C	4.782%	08/01/2021	100.000	342,658.35
	08/01/2024	18,255,000	5.000%	4.910%	100.704 C	4.926%	08/01/2021	100.000	128,515.20
		148,005,000							9,447,736.60

Dated Date	08/01/2011	
Delivery Date	08/01/2011	
First Coupon	02/01/2012	
Par Amount	148,005,000.00	
Premium	9,447,736.60	
Production	157,452,736.60	106.383390%
Underwriter's Discount	-	-
Purchase Price	157,452,736.60	106.383390%
Accrued Interest	-	
Net Proceeds	157,452,736.60	

BOND SUMMARY STATISTICS

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, State-Funded 2xMADS DSRF, Rated A+)

Dated Date	08/01/2011
Delivery Date	08/01/2011
Last Maturity	08/01/2024
Arbitrage Yield	4.113790%
True Interest Cost (TIC)	4.122240%
Net Interest Cost (NIC)	4.282842%
All-In TIC	4.322235%
Average Coupon	5.000000%
Average Life (years)	8.901
Duration of Issue (years)	7.262
Par Amount	148,005,000.00
Bond Proceeds	157,452,736.60
Total Interest	65,869,250.00
Net Interest	56,421,513.40
Total Debt Service	213,874,250.00
Maximum Annual Debt Service	19,169,500.00
Average Annual Debt Service	16,451,865.38

Bond Component	Par Value	Price	Average Coupon	Average Life	Average Maturity Date	Duration	PV of 1 bp change
Serial Bonds	148,005,000.00	106.383	5.000%	8.901	06/25/2020	7.262	103,931.45
	148,005,000.00			8.901			103,931.45

	TIC	All-In TIC	Arbitrage Yield
Par Value	148,005,000.00	148,005,000.00	148,005,000.00
+ Accrued Interest	-	-	-
+ Premium (Discount)	9,447,736.60	9,447,736.60	9,447,736.60
- Underwriter's Discount	-	-	
- Cost of Issuance Expense		-	
- Other Amounts	-	(2,220,075.00)	-
Target Value	157,452,736.60	155,232,661.60	157,452,736.60
Target Date	08/01/2011	08/01/2011	08/01/2011
Yield	4.122240%	4.322235%	4.113790%

PROJECT FUND

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, State-Funded 2xMADS DSRF, Rated A+)

Project Fund Deposit (PROJ)

Date	Deposit	Interest @ 0.5%	Principal	Scheduled Draws	Balance
08/01/2011	128,376,990.31	-	-	-	128,376,990.31
10/01/2011	-	106,980.83	(106,980.83)	-	128,483,971.14
01/01/2012	-	-	13,837,784.33	13,837,784.33	114,646,186.81
04/01/2012	-	303,912.70	20,620,076.76	20,923,989.46	94,026,110.05
07/01/2012	-	-	23,221,167.12	23,221,167.12	70,804,942.93
10/01/2012	-	206,038.82	23,015,128.30	23,221,167.12	47,789,814.63
01/01/2013	-	-	10,454,931.51	10,454,931.51	37,334,883.12
04/01/2013	-	106,405.87	10,348,525.64	10,454,931.51	26,986,357.48
07/01/2013	-	-	10,454,931.51	10,454,931.51	16,531,425.97
10/01/2013	-	54,397.23	1,234,593.60	1,288,990.83	15,296,832.37
01/01/2014	-	-	5,518,810.48	5,518,810.48	9,778,021.89
04/01/2014	-	31,343.57	3,242,527.05	3,273,870.62	6,535,494.84
07/01/2014	-	-	3,273,870.62	3,273,870.62	3,261,624.22
10/01/2014	-	12,246.40	3,261,624.22	3,273,870.62	-
	128,376,990.31	821,325.42	128,376,990.31	129,198,315.73	

Yield To Receipt Date:	0.5000228%
Arbitrage Yield:	4.1137897%
Value of Negative Arbitrage:	5,682,722.33

Note: Construction draws shown here are net of a total of $30 million of State grants.

CAPITALIZED INTEREST FUND

Western Area Water Supply Authority
Water Supply Revenue Bonds (10-Year Amort., 10-Year Par Call, State-Funded 2xMADS DSRF, Rated A+)

Capitalized Interest through 4/1/2015 (CAPI)

Date	Deposit	Interest @ 0.5%	Principal	Scheduled Draws	Balance
					26,852,779.44
08/01/2011	26,852,779.44	-	-	-	23,219,786.39
02/01/2012	-	67,131.95	3,632,993.05	3,700,125	19,577,710.86
08/01/2012	-	58,049.47	3,642,075.53	3,700,125	15,926,530.14
02/01/2013	-	48,944.28	3,651,180.72	3,700,125	12,266,221.47
08/01/2013	-	39,816.33	3,660,308.67	3,700,125	8,596,762.02
02/01/2014	-	30,665.55	3,669,459.45	3,700,125	4,918,128.93
08/01/2014	-	21,491.91	3,678,633.09	3,700,125	1,230,299.25
02/01/2015	-	12,295.32	3,687,829.68	1,233,375	-
08/01/2015	-	3,075.75	1,230,299.25		
	26,852,779.44	281,470.56	26,852,779.44	27,134,250	

Yield To Receipt Date:	0.5000000%
Arbitrage Yield:	4.1137897%
Value of Negative Arbitrage:	1,909,901.31

Attachment #1

DISCUSSION DRAFT

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

Page 1, line 2, after "authority" insert "; to require due diligence by the public finance authority and the Bank of North Dakota; to require budget section approval; and to provide for repayment of any state water commission grants"

Page 2, line 12, after the underscored period insert "Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income or bond revenue to the authority while any bonds or refunding bonds issued under this chapter remain outstanding."

Page 5, line 26, after "project" insert "and any other property of the authority"

Page 6, remove lines 23 through 25

Page 7, line 24, after "funds" insert "or any other property"

Page 7, line 29, remove "**Negotiability**"

Page 8, remove lines 20 through 29

Page 9, line 5, after "funds" insert "or any other property" and remove "refunding"

Page 9, line 6, remove "bond and in accordance with the"

Page 9, line 18, remove "refunding"

Page 9, line 20, after "revenues" insert "or any other property"

Page 9, line 28, after the second comma insert "or any other property of the authority"

Page 9, line 30, after "revenues" insert "and any other property"

Page 11, line 20, delete "However, the appropriation must be limited to an annual amount that does not exceed"

Page 11, line 21, delete "eighty percent of the required debt service reserve."; and insert "Any bond financing planned by the authority utilizing the provisions of this section must undergo due diligence examinations by the public finance authority and the Bank of North Dakota and must receive approval of the budget section."

Page 11, line 25, after "chapter." insert "To the extent any reserve fund is replenished under the provisions of this section by the State of North Dakota the authority

shall be obligated to reimburse the State from any revenues, funds or any other property of the authority as directed by the budget section."

Page 11, after line 25, insert:

"**SECTION 2. STATE WATER COMMISSION GRANT REPAYMENT OBLIGATION.** After any bonds or refunding bonds have been paid in full by the authority, the authority shall repay any state water commission grant made to the authority in an amount not to exceed thirty million dollars."

Renumber accordingly

Attachment # 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

PROPERTY

New Section 61-40-17. If the authority is in default in the payment of the principal of, or interest on, any of its obligations issued under this chapter; and, if the legislative assembly has appropriated moneys to restore the reserve fund for the obligation in default as provided for in this chapter; and, if the [state water commission / Industrial Commission / budget section], in its sole discretion, shall determine the authority is unable to repay the state loan to the authority in the time period required by the [state water commission / Industrial Commission / budget section]; the [state water commission / Industrial Commission / budget section] may give written notice to the governing board of the authority that, effective immediately, all members of the governing board of the authority are removed from office; that the state water commission shall, from the date of the written notice and thereafter, be the governing board of the authority; and that the state has taken possession of the water system and each and every part thereof.

As an alternative to Section 61-40-17:

Page 5, line 26, after "project" insert "and any other property of the authority"

Page 6, remove lines 23 through 25

Page 7, line 24, after "funds" insert "or any other property"

Page 8, line 29, after "limitation." insert "Provided, however, that this section shall not apply to any bonds issued under the provisions of Section 61-40-16."

Page 9, line 5, after "funds" insert "or any other property" and remove "refunding"

Page 9, line 20, after "revenues" insert "or any other property"

Page 9, line 28, after the second comma insert "or any other property of the authority"

Page 9, line 30, after "revenues" insert "and any other property"

MORAL OBLIGATION

Page 11, line 16, make this subsection 1

Page 11, line 16, after "reserve" insert ", including a letter of credit or similar instrument,"

Page 11, line 18, after "authority" insert "to the state water commission"

Page 11, line 20, after "reserve." strike "However, the appropriation must be limited to an annual amount that does not exceed"

Attachment #1

11.0390.02002
Title.

Prepared by the Legislative Council staff for
Representative Keiser
February 4, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

Page 1, line 2, after "authority" insert "; and to provide grant repayment by the authority"

Page 1, line 18, after the fifth underscored comma insert "irrigation,"

Page 2, line 12, after the underscored period insert "Participation member entities may not withdraw from the authority or fail or refuse to pay any water sale income or bond revenue to the authority if any bonds or refunding bonds issued under this chapter remain outstanding."

Page 3, after line 19, insert:

"5. The attorney general shall review the bylaws and shall approve for adequacy any provision of the procedure for dispute resolution between or among board members."

Page 5, line 17, after the third underscored comma insert "leases,"

Page 5, line 26, after "project" insert "and any other property of the authority"

Page 6, line 23, remove "Property of the authority may not be liable to be forfeited or taken in payment of any"

Page 6, remove lines 24 and 25

Page 6, line 26, remove "22."

Page 6, line 27, replace "23." with "22."

Page 7, line 1, replace "24." with "23."

Page 7, line 9, replace "25." with "24."

Page 7, line 10, replace "For" with "In relation to the initial construction of the system and for"

Page 7, line 14, replace "26." with "25."

Page 7, after line 17, insert:

"**61-40-06. Oversight of authority projects.**

The authority shall report to the water commission on the bidding, planning, construction, operation, and financial status of the project, as requested by the water commission. The authority shall present the overall plans and specifications for the project to the water commission for approval. The attorney general shall assist the authority at the request of the water commission."

Page 7, line 18, replace "**61-40-06.**" with "**61-40-07.**"

Page 7, line 24, after "funds" insert "or any other property"

Page 7, line 26, replace "**61-40-07.**" with "**61-40-08.**"

Page 7, line 26, remove "**- When private sale authorized - Public sale and notice**"

Page 7, line 29, replace "**61-40-08.**" with "**61-40-09.**"

Page 7, line 29, remove "**- Negotiability**"

Page 8, line 1, replace "**61-40-09.**" with "**61-40-10.**"

Page 8, line 9, replace "**61-40-10.**" with "**61-40-11.**"

Page 8, line 20, replace "**61-40-11.**" with "**61-40-12.**"

Page 8, line 20, remove "**- Taxing power prohibited**"

Page 8, line 29, after the underscored period insert "However, this section does not apply to any bonds issued under section 61-40-17."

Page 9, line 1, replace "**61-40-12.**" with "**61-40-13.**"

Page 9, line 5, after "funds" insert "or any other property"

Page 9, line 5, remove "refunding"

Page 9, line 6, remove "bond and in accordance with the"

Page 9, line 18, remove "refunding"

Page 9, line 20, after "revenues" insert "or any other property"

Page 9, line 28, replace "upon" with "on all or part of"

Page 9, line 28, replace ", or any part of the revenues," with "or any other property of the authority"

Page 9, line 30, after "revenues" insert "and any other property"

Page 10, line 11, replace "**61-40-13.**" with "**61-40-14.**"

Page 11, line 1, replace "**61-40-14.**" with "**61-40-15.**"

Page 11, line 9, replace "**61-40-15.**" with "**61-40-16.**"

Page 11, line 15, replace "**61-40-16.**" with "**61-40-17.**"

Page 11, after line 15, insert:

"1."

Page 11, line 16, after "reserve" insert ", including a letter of credit or similar instrument,"

Page 11, line 18, after "authority" insert "to the state water commission"

Page 11, line 20, remove "However, the appropriation must be limited to an annual amount that does not exceed"

Page 11, line 21, remove "eighty percent of the required debt service reserve."

Page 11, line 25, after the underscored period insert "However, the amount of the refinancing may not be counted toward the one hundred fifty dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced plus costs of issuance.

2. To the extent any reserve fund is replenished under this section, the authority shall reimburse the state from any revenues, funds, or any other property of the authority as dictated by the budget section.

3. Any bond financing planned by the authority utilizing this section must undergo due diligence examination by the public finance authority and the Bank of North Dakota, and must receive approval of the budget section.

SECTION 2. STATE WATER COMMISSION GRANT REPAYMENT OBLIGATION. After any bonds or refunding bonds have been paid in full by the authority and after the provision of adequate funds for capital reserves and operation and maintenance reserves, the authority shall repay any state water commission grant made to the authority in an amount not to exceed thirty million dollars."

Renumber accordingly

Attachment # 3

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February 7, 2011

Chairman Keiser
Representative Kelsh
Representative Hofstad
House Energy and National Resources Subcommittee

Re: Proposed Amendments to House Bill 1206 of February 4, 2011

Dear Chairman Keiser, Representative Kelsh and Representative Hofstad:

Our comments on the February 4, 2011 Proposed Amendments to House Bill 1206 are attached. In addition we request the following amendments:

A. Pledge of Property

Proposed New Section 61-40-18. If the authority is in default in the payment of the principal of, or interest on, any of its obligations issued under this chapter; and, if the legislative assembly has appropriated moneys to restore the reserve fund for the obligation in default as provided for in this chapter; and, if the budget section shall determine the authority is unable to reimburse state in the time period required by the budget section; the budget section may give written notice to the governing board of the authority that, effective immediately, all members of the governing board of the authority are removed from office; that the state water commission shall, from the date of the written notice and thereafter, be the governing board of the authority; and that the state has taken possession of the water system and each and every part thereof.

Comment: As a general rule, political subdivisions are not permitted to encumber property. Revenue bonds typically provide that they are payable solely from the revenues pledged to payment of the bonds and that the holder of such bonds may not enforce payment of the bonds against any property of the political subdivision (Municipalities, NDCC Section 40-35-14; Water Districts, NDCC Section 61-35-39; Water Resource Districts, NDCC Section 61-16.1-16; Irrigation Districts, NDCC Section 61-08-42; Lake Agassiz Water Authority, NDCC Section 61-39-13).

If revenues are insufficient, bondholders may enforce bond covenants through the appointment of a receiver. A receiver takes possession of the system and operates, manages and controls the system for the benefit of the bondholders. Proposed Section 61-40-18 provides a similar remedy to the state in the event the moral obligation is used and the authority is unable to repay the state.

B. Moral Obligation – Mechanism to Get Request before Legislature

The February 4, 2011 Proposed Amendments contain the following:

Page 11, line 18, after "authority" insert "to the state water commission"

We request the following additional amendment related to the above:

Page 11, line 20, after "reserve." "The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state such amounts as are certified to it by the authority. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts."

Comment: The rating agencies will examine the legislation to make certain that a clear mechanism is in place should the authority need to request an appropriation from the legislature.

C. Bank of North Dakota Letter of Credit

Proposed amendment:

Page 11, line 25, after the underscored period insert

4. Upon request of the authority made prior to the sale of bonds issued under this section, the Bank of North Dakota shall provide at market rates a letter of credit to the authority for up to two years of debt service reserve."

Comment: Revenue bonds are structured with a debt service reserve fund; cash set-aside to pay principal and interest on the bonds should revenues be short. While the debt service reserve fund is usually funded from the bond proceeds, federal tax law provides that not more than 10% of bond proceeds may be deposited in a reserve fund. Because the debt service reserve has to last for a biennium, and because 10% will not cover two years of debt service payments, the authority's bonds need a letter of credit from the Bank of North Dakota.

Jaret Wirtz, Manager
McKenzie County Water Resource District

C: Cory Chorne, PE, AE2

Attachment #1

11.0390.02003
Title.

Prepared by the Legislative Council staff for
Representative Keiser
February 9, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

Page 1, line 2, after "authority" insert "; and to provide grant repayment by the authority"

Page 2, line 12, after the underscored period insert "Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income or bond revenue to the authority, if any bonds or refunding bonds issued under this chapter remain outstanding or a grant of up to thirty million dollars from the state water commission has not been repaid."

Page 3, after line 19, insert:

"5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general."

Page 5, line 17, after the third underscored comma insert "leases,"

Page 6, line 25, after the underscored period insert "However, if bonds are issued by the authority under section 61-40-17, this subsection does not apply."

Page 7, line 10, replace "For" with "In relation to the initial construction of the system and for"

Page 7, after line 17, insert:

"**61-40-06. Oversight of authority projects.**

The authority shall report to the state water commission on the bidding, planning, construction, operation, and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for concurrence. The attorney general shall assist the authority at the request of the state water commission. If bonds are issued by the authority under section 61-40-17 or a grant of up to thirty million dollars from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue."

Page 7, line 18, replace "**61-40-06.**" with "**61-40-07.**"

Page 7, line 26, replace "**61-40-07.**" with "**61-40-08.**"

Page 7, line 26, remove "**- When private sale authorized - Public sale and notice**"

Page 7, line 29, replace "**61-40-08.**" with "**61-40-09.**"

Page 7, line 29, remove "**- Negotiability**"

Page 8, line 1, replace "**61-40-09.**" with "**61-40-10.**"

Page 8, line 9, replace "**61-40-10.**" with "**61-40-11.**"

Page 8, line 20, replace "**61-40-11.**" with "**61-40-12.**"

Page 8, line 20, remove "**- Taxing power prohibited**"

Page 8, line 29, after the underscored period insert "However, this section does not apply to any bonds issued under section 61-40-17."

Page 9, line 1, replace "**61-40-12.**" with "**61-40-13.**"

Page 9, line 5, remove "refunding"

Page 9, line 6, remove "bond and in accordance with the"

Page 9, line 18, remove "refunding"

Page 9, line 28, replace "upon" with "on all or part of"

Page 9, line 28, remove ", or any part of the revenues,"

Page 10, line 11, replace "**61-40-13.**" with "**61-40-14.**"

Page 11, line 1, replace "**61-40-14.**" with "**61-40-15.**"

Page 11, line 9, replace "**61-40-15.**" with "**61-40-16.**"

Page 11, line 15, replace "**61-40-16.**" with "**61-40-17.**"

Page 11, after line 15, insert:

"1."

Page 11, line 16, after "reserve" insert ", including a letter of credit or similar instrument,"

Page 11, line 17, replace "authority" with "state water commission"

Page 11, line 18, after "authority" insert "to the state water commission"

Page 11, line 20, remove "However, the appropriation must be limited to an annual amount that does not exceed"

Page 11, line 21, replace "eighty percent of the required debt service reserve." with "The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state any amount as is certified to the commission by the authority. If the governor does not include in the executive budget the amount certified, the state water commission shall request independently an appropriation from the legislative assembly for the certified amount."

Page 11, line 25, after the underscored period insert "However, the amount of the refinancing may not be counted toward the one hundred fifty million dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced plus costs of issuance.

2. To the extent any reserve fund is replenished under this section, the authority shall reimburse the state from any revenues, funds, or any other property of the authority as dictated by the budget section.

3. Any bond financing planned by the authority utilizing this section must undergo due diligence examination by the public finance authority and the Bank of North Dakota, and must receive approval of the budget section.

60-40-18. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter, if the legislative assembly has

appropriated moneys to restore the reserve fund for the obligation in default under this chapter, and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 2. STATE WATER COMMISSION GRANT REPAYMENT OBLIGATION. After any bonds or refunding bonds have been paid in full by the authority and after the provision of adequate funds for capital reserves and operation and maintenance reserves, the authority shall repay any state water commission grant made to the authority in an amount not to exceed thirty million dollars."

Renumber accordingly

Attachment #3

1206

Keiser, George J.

From: Robert Harms [robert@harmsgroup.net]
Sent: Tuesday, February 08, 2011 3:23 PM
To: Keiser, George J.; Kelsh, Scot R.; Hofstad, Curt L.
Subject: RE: Proposed amendments HB 1206 (Revised)
Attachments: HB1206amendments2.08.2011.docx

Gentlemen,

I added another amendment at page 6 (removing language at the end of the page). It is shown in the attached set of amendments.

Thank you.

Robert W. Harms
Robert@harmsgroup.net
701-471-0959 (cell)
701-255-2841 (ofc)

From: Robert Harms [mailto:robert@harmsgroup.net]
Sent: Tuesday, February 08, 2011 1:26 PM
To: 'gkeiser@nd.gov'; 'skelsh@nd.gov'; 'chofstad@nd.gov'
Subject: Proposed amendments HB 1206...initial comments to Western Area Water Supply

Representatives Keiser, Kelsh and Hofstad,

Attached please find a draft set of amendments to HB 1206.

The amendments do several things:

1. Limits the size of the project, to be commenced in phases
2. Limits use of the project for municipal and rural domestic use
3. Requires a financing and business plan to be submitted to the ND Water Commission and
4. Contemplates the elimination of duplication of effort/services by merging existing water supply entities into the authority. (Why should we have two layers of governance to provide one commodity)?

A few concerns and questions follow:

1. I have family and business in the west and travel there regularly. I'm wondering what the urgency is for a massive water supply project (in view of existing water supply features, such as McKenzie Rural Water, Williams Rural Water (of which I am a customer) and R &T Water Supply which provides water to Ray, Tioga (my home town) and Stanley.
2. I'm very concerned that the driver on the project is the presumed support of the oil industry, upon which the project relies for 80% of its revenue. (Having worked in the industry for the past 7 years, I know that water is an issue, BUT it is also being supplied at present with additional private competitors likely to be in the market yet this year. (Is the need municipal and rural use? If so, we should size the project appropriately).
3. Another major concern is simply that there is NO local match/skin in the game. ALL funds for the project are coming from either the resources trust fund (which is likely to be at risk in the case of default) and presumed revenue from the private sector (oil industry). I do not believe we have ever funded a project in that manner, and generally require some form of local support.

Energy and Natural Resource Committee
February 8 , 2011

Amendments HB 1206

Page 1, line 18, remove "industrial, oil and gas"

Page 1, line 19, remove "development"

Page 2, line 1, remove "private users, such as oil and gas producers" and "or outside"

Page 2, line 2, remove "or the state."

Page 2, line 6, remove "or outside"

Page 2, line 7, remove "including cities or water systems in Montana"

Page 2, line13 insert: The authority shall submit for approval to the water commission, a business plan, including proposed financing and a phased project schedule to meet the water supply needs of western North Dakota for municipal and rural domestic water supply before commencing construction, or letting bids for any projects contemplated in this Act. The authority shall provide water only for municipal and domestic use of its members.

Page 2, after line 28 insert: Following the initial meeting of the board of directors, the board shall formulate a plan for the orderly dissolution of member water resource districts, in order to minimize duplication of effort and to maximize the utilization of public resources for delivering water for public use in northwestern North Dakota. The plan should provide for a timetable for dissolution and distribution of assets to the authority and other necessary issues for the orderly transition of responsibility of water supply in the region.

Page 4, line 26 remove "and others"

Page 4, line 27, remove "or outside" and "and the state"

Page 5, line 8, remove "or outside"

Page 6, line 21, remove "out-of-state"

Page 6, line 28, remove "The authority may adopt a rate"

Page 6, remove lines 20 through 31

Page7, line 2, remove "Irrigation'

Page 7, line 3, remove "milling, manufacturing, mining, industrial, metallurgical"

Page 11, line 23, remove "one hundred fifty" and insert "twenty-five"

Robert W. Harms
471-0959

THE HARMS GROUP

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Attachment #1

11.0390.02004
Title.

Prepared by the Legislative Council staff for
Representative Keiser
February 9, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

Page 1, line 2, after "authority" insert "; to provide grant repayment by the authority; and to declare an emergency"

Page 2, line 12, after the underscored period insert "Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income or bond revenue to the authority, if any bonds or refunding bonds issued under this chapter remain outstanding or a grant of up to thirty million dollars from the state water commission has not been repaid."

Page 3, after line 19, insert:

"5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general."

Page 5, line 17, after the third underscored comma insert "leases,"

Page 6, line 25, after the underscored period insert "However, if bonds issued by the authority utilize section 61-40-17, this subsection does not apply."

Page 7, line 2, remove "irrigation,"

Page 7, line 10, replace "For" with "In relation to the initial construction of the system and for"

Page 7, after line 17, insert:

"**61-40-06. Oversight of authority projects.**

The authority shall report to the state water commission on the bidding, planning, construction, operation, and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for concurrence. The attorney general shall assist the authority at the request of the state water commission. If bonds issued by the authority utilize section 61-40-17 or a grant of up to thirty million dollars from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue."

Page 7, line 18, replace "**61-40-06.**" with "**61-40-07.**"

Page 7, line 26, replace "**61-40-07.**" with "**61-40-08.**"

Page 7, line 26, remove "**- When private sale authorized - Public sale and notice**"

Page 7, line 29, replace "**61-40-08.**" with "**61-40-09.**"

Page 7, line 29, remove "**- Negotiability**"

Page 8, line 1, replace "**61-40-09.**" with "**61-40-10.**"

Page 8, line 9, replace "**61-40-10.**" with "**61-40-11.**"

Page 8, line 20, replace "**61-40-11.**" with "**61-40-12.**"

Page 8, line 20, remove "**- Taxing power prohibited**"

Page 8, line 29, after the underscored period insert "However, this section does not apply to any bonds issued which utilize section 61-40-17."

Page 9, line 1, replace "**61-40-12.**" with "**61-40-13.**"

Page 9, line 5, remove "refunding"

Page 9, line 6, remove "bond and in accordance with the"

Page 9, line 18, remove "refunding"

Page 9, line 28, replace "upon" with "on all or part of"

Page 9, line 28, remove ", or any part of the revenues,"

Page 10, line 11, replace "**61-40-13.**" with "**61-40-14.**"

Page 11, line 1, replace "**61-40-14.**" with "**61-40-15.**"

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Page 11, line 15, replace "**61-40-16.**" with "**61-40-17.**"

Page 11, after line 15 insert

"1."

Page 11, line 16, after "reserve" insert ", including a letter of credit or similar instrument,"

Page 11, line 17, replace "authority" with "state water commission"

Page 11, line 18, after "authority" insert "to the state water commission"

Page 11, line 20, remove "However, the appropriation must be limited to an annual amount that does not exceed"

Page 11, line 21, replace "eighty percent of the required debt service reserve." with "The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state any amount as is certified to the commission by the authority. If the governor does not include in the executive budget the amount certified, the state water commission shall request independently an appropriation from the legislative assembly for the certified amount."

Page 11, line 25, after the underscored period insert "However, the amount of any refinancing may not be counted toward the one hundred fifty million dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced plus costs of issuance.

2. To the extent any reserve fund is replenished under this section, the authority shall reimburse the state from any revenues, funds, or any other property of the authority as dictated by the budget section.

3. Any bond financing planned by the authority utilizing this section must undergo due diligence examination by the public finance authority and the Bank of North Dakota, and must receive approval of the budget section.

60-40-18. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter, if the legislative assembly has appropriated moneys to restore the reserve fund for the obligation in default under this chapter, and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 2. STATE WATER COMMISSION GRANT REPAYMENT OBLIGATION. After any bonds or refunding bonds have been paid in full by the authority and after the provision of adequate funds for capital reserves and operation and maintenance reserves, the authority shall repay any state water commission grant made to the authority in an amount not to exceed thirty million dollars.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Attachment #2

11.0390.02004
Title.

Prepared by the Legislative Council staff for
Representative Keiser
February 9, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

Page 1, line 2, after "authority" insert "; to provide grant repayment by the authority; and to declare an emergency"

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Attachment #1

HALLIBURTON

Comments Given by Brent Eslinger, District Manager, North Dakota

North Dakota House of Representatives, Natural Resources Committee
Hearing on Western Area Water Supply Project
January 20, 2011

Good morning. My name is Brent Eslinger and I am the North Dakota, District Manager for Halliburton. I have been employed by Halliburton for 23 years and am responsible for the company's operations in the state of North Dakota. I have been asked to speak to you today about the growth of Halliburton's business operations in the state, and our industry's long-term water needs here. Halliburton provides jobs, tax revenue, charitable donations and support for North Dakota and its residents – and our commitment to the state continues as we expand our operations here.

Halliburton is not new to North Dakota. We've been an employer here since 1984 — during down cycles as well as boom times. We currently provide jobs for more than 750 people in the state, and we are hiring more all the time. We are committed to providing our customers with the expertise and services they need as they continue developing the vast resources of the western area.

Halliburton currently operates six facilities in North Dakota, and we continue to expand in places like Williston and Minot. This boom in North Dakota is definitely different from previous upticks in activity. For example, new, advanced technologies have been introduced into the market that make it more feasible to sustain production. Also, indications are that the industry will be drilling new wells for years to come. On Jan. 2, The Associated Press (AP) quoted North Dakota Department of Mineral Resources Director Lynn Helms as saying that in the next four to seven years, oil

HALLIBURTON

Comments Given by Brent Eslinger, District Manager, North Dakota

North Dakota House of Representatives, Natural Resources Committee
Hearing on Western Area Water Supply Project
January 20, 2011

production could double. According to the AP, government and industry officials are also projecting that the total recoverable oil in the Bakken and Three Forks-Sanish formations may be more than twice the current estimates. Ron Ness, president of the North Dakota Petroleum Council, told the AP that he expects up to 2,000 new wells to be drilled in the state this year. Moreover, even after all the wells are drilled, they will still need to be maintained.

North Dakota is poised to become the No. 2 oil-producing state in the country by 2015, and Williston is the strategic location to provide the required services for the oil industry, but a lack of infrastructure is slowing North Dakota's economic growth — costing the state, local communities and businesses money and jobs. In addition to the need for more housing developments, water is vital to oil-industry activities — from drilling and well completion to maintenance and refining.

Halliburton does not purchase or dispose of water — it is the responsibility of oil companies, which are our customers, to provide water for our operations. Halliburton then uses the water on-site to complete fracturing operations. This is a standard process for all service companies.

Halliburton is a leading provider of hydraulic fracturing technology, which is the key to unlocking these unconventional reserves. The main elements of a typical frac job are water, sand and pressure. For example, an average of 2 million gallons of water is required for completing each new well. As a leading provider of hydraulic-fracturing

HALLIBURTON

Comments Given by Brent Eslinger, District Manager, North Dakota

North Dakota House of Representatives, Natural Resources Committee
Hearing on Western Area Water Supply Project
January 20, 2011

technology for our industry, Halliburton understands that water is a precious resource. We continue to develop industry-leading technologies, such as dry-gel blending and water recycling, that seek to reduce the amount of potable water needed to perform our operations.

That being said, operators are expected to drill approximately 2,000 wells this year in Western North Dakota, and the total amount of water required to fracture those wells ranges from 11 million to 23 million gallons *per day* — and this is considering only Bakken and Three Forks/Sanish wells. Horizontal well completions are now also being contemplated for several other oil- and gas-bearing formations in the region. Looking forward over the next 10 to 20 years, the industry is projected to need 40 to 80 billion gallons of water to drill, fracture, stimulate and refracture thousands of wells in the state.

Halliburton looks forward to serving our customers for many years to come in North Dakota, and we support any efforts by the state that provide the essential resources needed to continue the development of energy resources in the region. The Western Area Water Supply Project represents an important investment in the Williston area — one that will encourage development and permanent growth, and will have long-term benefits for the state, its residents and its businesses.

Attachment #2

Testimony by Tami Norgard
Vogel Law Firm
Counsel for McKenzie County Water Resource District

To the
Energy & Natural Resources Committee
HB 1206 Hearing

Bismarck, North Dakota
January 20, 2011

Chairman Porter, members of the committee, I appreciate the opportunity to testify on behalf of House Bill 1206. My name is Tami Norgard, and I am an attorney with the Vogel Law Firm in Fargo. I have worked with McKenzie County Water Resource District since 2009 on matters relating to the need to supply water to the burgeoning oil and gas industry in western North Dakota.

Many of the Committee Members are intimately familiar with projects to meet water supply needs. Just as the Eastern part of the state has spent years working on a project seeking a reliable water supply for their MR&I needs, a similar water supply need has arisen in Western North Dakota due to the ever expanding oil and gas industry as well as needs to upgrade or replace municipal water treatment facilities.

The Industrial Commission expects 1500-1800 new oil and gas wells to be drilled per year for the next 15 years. Each well is expected to use 1.5 to 4 million gallons of water. After the drilling subsides, a continued water supply will be needed for well production. The State Water Commission concluded that this need cannot be met by groundwater, as the resources do not sufficiently recharge. As such, Lake Sakakawea is the most readily available resource to supply the needs.

A group of Western North Dakota stakeholders, including McKenzie County Water Resource District, Williams Rural Water District, the Cities of Williston and Watford City, and R&T Water Supply Association have been involved in meetings since the summer of 2009 to discuss how they can best work together to quickly and efficiently meet these needs. These water systems fall short in their abilities to serve the municipal needs of their increased population along with meeting these oil industry needs, and recognize that the quickest and most efficient means of meeting the water needs is to work together to implement a regional water system. McKenzie County Water Resource District is leading an effort by Western cities and water systems to develop a plan that contemplates an expansion of the Williston Water Treatment Plant, coupled with additional pipelines to distribute water to cities, water systems and strategically located water depots for distribution for industrial needs. The Western Counties welcome the water depots as a means of reducing the heavy truck traffic that is causing excessive wear and tear on the roads and hope public safety will improve with less traffic on the roads.

The stakeholder group contemplated a number of organizational structures, including various iterations of a joint powers authority, but ultimately chose to pursue this legislation to create a new political subdivision. The stakeholders selected this option since it provides a more centralized operation and management structure. It will also allow the regional entity to bond for the project and independently exercise other governmental functions. This structure is favored since it gives all stakeholders some say and control over rate setting, distribution, and over the operation of the Williston Treatment Plant.

It is important to note that while the imminent need for this project is to serve the industrial water needs in the oil field, this Project serves a vital municipal and rural water supply purpose as well. For instance, the City of Watford City uses groundwater for its current water supply and it serves rural water users in McKenzie County, which is of much inferior quality than treated Missouri River water. A water supply from the Williston Treatment Plant would have one-fourth the amount of total dissolved solids, sodium, bicarbonate, sulfates, and alkalinity. The Missouri River water supply will have better taste, less staining, less spotting on dishes and vehicles, increased lifetime for pipelines and electric water heaters, and will be better for lawns and gardens. Watford City was considering constructing a new water treatment plant, but will be able to save its residents an average of $14 per month by utilizing a Missouri River water supply treated at the Williston Treatment Plant.

Outline of Legislation

The legislation proposes to create a new political subdivision of the state, with powers consistent with other political subdivisions in the state. I will provide a general overview of the legislation provisions.

Proposed NDCC 61-40-01 is a declaration of policy that supports the need to provide a reliable, high quality water supply to meet the municipal, rural and industrial needs in the Northwestern part of the state. The development of the Western Area Water Supply Authority pursuant to this section would create a new political subdivision that could sell bulk water supplies to municipalities, other public water systems, private industry at their facilities, and private industry at water depots.

Proposed NDCC 60-40-02 creates the Western Area Water Supply Authority, which includes participating political subdivisions and water systems within McKenzie, Williams, Burke, Divide and Mountrail Counties. It contemplates that member entities may be required to pay dues, pay for water sale income or bond revenue to the Authority.

Proposed NDCC 61-40-03 provides that the initial four board members, with two representatives on the Authority board, include Williams Rural Water District, McKenzie County Water Resource District, City of Williston and R&T Water Supply Association. R&T is a joint powers authority created by the cities of Ray and Tioga for the purposes of water supply. These are the four entities that have been working together to date to put a regional water supply plan in place. Additional water systems that have water contracts with the Authority could join the board in the future upon a 2/3 vote of the Authority board.

Proposed NDCC 61-40-04 addresses protocol for board meetings, officer election and the adoption of bylaws. Bylaws will be developed soon after authorization that will address voting rights, rate setting, and details of board member service. Board members will be entitled to per diem at rates authorized pursuant to state law.

The Authority is granted governmental powers in proposed 61-40-05. These powers are largely consistent with legal authority granted to other political subdivisions of the state. These include the power to sue and be sued, to contract, to own property, to contract for services, to use the power of eminent domain, to borrow money, to issue revenue bonds, to set water rates, to hold water permits, and to develop a water supply system that includes bulk water sales.

There are two particular provisions that were added to the authorities specifically to expedite the project development in light of the imminent and dire need for water. First, in subdivision 2, the Authority would have quick take authority to acquire right-of-way for water lines. This is necessary to allow for streamlined project development without being held up in court. The difference between regular condemnation pursuant to Chapter 32 and quick take authorization is the time in which title or a right of way easement gets transferred and when construction can begin. With standard condemnation pursuant to Chapter 32, the property owner has the right to challenge whether the project for which property is being taken is for a public purpose. With standard condemnation, the Authority would not have the ability to initiate construction until after a court has tried any challenge to the public purpose for the project and a court has determined the property value. Using quick-take authority, the legislature essentially sanctions that this is a public project devised for a recognized public purpose, so there is no basis on which private property owners should be in a position to challenge whether the project has a public purpose. With quick-take, a court can provide the Authority with an easement almost immediately so construction can commence, yet the court preserves the right of the landowner to have his/her day in court to determine the fair market value for the property. Given the imminent need for water, McKenzie County Water Resource Board asks to have quick-take authority to facilitate a quick build of the project and minimize delay due to protracted litigation.

The second provision that is added to expedite the process is at Subsection 25, which exempts municipalities from having to hold a public vote prior to entering into a contract for a new water supply that would otherwise be required of cities pursuant to

NDCC 40-33-16. Given the time and expense required to draft ordinances, pass resolutions and to administer a special election to authorize a change in water supply source, this legislation contemplates a waiver of the need for a municipality to pass an ordinance by a public vote of its citizens before entering into a contract for a water supply with the Authority. The waiver of a public vote requirement will also leave less concern for bond underwriters.

Section 61-40-06 through 61-40-13 include standard language, largely based on the Lake Agassiz Water Authority bond authority language.

Proposed NDCC 61-40-06 provides that the Authority can pass a resolution to issue revenue bonds.

Proposed NDCC 61-40-07 provides that the Authority can sell bonds either publically or privately.

Proposed NDCC 61-40-08 provides that bond anticipation notes may be issued pending preparation of the bonds.

Proposed NDCC 61-40-09 provides that the bonds are valid even after the officer who signs them is no longer an officer of the authority.

Proposed NDCC 61-40-10 provides that these are municipal bonds that are exempt from taxation by the state or any political subdivision, except for estate, inheritance or transfer taxes.

Proposed NDCC 61-40-11 provides that the sole repayment for revenue bonds is the revenue stream that is used as collateral for the bonds. The bondholders cannot enforce the bonds as a general obligation or liability of the Western Area Water Supply Authority or any of its stakeholder entities. This section makes it clear that the revenue

bonds issued hereunder do not implicate statutory or constitutional debt ceilings of the Authority or its stakeholders and there is no recourse available to the bondholders against the stakeholders or the Authority except as it relates to the income generated from water sales.

Proposed NDCC 61-40-12 establishes the operating practices of the Authority. This section provides requirements of the Authority and its staff to operate the project in a responsible manner and to keep it in good repair, to pay the principal and interest on bonds in a timely fashion, to enforce its water contracts and fees against water users to collect revenues, to pay project expenses and construction costs, and to maintain accurate accounting records.

Proposed NDCC 61-40-13 establishes the remedies of bondholders in the event the Authority were to default on bond payments. The remedies include a court action whereby the bondholders could demand that the Authority enforce its contracts to generate project revenues or undertake any other duties required of the Authority by contract or by this statute. The bondholders can also bring civil actions to require the Authority board to account to the bondholders as if they were trustees of a trust or to stop the board from taking actions that violate this statute or any contracts. They could also bring suit upon the bond or pursue any other remedies allowed by law.

Proposed NDCC 61-40-14 establishes that the Authority may use an easement over any state land for right-of-way needed for this Project. The Director of the Department of Transportation and the State Engineer must approve an easement over any particular parcel of state land. This provision is consistent with statutory authority for

other pipeline projects, such as the Southwest Pipeline Authority at NDCC 61-24.5-18 and Garrison Diversion at 61-24-19.

Proposed NDCC 61-40-15 provides the ability to initiate court proceedings if necessary to have a court confirm the validity of contracts or other acts. This is a provision currently included in the North Dakota Water Resource District statute at 61-16.1-59. To the extent there was any question about legal authorities of the Authority for the purposes of bonding or other issues, a question can be submitted to a court for confirmation to satisfy bond counsel or other concerns.

Proposed NDCC 61-40-16 creates a debt service reserve account whereby the State will supplement any deficiency in the reserve fund for bond payments, up to a maximum of eighty percent of the required debt service reserve due. This essentially provides a state moral obligation or state backing for the bonds in the eyes of the bond market. This provision will be discussed further in detail by our investment banker, Bob Campbell, but I will provide a quick synopsis as to its necessity.

Bond underwriters would be unlikely to issue bonds based largely on a revenue stream generated from the potential boom and bust oil fields. While it is not anticipated, there is a chance that a change in technologies, a drop in oil prices or increased EPA regulations could impact the amount of water purchased from the Authority, adding an element of risk to bond underwriters. When determining how to organize themselves, it became clear that a joint powers agreement was not preferable since each entity would be required to bond separately for the infrastructure costs. Given the boom and bust history of oil development in Western North Dakota and the already high indebtedness of some of these stakeholders to improve their existing road, water and sewer infrastructure to

keep up with the population explosion, the stakeholders did not want to accept the risk associated with further indebtedness for this infrastructure project.

Typically, bond underwriters want 'take or pay' contracts that require the user to pay for a long-term water commitment, regardless of whether they actually take the water or not. Since there are so many private companies buying water in varying amounts and at varying locations for indefinite time periods, it would be difficult to expect private companies to enter into long term minimum payment contracts for water supply. It would be difficult, if not impossible, to fund the entire project based on contracts with oil companies to enter into long-term minimum payment water contracts.

That said, our investment banker advises that the bonds likely could achieve investment grade ratings if the State commits its moral obligation to replenish up to 80% of the required reserve fund in any fiscal year. While the stakeholders have every indication that the oil activity will continue on an increasing trajectory that will allow bonds to be repaid within 10 years, it is reasonable to ask the State to assume some level of risk of the project as well. The State receives significant benefit in tax revenue, employment taxes, income taxes among other economic advantages from increased oil activity. The oil industry needs additional water to facilitate a continuation and increase in production. The need for improved infrastructure is a growing pain that the local stakeholders should not be left to carry alone.

If and when the oil boom subsides thereafter, this municipal, rural and industrial water supply project will remain to serve the needs of municipal and rural water systems, so there will be long-term benefit to the entire region and a long-term need for the continuation of the Authority.

McKenzie County Water Resource District's goal is to create the best project in the shortest time for the best cost. They hope to create a project that will not require continued State appropriations, but will pay for itself. Your favorable recommendation for HB 1206 will assist the area meet its water supply needs and will also allow the state to optimize the increased state-wide public benefit that is being produced in the oil fields of Western North Dakota.

Attachment #3

Testimony of
Robert H. Campbell
Barclays Capital
In Support of
House Bill 1206
January 20, 2011

Mr. Chairman, members of the committee

My name is Bob Campbell. I am a managing director with Barclays Capital and have served as the Western Area Water Supply Authority's investment banker in designing a plan of finance for this proposed water supply project.

By way of background, I have been involved in the municipal securities industry for 38 years and have participated in a number of multi-party water and other utility project financings. Somewhat coincidentally, I served for ten years on the board of directors of a New York Stock Exchange listed oil and gas exploration and production company. In my role as investment banker to this project, I have been tasked to identify a structure that would provide a minimum-cost, marketable financing while fairly distributing the debt and rate burdens associated with the project. My testimony today is made in support of formation of the Western Area Water Supply Authority and the proposed financing plan, including a State moral obligation to support payment of debt service on the Authority's bonds. I will address the following topics:

1. Based on the demand and revenue projections provided by the consulting engineer, the project should be self-supporting and payable from its own revenues, but

2. This will be a financing for a newly formed authority with an unproven stream of revenues that will be reliant in large part on water sales to oil and gas exploration companies. Consequently, revenues in the early years will be viewed by investors as being somewhat speculative until proven. Therefore, selling Western Area Water Supply Authority revenue bonds based on forecast revenues and on a stand-alone basis would be unacceptably expensive, if such bonds could be sold at all.

3. If the State were to provide a moral obligation pledge to support the financing, we believe revenue bonds sold by the Western Area Water Supply Authority would receive ratings sufficient to support a public offering of the bonds, resulting in a lower-cost financing and lower water rates for citizens served by the Western Area Water Authority.

A. Plan of Finance.

The consulting engineer has provided a study showing that, based on the best projections of demand, there will be sufficient revenue to amortize the bonds, if demand and revenues occur as forecast, over approximately 10-years. The financing structure we are proposing would include an amortizing structure that would produce annual debt service debt service that would both be affordable and produce excess revenues that could be

used to redeem bonds. Given this structure, the authority would pay operating and maintenance expenses plus debt service due in each year while stockpiling the excess revenues and/or redeeming bonds. At the bonds' call date, the Authority would use the remaining stockpiled excess revenues to redeem the bonds still outstanding at that time. This structure would provide substantial annual debt service coverage, lessening the likelihood the state's moral obligation pledge would be called upon. And in the event that projected revenues during the early years were slightly below projections but still robust enough to pay debt service as it comes due (i.e., without ever touching the required debt service reserve fund), the Authority simply would redeem less of the outstanding bonds and adjust rates in later years as necessary to pay off the remaining bonds over the subsequent years.

B. Sources of Payment.

Vital to the structure of the intended sources of repayment for the bonds is the assumption that the oil companies, paying a higher industrial use rate per gallon, will account for, on average, roughly 80% of annual operating revenues, with the remaining percentage accounted for by the participating municipalities, who will pay a lower domestic per-gallon rate for project water. Although we view the figures in the consulting engineer's forecast to be the most likely scenario, there nonetheless exists the outside chance that the somewhat volatile water demand from the oil and gas companies could abate or cease. Were the project financed on a stand-alone basis, the burden such a scenario would place on domestic water customers served by the project would be

unacceptably high, with the need to increase domestic rates drastically in a single fiscal year to ensure coverage of debt service and operating and maintenance expenses.

C. Need for State Moral Obligation Pledge.

Were the Authority an established entity with a history of water sales and revenues, its bonds likely could be sold on the basis of historical revenues plus forecast demand and revenue projections for the new project, without the need for backing by the State with its moral obligation pledge. Given that this will be a financing by a new entity to build a new project with no operating history and with revenues dependent on a volatile industry, we do not believe that an affordable financing could be sold on a stand-alone basis because of: (i) the lower credit ratings that would be assigned to such a financing and (ii) the likely resistance or outright refusal by investors to purchase bonds based exclusively on forecast revenues.

We have discussed this project with the rating agencies, and based on the information available, we estimate the Authority bonds issued to finance it could achieve ratings ranging from A+ to BBB- with a moral obligation pledge of the State (not a general obligation of the State). The best case option, of course, would be the full moral obligation backing by the State, which would result in the A+ rating and lower interest costs. However, in balancing the benefits and burdens of this project against the need for state backing, we believe an affordable, marketable bond sale would be possible with the State's 80% pledge. If the bonds were to be sold on a stand-alone basis, we estimate they

likely could not achieve investment grade ratings, and, accordingly, a public sale of the bonds would be expensive, if such a sale would even be possible.

D. Conclusion.

As stated at the beginning of my testimony, my role as investment banker to this project has included identifying the structure that would provide a minimum-cost, marketable financing that fairly distributes the debt and rate burdens associated with the project. The structure the Western Area Water Supply Authority is proposing – authority revenue bonds backed by a State moral obligation pledge – we believe is that structure.

Thank you for your time.

Attachment #4

January 20, 2011
The Honorable Todd Porter
Energy and Natural Resources Committee
Bismarck, ND
Re: Support for HB 1206
Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in support of HB 1206.

My name is David L. Johnson and I am the Operations Manager for Advanced Engineering and Environmental Service (Advanced Engineering) in Williston. Advanced Engineering has been retained by McKenzie County Water Resource District to evaluate the economic feasibility of the regional water project for northwest North Dakota commonly referred to as the Western Area Water Supply Project.

We have completed an appraisal level analysis that shows that under most cases the project is feasible and can be paid for in 10 years. There are some key assumptions which dictate the economic feasibility of the project. They are the amount of water that can be sold to the oil industry and the price which the industry is willing to pay. These two assumptions combined make up approximately 80% of the required revenue stream. The municipal and rural customers represent approximately 20% of the revenue stream.

The industry is currently paying between $.40 and $1.05 per barrel of water. Our analysis was based on $.63 and $.84 per barrel.

The volume of water sold in our analysis was assumed to be one half of the volume projected for fracturing needs in the region. This volume was taken from information provided by the Department of Mineral Resources.

Because of the importance of the volume of water demand in the analysis, McKenzie County Water Resource District has asked Advanced Engineering to study the location of the water demand over time and the location and volume of other available water sources for the oil industry. The results of this analysis are not complete at this time. However, preliminary results indicate the assumption that the water demand for the project will be 50% of the projected

demand for fracturing of the oil formation provided by the Department of Mineral Resources is likely low. In other words it is likely the demand for water from this project will be higher than assumed in the appraisal level analysis.

Secondly, McKenzie County Water Resource District requested that we evaluate secondary benefits from the project. The secondary benefits of interest were on the roads and irrigation.

To accomplish this analysis we mapped the location of the rigs and the location of all of the permitted and pending permits of other available water supplies likely to be issued. Since the cost of hauling water far exceeds the cost of the water, we assumed the oil industry would get the water from the closest water source. We further assumed that preference would be given to the competing water sources because they would likely be a lower priced supply. The results showed a reduction of road impacts of $38 to $56 million.

The State Water Commission has instituted a temporary policy to convert irrigation water to industrial water on a temporary basis. Based on a 1991 study by the North Dakota State University Department of Agricultural Economics, the enhanced agricultural return with irrigation ranges from $56-$173.50 per acre (2010 dollars). Further, based on the North Dakota Input-Output Model the co-efficient of agriculture has a net effect of 3.6851 times the enhanced agricultural return. The permits that have currently been converted to industrial use have impacted 1700 acres. If this continues for the next 10 years the economic impact to the region is estimated to be between $3.2 to $10 million dollars. If the project is not completed and the demand that would be served by the project is supplied by converting irrigation to industrial use, the impacts to the economy are estimated to be between $13and $40 million.

In summary the cost of the project is estimated to be $150 million and our analysis indicates that the financial plan for the project is feasible under the current conditions and projections. In addition the project is estimated to have secondary benefits to the road system of $38 to $57 million and prevent impacts to the agriculture economy of the region of $13 to $40 million.

The traditional method of building this type of project in North Dakota would require a 75% grant from the State MR&I Program or like in the case of the South West Water Pipeline Project, which is a very good project for the state, a 95% state funded and owned project. The local entities have banded together and developed a plan to capitalize on an opportunity to construct

a project to solve the regions municipal, rural, and industrial need while ensuring the oil industry continues to develop for the benefit of the state. They landed on this plan in consultation with the State Water Commission and the Water Coalition recognizing that there are enormous water needs such as Devils Lake, Fargo Flood Control, Red River Valley Water Supply, Northwest Area Water Supply, South West Area Water Supply and many other water needs. This bill provides the tools needed to take advantage of the opportunity and pay for the project from water sales with limited direct state funding.

Attachment #5

January 20, 2011
The Honorable Representative Todd Porter
Natural Resources Committee
Re: Support for House Bill 1206

Mr. Chairman Porter and Members of the Committee:

Thank you for this opportunity to testify in support of House Bill 1206.

I am Brad Bekkedahl and I serve as Vice-President, and Finance Commissioner for the City of Williston. Williston serves as the service center for the oil industry and the region. Williston is in full support of providing treatment capacity and entering a partnership with the other water supply systems in the region to deliver water to the entire region. The creation of the Western Area Water Supply Project will provide the organizational structure that will grant the necessary flexibility to serve all of the entities involved and tear down local political boundaries to allow the efficient and cost effective delivery of water for the benefit of the industry, the region, and the state of North Dakota.

I want to start by saying that some have said that Williston is not contributing enough to this project and that we should provide for this growth on our own. This is far from the reality. We are providing solid leadership and have constructed and improved a water supply infrastructure to make this project viable. With debt financing and rate structure increases to our citizens, we have expended approximately $30 million in the last decade on our water plant, storage, and transmission facilities. Williston has paid its fair share to support the current growth and intends to continue to pay its fair share. However, if we are going to continue to efficiently provide for the increase in water demand for the people and the oil industry we need a three way partnership between Williston, the other local water systems, and the state of North Dakota.

Williston has always worked towards being a proactive community through water infrastructure master planning. When we developed the last master plan for the water treatment plant we interviewed the rural systems and included their needs in our plan. In the past ten years, we have completed major water system construction projects including adding a redundant transmission main, increasing capacity at our water treatment plant, and improving the water

quality through a state-of-the-art ultra violet treatment technology, the first of its kind in the Upper Midwest.

Currently we use approximately 3 million gallons per day on average and our peak day demand is estimated to be approximately 6.5 million gallons per day. Our current water treatment plant has the capacity to treat 10 million gallons per day and is planned for expansion to 14 million gallon per day. So, currently we can meet our existing and future capacity demand at our treatment plant.

The demand for the region is currently forecasted to be 11 million gallons per day on average, with peak day demands of 23 million gallons per day by the year 2015 if the facility is used for the Western Area Water Supply Project. Our water intake facility takes water from the Missouri River, is permitted for ample quantities of water, is reliable, and ready to serve the needs of the region as well. We are confident that our water intake will perform at 14 million gallon per day and has a design capacity to serve 21 million gallon per day. We are also currently evaluating actual performance of the intake to verify that it will serve the full 21 million gallon per day. And, with our current Corps permit of 36 million gallons per day, we are the largest permitted source point for Missouri Water in the northwest region to supply this system.

In summary, Williston has built solid infrastructure that is well positioned to serve as the foundation for supplying water to the region, which can be readily expanded to meet the projected need.

Just as important, the Western Area Water Supply Authority will tear down district boundaries and promote regional planning and coordination to solve the problem in the most efficient manner. This is very important to Williston because we are surrounded by the Williams Rural Water District which serves the rural areas and does not have fire flow protection. As we expand it is important that the City be allowed to provide fire protection. In addition our growth areas are not serviceable from the City's existing water distribution system due to elevation issues. The Western Area Water Supply Project will address several of these distribution pressure problems so that the City can develop in the most appropriate manner.

The Western Area Water Supply Project is the solution to the water supply and distribution problems of the industry, the region, and Williston. Through this project we will be able to make

more efficient use of our treatment plant for the benefit of the growth of this industry, and if the industry continues to grow and develop, the City of Williston, the Region, and the State of North Dakota benefit also. The funding plan for the $150 million project includes a $25 million grant from the state, bonding that will be issued by the Western Area Water Authority, and a moral obligation from the state in the event that the required debt reserves cannot be maintained by the system. Through this partnership of state, local and regional entities we will be able to solve the water supply and treatment problems of the region, while paying for the improvements primarily through water rates.

We are proud to serve as a major stakeholder in this endeavor and excited to be part of the solution for our city, region, and state. We think this plan is the most fiscally responsible plan for everyone.

Thank you for your consideration and I would entertain any questions you may have at this time.

Attachment #6

January 20, **2011** Todd Porter

The Honorable (First and Last Name of Committee Chair)

(Name of Committee) Natural Resources Committee

(Address)

Re: Support for (Bill # and Bill Title) 1206

~~(Mr. / Madam)~~ (Chairman / ~~Chairwoman~~) and Members of the Committee: Chairman Porter

Thank you for this opportunity to testify in support of (~~Bill #~~). HB 1206

My name is Rick Olson and I am the Manager of Williams Rural Water District. Williams Rural Water District purchases drinking water from the City of Williston and distributes water to its customers throughout Williams County. Over the past several years, our district has continued to upgrade existing water system infrastructure to address US EPA standards, address aging equipment issues, and meet our customer's needs. Even though we strive to be proactive on this front, our system is struggling to provide the necessary infrastructure to grow with our customers.

Williams Rural Water District is facing several challenges including:

- a water distribution system that is out of capacity for the growth needed to address the water requirements in the area;
- the piping literally lacks the conveyance capacity to reach most of the system boundary; and
- a major transmission line that will provide the crucial piece to serve the remainder of the county.

The **Western Area Water Supply Project** has the ability to address these issues and more. A new regional pipeline system will allow service to the rural areas and continue to grow our system. The overall growth of our system is important to us for another reason. As the City of Williston is expanding into some of the existing Williams Rural Water District territory, there is a need to provide fire flow protection in those areas. Although this is a natural progression with growth, it means we either have to increase our capacity in those areas or let the City provide those services which will result in the loss of revenue for our system. We feel it is more appropriate for the City of Williston to provide fire flow protection in their territory. However, the

sustainability of our rural water system is extremely important as it provides much needed water to local farmers, ranchers, rural customers, and industry. We will need to balance the loss of revenue with future customers to maintain the system infrastructure. Our system looks towards the Western Area Water Supply Project as a means to do that.

The Western Area Water Supply Project will provide the cooperation needed and the frame work to allow our system to expand and grow to the areas that need it most, while ensuring that our system meets capital demands in the future.

Williams Rural Water District feels strongly that this is the right direction for our system and for the region as a whole. We fully support this project as a major stakeholder and as major infrastructure provider in Northwest North Dakota.

Thank you for your consideration....

Attachment #1

North Dakota WATER COALITION

PO Box 2254
Bismarck, ND 58502
(701) 223-4330
FAX (701) 223-4645

MEMBERS

Cass County Joint Board
City of Bismarck
City of Devils Lake
City of Dickinson
City of Fargo
City of Grand Forks
City of Minot
City of Williston
Devils Lake Basin Joint Board
Garrison Diversion Conservancy District
Lake Agassiz Water Authority
Missouri River Joint Water Resource Board
Mercer County Water Resource District
North Central Rural Water Consortium
North Dakota County Commissioners Association
North Dakota Association of Rural Electric Cooperatives
North Dakota Atmospheric Resource Board
North Dakota Farmers Union
North Dakota Irrigation Association
North Dakota League of Cities
North Dakota Public Finance Authority
North Dakota Rural Water Systems Association
North Dakota State Water Commission
North Dakota Water Resource Districts Association
North Dakota Water Users Association
North Dakota Weather Modification Association
Red River Joint Water Board
Souris River Joint Water Resource Board
South Central Regional Water District
Southwest Water Authority
Stutsman Rural Water District
Three Affiliated Tribes
West River Joint Water Board
Western Area Water Supply

Testimony of
Jean Schafer, Executive Director
North Dakota Water Coalition
HB 1206
January 20, 2010

Mr. Chairman and members of the House Natural Resources Committee:

For the record my name is Jean Schafer, and I serve as the Executive Director of the North Dakota Water Coalition. The North Dakota Water Coalition is comprised of more than 30 statewide, regional and tribal organizations in North Dakota who have a stake in the critical water needs facing our state. The Water Coalition has joined together so that we are united in our efforts to complete North Dakota's water infrastructure for economic growth and quality of life.

The Water Coalition supports the Western Area Water Supply project, and as indicated on the draft priorities sheet, that project is included as one of the water coalition priorities. We know that the oil industry brings many infrastructure challenges and impacts, and the water supply needs for this industry must be addressed as well as the continued needs for the rural and municipal residents.

The Water Coalition asks for your continued support that allows for adequate funding to meet all the critical water needs of North Dakota, and this includes the Western Area Water Supply project.

Thank you.

Handouts: Draft water priorities outline; Meeting the Challenge VII

January 11, 2011

Draft

Attachment #8

Water Coalition Funding Priorities Outline

Regional Infrastructure Development Projects:

	2011-13	2013-15	2015-17	2017-19	Total
Devils Lake Flood Control/Outlet Water Treatment	 $100 million $20 million	 ------ $20 million	 ------ ------	 ------ ------	 $100 million $40 million
Flood Control - Fargo	$45*/ $30 million	$75 million	$75 million	$75 million	$300 million
RRVWSP	$20 million	$40 million	$80 million	$80 million	$220 million
SWPP/NAWS	$25/ $12 million	$23/ $50 million	$19/ $20million	---/ $10 million	$159 million
Western Area Water Supply	$25 million	$5 million	------	------	$30 million
Total	$232 million	$213 million	$194 million	$165 million	$849 million

Local Infrastructure Development Projects:

	2011-13	2013-15	2015-17	2017-19	Total
General Water Management	$30 million				
Irrigation	$6 million	$6 million	$3.5 million	$3.5 million	$19 million
Missouri River	$1 million	$1 million	$1 million	$1 million	$4 million
MR&I Municipal Rural	 $25 million $46 million	 $55 million	 $35 million	 $15 million	 $151 million
Weather Modification	$1 million	$1 million	$1 million	$1 million	$4 million
Total	$109 million				

**** This was allocated by the 2009 Legislative Session***

Meeting the Challenge VII

Attachment #9

2011-13 Critical Water Needs Summary

In the past two years we have seen serious flooding not just in the east, but throughout the entire state. This next spring is projected to bear similar conditions. In the west oil development is booming and in need of water to continue and grow. We also have regional infrastructure needs such as Devils Lake, Red River Valley Water Supply, NAWS and the Southwest Pipeline Project, as well as local needs for rural water, irrigation, water management and weather modification. The Missouri River is another very significant issue. The following is a summary of the critical water needs we are facing in the coming biennium and beyond.

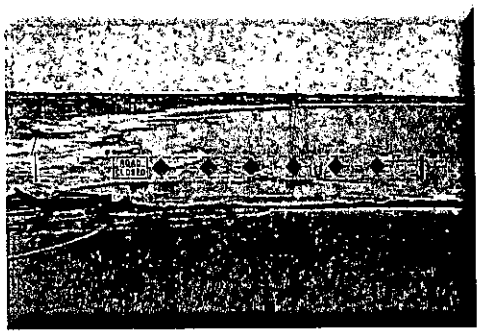
Our focus has always been, and continues to be, on critical water priorities. The North Dakota Water Coalition brings water and other groups together to help build grassroots support to complete North Dakota's water infrastructure for economic growth and quality of life.

– Dennis Hill, Chairman, North Dakota Water Coalition

Regional Infrastructure

Devils Lake

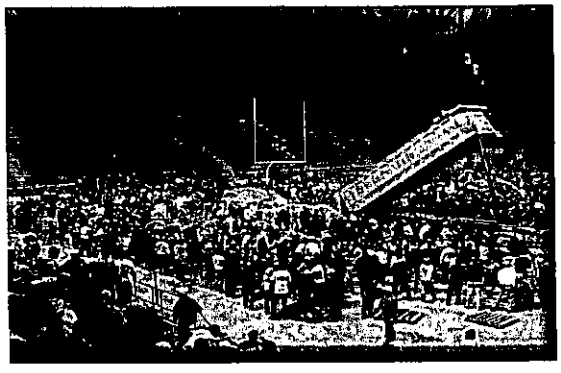
Devils Lake continues to plague the region with on-going flooding. The lake reached another all-time high during the summer of 2010, and sparked another round of road raises, flood protection measures, and home relocations – pushing the costs of mitigating the crisis to more than $700 million. In addition, the lake inundated more than 40,000 acres of productive farmland in the last two years, bringing the total amount of flooded land to nearly 140,000 acres since 1993.



Record lake elevations have also significantly increased the risk of a natural spill from the east end of the lake, causing increased concerns for potential downstream flooding and water quality impacts.

Federal, state, and local officials continue to search for answers to bring the lake into check. A federal task force was convened in the summer of 2010 to review alternatives and develop recommendations for flood control for the area. However, based on federal rules and regulations, it appears a federal response may take years to implement and will be quite costly. State and local officials have been reviewing potential non-federal alternatives for a solution to prevent a potential catastrophic overflow of the lake and reduce additional flooding in the region. The non-federal response will require significant state funding in future bienniums.

F-M Metropolitan Flood Protection



The City of Fargo has adopted a two-track strategy to achieve both comprehensive, long-term protection and continue to meet the immediate needs of the population. Fargo continues to be the last major city on the Red River that does not have a comprehensive flood protection project in place to protect its approximately 100,000 residents.

The immediate plan involves a series of projects that take a neighborhood approach to raising the level of protection available, thereby minimizing the amount of emergency efforts needed in areas that have historically required a substantial effort to protect. This approach has currently identified 26 locations and involves levee and flood wall construction, acquisition and removal of flood-prone property, road raises and storm sewer modifications that total approximately $31 million.

The comprehensive metro-wide flood risk management project is being developed in conjunction with the U.S. Army Corps of Engineers (USACE). The USACE has identified the National Economic Development plan as a diversion of the Red River through Minnesota that begins south of Fargo-Moorhead and terminates to the north of the cities. A locally preferred plan has also been identified that involves the construction of a diversion channel that would carry water from the Red, Wild Rice, Sheyenne, Maple, Lower Rush, and Rush rivers around the Fargo, West Fargo, Horace and Harwood communities in North Dakota as well as the cities of Moorhead and Dilworth in Minnesota. This plan is being carried forward and is currently in development. It will take more than 10 years to construct a North Dakota diversion. The estimated cost for this project is $1.2 billion and includes an estimated $711 million in federal funding. This leaves an estimated $561 million to be shared by the local entities including the states (North Dakota and Minnesota), counties, City of Fargo, City of Moorhead, as well as potential special assessments to benefitting properties.

Northwest Area Water S

NAWS is delivering much-improved drinking water to water service is being provided to Burlington, West F Souris Water District near Donnybrook. Construction Sherwood, Mohall and All Seasons Water District nea contracts for facilities north of Minot to the Air Force will be ready for construction in 2011. A federal cou intake and construction on improvements to the Min underway in 2011.

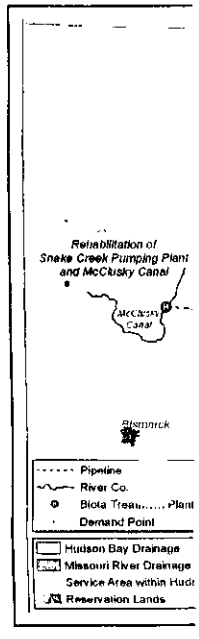
The water supply from Lake Sakakawea is still a few the Bureau of Reclamation to review two additional ii and the depletions to the Missouri River. To address meetings for a Supplemental Environmental Impact S expects to complete a draft of the Supplemental EIS construction costs is contingent on the required leve The projects that can be pursued while the Supplem million. The project receives federal and state fundir Minot.

Red River Valley Water

The Red River Valley faces a potential water supply prone Red River, or its tributaries, for their primary 1930s, there were months of no flow in the river.

Preparing for the lack of water is critical. A c[illegible]or. and federal officials have worked together to [illegible]dy all agree that a drought similar to 1930s is inevitabl 1,200 truckloads of water per day just to supply Fa year drought, there is not enough water to meet toc in the Valley, water shortages will become even gre resources are fully allocated, leaving no room for in

A solution has been chosen to counter this devastat will provide a supplemental water supply to ensure Fourteen years of studies, backed by sound data ar to the Sheyenne River Alternative is the best solutio costly of all Missouri River alternatives to build, the least costly to operate, and provides the most environmental benefits.



The Lake Agassiz Water Authority board of directors, Garrison Diversion board of directors, the State Water Commission and Gov. John Hoeven have all identified this option as the state's preferred alternative. In addition, the Bureau of Reclamation declared it the federally preferred alternative.

This plan is the best opportunity to sustain the Valley's population and to retain and attract new businesses. Keeping this plan moving forward is critical to the Valley's future.

rastructure Developn

Northwest Area Water Supply

NAWS is delivering much-improved drinking water to areas in north central North Dakota. Interim water service is being provided to Burlington, West River Water District, Berthold, Kenmare and Upper Souris Water District near Donnybrook. Construction on the facilities to provide interim water service to Sherwood, Mohall and All Seasons Water District near Antler which were completed in fall 2010. New contracts for facilities north of Minot to the Air Force Base and Upper Souris Water District near Glenburn will be ready for construction in 2011. A federal court is reviewing a request to allow design work on the intake and construction on improvements to the Minot water treatment plant. If allowed, this work will be underway in 2011.

The water supply from Lake Sakakawea is still a few steps away. In March 2010, a federal court directed the Bureau of Reclamation to review two additional items: study the consequences of a biota transfer, and the depletions to the Missouri River. To address the court order, Reclamation started public scoping meetings for a Supplemental Environmental Impact Statement (EIS) in September 2010. Reclamation expects to complete a draft of the Supplemental EIS by the end of 2011. The estimate of remaining construction costs is contingent on the required level of biota treatment identified in the Supplemental EIS. The projects that can be pursued while the Supplemental EIS is being completed total approximately $40 million. The project receives federal and state funding, and a 35 percent cost-share from local sales tax in Minot.

Red River Valley Water Supply Project

The Red River Valley faces a potential water supply crisis. Most residents of the region rely on the drought-prone Red River, or its tributaries, for their primary water supply. During the devastating drought of the 1930s, there were months of no flow in the river.

Preparing for the lack of water is critical. A c[illegible]orative t[illegible]of researchers, water experts, and state and federal officials have worked together to [illegible]dy the wat[illegible] supply needs of the Red River Valley. They all agree that a drought similar to 1930s is inevitable. During this type of water shortage, it would take 1,200 truckloads of water per day just to supply Fargo's basic indoor household water needs. In a multi-year drought, there is not enough water to meet today's demands. With the predicted population growth in the Valley, water shortages will become even greater. Future growth is also limited—groundwater resources are fully allocated, leaving no room for industrial growth.

A solution has been chosen to counter this devastating loss. The Red River Valley Water Supply Project will provide a supplemental water supply to ensure continued economic growth in eastern North Dakota. Fourteen years of studies, backed by sound data and scientific research, concluded that the GDU Import to the Sheyenne River Alternative is the best solution. It is the most reliable, the most flexible, the least costly of all Missouri River alternatives to build, the least costly to operate, and provides the most environmental benefits.

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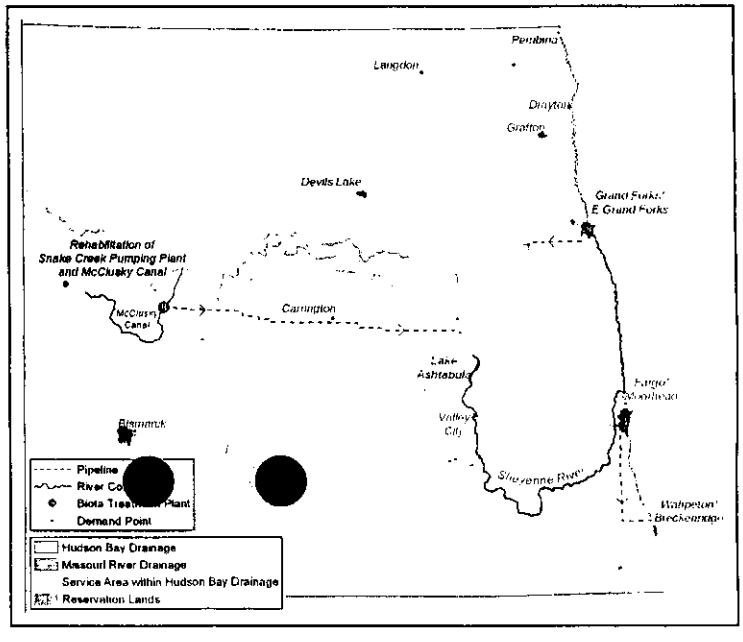
This plan is the best opportunity to sustain the Valley's population and to retain and attract new businesses. Keeping this plan moving forward is critical to the Valley's future.



Development Projects

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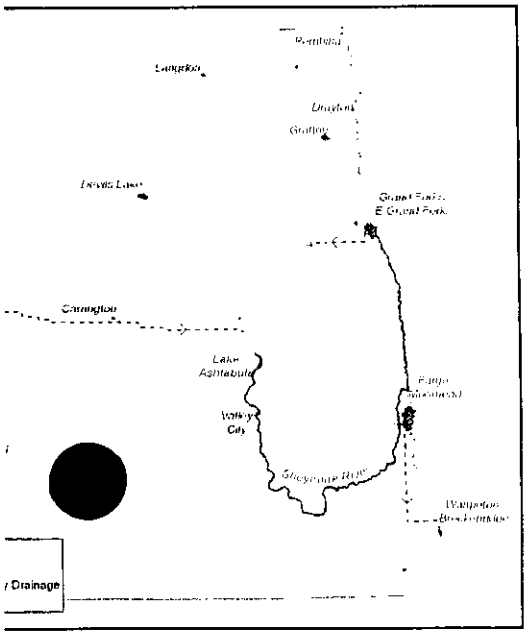
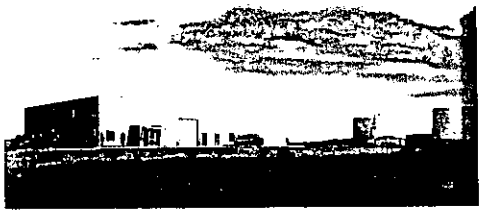


Southwest Pipeline Project



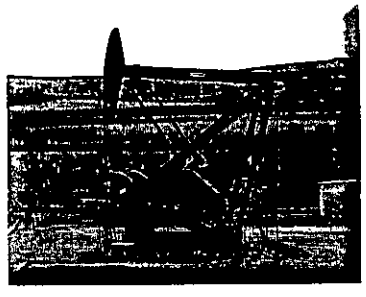
The Southwest Pipeline Project (SWPP) is the first large multi-county regional rural water project developed in the state. For 25 years, the SWPP has been constructing an efficient network of pipelines, pump stations, reservoirs and treatment facilities to bring southwest North Dakota an adequate supply of quality water. To date, 28 communities, more than 4,000 rural service locations and more than 30 other contract customers are served by the pipeline.

Current construction includes the last regional phase of construction, the Oliver, Mercer, North Dunn (OMND) Service Area. This includes Zap (Hazen) Service Area, Center Service Area, Dunn Center Service Area and the Halliday Service Area.

The new water treatment plant, two main transmission pipelines and one potable water reservoir for the OMND Regional Service Area have been bid and are/will be under construction.

Looking to the future, the ultimate goal is to reach out to those who wait for project completion. This includes communities, more than 1,000 rural customers and all energy sector users, including the power plants and the oil industry.

Western Area Water Supply



As oil industry expansion and population growth continues to soar, there is a dire need for water in the northwest portion of North Dakota. Currently, the existing regional water systems have limited capacity to accommodate the expanding energy work force, much less try to provide for the estimated 12 to 20 million gallons of water that will be needed each day to meet the needs of the oil industry. In fact, the State Water Commission concluded the aquifers in the area are insufficient to supply the requirements of the current region at the proposed rate of development.

The most viable solution is to utilize the plentiful water supply of Lake Sakakawea and enhance the infrastructure already in place. The Northwest North Dakota Oil Country Water Plan can provide additional water supplies and distribution points to the area in need.

This plan has the support of the key water infrastructure stakeholders in the region. The communities and water districts agree that this plan will address their challenges while providing the key benefits below:

- Meets the regional energy and domestic water needs
- Delivers water into the oil fields
- Reduces trucking road miles
- Reduces road operations and maintenance costs
- Reduces accidents
- Saves lives
- Financially responsible project that will use revenues from bulk sales to pay for a majority of the project without increasing the rates of existing residents
- Flexible phased plan can be implemented quickly
- Serves the best long-term needs of the state and region
- Estimated project is three years from the start date to being fully operational

The Northwest North Dakota Oil Country Water Plan meets existing and expanding domestic, commercial, and industrial water needs to: Williston, Williams Rural Water District, McKenzie County Water District, R&T Water Supply Association, Watford City, Ray, Tioga, Stanley, Crosby and BDW.

Ultimately, this plan benefits the entire state by providing the essential resources needed to continue the economic development of oil and other energy sources in the region.

Local Infrastructure Development Projects

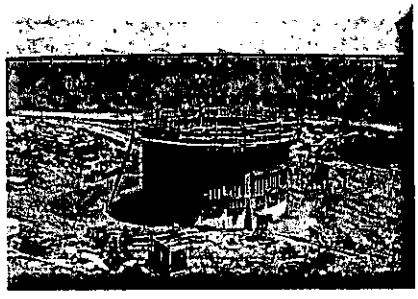
General Water Management

In addition to the many large-scale water projects being developed across North Dakota, there are also hundreds of smaller local water management projects that benefit individuals and local communities. The State Water Commission provides support for these water management projects, which require cost-sharing with local entities, primarily water resource districts. Joint water boards are playing a key role in these local water management projects. Examples of general water management projects that typically receive cost-share assistance from the state include: rural flood control, snagging and clearing, channel improvements, recreation projects, dam repairs, planning efforts, and special studies.

State and Tribal MR&I

The state's Municipal, Rural and Industrial (MR&I) program helps provide a reliable, high-quality and affordable water supply to North Dakota residents, farms, schools, hospitals and industries. In order to meet the growing statewide water needs, the Bureau of Reclamation, Garrison Diversion Conservancy District, North Dakota State Water Commission, and four Tribal Nations are working cooperatively to solve water quality and quantity problems.

State MR&I projects under construction include a new water treatment plant and lake intake for Emmons County. This treatment plant, part of the South Central Regional Water District, will eventually serve Emmons, Logan and McIntosh counties.



Recently completed projects include Tri-County Rural Water (City of Lakota), Walsh Rural Water, All Seasons Rural Water (City of Upham), Barnes Rural Water (City of Wimbledon) and the City of Garrison. Other rural water sponsors have requested funding for studies and project construction.

The Tribal MR&I program is administered under the Bureau of Reclamation. Reclamation must concur and approve feasibility studies, plans, and specifications; take the lead in complying with the National Environmental Policy Act; and must be responsible for the operation and maintenance of reservations' rural water systems. The tribes carry out the day-to-day activities related to construction and operation and maintenance.

Missouri River

The six mainstem dams and reservoir projects along the Missouri River were constructed with the goal of bringing substantial economic, environmental and social benefits to North Dakota and nine other states. However, this has not come without controversy and competition between water users, loss of valuable habitat, endangered species impacts, bank erosion, and delta formation—just a few of the complex issues related to Missouri River management today. Currently there are several coordinated efforts to address multiple issues in the Missouri River Basin, including:

Missouri River Recovery Implementation Committee (MRRIC)
The Missouri River Recovery Implementation Committee (MRRIC) serves as a collaborative forum to develop a shared vision and provides recommendations to federal, tribal, state, local and private entities in the basin on threatened and endangered species, while sustaining the river's many uses.

Missouri River Ecosystem Restoration Plan (MRERP)
The Corps, partnering with the U.S. Fish and Wildlife Service, initiated a collaborative long-term study/plan to identify and guide actions required to restore ecosystem functions, mitigate habitat losses and recover native fish and wildlife on the Missouri River, while seeking balance with social, economic and cultural values for future generations.

Missouri River Authorized Purposes Study (MRAPS)
Congress provided funding to the Corps for a five-year study of the original purposes of the Missouri River projects based on the Flood Control Act of 1944, as amended, to determine if changes to the authorized purposes and existing federal infrastructure may be warranted given current priorities.

Missouri River Protection and Improvement Act of 2000, Title VII
This act requires a taskforce to prepare and approve a plan for the use of the funds made available under Title VII primarily dealing with sedimentation issues in the headwaters of Lake Sakakawea and Lake Oahe.

Irrigation

North Dakota has approximately 260,000 acres of irrigated land. Irrigation provides increased job opportunities, more farm income, enhanced crop diversification, creates value-added opportunities, and increases tax revenues and overall economic benefits to the state. Revenue from irrigated production results in $4 to $5 return compared to each dollar of dryland crop production. Substantial land and water resources are available for increased irrigation development.

The expansion of the biofuels industry along with increased markets for irrigated malt barley, corn, potatoes, edible beans, pulse crops, oilseeds, and livestock forage all provide additional opportunities for profitable irrigated production. As an example, the research currently underway on the use of sugar beets for the production of ethanol may lead to an expanded irrigated crop and local processing opportunity. Irrigation development is a partnership of federal, state, local and private interests. State support of irrigation development enhances the opportunities for the overall expansion and diversification of the state's economy.

Weather Modification

Cloud seeding has been conducted over parts of western North Dakota for more than 50 years. The North Dakota Cloud Modification Project (NDCMP) currently includes Bowman, McKenzie, Mountrail, part of Slope, Ward and Williams counties, encompassing approximately 6.7 million acres. NDCMP goals include the enhancement of rainfall and suppression of hail from convective clouds each summer from June through August.

Participating counties fund two-thirds of project costs with the state cost-sharing one-third. Independent evaluations indicate the NDCMP has reduced crop-hail damage by 45 percent and increased rainfall by 5 to 10 percent, resulting in increased wheat production of nearly 6 percent. A 2011 economic evaluation by Bangsund and Leistritz at NDSU shows the NDCMP increases direct agricultural production value by $12 million to $19.7 million annually, while producing total annual economic activity of $37 million to $60 million. Costs for the 2011-13 biennium are estimated to be $1.75 million.

Attachment # 10

January 20, 2011

The Honorable Todd Porter

Natural Resources Committee

Re: Support for HB 1206

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in support of HB 1206. My name is Jerry Ranum and I am the President of the R&T Water Supply Association. The R&T Water Supply Association was created in the late 1970's to meet the water needs of the Cities of Ray and Tioga and rural users along the line. In 1988, the R&T system began providing water service to the Hess Tioga Gas Plant, and in 1994, expanded its service area to include the City of Stanley. In recent years, industrial and domestic demands have risen dramatically,

Throughout the years, the R&T Water Supply Association has met the challenges of growth and poor water quality by using the Ray aquifer as the water source in our region. In the last biennium, our system added a million gallon reservoir, a new 16" transmission line from the plant to the Tioga High Point reservoir, and cooperated with the City of Wildrose to supply its water. We are scheduled to connect the City of Crosby and the BDW rural water system next year. All of this growth is approaching the sustainable yield of the Ray aquifer.

We fully expect that the region will continue to grow. Some recent activity indicates that potash mining will be the next industry in our area. In order to continue to support the anticipated growth we will need to get water from the Missouri River. We have studied the feasibility of going directly south to the Missouri River from Ray. It is much more cost effective to connect to the City of Williston's water treatment plant through the Western Area Water Supply.

The Western Area Water Supply Authority provides a governance structure that we would be comfortable with, providing the necessary representation on the governing board to balance the needs of the entire region.

The Western Area Water Supply Project will provide the northwest region with adequate water resources to help create economic diversity such as potash processing, gasification plants, or agriculture processing facilities, as well as meeting increasing domestic needs. This plan is a solution to our current needs and is a critical piece of our future.

The R&T Water Supply Association and its members pledge complete support of the Western Area Water Supply Project. Included are letters of support from the Cities of Stanley and Crosby and the BDW Water System. We are excited to serve as a project sponsor and we look towards its ultimate implementation.

Thank you for your consideration.

Attachment #11

City of Crosby

PO Box 67 ~ Crosby, North Dakota 58730

January 19, 2011

RE: House Bill #1206

To Whom It May Concern:

Please be advised that the Mayor, City Council members and the residents of the City of Crosby fully support and intend on being a participating member of the Western Area Water Supply Authority.

This plan is a proactive approach to addressing the needs of the growing industrial development for excessive water as a necessary part of their operation as well as the growing domestic needs by recognizing and proceeding to develop the Missouri River as an alternate source BEFORE depleting our ground water sources.

The plan will not only protect a valuable commodity, our ground water source, but will also make it possible for small communities to continue providing quality potable water to their residents at an affordable cost.

Thank you for your consideration.

Sincerely,

CITY OF CROSBY

Carol Lampert

Carol Lampert
Auditor

Attachment #12

City of Stanley

221 S Main
Box 249
Stanley, ND 58784

January 18, 2011

To Whom It May Concern

The City of Stanley supports HB 1206 and is in agreement with the Western Area Water Supply Authority formation and its project to protect ground water sources.

The regions growing industrial and domestic needs could be met by using the Missouri River water.

Sincerely

Bev Gleave

City Auditor
Bev Gleave

Attachment #13

BDW WATER SYSTEM ASSOCIATION

PO Box 67 ~ Crosby, North Dakota 58730

January 19, 2011

RE: House Bill #1206

To Whom It May Concern:

Please be advised that the Chairman and board members of the BDW Water System Association, as well as the residents of the cities of Fortuna, Noonan and Columbus, fully support and intend on being a participating member of the Western Area Water Supply Authority.

We have recognized and are presently developing the initial phase of a small regional rural water system to provide abundant and quality potable water to smaller communities unable to afford it on their own. We know that by becoming a part of a larger system being supplied by surface water it will enhance redundancy of our system and guarantee an available water supply source as well as keeping costs to rural communities affordable.

This plan is a proactive approach to addressing the needs of the growing industrial development for excessive water as a necessary part of their operation as well as the growing domestic needs by recognizing and proceeding to develop the Missouri River as an alternate source BEFORE depleting our ground water sources.

Thank you for your consideration.

Sincerely,

BDW WATER SYSTEM ASSOCIATION

Carol Lampert

Carol Lampert
Agent of Record

Attachment #14

GRANITE PEAK DEVELOPMENT, LLC

Terry Metzler

RE: House Bill No. 12-06

I am here today representing Granite Peak Development North Dakota. We are a residential, commercial, retail and industrial development company with offices in Williston, North Dakota.

I would like to speak in support of the Western Area Water Supply Project. We are currently developing property for residential and industrial uses in and around the Williston area. As we analyze projects, infrastructure costs become a key element in determining the project's feasibility. While the developer can and should provide infrastructure inside the development boundaries, if they also need to bring water, sewer, power, gas, telephone and data to the property from a great distance, the project can soon become uneconomical. This is particularly true in building workforce housing. Lot development costs will ultimately affect the total house cost and can make it difficult for the average worker to afford. We have all seen what overpriced housing can do to the economy.

Any assistance a developer can get by having good quality water available to a project in the vicinity will ultimately reduce the cost of the project and make more projects economically feasible. In many of these highly impacted areas, land costs have risen dramatically. To maintain orderly and responsible development, water supply will be critical. We urge you to support the Western Area Water Supply Project to provide this element to ensure housing, retail expansion, and continued commercial growth to the citizens of North Dakota.

Attachment #15

HOUSE ENERGY AND NATURAL RESOURCE COMMITTEE
January 20, 2011
10:00 a.m. – Pioneer Room

North Dakota Department of Transportation
Ron Henke, P.E., Project Development Director

HB 1206

Members of the committee, my name is Ron Henke and I serve as Project Development Director for the North Dakota Department of Transportation (NDDOT). The Department would like to ensure we have on record our understanding of proposed bill as it relates to the use of highway right-of-way.

It is the Department's understanding that section 61-40-14 on page 11, lines 1 thru 8, requires approval of the plans from the Director of the Department of Transportation. As part of our approval process we would ensure the following:

- Make sure the utility is outside of the highway clear zone to maintain public safety.
- Placement of the utility would not interfere with any known future highway projects.
- Advise the utility that if a highway improvement project will impact the utility facility, that all costs to relocate, adjust or remove the utility facility is the sole responsibility of the utility.
- Appropriate permit fees are collected to cover approval costs.

I would be happy to answer any questions at this time. Thank you.

Attachment #16

HB 1206

Dear Honorable Representative

I hope that HB 1206 is not out of committee yet. I am writing in opposition to the bill. I didn't get to the hearing.
I feel that the taxpayers shouldn't be using tax money to pay for water distribution that is in direct competition to private business. I have no objection to cities getting an increased water supply.

There is plenty of water in private water depots that can handle the demand of the oil companies.

I am involved in a water depot with another person. Sometimes they(oil company services) us a lot of water and sometimes they don't.

This project will hurt all private depot operators and cost the taxpayers unneeded expenditures.

What happens if 170 million is spent for the project and the oil companies don't need the water any more. They can leave on a minutes notice. Who is left to pay for the project that is overbuilt for the remaining users.

Jerry Wurtz
PO Box 55
Plaza ND 58771
701-497-3783 Mike@agriindustries.com

jwurtz@restel.net

Mike Ames
701-572-0767
701-770 5108 cell - direct

WESTERN AREA WATER SUPPLY PROJECT
DRINKING WATER SYSTEM FACT SHEET

WATER FOR THE PEOPLE AND INDUSTRY

- The Western Area Water Supply Project (WAWSP) is a comprehensive domestic water project utilizing Missouri River water to meet the municipal, rural, and industrial water needs for all or parts of McKenzie, Williams, Divide, Burke, and Mountrail Counties (including the Cities of Williston, Watford City, Ray, Tioga, Stanley, Wildrose, and Crosby).
- The primary focus of the project is to supply drinking water for the estimated regional population peak of 48,000 expected in 2032.
- The system will utilize its unused capacity during the growth period to sell water to the oil industry, which is projected to pay for 80 percent of the initial project cost.

Local Unified Support:

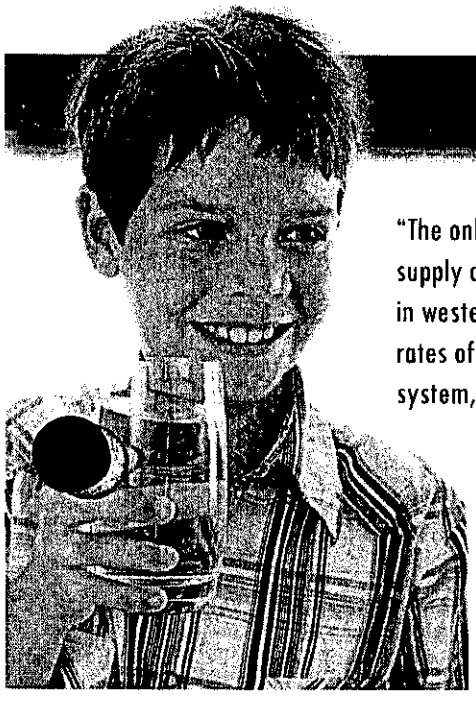
- City of Williston
- Williams Rural Water District
- McKenzie County Water Resource District
- R&T Water Supply Association

These systems have been developing a solution to the water needs in the region for several years and concluded the formation of the Western Area Water Supply Authority (WAWSA) to corroboratively address drinking water needs of the current population and the estimated 20,000 people that will be moving into the region over the next 15 to 20 years is the best solution.

AQUIFERS CANNOT SUPPLY QUANTITY AND QUALITY WATER

According to studies by the State Water Commission, the regional aquifers cannot adequately handle the amounts of water needed to supply the oil industry and the growth in the region.

- R&T Water Supply Association has reached the safe yield capacity of its aquifer (in 2010, the system exceeded its groundwater appropriation from the Ray Aquifer). Additional appropriations cannot be obtained quickly.
- Regional and municipal water systems in the region currently utilizing groundwater, including BDW Rural Water District and McKenzie County Water Resource District, are suffering numerous challenges such as poor water quality and insufficient quantity.
- The State Water Commission is charged with protecting the rights of senior water permit holders. In doing so, the permit review and approval process for additional groundwater permits may take years to complete.



THE BEST SOLUTION TO MEET REGIONAL NEEDS

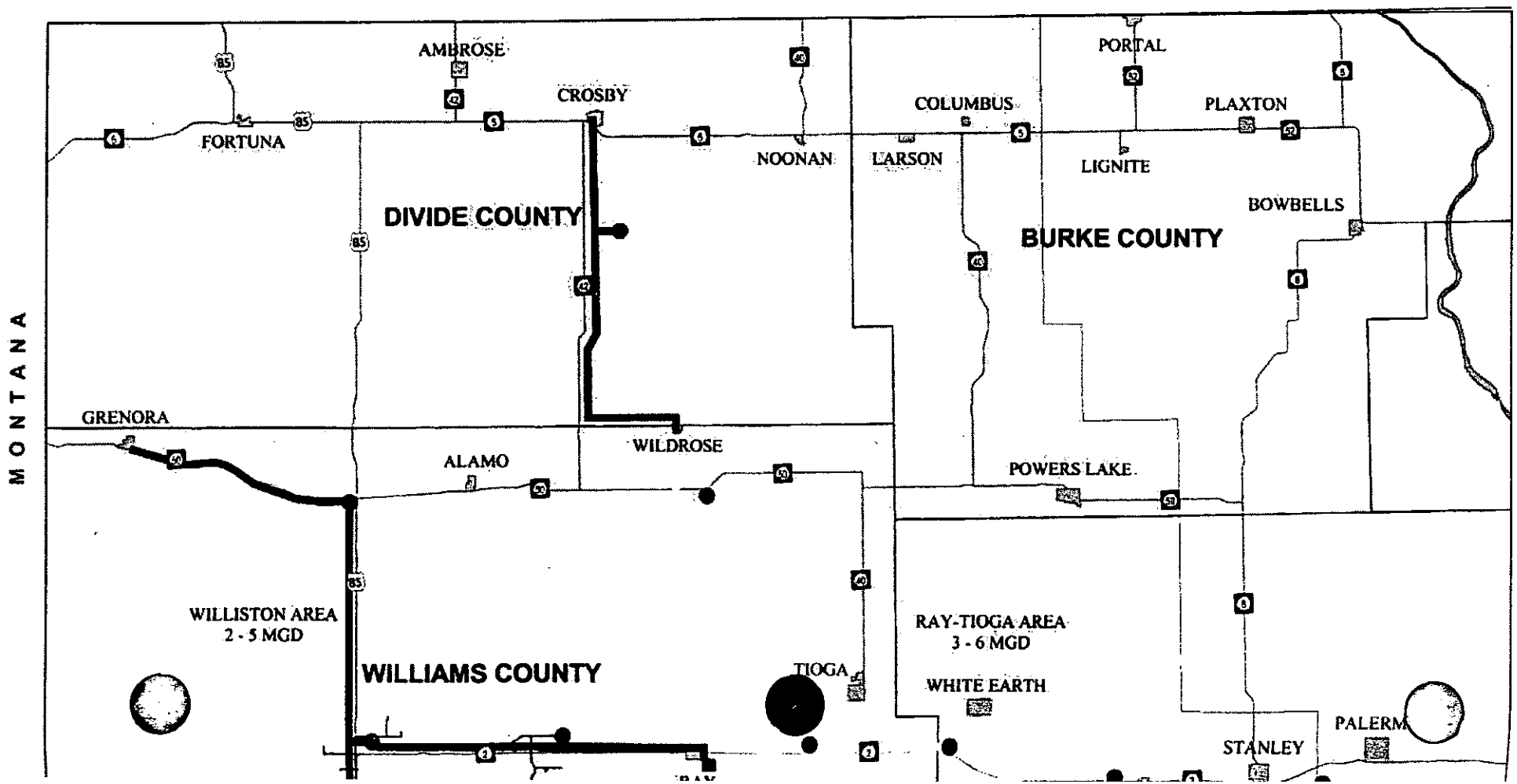
"The only plentiful and dependable supply of water for the oil industry in western North Dakota, at projected rates of extraction, is the Missouri River system, including Lake Sakakawea"

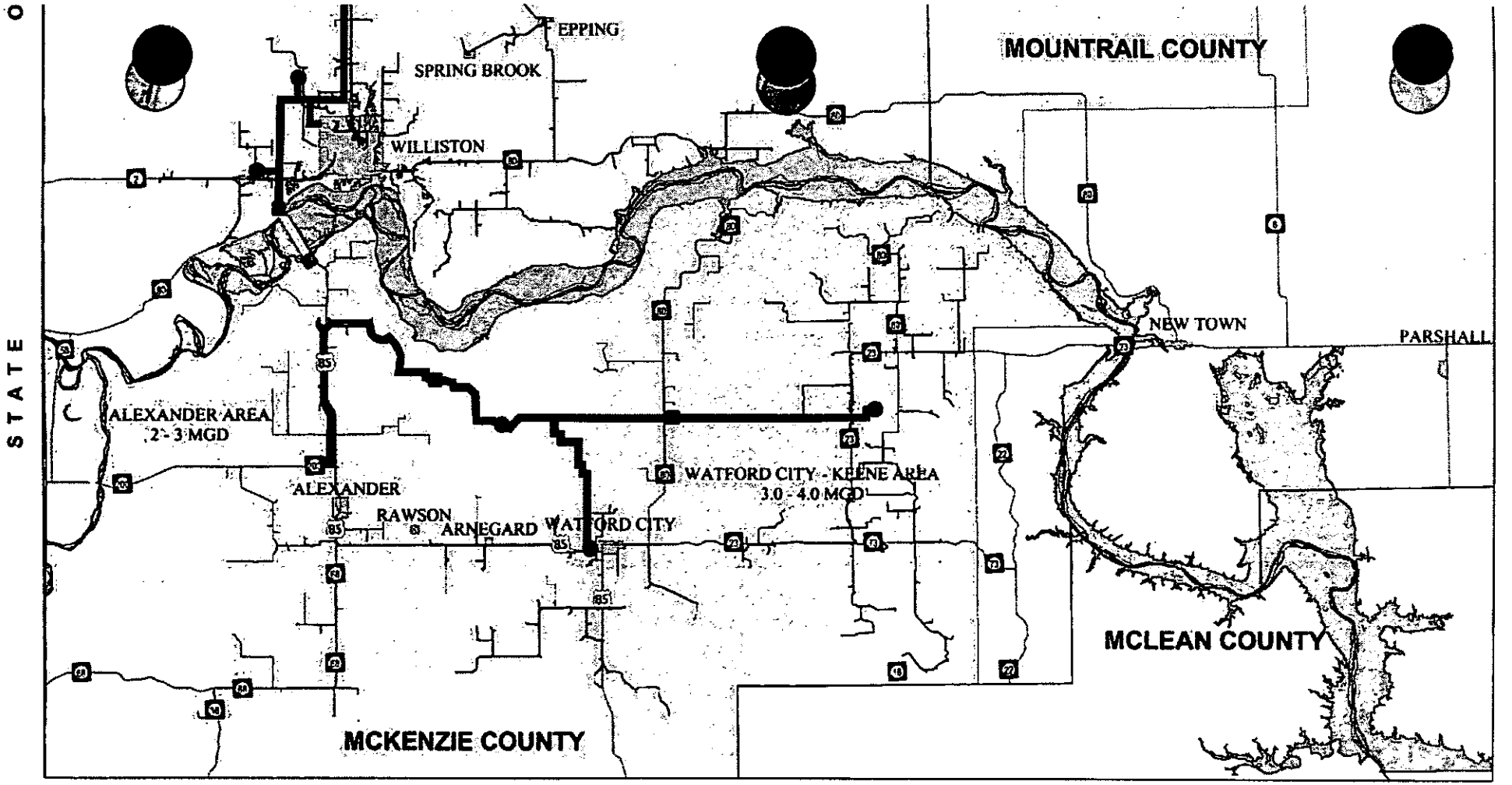
ND State Water Commission Investigation #49

- The City of Williston utilizes the Missouri River as its source and holds a senior water permit already, reducing the role of the US Army Corp of Engineers.
- This plan maximizes infrastructure already in place and combines the efforts of many entities for the good of the entire region and State.
- An independent study conducted by the Garrison Diversion Conservancy District concluded that a regional approach, such as WAWSP, was the most economical solution to solve the water supply problems of the region.

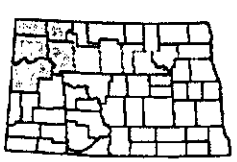
WESTERN AREA WATER SUPPLY PROJECT
DRINKING WATER SYSTEM FACT SHEET
MARCH 2011

MAP OF WAWSP AREA





- WTP/INTAKE EXPANSION/IMPROVEMENTS
- PUMP STATION
- RESERVOIR/BULK FILL
- EXISTING DISTRIBUTION SYSTEM
- PROPOSED RURAL WATER DISTRIBUTION SYSTEM
- DISTRIBUTION SYSTEM UNDER CONSTRUCTION
- NORTH SERVICE AREA (5 MGD OIL INDUSTRY WATER DEMAND)
- SOUTH SERVICE AREA (4 MGD OIL INDUSTRY WATER DEMAND)
- EXISTING/FUNDED TRANSMISSION LINES
- McKENZIE/WILLIAMS RURAL WATER DISTRICT IMPROVEMENTS PROJECT
- R&T WATER SUPPLY ASSOCIATION IMPROVEMENTS PROJECT
- CITY OF WILLISTON IMPROVEMENTS PROJECT



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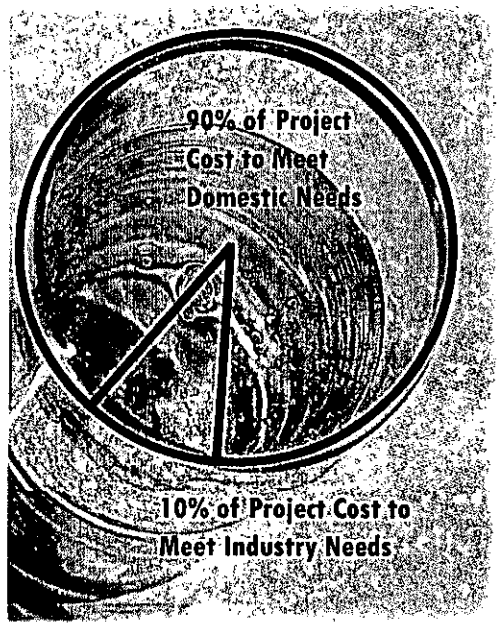
WESTERN AREA WATER SUPPLY PROJECT
DRINKING WATER SYSTEM FACT SHEET
MARCH 2011

CAL RESPONSIBILITY IS A TOP PRIORITY



- WAWSP has an estimated project cost of $150 million. Approximately 90 percent of this project cost is to meet the domestic water use (drinking water needs) of the entire region. Ten percent of the project cost is to meet the needs of the oil industry.
- The 10 percent investment in meeting oil industry needs will in turn finance approximate 80 percent of the project.
- A typical regional water supply project utilizes a 75 percent State or Federal grant and 25 percent local match formula. Most regional projects need to acquire the 75 percent grant to make it feasible to affordably provide a clean, adequate drinking water. In addition, there is often a 10-year wait to implement the project.
- Conversely, WAWSP proposes a 20 percent State "grant" over two biennia, covering the remaining project balance through a revenue bond issuance by local WAWSA entities, with a moral obligation from the State of North Dakota as a back stop.
- Projections include repayment scenarios of all grant funds which will be repaid following the debt repayment period.

GNIFICANT STATE OVERSIGHT

- First, a private review of the bond must occur to identify investors. Next, project financing must undergo examination by the North Dakota Public Finance Authority, the Bank of North Dakota, and the Budget Section of the North Dakota Legislature.
- The WAWSA bylaws must be reviewed and approved by the Attorney General.
- WAWSA will also report to the State Water Commission on project financing and project planning, design, and construction.
- The project grant funds are included in the State Water Commission budget, which is subject to approval by the North Dakota State Legislature.

ADDITIONAL BENEFITS TO REGION AND TO THE STATE

- Preliminary studies have shown that a water system such as WAWSP will save an estimated $29-51 million over the next 20 years in wear and tear on county and township road systems due to reduced oil industry traffic.
- In addition, less truck traffic on the roadways also translates into priceless safety benefits.
- This funding plan which primarily uses bond financing reduces competition for dollars to complete the other needed water infrastructure projects in North Dakota such as Fargo flood control, Devils Lake outlet, Grand Forks treatment plant, and other rural water projects.
- This project will utilize a State resource (Missouri River) for the good of the region, and in turn will boost the economic health of the entire State.

For questions or to request additional information about WAWSP, please contact:

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Mayor Ward Koeser
(701) 701-577-8100
ward@nccray.net

Testimony of
Robert H. Campbell
Barclays Capital
In Support of
House Bill 1206
March 3, 2011

Mr. Chairman, members of the committee

My name is Bob Campbell. I am a managing director with Barclays Capital and have served as the Western Area Water Supply Authority's investment banker in designing a plan of finance for this proposed water supply project.

By way of background, I have been involved in the municipal securities industry for 38 years and have participated in a number of multi-party water and other utility project financings. Somewhat coincidentally, I served for ten years on the board of directors of a New York Stock Exchange listed oil and gas exploration and production company. In my role as investment banker to this project, I have been tasked to identify a structure that would provide a minimum-cost, marketable financing while fairly distributing the debt and rate burdens associated with the project. My testimony today is made in support of formation of the Western Area Water Supply Authority and the proposed financing plan, including a State moral obligation to support payment of debt service on the Authority's bonds. I will address the following topics:

1. Viable Project. Based on the demand and revenue projections provided by the consulting engineer, the project should be self-supporting and payable from its own revenues.

2. Market Resistance. This will be a financing for a newly formed authority with an unproven stream of revenues that will be reliant in large part on water sales to oil and gas exploration companies. Consequently, revenues in the early years will be viewed by investors as being somewhat speculative until proven. Therefore, selling Western Area Water Supply Authority revenue bonds based on forecast revenues and on a stand-alone basis would be unacceptably expensive, if such bonds could be sold at all.

3. Need for State Moral Obligation. If the State were to provide its moral obligation pledge to support the financing, the Western Area Water Supply Authority's revenue bonds sold to finance the project would receive ratings sufficient to support a public offering of the bonds, resulting in a lower-cost financing and lower water rates for citizens served by the Western Area Water Supply Authority.

A. Plan of Finance.

The consulting engineer has produced a study showing that, based on conservative projections of demand, there will be sufficient project revenue to pay off the bonds in approximately 10 years. The financing structure we are proposing would amortize the bonds over a longer term, with the opportunity to call them in after 10 years if there is

sufficient excess project revenue to do so. This structure would be affordable, flexible and produce excess project revenues that could be used to redeem bonds. Given this structure, the Authority would pay operating and maintenance expenses plus debt service due in each year while maintaining a minimum level of coverage and stockpiling the excess revenues and/or redeeming bonds. At the bonds' call date, the Authority would use the remaining stockpiled excess revenues to redeem the bonds still outstanding at that time. This structure would provide substantial annual debt service coverage and reduce the likelihood the state's moral obligation pledge would be called upon. In the event that projected revenues during the early years were slightly below projections but still robust enough to pay debt service as it comes due (i.e., without ever touching the required debt service reserve fund), the Authority simply would redeem fewer of the outstanding bonds and adjust rates in later years as necessary to pay off the remaining bonds over the subsequent years.

B. Sources of Payment.

Vital to the structure of the intended sources of repayment for the bonds is the assumption that the oil companies, paying a higher industrial use rate per gallon, will account for, on average, roughly 80% of annual operating revenues, with the remaining percentage accounted for by the participating municipalities, who will pay a lower domestic per-gallon rate for project water. Although we view the figures in the consulting engineer's forecast to be the most likely scenario, there nonetheless exists the outside chance that the somewhat volatile water demand from the oil and gas companies

could abate or cease. Were the project financed on a stand-alone basis, the burden such a scenario would place on domestic water customers served by the project would be unacceptably high, with the need to increase domestic rates drastically in a single fiscal year to ensure coverage of debt service and operating and maintenance expenses. Placing such a burden on domestic customers would be a formula for political and financial disaster that investors would find intolerable.

To satisfy ourselves of the unlikelihood of this sort of payment burden shift and to evaluate the integrity of the project as a self-funding enterprise, we would expect to conduct extensive due diligence to support the conclusion the oil and gas companies' demand for water would produce revenues that support bond repayment under a number of stress tests, including the assessment of proven, probable and possible reserves, the price of oil and the alternative sources of water available to those companies. In the end, we, the rating agencies and investors must be satisfied the project will be viable and able to stand on its own legs.

C. Need for State Moral Obligation Pledge.

Were the Authority an established entity with a history of water sales and revenues, its bonds likely could be sold on the basis of historical revenues plus forecast demand and revenue projections for the new project, without the need for backing by the State with its moral obligation pledge. Given that this will be a financing by a new entity to build a new project with no operating history and with revenues dependent on a volatile industry,

we do not believe that an affordable financing could be sold on a stand-alone basis despite our extensive due diligence, because of: (i) the lower speculative credit ratings that would be assigned to such a financing and (ii) the likely resistance or outright refusal by investors to purchase bonds based exclusively on forecast revenues.

We have discussed this project with the rating agencies, and based on the information available, we estimate the Authority bonds issued to finance it could achieve A+ ratings with a moral obligation pledge of the State (not a general obligation of the State) but likley could not achieve minimal investment grade (BBB-) ratings without it. Thus, the State's moral obligation backing of the Authority's bonds would assure market access and the opportunity for a public offering of those bonds when none might otherwise exist. As well, the strong State moral obligation based ratings would produce affordable borrowing costs that would enhance the project's viability, improve the project's ability to operate on a stand-alone basis, reduce the risk the State ever would have to make a payment to support the bonds and increase the prospects for the bonds to be retired after 10 years.

D. Conclusion.

As stated at the beginning of my testimony, my role as investment banker to this project has included identifying the structure that would provide a minimum-cost, marketable financing that fairly distributes the debt and rate burdens associated with the project. The

structure the Western Area Water Supply Authority is proposing – Authority revenue bonds backed by a State moral obligation pledge –is that structure.

Thank you for your time.

Testimony by Tami Norgard
Vogel Law Firm
Counsel for McKenzie County Water Resource District

To the
Senate Industry, Business and Labor Committee
In favor of HB 1206

March 3, 2011

Chairman Klein, members of the committee, I appreciate the opportunity to testify on behalf of House Bill 1206. My name is Tami Norgard, and I am an attorney with the Vogel Law Firm in Fargo. I have worked with McKenzie County Water Resource District since 2009 on matters relating to the need to supply water to the burgeoning oil and gas industry in western North Dakota.

A group of Western North Dakota stakeholders, including McKenzie County Water Resource District, Williams Rural Water District, the Cities of Williston and Watford City, and R&T Water Supply Association have been involved in meetings since the summer of 2009 to discuss how they can best work together to quickly and efficiently meet these needs. These water systems fall short in their abilities to serve the municipal needs of their increased population along with meeting these oil industry needs, and recognize that the quickest and most efficient means of meeting the water needs is to work together to implement a regional water system. McKenzie County Water Resource District is leading an effort by Western cities and water systems to develop a plan that contemplates an expansion of the Williston Water Treatment Plant, coupled with additional pipelines to distribute water to cities, water systems and strategically located water depots for distribution for industrial needs.

The stakeholder group contemplated a number of organizational structures, including various iterations of a joint powers authority, but ultimately chose to pursue this legislation to create a new political subdivision. The stakeholders selected this option since it provides a more centralized operation and management structure. It will also allow the regional entity to bond for the project and independently exercise other governmental functions. This structure is favored since it gives all stakeholders some say and control over rate setting, distribution, and over the operation of the Williston Treatment Plant.

Outline of Legislation

The legislation proposes to create a new political subdivision of the state, with powers consistent with other political subdivisions in the state. I will provide a general overview of the legislation provisions.

Proposed NDCC 61-40-01 is a declaration of policy that supports the need to provide a reliable, high quality water supply to meet the municipal, rural and industrial needs in the Northwestern part of the state. The development of the Western Area Water Supply Authority pursuant to this section would create a new political subdivision that could sell bulk water supplies to municipalities, other public water systems, private industry at their facilities, and private industry at water depots.

Proposed NDCC 60-40-02 creates the Western Area Water Supply Authority, which includes participating political subdivisions and water systems within McKenzie, Williams, Burke, Divide and Mountrail Counties. It contemplates that member entities may be required to pay dues, pay for water sale income or bond revenue to the Authority.

Members cannot withdraw from the Authority until bonds and grant monies have been repaid.

Proposed NDCC 61-40-03 provides that the initial four board members, with two representatives on the Authority board, include Williams Rural Water District, McKenzie County Water Resource District, City of Williston and R&T Water Supply Association. R&T is a joint powers authority created by the cities of Ray and Tioga for the purposes of water supply. These are the four entities that have been working together to date to put a regional water supply plan in place. Additional water systems that have water contracts with the Authority could join the board in the future upon a 2/3 vote of the Authority board. I've heard some commentary that these positions should be elected by the citizens rather than appointed by the stakeholder entities, but it is important for the Cities and Water Boards that the initial representatives understand the stakeholders' water systems and have an existing relationship with the member entity for ease of regular communication.

Proposed NDCC 61-40-04 addresses protocol for board meetings, officer election and the adoption of bylaws. Bylaws will be developed soon after authorization that will address voting rights, rate setting, and details of board member service. Board members will be entitled to per diem at rates authorized pursuant to state law.

The Authority is granted governmental powers in proposed 61-40-05. These powers are largely consistent with legal authority granted to other political subdivisions of the state. These include the power to sue and be sued, to contract, to own property, to contract for services, to use the power of eminent domain, to borrow money, to issue

revenue bonds, to set water rates, to hold water permits, and to develop a water supply system that includes bulk water sales.

There are two particular provisions that were added to the authorities specifically to expedite the project development in light of the imminent and dire need for water. First, in subdivision 2, the Authority would have quick take authority to acquire right-of-way for water lines. This is necessary to allow for streamlined project development without being held up in court. The difference between regular condemnation pursuant to Chapter 32 and quick take authorization is the time in which title or a right of way easement gets transferred and when construction can begin. With standard condemnation pursuant to Chapter 32, the property owner has the right to challenge whether the project for which property is being taken is for a public purpose. With standard condemnation, the Authority would not have the ability to initiate construction until after a court has tried any challenge to the public purpose for the project and a court has determined the property value. Using quick-take authority, the legislature essentially sanctions that this is a public project devised for a recognized public purpose, so there is no basis on which private property owners should be in a position to challenge whether the project has a public purpose. With quick-take, a court can provide the Authority with an easement almost immediately so construction can commence, yet the court preserves the right of the landowner to have his/her day in court to determine the fair market value for the property. Given the imminent need for water, McKenzie County Water Resource Board asks to have quick-take authority to facilitate a quick build of the project and minimize delay due to protracted litigation.

The second provision that is added to expedite the process is at Subsection 25, which exempts municipalities from having to hold a public vote prior to entering into a contract for a new water supply that would otherwise be required of cities pursuant to NDCC 40-33-16. Given the time and expense required to draft ordinances, pass resolutions and to administer a special election to authorize a change in water supply source, this legislation contemplates a waiver of the need for a municipality to pass an ordinance by a public vote of its citizens before entering into a contract for a water supply with the Authority. The waiver of a public vote requirement will also leave less concern for bond underwriters.

Section 61-40-06 provides for the State Water Commission to administer oversight of the bidding, planning, construction, operation and financial status of the project. It also allows the Attorney General's office to provide legal assistance to the Authority upon request of the State Water Commission. Finally, this provision prohibits the Authority from selling revenue-producing assets without the State Water Commission's permission until the $30 million grant is repaid.

Section 61-40-07 through 61-40-14 include standard language, largely based on other political subdivision bond authority language.

Proposed NDCC 61-40-07 provides that the Authority can pass a resolution to issue revenue bonds.

Proposed NDCC 61-40-08 provides that the Authority can sell bonds either publically or privately.

Proposed NDCC 61-40-09 provides that bond anticipation notes may be issued pending preparation of the bonds.

Proposed NDCC 61-40-10 provides that the bonds are valid even after the officer who signs them is no longer an officer of the authority.

Proposed NDCC 61-40-11 provides that these are municipal bonds that are exempt from taxation by the state or any political subdivision, except for estate, inheritance or transfer taxes.

Proposed NDCC 61-40-12 provides that the sole repayment for revenue bonds is the revenue stream that is used as collateral for the bonds. The bondholders cannot enforce the bonds as a general obligation or liability of the Western Area Water Supply Authority or any of its stakeholder entities. This section makes it clear that the revenue bonds issued hereunder do not implicate statutory or constitutional debt ceilings of the Authority or its stakeholders and there is no recourse available to the bondholders against the stakeholders or the Authority except as it relates to the income generated from water sales.

Proposed NDCC 61-40-13 establishes the operating practices of the Authority. This section provides requirements of the Authority and its staff to operate the project in a responsible manner and to keep it in good repair, to pay the principal and interest on bonds in a timely fashion, to enforce its water contracts and fees against water users to collect revenues, to pay project expenses and construction costs, and to maintain accurate accounting records.

Proposed NDCC 61-40-13 establishes the remedies of bondholders in the event the Authority were to default on bond payments. The remedies include a court action whereby the bondholders could demand that the Authority enforce its contracts to generate project revenues or undertake any other duties required of the Authority by

contract or by this statute. The bondholders can also bring civil actions to require the Authority board to account to the bondholders as if they were trustees of a trust or to stop the board from taking actions that violate this statute or any contracts. They could also bring suit upon the bond or pursue any other remedies allowed by law.

Proposed NDCC 61-40-15 establishes that the Authority may use an easement over any state land for right-of-way needed for this Project. The Director of the Department of Transportation and the State Engineer must approve an easement over any particular parcel of state land. This provision is consistent with statutory authority for other pipeline projects, such as the Southwest Pipeline Authority at NDCC 61-24.5-18 and Garrison Diversion at 61-24-19.

Proposed NDCC 61-40-16 provides the ability to initiate court proceedings if necessary to have a court confirm the validity of contracts or other acts. This is a provision currently included in the North Dakota Water Resource District statute at 61-16.1-59. To the extent there was any question about legal authorities of the Authority for the purposes of bonding or other issues, a question can be submitted to a court for confirmation to satisfy bond counsel or other concerns.

Proposed NDCC 61-40-17 creates a debt service reserve account. This section provides a moral obligation of the State, whereby the State, through the State Water Commission, will provide appropriation to deposit in a reserve account to supplement any deficiency in the debt service reserve fund for bond payments due. This provision will be discussed further in detail by our investment banker, Bob Campbell, but I will provide a quick synopsis as to its necessity.

Bond underwriters would be unlikely to issue bonds based largely on a revenue stream generated from the potential boom and bust oil fields. While it is not anticipated, there is a chance that a change in technologies, a drop in oil prices or increased EPA regulations could impact the amount of water purchased from the Authority, adding an element of risk to bond underwriters. When determining how to organize themselves, it became clear that a joint powers agreement was not preferable since each entity would be required to bond separately for the infrastructure costs. Given the boom and bust history of oil development in Western North Dakota and the already high indebtedness of some of these stakeholders to improve their existing road, water and sewer infrastructure to keep up with the population explosion, the stakeholders did not want to accept the risk associated with further indebtedness for this infrastructure project.

Typically, bond underwriters want 'take or pay' contracts that require the user to pay for a long-term water commitment, regardless of whether they actually take the water or not. Since there are so many private companies buying water in varying amounts and at varying locations for indefinite time periods, it would be difficult to expect private companies to enter into long term minimum payment contracts for water supply. It would be difficult, if not impossible, to fund the entire project based on contracts with oil companies to enter into long-term minimum payment water contracts.

That said, our investment banker advises that the bonds likely could achieve investment grade ratings if the State commits its moral obligation to replenish any deficiency in the reserve fund in any fiscal year. While the stakeholders have every indication that the oil activity will continue on an increasing trajectory that will allow bonds to be repaid within 10 years, it is reasonable to ask the State to assume some level

of risk of the project as well. The State receives significant benefit in tax revenue, employment taxes, income taxes among other economic advantages from increased oil activity. The oil industry needs additional water to facilitate a continuation and increase in production. The need for improved infrastructure is a growing pain that the local stakeholders should not be left to carry alone.

If and when the oil boom subsides thereafter, this municipal, rural and industrial water supply project will remain to serve the needs of municipal and rural water systems, so there will be long-term benefit to the entire region and a long-term need for the continuation of the Authority.

Proposed 60-40-18 is a default provision that requires the Authority to repay any monies appropriated and advanced by the State for a reserve fund. It also provides an opportunity for the State Water Commission to operate the Authority for some time period if the Authority is in default and it is otherwise deemed appropriate.

Section 2 provides for the repayment of the State's initial $30 million grant to the project.

Section 3 declares this measure an emergency.

McKenzie County Water Resource District's goal is to create the best project in the shortest time for the best cost. They hope to create a project that will not require continued State appropriations, but will pay for itself. Your favorable recommendation for HB 1206 will assist the area meet its water supply needs and will also allow the state to optimize the increased state-wide public benefit that is being produced in the oil fields of Western North Dakota.

Testimony of Gene Veeder

McKenzie County Water Resource District
To the

Senate Industry, Business and Labor Committee

HB 1206 Hearing

Bismarck, North Dakota

March 3, 2011

Re: Support for House Bill 1206

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in support of House Bill 1206

My name is Gene Veeder and I am a board member on the McKenzie County Water Resource District. I am here today as the lead entity from the four entities, City of Williston, R&T Water Association, Williams Rural Water District, and the McKenzie County Water Resources District, that have signed a memorandum of understanding to proceed with the development of the Western Area Water Supply Project. The region that these entities serve is experiencing rapid growth and also has primary and secondary drinking water problems that need to be solved.

McKenzie County became aware of a growing water demand in the oil field prior to the rapid increase in needs for the extraction of oil through hydraulic fracturing of the Bakken formation in the Williston Basin

McKenzie County saw growing conflict between agricultural users and the energy industry over the use of Fox Hills water in western McKenzie County over 7 years ago. Concerns over the depletion of

that aquifer and depletion of water quality became the focus of McKenzie County and the McKenzie County Water Resource District.

Working with the State Water Commission, we explored alternatives and it became evident the natural solution to protecting aquifers in our county was to look to the Missouri River and Lake Sakakawea which borders our county to the north and east. We saw a solution to the high cost of delivering water to rural residents through the inclusion of volume customers in the oil field. Those volume sales spread that infrastructure cost over more users and increased sales to support loans to build the project. Our first project is under construction in eastern McKenzie County, partnering with the Three Affiliated Tribes, State Water Commission and Hess and the county water district. This project has taken over 5 years to develop and it now appears demand far outreaches the capacity of that system, even before the project is completed.

Since that time, water needs for hydraulic fracturing have exploded. A recent housing study sponsored by the North Dakota Department of Commerce, the North Dakota Housing Finance Agency, and the Bank of North Dakota has predicted unparalleled growth in western North Dakota. Over the next 10 to 20 years, the most conservative estimates expect the population in western North Dakota to increase by 30,000 and the most optimistic estimates suggest the population may increase by as many as 45,000. Whichever estimate you subscribe to, a community nearly the size of Minot or Grand Forks is moving to Western North Dakota.

Of the people yet to come, 10 to 20 thousand are expected to move into northwest North Dakota. This expanding population and the energy industry that have brought many of them to northwest North Dakota, have and will continue to strain the water resources of northwest North Dakota.

In McKenzie County this growth is causing the following problems:

- The demand for industrial water is putting extreme pressure on the aquifers and causing tremendous road damage.

- McKenzie Rural Water System has rural water users that have been waiting for water for several years.

- Part of our system is currently using water from the City of Watford City. The Watford City water supply quality has been deteriorating and the City has voted to change its source to the Missouri River.

- Demand for service in the rural area continues to grow and our existing system capacity is insufficient.

As you will hear from the others, the entire region needs a quality water supply of robust quantity and good quality. The only supply to meet these requirements is the Missouri River and the City of Williston has graciously stepped forward to be a partner in assisting the region with their existing supply and treatment facilities. This is very important because it is a supply that has ample permitted capacity and is currently in place and does not need any further permits from the Corp of Engineers to access the Missouri River.

For the last 2.5 years we have been doing our due diligence to develop this project and to make sure that it is economically feasible. To date the following efforts have been completed.

- We participated in an economic study with the Garrison Diversion Conservancy District to determine if the regional system or individual high tech water treatment plants would be the most cost effective. The conclusion was that a regional water system was the most cost effective.

- We have had engineering cost estimates completed for the project. We have had the existing intake and water treatment plant at Williston evaluated

- We have completed a financial plan and looked at several water demand scenarios to evaluate the financial viability of the funding plan

- We have completed an examination of the available water supplies to ensure that there is a need for the industrial water supply.

The conclusion from all of this work is that the solution is the Western Area Water Supply Project or WAWSP. WAWSP is a comprehensive regional approach that will supply quality water for new customers, future economic development, and industrial demands. In addition, it is estimated to have a secondary benefit of reducing the damage to roads by $38 to $56 million which is very important to McKenzie County.

The proposed Western Area Water Supply Project would construct a series of transmission pipelines, reservoirs, pump stations, and bulk fill depots throughout McKenzie, Williams, Divide, and portions of Mountrail Counties. In addition, a series of expansions to the Williston Regional Water Treatment Facility would also be included as part of the project. When completed, the Western Area Water Supply Project will deliver Missouri River water to provide for the domestic and industrial water supply needs for a majority of northwest North Dakota.

Upon completion, the nearly $150,000,000 proposed Western Area Water Supply Project will be capable of delivering over 21 million gallons of water per day throughout northwest North Dakota just to meet the peak municipal and rural water needs of the region. Public water supply systems are designed to meet peak day demands over a relatively long-term planning horizon. The highest peak day demands are typically limited to the driest years of the planning horizon

with the highest populations. Peak day demands are also typically limited to a few days each year. Consequently, the Western Area Water Supply Project will have significant unused capacity during non-peak domestic demand periods available for other purposes without having to significantly increase the size or the cost of the water supply, treatment, or distribution facilities. As conceptually designed, the Western Area Water Supply Project would be capable of providing over 13,000 acre-feet of water to the oil and gas industry annually while having the design flexibility to expand and nearly double that amount.

The WAWSP working group has spent considerable time analyzing numerous financial scenarios in order to be able to suggest the best use of state and local dollars. We remember the 80's oil boom and bust and how it affected our communities, we refuse to commit to any plan that may put undue burden on our systems, our communities, and our State. The total project is proposed to cost $150 million. This proposal consists of a $25 million grant from the state, bonding that will be issued by the Western Area Water Authority, and a moral obligation from the state in the unlikely event that the required debt reserves cannot be maintained by the system, followed by repayment of the grant funds. Through rigorous analysis, we have determined that the project has a potential payback period of 10 years through sufficient income for debt services (water rates) if started immediately. The need is immediate, so the start date must be immediate.

The result of the project will provide the area with water infrastructure and distribution to the people as well as the capability of supplying future needs following the success of the Bakken drilling. Consequently, when drilling declines, the area will have adequate resources to potentially provide water for a potash plant, gasification plant, or agriculture processing plant. Therefore, this plan not only helps the area prosper in the immediate future but for years following the Bakken drilling.

Overall, WAWSP has the potential to solve water challenges on multiple levels, while positioning the region for an economic windfall. The creation of the Western Area Water Supply Authority and the moral obligation from the State of North Dakota as a back stop for bonding to construct the project is critical to meeting the needs of the rural citizens and communities in the region, the oil and energy sector, and the growth associated with it. We, in McKenzie County are proud of the cooperation that has developed and are committed to this project. We respectively request that the state provide the necessary tools to meet these needs and propel the region, and ultimately the State of North Dakota in economic prosperity by passing this bill.

Thank you for your time and consideration of this project.

TESTIMONY FOR HB1206
March 3, 2011

Good morning Chairman Klein and committee members. My name is Ward Koeser and I serve as Williston's mayor. I am here today to ask for your support of HB1206.

Northwest North Dakota has a valuable natural resource that needs to be developed and it's not oil. It's water. Over 90 per cent of the surface water that flows through North Dakota is in the Missouri River and it flows right past Williston. HB 1206 allows for the development of that resource as part of a regional system that would serve communities and rural customers in this rapidly growing area.

Williston has experienced a 35% population growth in the past 4 years and anticipates further rapid growth over the next 10 years, possibly a doubling of our population. With that growth comes the need for additional treated water as we serve not only our citizens but those of neighboring communities and those who choose to live in a rural setting.

We have always wanted to find a way to involve the oil industry to help pay for the necessary infrastructure as they work in our region. HB 1206 does just that by allowing the Western Area Water Supply authority the ability to sell water to the oil industry, funding the development of the expanded system. After the oil resource is developed and drilling stops, this expanded water system will be a tremendous asset to the region and state allowing for food processing or manufacturing facilities.

It is estimated that the oil industry will purchase between $60 and $100 million dollars worth of water in 2011. If HB 1206 passes and we begin construction of the system this year, the cash flow from those sales made by the authority will be put to good use in the

public interest. At present a number of communities as well as independent water suppliers are selling to the oil industry. We see this scenario continuing with all water sellers being successful.

We recognize that some are concerned with the rapid pace that this project is scheduled for but believe that discussions over the past several years with the four water entities have been appropriate and informative . With the strong oil activity presently putting great pressure on our communities, now is the time to act. Since Williston is not changing its water supply, we believe that the city commission has the authority to negotiate this agreement. We would not oppose a vote by our people but recognize that it would substantially delay the project.

Williston has long promoted the regional concept when it comes to promoting and building the Northwest corner of the state. We have a good working relationship with those who supply water to the surrounding rural areas and communities and will continue to work together with them to make sure an adequate supply of treated water is available for our future growth.

Thanks in advance for your support of HB 1206.

(5)

March 3, 2011

Re: Support for HB 1206

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in support of HB 1206. My name is Jerry Ranum and I am the President of the R&T Water Supply Association. The Association was created in the late 1970's to meet the water needs of the Cities of Ray and Tioga and the surrounding region. The R&T system began providing water service to the Hess Tioga Gas Plant, and expanded its service area to other rural water users and the City of Stanley.

Throughout the years, the R&T Water Supply Association has met the challenges of growth and poor water quality by using the Ray aquifer as the water source in our region. In the last biennium, our system added a million gallon reservoir and a new 16" transmission line from the plant to the Tioga High Point reservoir, and also cooperated with the City of Wildrose to supply its water. We are scheduled to connect the City of Crosby and the BDW rural water system next year. All of this growth is approaching the sustainable yield of the Ray aquifer.

After visiting with the oil companies in our area, we fully expect our area to grow and in order to continue the support, and the anticipated growth, we will need to get water from the Missouri River. We have studied the feasibility of going directly south to the Missouri River from Ray. It is much more cost effective to connect to the City of Williston's water treatment plant through the Western Area Water Supply Authority.

The Authority provides a governance structure that we would be comfortable with, and also provides the necessary representation on the governing board to balance the needs of the entire region.

The Western Area Water Supply Project will provide the northwest region with adequate water resources to help create economic diversity such as potash processing, gasification plants, or agriculture processing facilities, if needed. We look towards this plan as a solution to our current needs and is critical to our future.

The R&T Water Supply Association and its members pledge complete support of the Western Area Water Supply Project. We are excited to serve as a project sponsor and we look forward to being able to complete the project.

Thank you for your time.

City of Ray

101 Main Street – PO Box 67
Ray, ND 58849-0067
701-568-2204 raynd@nccray.net

February 18, 2011

RE: House Bill #1206

To Whom It May Concern:

I am writing in support of House Bill #1206 from the Ray City Commission, myself and the residents of Ray, North Dakota. We intend to be members of the Western Area Water Supply Authority and we fully support the project.

This plan is a proactive approach to addressing the growing needs of the industrial development of our area and the need for water, along with the domestic needs of our increasing population. We recognize that in order to grow, the development of the Missouri River resources are an alternate to depleting our ground water sources, thus saving the aquifer for future generations. Not only do we need water to accommodate our growing city, but the surrounding area R & T Water Supply serves. Protecting our ground water source is important to the city of Ray, but we must also provide quality potable water for the areas R & T Water Supply serves.

Thank you in advance for your consideration.

Kimberly Steffan

Kimberly Steffan
Ray City Auditor

City of Crosby

PO Box 67 ~ Crosby, North Dakota 58730

January 19, 2011

RE: House Bill #1206

To Whom It May Concern:

Please be advised that the Mayor, City Council members and the residents of the City of Crosby fully support and intend on being a participating member of the Western Area Water Supply Authority.

This plan is a proactive approach to addressing the needs of the growing industrial development for excessive water as a necessary part of their operation as well as the growing domestic needs by recognizing and proceeding to develop the Missouri River as an alternate source BEFORE depleting our ground water sources.

The plan will not only protect a valuable commodity, our ground water source, but will also make it possible for small communities to continue providing quality potable water to their residents at an affordable cost.

Thank you for your consideration.

Sincerely,

CITY OF CROSBY

Carol Lampert

Carol Lampert
Auditor

City of Wildrose
PO Box 664
Wildrose, ND 58795

February 14, 2011

RE: House Bill #1206

To Whom It May Concern:

Please be advised that the Mayor, City Council members and the residents of the City of Wildrose fully support and intend on being a participating member of the Western Area Water Supply Authority.

This plan is a proactive approach to addressing the needs of the growing industrial development for excessive water as a necessary part of their operation as well as the growing domestic needs by recognizing and proceeding to develop the Missouri River as an alternate source of water before depleting our ground water sources.

The plan will not only protect a valuable commodity, our ground water source, but will also make it possible for small communities to continue providing quality potable water to their residents at an affordable cost.

Thank you for your consideration.

Sincerely,

CITY OF WILDROSE

Susan Jacobson
City Auditor

BDW WATER SYSTEM ASSOCIATION

PO Box 67 ~ Crosby, North Dakota 58730

January 19, 2011

RE: House Bill #1206

To Whom It May Concern:

Please be advised that the Chairman and board members of the BDW Water System Association, as well as the residents of the cities of Fortuna, Noonan and Columbus, fully support and intend on being a participating member of the Western Area Water Supply Authority.

We have recognized and are presently developing the initial phase of a small regional rural water system to provide abundant and quality potable water to smaller communities unable to afford it on their own. We know that by becoming a part of a larger system being supplied by surface water it will enhance redundancy of our system and guarantee an available water supply source as well as keeping costs to rural communities affordable.

This plan is a proactive approach to addressing the needs of the growing industrial development for excessive water as a necessary part of their operation as well as the growing domestic needs by recognizing and proceeding to develop the Missouri River as an alternate source BEFORE depleting our ground water sources.

Thank you for your consideration.

Sincerely,

BDW WATER SYSTEM ASSOCIATION

Carol Lampert

Carol Lampert
Agent of Record

City of Stanley

221 S Main
Box 249
Stanley, ND 58784

January 18, 2011

To Whom It May Concern

The City of Stanley supports HB 1206 and is in agreement with the Western Area Water Supply Authority formation and its project to protect ground water sources.

The regions growing industrial and domestic needs could be met by using the Missouri River water.

Sincerely

Bev Gleave

City Auditor
Bev Gleave

March 3, 2011
The Honorable Jerry Klein
Industry, Business and Labor Committee
Bismarck, ND
Re: Support for Bill HB1206 – Western Area Water Authority

Mr. Klein and Members of the Committee:

Thank you for this opportunity to testify in support of HB1206.

My name is Rick Olson and I am the Manager of Williams Rural Water District. Williams Rural Water District purchases drinking water from the City of Williston and distributes water to its customers throughout Williams County. Over the past several years, our district has continued to upgrade existing water system infrastructure to address US EPA standards, address aging equipment issues, and meet our customer's needs. Even though we strive to be proactive on this front, our system is struggling to provide the necessary infrastructure to grow with our customers. In addition, we have several rural residents that have paid for feasibility studies and have been waiting for four years for service.

Williams Rural Water District is facing several challenges including:

- a water distribution system that is out of capacity for the growth needed to address the water needs in the existing service area;
- the existing piping lacks the capacity to reach the more remote areas of the system boundary; which results in several rural areas inside our service territory being left without water service;
- areas outside our existing service territory that need a major transmission line to provide the crucial piece of infrastructure to serve the remainder of Williams County.

The **Western Area Water Supply Project** has the ability to address these issues and more. A new regional pipeline system will allow service to the rural areas and continue to grow our system. The overall growth of our system is important to us for another reason. As the City of Williston is expanding into some of the existing Williams Rural Water District territory, there is a need to provide fire flow protection in those areas. Our system is not designed to accommodate fire protection and we feel that the City should provide those services.

We are willing to cooperate with the City to allow them to provide service in those areas as long as we can grow sufficiently to make up for those lost revenues and not significantly increase our rates, which is already one of the highest in the state. According to the 2010 rate survey completed by AE2S, our typical monthly rate is $85.40 per month which is the third highest in the state.

The Western Area Water Supply Project will provide the cooperation needed and the frame work to allow our system to expand and grow to the areas that need it most, while ensuring that our system meets capital demands in the future.

Williams Rural Water District feels strongly that this is the right direction for our system and for the region as a whole. We fully support this project as a major stakeholder and as major infrastructure provider in Northwest North Dakota.

Thank you for your consideration....

March 3, 2011

The Honorable Senator Jerry Klein

Industry, Business, and Labor Committee

Re: Support for HB 1206

Mr. Chairman Klein and Members of the Committee:

Thank you for this opportunity to testify in support of House Bill 1206.

I am Brent Bogar and I serve as the Water, Sewer, Airport, Building and Planning Commissioner for the City of Williston. I am keenly aware of the infrastructure challenges our region is facing, specifically those that face our City water infrastructure. Williston serves as a major hub and service center for the oil industry and the region. The development taking place in our City and our region is unprecedented and at that heart of the development is the need for infrastructure, including water infrastructure.

I want to start by saying that some have said that Williston and or the region are not contributing enough to this project and that we should provide for this growth on our own. It is my opinion that the local entities have shown great leadership in developing a unique concept to fund its water infrastructure with limited state taxpayer dollars. This bill will create the tools necessary to enable the region to implement this unique concept that actually does allow the region to pay for its own infrastructure through water rates and not taxpayer dollars.

The project as has been developed over the last few years has focused on how to provide water to the regional communities and citizens. In the beginning we worked with the Garrison Conservancy District and came up with a plan that, with MR&I grant dollars it was feasible to build out a regional water system, with the Williston water treatment plant as the cornerstone.

This was a better option than building out new, or replacing aging plants in the region, while also allowing more rural residents the option of quality water.

Now we come to today, and we have a plan based on the same principles of providing water to the communities and citizens of the region. The difference is now instead of large amounts of grant funding, we have the opportunity to build out a system in the region using sales of water to the industry.

The industry's need for water in the region is well documented within the business plan, and from the various state agencies. By tapping into the opportunity to sell water to the industry, we can create a revenue source for the WAWSA that provides for paying of the system build-out. This creates a way in which the industry that is leading the growth and impacts to the communities can finance the infrastructure demands that are now being felt.

Williston has always worked towards being a proactive community through water infrastructure master planning. When we developed the last master plan for the water treatment plant we interviewed the rural systems and included their needs in our plan. In the past ten years, we have completed major water system construction projects including adding a redundant transmission main, increasing capacity at our water treatment plant, and improving the water quality through a state-of-the-art ultra violet treatment technology, the first of its kind in the Upper Midwest.

Currently we use approximately 3 million gallons per day on average and our peak day demand is estimated to be approximately 6.5 million gallons per day. Our current water treatment plant has the capacity to treat 10 million gallons per day and is planned for expansion to 14 million

gallon per day. So, currently we can meet our existing and future capacity demand at our treatment plant.

Our water intake facility takes water from the Missouri River, is permitted for ample quantities of water, is reliable, and ready to serve the needs of the region as well. We are confident that our water intake will perform at 14 million gallons per day and has a design capacity to serve 25 million gallons per day. We are also currently evaluating actual performance of the intake to verify that it will serve the full 25 million gallons per day.

In summary, Williston has built solid infrastructure that is well positioned to serve as the foundation for supplying water to the region, which can be readily expanded to meet the projected need.

In addition to the commitment of infrastructure from Williston the funding plan for the $150 million project includes the following components

- Bonding that will be issued by the Western Area Water Authority, i.e., the local entities and the City of Williston commitment to fund their fair share of the project
- $30 million grant and a moral obligation from the state in the event that the required debt reserves cannot be maintained by the local entities.
- Industrial water sales to support the growing industry which will make it possible to repay the bonds and the state grant.

With this bill the citizens, communities, region and state have an opportunity to build the infrastructure using revenue from the industry with little to no cost of taxpayer funds. The business plan has shown that not only will WAWSA pay the bonds, but also return the initial grant funds from the state water commission. This is a win-win situation. The communities and

region gain the water system necessary to support the continued growth, while the state taxpayer does not need to provide large amounts of grant funding to support the build-out of the water system.

Professionally I am the CIO at a community bank and have been involved in the development of the concept. I have reviewed the business plan and the research that has been completed, and it provides me with great confidence that this project will succeed. I hope that the testimony given today provides you with the confidence to vote Do Pass on HB 1206. Thank you for your consideration.

(8)

NORTH DAKOTA PETROLEUM COUNCIL

Ron Ness
President

Marsha Reimnitz
Office Manager

120 N. 3rd Street • Suite 200 • P.O. Box 1395 • Bismarck, ND 58502-1395
Phone: 701-223-6380 • Fax: 701-222-0006 • Email: ndpc@ndoil.org

House Bill 1206

Senate Industry Business & Labor Committee

March 3, 2011

Chairman Klein and Members of the Committee. My name is Ron Ness and I am the president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 280 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. Our members produced nearly 98% of the 113 million barrels of oil produced in North Dakota in 2010. We also represent 47 of the top 50 oil producers in the state and numerous companies involved in water transportation. I appear before you today in ~~opposition~~ support to HB 1206.

In November of 2009, the oil industry, state leaders, and the western water community started meeting to discuss the need for adequate water resources for the Bakken play in western North Dakota. Water and oil quickly found common ground and have worked to develop a win-win situation on water projects in western North Dakota. The Bakken Formation is an incredible resource, but with today's technology, it requires a substantial amount of water to fracture stimulate these wells. Even though in the big picture this is still just a fraction of a second worth of water that passes through Bismarck each day, it's still a lot of water. The fact that Lake Sakakawea is right in the heart of the Bakken is a tremendous benefit. Can you imagine, where we would be if we did not have this tremendous water resource and the difficult decisions we would have to make. Utilizing the industry's demand for water to create a rural water system throughout western areas that would otherwise never happen is a historic opportunity for our state. These opportunities rarely occur and we need to take advantage when they do.

The demand is there. We estimate it would take approximately 3,000 fracs to pay for most of this water system. Considering the industry plans to drill 1,500 – 2,000 wells per year for the next several years, and potentially thousands of in-field wells thereafter, we think the demand will be there to provide the funding for the bonds. The private water companies will have more than enough business and this can reduce road impacts significantly.

Beyond the Bakken factor, this is great project for the citizens and future growth of western North Dakota. The area designated for this project lacks sufficient ground water resources, but the parties have come together and put this proposal before you because we need all the water resources that our state has available. North Dakota's oil industry stands in support of HB 1206.

(9)

Whiting Oil & Gas Corp
528 21st St. West
Dickinson, ND 58601

Mr. Ron Ness
President
ND Petroleum Council
120 N. 3rd St. Suite 200
Bismarck, ND 58501

Mr. Ness,

I am sending this letter in support of the Western Area Water Supply Authority bill that comes before the Industry, Business and Labor Committee this Thursday morning. I don't believe there is any question that this bill should not be supported by anyone living or working in North Dakota. First and foremost as a lifelong resident of western North Dakota, I believe this is a golden opportunity to provide our residents with an abundant supply of quality water from a state owned resource that needs to be tapped and utilized not only for us but for a growing base of future generations in western North Dakota.

The growth and expansion of the communities and business culture in western North Dakota will largely depend on the natural resources we are able to put to use in an environmentally safe and secure atmosphere. Quality water is the key to any thriving business ecosystem whether it is residential, farming, ranching, energy or recreation.

With the growth in our population, related mostly to the energy sector, and current need to sustain our healthy energy economy which has benefited all of North Dakota, we need this supply of quality water to keep western North Dakota moving forward. As the demand only increases from our residents and business climate, the current supply of water can not sustain our growth. With each oil well using over two million gallons of water during completion procedures (times 160 wells per month) and the number of people transplanting here and in need of quality water; it very clear this bill not only needs to pass but do so expediently so as to move this project on a fast track to fruition.

Please express my support and concerns to committee chairs Senators Klein and Nodland on this extremely important and beneficial bill that will keep all of North Dakota a great place to live and work.

Blaine Hoffmann

Superintendent
Whiting Oil & Gas Corp

HALLIBURTON

Comments Given by Brent Eslinger, District Manager, North Dakota

North Dakota State Senate: Industry, Business, and Labor Committee
Hearing on Western Area Water Supply Project
March 3, 2011

Good morning. My name is Brent Eslinger and I am the North Dakota, District Manager for Halliburton. I have been employed by Halliburton for 23 years and am responsible for the company's operations in the state of North Dakota. I have been asked to speak to you today about the growth of Halliburton's business operations in the state, and our industry's long-term water needs here. Halliburton provides jobs, tax revenue, charitable donations and support for North Dakota and its residents – and our commitment to the state continues as we expand our operations here.

Halliburton is not new to North Dakota. We've been an employer here since 1984 — during down cycles as well as boom times. We currently provide jobs for more than 750 people in the state, and we are hiring more all the time. We are committed to providing our customers with the expertise and services they need as they continue developing the vast resources of the western area.

Halliburton currently operates six facilities in North Dakota, and we continue to expand in places like Williston and Minot. This boom in North Dakota is definitely different from previous upticks in activity. For example, new, advanced technologies have been introduced into the market that make it more feasible to sustain production. Also, indications are that the industry will be drilling new wells for years to come. On Jan. 2, The Associated Press (AP) quoted North Dakota Department of Mineral Resources Director Lynn Helms as saying that in the next four to seven years, oil

production could double. According to the AP, government and industry officials are also projecting that the total recoverable oil in the Bakken and Three Forks-Sanish formations may be more than twice the current estimates. Ron Ness, president of the North Dakota Petroleum Council, told the AP that he expects up to 2,000 new wells to be drilled in the state this year. Moreover, even after all the wells are drilled, they will still need to be maintained.

North Dakota is poised to become the No. 2 oil-producing state in the country by 2015, and Williston is the strategic location to provide the required services for the oil industry, but a lack of infrastructure is slowing North Dakota's economic growth — costing the state, local communities and businesses money and jobs. In addition to the need for more housing developments, water is vital to oil-industry activities — from drilling and well completion to maintenance and refining.

Halliburton does not purchase or dispose of water — it is the responsibility of oil companies, which are our customers, to provide water for our operations. Halliburton then uses the water on-site to complete fracturing operations. This is a standard process for all service companies.

Halliburton is a leading provider of hydraulic fracturing technology, which is the key to unlocking these unconventional reserves. The main elements of a typical frac job are water, sand and pressure. For example, an average of 2 million gallons of water is required for completing each new well. As a leading provider of hydraulic-fracturing

technology for our industry, Halliburton understands that water is a precious resource. We continue to develop industry-leading technologies, such as dry-gel blending and water recycling, that seek to reduce the amount of potable water needed to perform our operations.

That being said, operators are expected to drill approximately 2,000 wells this year in Western North Dakota, and the total amount of water required to fracture those wells ranges from 11 million to 23 million gallons *per day* — and this is considering only Bakken and Three Forks/Sanish wells. Horizontal well completions are now also being contemplated for several other oil- and gas-bearing formations in the region. Looking forward over the next 10 to 20 years, the industry is projected to need 40 to 80 billion gallons of water to drill, fracture, stimulate and refracture thousands of wells in the state.

Halliburton looks forward to serving our customers for many years to come in North Dakota, and we support any efforts by the state that provide the essential resources needed to continue the development of energy resources in the region. The Western Area Water Supply Project represents an important investment in the Williston area — one that will encourage development and permanent growth, and will have long-term benefits for the state, its residents and its businesses.

HALLIBURTON

Comments Given by Brent Eslinger, District Manager, North Dakota

North Dakota State Senate: Industry, Business, and Labor Committee
Hearing on Western Area Water Supply Project
March 3, 2011

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production could double. According to the AP, government and industry officials are also projecting that the total recoverable oil in the Bakken and Three Forks-Sanish formations may be more than twice the current estimates. Ron Ness, president of the North Dakota Petroleum Council, told the AP that he expects up to 2,000 new wells to be drilled in the state this year. Moreover, even after all the wells are drilled, they will still need to be maintained.

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Halliburton looks forward to serving our customers for many years to come in North Dakota, and we support any efforts by the state that provide the essential resources needed to continue the development of energy resources in the region. The Western Area Water Supply Project represents an important investment in the Williston area — one that will encourage development and permanent growth, and will have long-term benefits for the state, its residents and its businesses.

(11)

City of WILLISTON
NORTH DAKOTA

P.O. Box 1306
Williston ND 58802-1306
PHONE: 701-577-8100
FAX: 701-577-8880
TDD: 711

HB 1206

Senate Industry, Business, and Labor Committee

Thursday, March 3, 2011

Honorable Chairman Klein and Committee Members,

My name is Brad Bekkedahl, Finance Commissioner for the City of Williston. In my 15 years on the City Commission, I have advocated for major regional infrastructure projects that will bring benefits to Williston, our neighbors in NW North Dakota, and the entire State. HB 1206, the Western Area Water Supply system, is one of those projects. Like Hwy 2 four laning and current safety improvements to Hwy 85, this project has a time sensitive factor. There will likely never occur again the opportunity to construct a system that brings consistent quantity and quality of water to an estimated 50,000 current and future residents of this part of North Dakota.

I am honored to provide testimony that summarizes the formal presentation today in favor of HB 1206. First and foremost, this is a domestic water supply system that will service the community and rural water systems needs of NW North Dakota for 50 years or more. An added advantage is reducing the stress on local aquifers for community and industrial needs, a priority of the State Water Commission. As a region, we have reached agreement among our municipal and rural water stakeholders to proceed cooperatively and work together. We have the water permit from the Missouri River in place for more than is needed, and by piping treated water right from the Williston water treatment plant at the river, we have no involvement or concerns of the Canadian governments or the US Army Corps of Engineers.

Our water needs are urgent and cannot wait, for the benefit of the oil industry and our residents. Unlike other large regional water projects, which can take decades to totally construct, we believe this project will be completed in 2-3 years. From the financial perspective, we believe this project has many positive aspects. First, by utilizing the revenue bond approach, we will not be competing with other water projects such as the Devils Lake Outlet, Fargo Flood Control, and others for an appropriation. Secondly, only 10% of the project cost is related to the water depots for industrial sales, yet the finance plan indicates this investment has the potential to pay up to 80% of the total project cost. And that still leaves room for private industry to continue the sales they are positioned to deliver to industry. Third, the front end appropriation from the State Water Commission budget will be repaid after the bonds are retired. A significant side benefit is that the addition of water depots at strategic locations where the industry need is greatest will reduce truck traffic as well as wear and tear on our road systems.

We realize this business model is different from other regional systems in its development and financing. We also hear the concerns about oversight with this level of State involvement, which is why we have supported the amendments in the House to provide the State an appropriate level of involvement and security. These include the Attorney General's approval of the Bylaws of the Water Users Authority, the State Water Commission's approval of the overall plan, specifications of the project, and regular reporting requirements, the Bank of North of Dakota and the Public Finance Agency diligence in bond financing, and finally, Legislative Budget Section authorization for project commencement.

Mr. Chairman and Members of the Committee, the timing and need for this project is urgent and the unique financing opportunity is time sensitive. We believe in this project because of its enormous public benefit. It is our hope you do as well, and we request your favorable consideration of HB 1206 with a Do Pass recommendation. As a group, we would be happy to entertain any further questions the Committee may have.

THE HARMS GROUP

Senate IBL Committee
State Capitol
Bismarck, ND

DO NOT PASS: HB 1206

Chairman Klein and Members of the Senate IBL Committee

For the record, my name is Robert W. Harms, and I am the lobbyist for the Independent Water Providers, a group of 25 entrepreneurs, ranchers and farmers in northwestern North Dakota, who have serious concerns about HB 1206. First let me say that we think you should pass a bill that begins with HB 1206—but not in the present form. We'll explain why and offer what we think is a better plan.

We support building additional-appropriately sized water infrastructure in northwestern North Dakota. We also support accessing the Missouri River and Lake Sakakawea to appropriate water for the future of our state. A number of our members have permit applications for that very purpose.

Our proposal has 3 components:

1. Place the project, squarely with the Water Commission, to include bonding if necessary;
2. Authorize the WAWSP Authority, but use the Southwest Pipeline Authority model.
3. Once the WAWSP is organized and the project is built, SWC will negotiate turning the project over to the WAWSP to manage and operate (again as was done with SWPP).

The amendments we have handed out do several things:

1. Remove all authority to operate outside the boundary of the Authority or the state.
2. Make clear that the project is to be built by the State Water Commission.
3. Dedicates the project to meet domestic and livestock needs of the region.
4. Revises the governance model to the model used in the Southwest Pipeline Authority.
5. Prohibits construction of water depots within 20 miles of permitted private depots.
6. Reduces the funding authorization to $50 million (rather than $150 million).
7. Prohibits WAWSP from interfering with future development of private water supply.

We have summarized some of our concerns with the current bill and the project, in the attached critique and Fact Sheet. Some of those concerns are:

1. Larger than the domestic needs of area residents, to provide water to the oil industry, hoping the industry will pay 80% of the cost. (Based upon a theory we can have something that someone else will pay for, and if they don't the state will pay for it). This strategy is faulty because:
    a. Oil industry demand for water may falter because of EPA regulation of "fracing"
    b. Price of oil may falter (two years ago oil was at $30).
    c. New technology may reduce need for fresh water for "fracing"
    d. Price of water (potable) is above market price for fresh water
    e. Industry does not need treated (potable) water for fracing
    f. Current tax policy changes now before Congress could reduce oil activity by 30%

2. $150 million cost will grow to $200 million including engineering, attorneys etc, for which, the citizens of North Dakota (and other water projects) are 100% responsible if the project defaults.
   -There is a perception (right or wrong) that the proponents are driving the speed, and size of the project and have a financial interest in the project.
   -100% State funded.

3. Proponents assert the project is "urgent" in order to capture "sales" of water in the current market.
   -Not urgent....but if it is urgent, then get water to PEOPLE first. (First leg is for water depots south of Williston, NOT for the people of Watford City where it is needed).
   --If it is urgent...SWC can build it faster than the current bill/structure because:
   -authority is yet to be formed—likely to take months to get organized
   -must have by-laws, management process in place

4. Current supply exceeds current demand:
    a. 15 million gallons @ day; projected to go to 23 million gallons this year in private depot fleet (including new Missouri River depots)
    b. 5 million gallons @ day; (estimated sales from local community depots).
    c. The oil industry will use approximately 8.2MM gal @ day (1500 fracs annually; 2MM gal @ frac).

5. Ignores current expansions already underway. For example, R & T is expanding from 1 MMgal/day to 3MMgal/day at a cost of $3 million dollars. (R & T does not need this extra capacity, which will be redundant).

6. Funding: All other state water projects pay BACK to the Resources Trust fund. (HB 1206---pays back the bonds and the grant, and then retains all future revenue. (If ND is going to guarantee 100% of a 100% bonded project, then ND should get the revenue.....JUST like Southwest Pipeline. (ND owns the project, and gets the revenue, with which to finance other water projects in ND).

7. Oil industry: Oil is currently applying for/building its own water supply features: Brigham Oil and Gas; Continental Resources, Zavana and Whiting ALL have water permits pending.
    a. NOT ONE contract has been signed for water on this project from the industry
    b. And why WOULDN'T you "support" the bill, if it creates more outlets that you have no financial responsibility for----it might even lower your costs.

8. Local Cost Share: There is no local cost share, or obligation. (Contrast NAWS, where Minot has spent millions of sales tax dollars in support of the NAWS project).

9. Governance structure is complex and provides little public accountability: attempts to use the Lake Agassiz model that failed (4 different entities coupled with weighted vote based upon water sales).

10. Current price of water:
    a. $.50 a bbl. private sector ($11.90 @ 1000 gal)
    b. $.63 a bbl. municipal market ($15 @ 1000 gal)
    c. $.84 a bbl., project price ($20 @ 1000 gal)

11. Flawed assumptions
    a. Assumes 50% of market share;
    b. Will cash flow at $20/1000 gallons—high end of market price
    c. $15/1000 gallons—only high and average industrial use will cash flow.
    d. Drilling activity to proceed unabated. (2010—1544 wells were spudded).

A better approach

A different approach will allow the project to move forward with an objective, experienced Agency without a vested interest in the outcome that can balance the state's public interest, and minimize the risk to the public treasury.

-Experienced staff

-Significant public water project experience

-Objective assessment of need, with appropriate design, planning and construction

-Final hand off to WAWSP after it is established.

-Follows proven model/moderates risk to public

-Does not jeopardize proven, well established policies/processes for future projects.

-SWC: Governor/Ag Commissioner/Attorney General, and seven statewide members
  -experience, knowledge and strength for such projects
  -bonding, engineering and legal background for such projects
  -accountable to the public, and Legislature

We urge a DO NOT PASS of HB 1206 in its current form, and ask the Committee to adopt the amendments we have submitted or similar amendments developed before adjournment.

Thank you.

Robert W. Harms
The Harms Group

On behalf of the Independent Water Providers,
Williston, North Dakota

Independent Water Providers: HB1206---a better approach 3/1/2011

1. Project is dependent upon water sales to oil industry (page 1, line 18; page 2, line 1) including elevated rates for oil and gas (page 7, line 6); 80% of revenue is to come from oil industry.
2. Project authorizes sale of water to venues outside North Dakota (page 2, line 7; page 5, line 4)
3. Structure of the Board of the Authority erodes accountability (page 2, lines 18-24); responsibility for the project, management and financial responsibility is dispersed among 4 different entities, leaving the public with limited ability to influence board decisions.
    a. Board structure is internally complex (weighted provision); may make it unworkable. (page 3, line 21-24); entities that sell more water have more votes.
4. Unwritten bylaws are to be approved by attorney general (page 3, line25).
    a. Attorney general should not have to review bylaws of an entity of local government, in order to assure the public treasury is protected
    b. Can a board member be removed? Will a vacancy be filled by the member, or other board members? Can Board members be impeached (if so, by the Authority, or by vote of the governing body of the authority member)? How will the 4 different entities, each of whom have their own governance, reconcile differences within the authority board itself? All questions that may or may not be addressed, in bylaws.
    c. No bylaws delays implementation of project--described as being "urgent". (NO public funds should be expended or contracts authorized until structural issues are resolved).
5. $200 million of public funds can be obligated without a public vote of members (page 7, line 18).
6. No local or federal funds are obligated towards this project. (ALL funds are state funds)
7. State water commission does not have CLEAR authority to APPROVE the project, but rather is asked for its "concurrence" and to "report" to the state water commission. (page 7 line 28; page 8, line1). If project is paid, then future funds should be returned to resources trust fund.
8. Efforts to "protect" the state are cosmetic and dispersed among water commission, attorney general, BND, public finance and budget section, with no clear responsibility for project. (page 8, line 1; page 13, lines 1-3)
9. Gives the authority "quick take" eminent domain power— to take immediate possession of private property (page 4, line 11)
10. State of North Dakota is ultimately responsible for the payment of $200 million for the project.
11. Legislature must appropriate sufficient funds to restore the "reserve funds" as certified by the authority. (page 12, lines 10-13)
    a. Water commission must request—regardless of Governor's budget—an appropriation of the "certified amount" to restore reserve fund (page 12, line 19-20).
12. Places the construction of a $200 million water project under the control of an untested, in-experienced, yet to be formed "water authority"
13. Authorizes (page 7, line10-11) the use of water for a host of purposes --including oil and gas-- but excluded "irrigation" (because potable water is too expensive to use for irrigation).
14. Bill is declared to "be an emergency". (page 13)

A better approach:

Authorize project

Build by State Water Commission; phased construction—as per NAWS, Devils Lake and SWPP.

Remove bonding guarantee, unless approved/deemed necessary by SWC

Create WAWSP—to manage project, once designed and built, and WAWSP is fully functional.

FACT SHEET March 3, 2011 HB 1206
Independent Water Providers

1. HB 1206 authorizes a water supply infrastructure in northwest North Dakota.

2. Independent water providers support additional, appropriately sized water infrastructure for the area. Infrastructure currently exists throughout much, but not all of the region through Williams Rural Water, R & T Water Supply, Williston and McKenzie County Water District.

3. The bill authorizes a water project, larger than the domestic needs of area residents, to provide water to the oil industry, hoping the industry will pay 80% of the cost---a risky strategy because:
   a. Oil industry demand for water may falter because of EPA regulation of "fracing"
   b. Price of oil may falter (2 years ago oil was at $30).
   c. New technology may reduce need for fresh water for "fracing"
   d. Price of water (potable) is above market price for fresh water
   e. Industry does not need treated (potable) water for fracing
   f. Current tax policy changes now before Congress could reduce oil activity by 30%

4. $150 million cost will grow to $200 million including engineering, attorneys etc, for which, the citizens of North Dakota (and other water projects) are 100% responsible if the project defaults.

5. Proponents assert the project is "urgent" in order to capture "sales" of water in the current market. No oil company has committed to buy water; four have water permits pending.

6. The oil industry will use approximately 8.2MM gal @ day (1500 fracs annually; 2MM gal @ frac).
   a. Current supply exceeds current demand:
      i. 15 million gallons @ day; projected to go to 23 million gallons this year in private depot fleet (including new Missouri River depots)
      ii. 5 million gallons @ day; (estimated sales from local community depots).

7. Aquifers currently being used: Hofflund at Nesson Valley; Ray, Little Muddy, Wildrose are not in jeopardy, in contrast to Fox Hills aquifer which has been off limits for years.

8. Current price of water:
   a. $.50 a bbl. private sector ($11.90 @ 1000 gal)
   b. $.63 a bbl. municipal market ($15 @ 1000 gal)
   c. $.84 a bbl., proposed project price ($20 @ 1000 gal)

9. Flawed assumptions
   a. Assumes 50% of market share;
   b. Will cash flow at $20/1000 gallons—high end of market price
   c. $15/1000 gallons—only high and average industrial use will cash flow.
   d. Drilling activity to proceed unabated. (2010—1544 wells were spudded).

(Reference: 1 acre foot of water =325,851 gallons)

11.0390.03000

First Engrossment
Senate IBL Committee
March 3, 2011
Amendments to Engrossed HB 1206

Page 1, line 19, remove "industrial, oil and gas"

Page 1, line 20, remove "development"

Page 2, line 1, remove "such as oil and gas producers" and "or outside"

Page 2, line 2, remove "or the state."

Page 2, line 6, remove "or outside"

Page 2, line 7, remove "including cities or water systems in Montana"

Page 2, remove lines 18 through 30 and insert the following:

The initial board of directors shall consist of at least five members appointed by the governing body of each city or county participating in the authority until a successor is elected. Each board member shall be elected for a period of 3 years. The board shall consist of the following members:

1. One member from Watford City
2. One member from McKenzie County
3. Two members from Williston
4. One member from Williams County.

Additional members will be added as provided in by-laws adopted by the board of directors, and shall afford each participating political subdivision at least one member to the board of directors.

Page 3, remove lines 1 and 2

Page 3, remove lines 21 through 24

Page 5, line 3 remove "and others"

Page 5, line 4 remove "or outside" and "and the state"

Page 5, line 8, remove "or outside"

Page 6, line 27, remove "out-of-state"

Page 7, line 5, remove "The authority may adopt a rate"

Page 7, remove lines 6 through 8

Page 7, line 25 insert the following:

Notwithstanding anything to the contrary, water features and projects contemplated by this act shall be designed, planned and constructed by the state water commission in phases or as the state

water commission deems most appropriate for the public interest. Revenue bonds, or other bonds issued in furtherance of the projects contemplated by this act shall be issued by the state water commission.

The state water commission shall consult with local officials on a regular basis in planning, designing and constructing projects contemplated by this act.

Upon completion of the project, the state water commission may negotiate for the management and operation of the facilities with the authority authorized by this act, in the same manner and upon similar terms as provided by similar water supply projects within the state.

Page 7, remove lines 27 through 31

Page 8, remove lines 1 through 5

Page 7, line 5 insert the following:

No feature, or supply depot shall be constructed, operated or maintained as part of the project contemplated by this act, within twenty miles of an existing private water supply depot holding a valid permit from the state water commission.

Page 12, line 14, remove "one hundred"

Page 12, line 18, remove "one hundred"

Page 12, remove lines 21 through 26

Page 13, remove line 15

Page 13, line 15 insert the following:

The authority shall not interfere with, or attempt to influence through lobbying, providing comments, testifying at public meetings or hearings or by any other means, the approval, permitting, or development of any future private water development in the state, at any level of government.

Robert W. Harms
471-0959

INDEPENDENT WATER PROVIDERS

SUPPORT DATA

WHAT IS THE OIL INDUSTRY WATER NEEDS

- ESTIMATED 2,000 NEW WELLS WILL BE DRILLED ANNUALLY IN NORTHWEST NORTH DAKOTA
- EACH WELL REQUIRES APPROXIMATELY 9.23 ACRE FEET OR A TOTAL OF 3,027,440 GALS
- ESTIMATED USAGE OF 18,460 ACRE FEET PER YEAR

HOW MUCH WATER IS AVAILABLE NOW?

- STATE WATER HAS CURRENTLY GRANTED 44 INDUSTRIAL PERMITS WITH 21,771 ACRE FEET BEING AVAILABLE
- THERE IS AN ADDITIONAL 61 INDUSTRIAL WATER PERMITS BEING REVIEWED BY THE STATE WATER COMMISSION WITH 31,353 ACRE FEET BEING REQUESTED
- THE TOTAL ACRE FEET OF WATER PERMITTED AND REQUESTED AMOUNTS TO 53,124 ACRE FEET WITH 11,819 ACRE FEET GROUND WATER AND 41,306 ACRE FEET BEING SURFACE WATER

PRIVATE INDUSTRY PROVIDERS

- ESTIMATED 53,124 ACRE FEET OF WATER COULD BE PERMITTED FOR INDUSTRIAL USE
- ABOUT 3 TIMES THE CURRENT WATER NEEDS WOULD BE AVAILABLE FOR THE OIL INDUSTRY
- OIL INDUSTRY DOES NOT NEED TREATED WATER FOR HYDRAULIC FRACKING

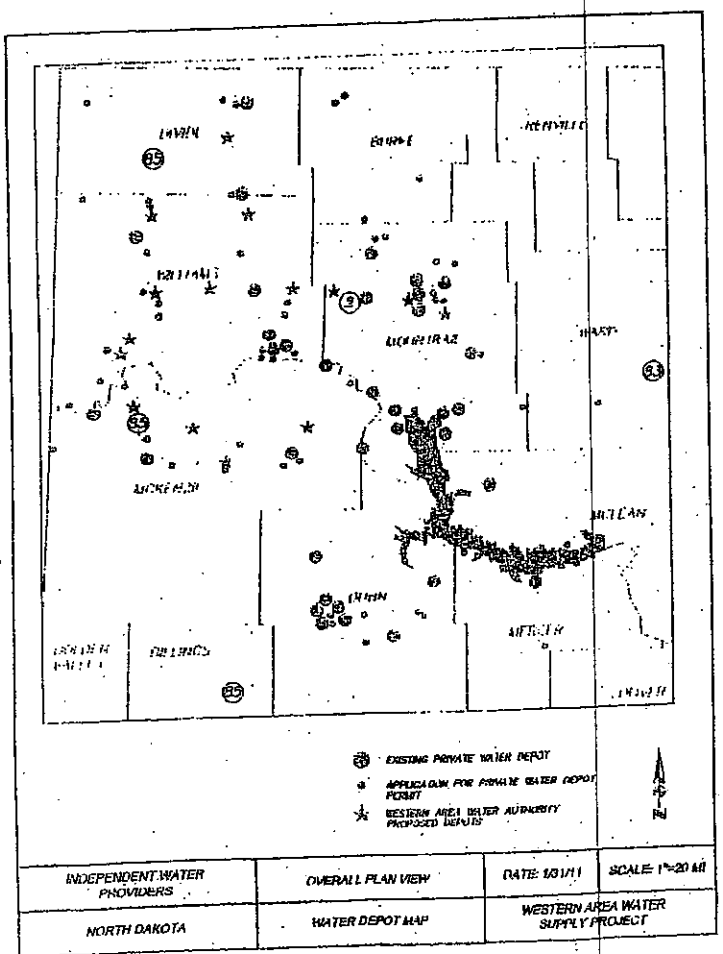
FINANCIAL CONCERNS

- WHY SHOULD PRIVATE INDUSTRY HAVE TO COMPETE WITH STATE FUNDED PROJECTS
- WHY DOES THE BURDEN HAVE TO FALL TO THE TAXPAYERS OF NORTH DAKOTA IF THE INDUSTRY SLOWS DOWN
- BY DOWNSIZING THE SYSTEM AND PROVIDING TREATED WATER TO THE RURAL AND MUNICIPALITIES IT COULD SAVE THE TAXPAYERS OF NORTH DAKOTA 100 MILLION DOLLARS AND WITH STATE AND FEDERAL FUNDING HAVE THE PROJECT PAID FOR IN 3- 5 YEARS INSTEAD OF 30 YEARS

BUSINESS PLANS CONCERNS

- THE BUSINESS PLAN STATES WAWA WILL NEED 50% OF THE OIL INDUSTRIES WATER NEEDS THE FIRST YEAR TO BREAK EVEN
- WHO WILL MAKE THE PAYMENT IF THAT PERCENTAGE IS NOT REACHED ?
- WHO WILL MAKE UP THE LOSS REVENUE FOR PRIVATE DEPOT WHO ALREADY HAS A MADE A COMMITMENT TO THE OIL INDUSTRY?

PERMITTED AND PROPOSED PRIVATE DEPOTS AND PROPOSED WAWA DEPOTS



POSITIVE CONCERNS

- INDEPENDENT WATER PROVIDERS ARE IN SUPPORT OF TREATED DRINKING WATER TO RURAL AND MUNICIPALITIES
- WE ARE ALSO IN SUPPORT OF LOCAL COMMUNITIES OPERATING THEIR OWN LOCAL DEPOT FOR ADDITIONAL INCOME
- MOST OF THE PERMITS BEING APPLIED FOR ARE LOCAL AG PRODUCERS WHO HAVE NOT BEEN ABLE TO PARTICIPATE IN THE OIL INDUSTRY REVENUE, MOST PRODUCERS DO NOT EVEN OWN MINERAL ACRES BUT SHARE THE INCREASE COST FOR LABOR,FUEL,REPAIRS CAUSED BY THE OIL INDUSTRY

CONCLUSION

- WE ARE IN SUPPORT OF RURAL AND MUNICIPALITIES TREATED WATER NEEDS
- SUPPORT OF LOCAL COMMUNITIES OWN WATER DEPOT OPERATIONS
- OPPOSE THE USE OF STATE FUNDED PROJECTS COMPETING WITH PRIVATE ENTERPRISE
- OPPOSE THE INDUCTION OF A BILL INTO THE LEGISLATION WITH OUT LOCAL NOTIFICATION

WATER DEPOTS – PERMITS AND APPLICATIONS

To serve the oil industry in Northwest North Dakota

NDSWC/Office of the State Engineer – February 1, 2011

Water permits issued (depots):	**44**	**39 groundwater, 5 surface water**
Issued before 2007:	10	
Issued 2007 or later:	34	(2007-4; 2008-8; 2009-7; 2010-15)

Annual quantity of groundwater permitted: 3,494 acre-feet (1.1 billion gal)
Annual quantity of surface water permitted: 19,929 acre-feet (6.5 billion gal)

Includes 18,000 acre-feet recently granted from Lake Sakakawea
NDSWC-SW Pipeline permit: about 500 af/yr for Red Trail Ethanol, leaving about 630 af/yr for Dodge depot
Additional water is being sold under municipal permits (apps. pending)

Permits with a portion held in abeyance:	**9**	**All groundwater: 2,099.4 ac-ft/yr (684 million gal)**
Permit applications denied:	**6**	**5 groundwater, 1 surface water**
Permit applications to be reviewed:	**69**	**52 groundwater, 17 surface water**

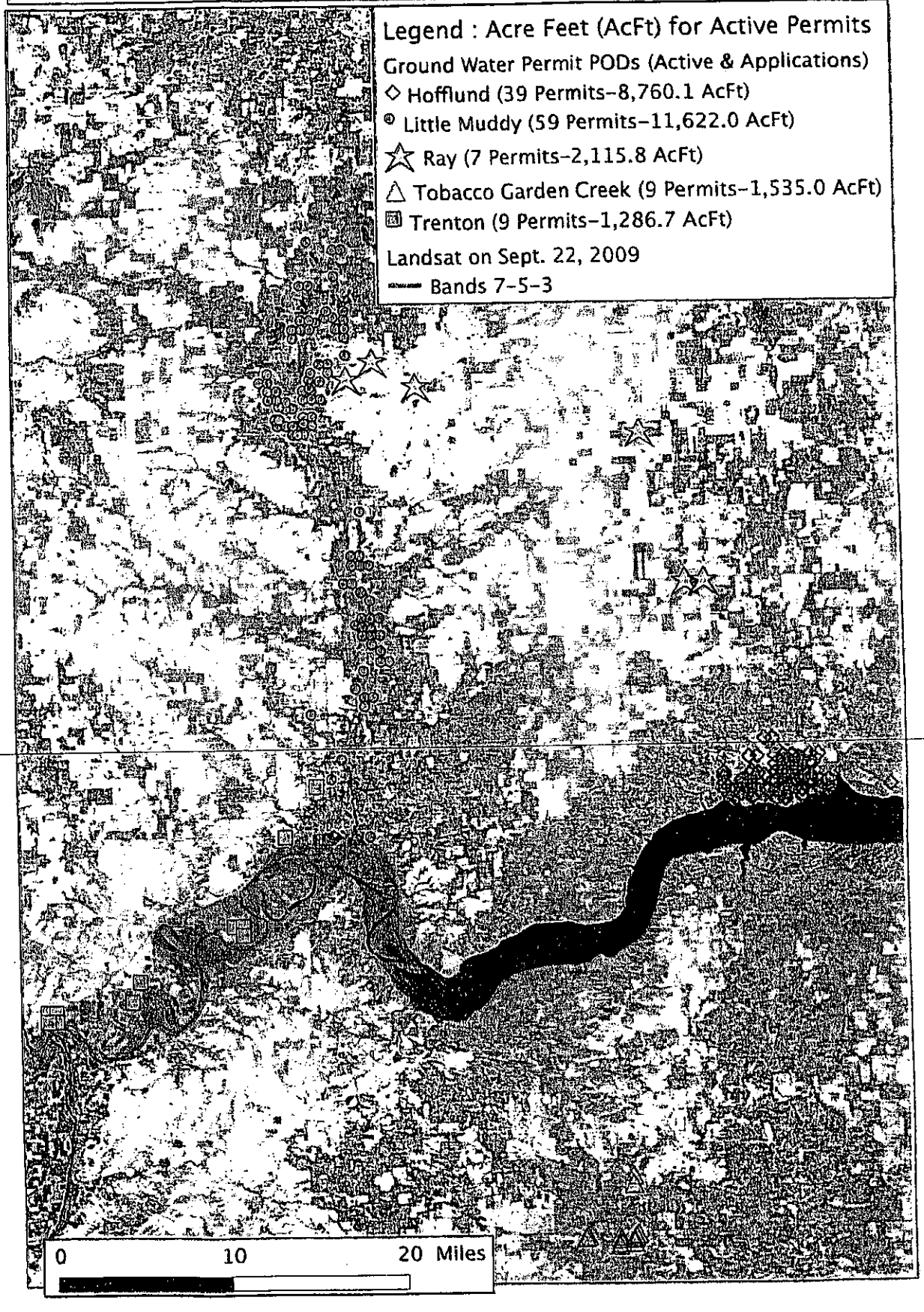
Annual quantity of groundwater applied for: 13,370 acre-feet (4.4 billion gal)
Annual quantity of surface water applied for: 41,807 acre-feet (14 billion gal)

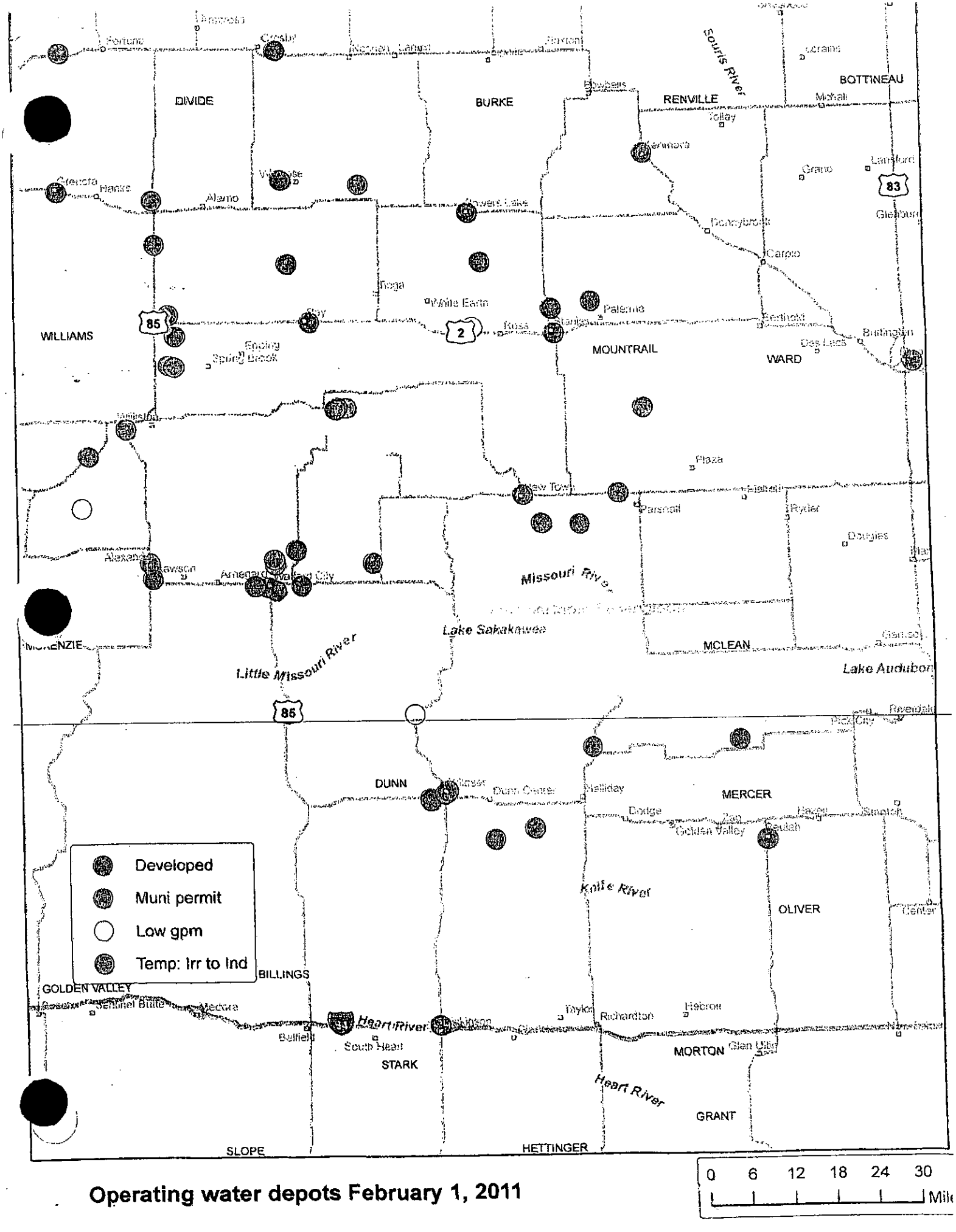
~~Applications with a priority date in 2006: 1~~
Applications with a priority date in 2007: 2
Applications with a priority date in 2008: 10
Applications with a priority date in 2009: 8
Applications with a priority date in 2010: 46
Applications with a priority date in 2011: 3

Oil well drilling rigs in operation on February 1, 2011: 164

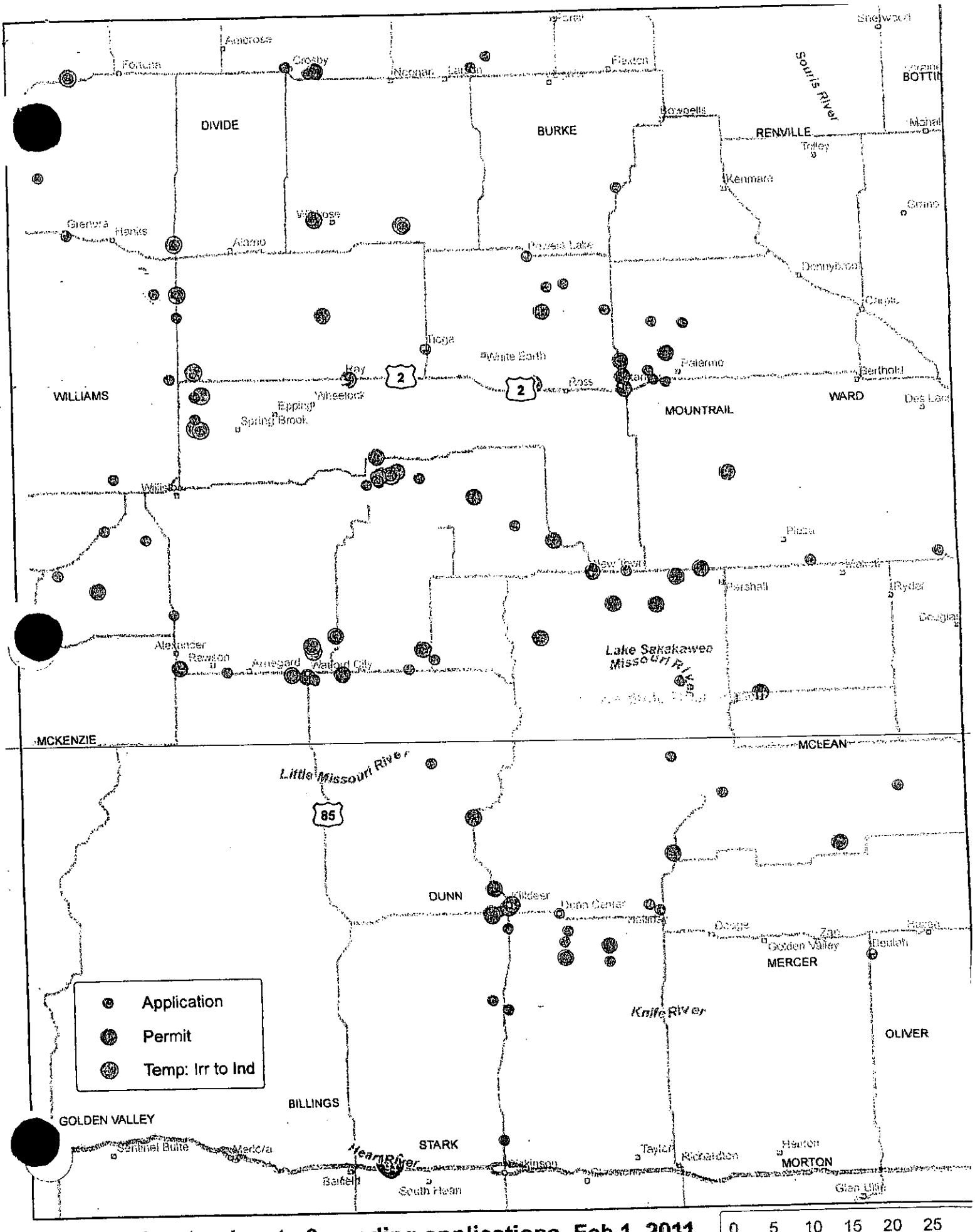
Mountrail 36; McKenzie 43; Williams 33; Dunn 23; Divide 10; Stark 5; Burke 6; Billings 2; Bowman 1; Renville 1; McLean 2; Bottineau 1; Slope 1; Golden Valley 0; Ward 0, (source: NDIC - Oil & Gas Division website)

Ground Water Permits from Selected Aquifers in Western North Dakota

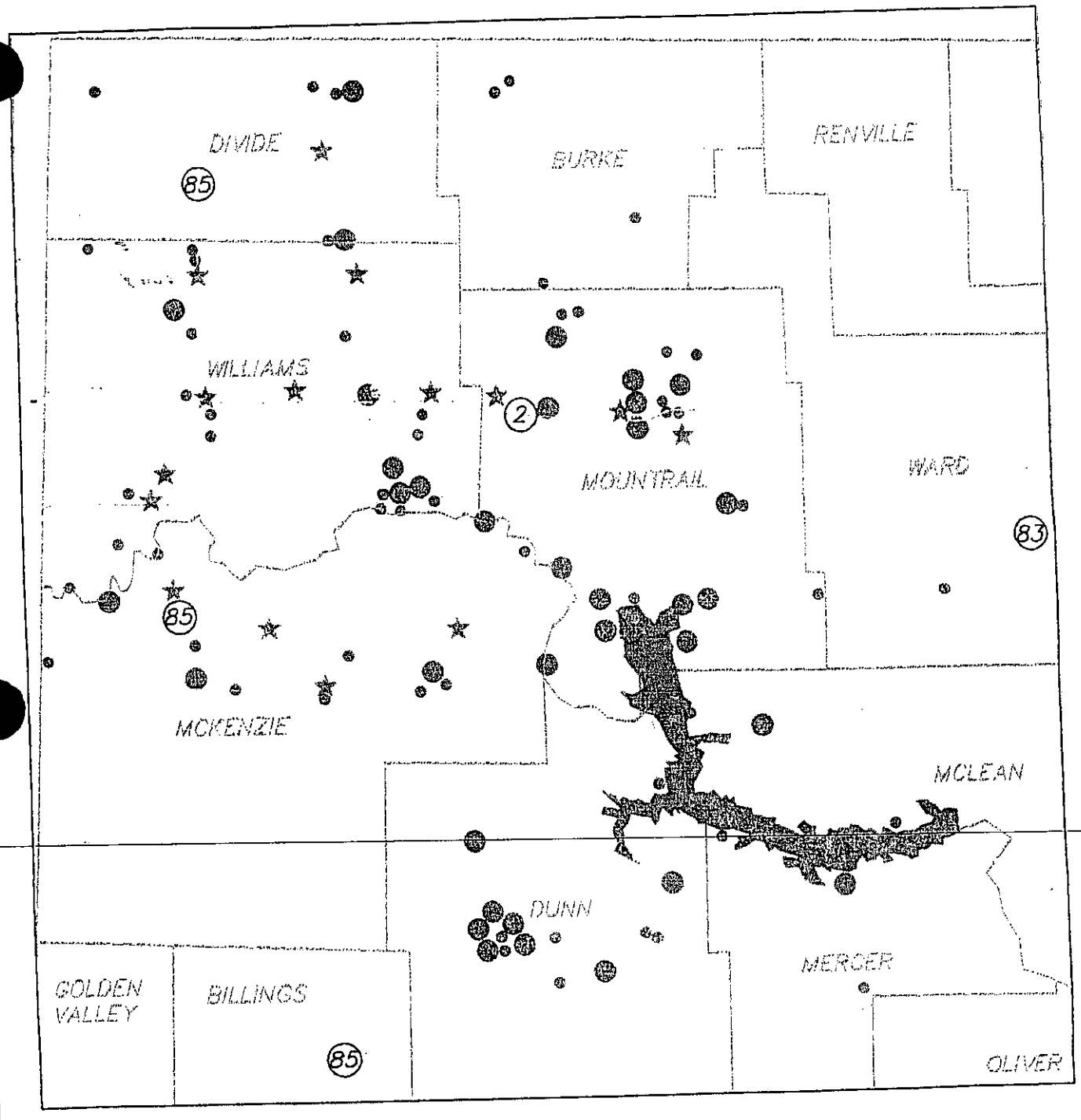




Operating water depots February 1, 2011



Permitted water depots & pending applications, Feb 1, 2011
Including irrigation to industrial temporary conversions



EXISTING PRIVATE WATER DEPOT

APPLICATION FOR PRIVATE WATER DEPOT PERMIT

WESTERN AREA WATER AUTHORITY PROPOSED DEPOTS

N

INDEPENDENT WATER PROVIDERS	OVERALL PLAN VIEW	DATE: 1/31/11	SCALE: 1"=20 MI
NORTH DAKOTA	WATER DEPOT MAP	WESTERN AREA WATER SUPPLY PROJECT	

THE HARMS GROUP

Independent Water Producers
Meeting with Governor Dalrymple
February 21, 2011

Agenda:

ISSUE: Design, cost and construction of water supply infrastructure for northwestern North Dakota.

Support: -utilization of Missouri River water for ND beneficial use
-providing water supply infrastructure for northwestern ND
-having SWC design, cost and construct project

Concern: $200 million of public funds at risk.

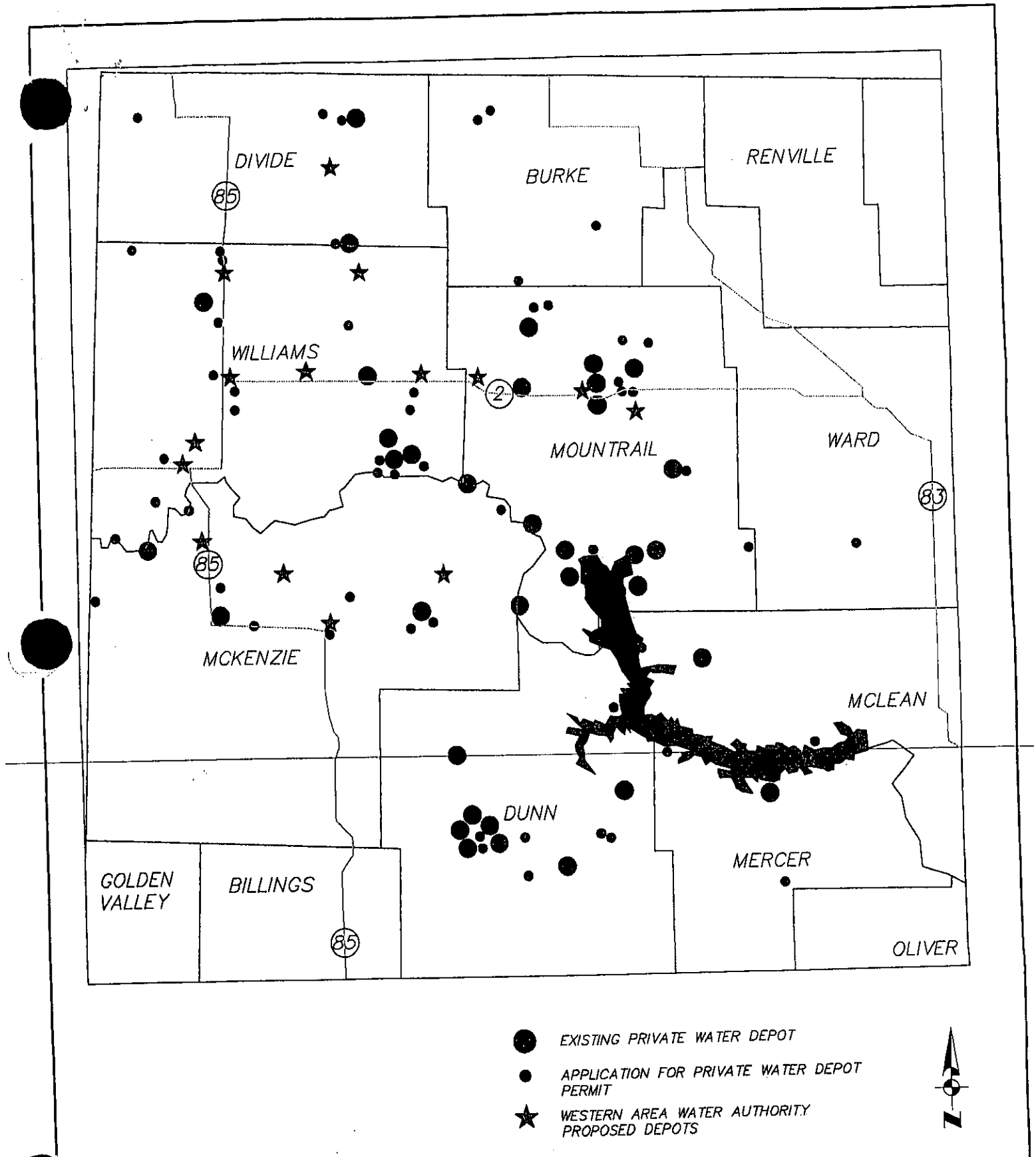
1. Premise of HB 1206—build a public water supply, someone else will pay for; backstopped by the people of North Dakota (through M.O. bonds).

2. Assumptions of the project and business plan (current water supply/demands and presumed market share).

3. Review/critique of bill in present form.

4. Discussion

5. Ask:
   a.) Support building water supply in northwestern ND
   b.) Support utilization of Missouri River water for ND
   c.) Support having SWC take lead in design, construction and management of WAWS,
   d.) Support formation of WAWS Authority during interim.



INDEPENDENT WATER PROVIDERS	OVERALL PLAN VIEW	DATE: 1/31/11	SCALE: 1"=20 MI
NORTH DAKOTA	WATER DEPOT MAP	WESTERN AREA WATER SUPPLY PROJECT	

Independent Water Providers: HB1206---a better approach 2/21/2011

1. Project is dependent upon water sales to oil and gas industry (page 1, line 18; page 2, line 1) including elevated rates for oil and gas (page 7, line 6)
2. Project authorizes sale of water to venues outside North Dakota (page 2, line 7; page 5, line 4)
3. Structure of the Board of the Authority erodes accountability (page 2, lines 18-24); responsibility for the project, management and financial responsibility is dispersed among 4 different entities, leaving the public with limited ability to influence board decisions.
    a. Board structure is internally complex (weighted provision); may make it unworkable. (page 3, line 21-24); entities that sell more water have more votes.
4. Unwritten bylaws are to be approved by attorney general (page 3, line25).
    a. Attorney general should not have to review bylaws of an entity of local government, in order to assure the public treasury is protected
    b. Can a board member be removed? Will a vacancy be filled by the member, or other board members? Can Board members be impeached (if so, by the Authority, or by vote of the governing body of the authority member)? How will the 4 different entities, each of whom have their own governance, reconcile differences within the authority board itself? All questions that may or may not be addressed, in bylaws.
    c. No bylaws delays implementation of project--described as being "urgent". (NO public funds should be expended or contracts authorized until structural issues are resolved).
5. $200 million of public funds can be obligated without a public vote of members (page 7, line 18).
6. No local or federal funds are obligated towards this project. (ALL funds are state funds)
7. State water commission does not have CLEAR authority to APPROVE the project, but rather is asked for its "concurrence" and to "report" to the state water commission. (page 7 line 28; page 8, line1). If project is paid, then future funds should be returned to resources trust fund.
8. Efforts to "protect" the state are cosmetic and dispersed among water commission, attorney general, BND, public finance and budget section, with no clear responsibility for project. (page 8, line 1; page 13, lines 1-3)
9. ~~Gives the authority "quick take" eminent domain power -- to take immediate possession of~~ private property (page 4, line 11)
10. State of North Dakota is ultimately responsible for the payment of $200 million for the project.
11. Legislature must appropriate sufficient funds to restore the "reserve funds" as certified by the authority. (page 12, lines 10-13)
    a. Water commission must request—regardless of Governor's budget—an appropriation of the "certified amount" to restore reserve fund (page 12, line 19-20).
12. Places the construction of a $200 million water project under the control of an untested, in-experienced, yet to be formed "water authority"
13. Authorizes (page 7, line10-11) the use of water for a host of purposes --including oil and gas-- but excluded "irrigation" (because potable water is too expensive to use for irrigation).
14. Bill is declared to "be an emergency". (page 13)

A better approach:

Authorize project
Build by State Water Commission
Create WAWSP—with intent of turning over management, once project is designed and built, and WAWSP is established, by-laws in place and fully functional.

Talking Points on WAWSP

Proposed purpose:

1. Plan is suppose to bring potable water to areas of need in northwest North Dakota.

2.Begining Phases address oil industry needs not potable water needs of people in the area.

Business Plan Flaws:

1.Project designed and built by beneficiaries with no local match and guaranteed by taxpayers of North Dakota.

2.Over estimation of water sales to provide payment on revenue bonds need 50% plus of oil industries sales.

2.Oil industry does not needed treated water, added cost to project and O&M.

3.No contracts in place from oil industry to support projects.

4.Finacial risk to taxpayers of the state of North Dakota to make payment on bonds if water sales of WAWSP are not met ,which also would take funds away from current water projects already approved.

5. Project cost will move to $200 million with the development and sale of the bonds.

6.Cost difference for oil industry water between WAWSP and private depots amounts to **$20,250** per well.

7.Over built pipeline will result in low quality of potable water after oil industry leaves(stagnate water due to low use)

State Concerns:

1. The State Water Commission should be designing, engineering, and supplying input to this project and not just being asked to guarantee it ?

2.Radical departure from other regional water projects.

3. Engineering Firm will earn 10% of project cost or $20,000 million dollars

4. If project is considered to be such a good plan, then the local sponsors of McKenzie County, R&T Water, Williams Water and city of Williston should fund some of the cost since they are all profiting from selling industrial water now.

Private Water Providers Concerns:

1. Why should projects be guaranteed by the state compete with private business.

2. Private business has met the demands of the oil industry and will continue to meet the demands.

3. Private water providers are not opposed to any type of water line that brings potable water to the people of northwestern North Dakota and nor are we opposed with the sales of water to the oil industries from the local local municipal depots located within their local municipalities, but we feel they do not have to place depots outside the municipal areas that we are currently supplying.

Estimate for a water line to Alexander & Watford City from the Williston Water Treatment Plant for municipal and rural needs

This estimate is based upon 2010 bid jobs

16 inch pipeline from Ray to Tioga **$43 per foot**

12 inch pipeline from Ray to Wildrose **$20 per foot**

This estimate is based upon the above actual prices plus contingencies

20 mile 16 inch pipeline from Williston water treatment plant to the City of Alexander:

105,600 ft of 16 inch pipeline, installed @ $43 per ft.	**$4,540,800**
1 water tower	**2,000,000**
1 Missouri River bore	**1,000,000**
1 additional booster stations	**1,000,000**
1 misc	**1,000,000**
Subtotal	**$9,540,800**

22 mile 12 inch pipeline from Alexander to Watford City:

116,160 ft. of 12 inch pipeline, installed @ $20 per ft.	**$2,323,200**
1 water tower	**2,000,000**
1 additional booster station	**1,000,000**
1 misc.	**1,000,000**
Subtotal	**$6,323,200**
10% engineering fee	**1,586,400**
Total	**$17,450,400**
State Grant	**$30,000,000**
RESERVE	**$12,549,600**

The estimated reserve money is sufficient to provide potable water to rural McKenzie County residents who deserve quality drinking water

BID OPENING
R&T WATER SUPPLY ASSOCIATION 2009 DISTRIBUTION SYSTEM IMPROVEMENTS PROJECT
THURSDAY, DECEMBER 3, 2009
4:00 PM

16" WATER LINE

CONTRACTORS	ADDENDUM 1	BID SECURITY	CONTRACTOR'S LICENSE	DEBARMENT FORM	MBE/WBE SOLICITATION	UNDERSTANDING OF ARRA LOAN MATTERS	ARRA FUNDING REQUIREMENT CERT.	AFFIDAVIT OF NON-COLLUSION	SIGNATURE	GENERAL CONSTRUCTION
Wagner Construction Inc South International Falls, MN	✓	✓	✓	✓	✓	✓	✓	✓	✓	$1,899,788.00
Quam Construction Co Inc Willmar, MN	✓	✓	✓	✓	✓	✓	✓	✓	✓	$2,188,150.00
Geo E Haggart Inc Fargo, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$2,239,450.00
Agri Industries Inc Williston, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$2,367,225.00
Molstad Excavating Grand Forks, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$2,269,775.00
Cofell's Plumbing & Heating Inc Bismarck, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$2,300,020.00
Swanberg Construction Inc Valley City, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$2,357,720.00
Engineer's Estimate										$2,300,000.00

AE2S
www.ae2s.com

Engineer: Advanced Engineering and Environmental Services, Inc.
1815 Schafer Street, Suite 301, Bismarck, ND 58501
Tel: 701-221-0530 / Fax: 701-221-0531

Respectfully Submitted By: Cory Chorne
Cory Chorne, PE

TABULATION OF BIDS
2009 Distribution System Improvements Project
R&T Water Supply Association

Bid Letting: Thursday, December 3, 2009
Checked by:

	ITEM DESCRIPTION	QUANTITY	UNIT	Wagner Construction, Inc. Int'l Falls, MN UNIT PRICE	Wagner Construction, Inc. Int'l Falls, MN TOTAL PRICE	Gee E. Haggart Inc. Fargo, ND UNIT PRICE	Gee E. Haggart Inc. Fargo, ND TOTAL PRICE	Odell's Plumbing & Heating Inc. Bismarck, ND UNIT PRICE	Odell's Plumbing & Heating Inc. Bismarck, ND TOTAL PRICE	Kvamsdal Construction Wilmar, MN UNIT PRICE	Kvamsdal Construction Wilmar, MN TOTAL PRICE	Agri Industries, Inc. Williston, ND UNIT PRICE	Agri Industries, Inc. Williston, ND TOTAL PRICE	Swanberg Construction, Inc. Valley City, ND UNIT PRICE	Swanberg Construction, Inc. Valley City, ND TOTAL PRICE	Molstad Excavating, Inc. Grand Forks, ND UNIT PRICE	Molstad Excavating, Inc. Grand Forks, ND TOTAL PRICE	Engineer's Estimate UNIT PRICE	Engineer's Estimate TOTAL PRICE
A.	Mobilization	1	l.s.	$10,000.00	$10,000.00	$70,000.00	$70,000.00	$100,000.00	$100,000.00	$57,000.00	$57,000.00	$189,000.00	$189,000.00	$160,000.00	$160,000.00	$30,000.00	$30,000.00	$140,000.00	$140,000.00
B.	Seeding																		
	b. Native Seed	10	ac.	$1,000.00	$10,000.00	$750.00	$7,500.00	$722.00	$7,220.00	$800.00	$8,000.00	$1,550.00	$15,500.00	$480.00	$4,800.00	$375.00	$3,750.00	$800.00	$8,000.00
C.	Furnish and Install Pipe																		
1	16" C905 DR18	33,000	Lf	$26.44	$872,520.00	$28.80	$950,400.00	$26.75	$882,750.00	$32.25	$1,064,250.00	$34.30	$1,131,900.00	$29.00	$957,000.00	$34.00	$1,122,000.00	$30.00	$990,000.00
2	16" C905 DR25	13,200	Lf	$20.74	$273,768.00	$23.00	$303,600.00	$26.50	$349,800.00	$26.50	$349,800.00	$31.95	$421,740.00	$23.40	$308,880.00	$28.00	$369,600.00	$26.50	$349,800.00
D.	Furnish and Install Fittings																		
1	16" DI MJ 45 Elbow with SS Bolts	1	ea.	$1,200.00	$1,200.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$1,150.00	$1,150.00	$1,115.00	$1,115.00	$1,960.00	$1,960.00	$1,250.00	$1,250.00	$1,200.00	$1,200.00
2	16" DI MJ 90 Elbow with SS Bolts	3	ea.	$1,200.00	$3,600.00	$2,400.00	$7,200.00	$2,100.00	$6,300.00	$1,300.00	$3,900.00	$1,660.00	$4,980.00	$2,140.00	$6,420.00	$1,525.00	$4,575.00	$1,400.00	$4,200.00
E.	Furnish and Install Valves and Hydrants																		
4	16" Gate Valve	2	ea.	$5,700.00	$11,400.00	$7,500.00	$15,000.00	$5,400.00	$12,800.00	$6,250.00	$12,500.00	$7,740.00	$15,480.00	$6,200.00	$12,400.00	$7,500.00	$15,000.00	$8,500.00	$17,000.00
F.	Combination Air Valves															$7,000.00	$21,000.00	$4,000.00	$12,000.00
	1"	3	ea.	$3,400.00	$10,200.00	$7,000.00	$21,000.00	$5,000.00	$15,000.00	$3,550.00	$10,650.00	$6,265.00	$18,795.00	$4,620.00	$13,860.00				
G.	Non-Casing Borings																		
	16"	7	ea.	$5,200.00	$36,400.00	$9,500.00	$66,500.00	$10,500.00	$73,500.00	$7,400.00	$51,800.00	$6,500.00	$45,500.00	$7,600.00	$53,200.00	$8,000.00	$56,000.00	$8,000.00	$56,000.00
H.	Post Highway Bores																		
	16" - SDR11	1	ea.	$45,000.00	$45,000.00	$50,000.00	$50,000.00	$45,000.00	$45,000.00	$24,700.00	$24,700.00	$28,000.00	$28,000.00	$40,000.00	$40,000.00	$27,000.00	$27,000.00	$35,000.00	$35,000.00
I.	Directional Bores																		
1	16" - SDR9	1550	Lf	$84.50	$130,975.00	$95.00	$147,250.00	$101.00	$156,550.00	$90.00	$139,500.00	$60.00	$93,000.00 *	$80.00	$124,000.00	$82.00	$127,100.00	$90.00	$139,500.00
2	16" - SDR11	500	Lf	$67.85	$33,925.00	$90.00	$45,000.00	$100.00	$50,000.00	$86.00	$43,000.00	$60.00	$30,000.00	$75.00	$37,500.00	$80.00	$40,000.00	$87.00	$43,500.00
J.	Special Connections																		
1	16"	1	l.s.	$7,500.00	$7,500.00	$14,000.00	$14,000.00	$7,500.00	$7,500.00	$10,500.00	$10,500.00	$18,959.00	$18,959.00	$15,500.00	$15,500.00	$15,500.00	$15,500.00	$12,500.00	$12,500.00
2	12" Tie-In, Detail 4/C7	1	l.s.	$8,300.00	$8,300.00	$12,000.00	$12,000.00	$14,000.00	$14,000.00	$11,200.00	$11,200.00	$19,996.00	$19,996.00	$17,400.00	$17,400.00	$14,000.00	$14,000.00	$10,000.00	$10,000.00
K.	Facilities																		
1	Tioga High Point Booster Station	1	l.s.	$104,000.00	$104,000.00	$115,000.00	$115,000.00	$135,000.00	$135,000.00	$90,000.00	$90,000.00	$101,890.00	$101,890.00	$153,000.00	$153,000.00	$112,000.00	$112,000.00	$110,000.00	$110,000.00
2	Booster Station 1	1	l.s.	$143,000.00	$143,000.00	$120,000.00	$120,000.00	$132,500.00	$132,500.00	$93,000.00	$93,000.00	$113,090.00	$113,090.00	$157,000.00	$157,000.00	$114,000.00	$114,000.00	$120,000.00	$120,000.00
3	Stanley High Point Booster Station	1	l.s.	$137,000.00	$137,000.00	$118,000.00	$118,000.00	$130,000.00	$130,000.00	$90,000.00	$90,000.00	$103,080.00	$103,080.00	$153,000.00	$153,000.00	$106,000.00	$106,000.00	$110,000.00	$110,000.00
4	Stanley Meter Station	1	l.s.	$16,000.00	$16,000.00	$15,000.00	$15,000.00	$12,000.00	$12,000.00	$8,200.00	$8,200.00	$15,200.00	$15,200.00	$9,800.00	$9,800.00	$12,000.00	$12,000.00	$10,000.00	$10,000.00
L.	Electrical	1	l.s.	$45,000.00	$45,000.00	$160,000.00	$160,000.00	$168,000.00	$168,000.00	$119,000.00	$119,000.00	$89,660.00	$89,660.00	$130,000.00	$130,000.00	$79,000.00	$79,000.00	$140,000.00	$140,000.00
	TOTAL LUMP SUM BID FOR ALTERNATE NO. 1				$1,899,788.00		$2,239,450.00		$2,300,920.00		$2,188,150.00		$2,367,225.00 *		$2,356,720.00 *		$2,259,775.00		$2,398,700.00

TRUE TABULATION OF BIDS Christopher Bryant

Advanced Engineering and Environmental Services, Inc.

*Corrected for Mathematical Error

BID OPEN
CITY OF WILDROSE REGIONAL WATER SERVICE
THURSDAY, DECEMBER 3, 2009
1:00 PM

6" WATER LINE

CONTRACTORS	ADDENDUM 1	BID SECURITY	CONTRACTORS LICENSE	DEBARMENT FORM	MBE/WBE SOLICITATION	UNDERSTANDING OF ARRA LOAN MATTERS	ARRA FUNDING REQUIREMENT CERT.	AFFIDAVIT OF NON-COLLUSION	SIGNATURE	GENERAL CONSTRUCTION
Swanberg Construction Inc Valley City, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$1,074,744.00
Agri Industries Inc Williston, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$1,376,650.00
Geo E Haggart Inc Fargo, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$1,525,680.00
Molstad Excavating Grand Forks, ND	✓	✓	✓	✓	✓	✓	✓	✓	✓	$1,669,200.00
Quam Construction Co Inc Willmar, MN	✓	✓	✓	✓	✓	✓	✓	✓	✓	$1,736,579.00
Engineer's Estimate										$1,300,000.00

AE2S
www.ae2s.com

Engineer: Advanced Engineering and Environmental Services, Inc.
1815 Schafer Street, Suite 301, Bismarck, ND 58501
Tel: 701-221-0530 / Fax: 701-221-0531

Respectfully Submitted By: Cory Chorne
Cory Chorne, PE

TABULATION OF BIDS
Regional Water Service Project
Wildrose, ND

Bid Letting: Thursday, December 3, 2009
Checked by:

	ITEM DESCRIPTION	QUANTITY	UNIT	Swanberg Construction, Inc. Valley City, ND		Geo E. Haggart Inc. Fargo, ND		Molstad Excavating, Inc. Grand Forks, ND		Kvamsdal Construction Willmar, MN		Agri Industries, Inc. Williston, ND		Engineer's Estimate	
				UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
A.	Mobilization	1	l.s.	$40,000.00	$40,000.00	$100,000.00	$100,000.00	$25,000.00	$25,000.00	$160,140.00	$160,140.00	$76,500.00	$76,500.00	$100,000.00	$100,000.00
B.	Seeding														
	b. Native Seed	10	ac.	$480.00	$4,800.00	$750.00	$7,500.00	$375.00	$3,750.00	$737.00	$7,370.00	$1,750.00	$17,500.00	$800.00	$8,000.00
C.	Furnish and Install Piping														
1	6" Class 160 PVC	47,600	l.f	$5.40	$257,040.00	$8.50	$404,600.00	$11.00	$523,600.00	$10.75	$511,700.00	$7.75	$368,900.00	$6.50	$309,400.00
2	6" Class 200 PVC	67,400	l.f.	$5.96	$401,704.00	$9.20	$620,080.00	$12.00	$808,800.00	$11.05	$744,770.00	$8.40	$566,160.00	$7.00	$471,800.00
E.	Furnish and Install Valves and Hyorants														
4	6" Gate Valve	10	ea.	$905.00	$9,050.00	$950.00	$9,500.00	$1,000.00	$10,000.00	$759.00	$7,590.00	$1,450.00	$14,500.00	$1,200.00	$12,000.00
F.	Combination Air Valves														
	1"	5	ea.	$2,460.00	$12,300.00	$3,500.00	$17,500.00	$3,000.00	$15,000.00	$12,487.00	$62,435.00	$2,960.00	$14,800.00	$3,000.00	$15,000.00
G.	Non-Cased Bores														
	6"	15	ea.	$3,000.00	$45,000.00	$3,000.00	$45,000.00	$2,400.00	$36,000.00	$2,531.00	$37,965.00	$3,650.00	$54,750.00	$3,000.00	$45,000.00
H.	Bore & Highway Bores														
	6"	3	ea.	$9,600.00	$28,800.00	$8,500.00	$25,500.00	$8,500.00	$25,500.00	$6,884.00	$20,652.00	$7,650.00	$22,950.00	$9,000.00	$27,000.00
I.	Directional Bores														
1	6"	1,150	l.f	$37.00	$42,550.00	$40.00	$46,000.00	$25.00	$28,750.00	$28.00	$32,200.00	$36.00	$41,400.00	$34.00	$39,100.00
J.	Cased Bores														
	12"	200	l.f	$125.00	$25,000.00	$125.00	$25,000.00	$64.00	$12,800.00	$111.00	$22,200.00	$74.50	$14,900.00	$100.00	$20,000.00
K.	Facilities														
1	Booster Station (at R&T WTP)	1	l.s.	$90,000.00	$90,000.00	$100,000.00	$100,000.00	$70,000.00	$70,000.00	$74,000.00	$74,000.00	$92,275.00	$92,275.00	$110,000.00	$110,000.00
2	Special Connection - Connectioin to City of Wildrose Water Tower	1	l.s.	$18,500.00	$18,500.00	$20,000.00	$20,000.00	$10,000.00	$10,000.00	$14,337.00	$14,337.00	$36,400.00	$36,400.00	$25,000.00	$25,000.00
L.	Electrical	1	l.s.	$100,000.00	$100,000.00	$105,000.00	$105,000.00	$100,000.00	$100,000.00	$41,220.00	$41,220.00	$55,615.00	$55,615.00	$100,000.00	$100,000.00
	TOTAL LUMP SUM BID FOR ALTERNATE NO. 1				$1,074,744.00		$1,525,680.00		$1,669,200.00		$1,736,579.00		$1,376,650.00		$1,282,300.00

*Corrected for Mathematical Error

TRUE TABULATION OF BIDS

Advanced Engineering and Environmental Services, Inc.

BID O[illegible]G

CITY OF WILDROSE REGIONAL WATER SERVICE PHASE 2

TUESDAY, JULY 20, 2010

11:00 AM

12" WATERLINE

CONTRACTORS	ADDENDUM #1	ADDENDUM #2	BID SECURITY	ND CONTRACTORS LICENSE	DEBARMENT REPORT	ITB/RFP SOLICITATION	DAVIS-BACON NON-COLLUSION	SIGNATURE	GENERAL CONSTRUCTION
Swanberg Construction Inc Valley City, ND	X	X	X	X	X	X	X	X	$1,215,655.00
Wagner Construction International Falls, MN	X	X	X	X	X	X	X	X	$1,354,650.00
Geo E Haggart Inc Fargo, ND	X	X	X	X	X	X	X	X	$1,361,900.00
Kamphuis Pipeline Co Grand Rapids, MI	X	X	X	X	X	X	X	X	$1,379,990.00
Quam Construction Co Inc Willmar, MN	X	X	X	X	X	X	X	X	$1,432,380.00
SJ Louis Construction Inc. Rockville, MN	X	X	X	X	X	X	X	X	$1,461,500.00
Agri Industries Inc Williston, ND	X	X	X	X	X	X	X	X	$1,495,219.00
Rising Sun Construction Fargo, ND	X	X	X	X	X	X	X	X	$1,582,400.00
Kemper Construction Co Minot, ND	X	X	X	X	X	X	X	X	$2,145,925.00
Engineer's Estimate									$1,500,000.00

AE2S
www.ae2s.com

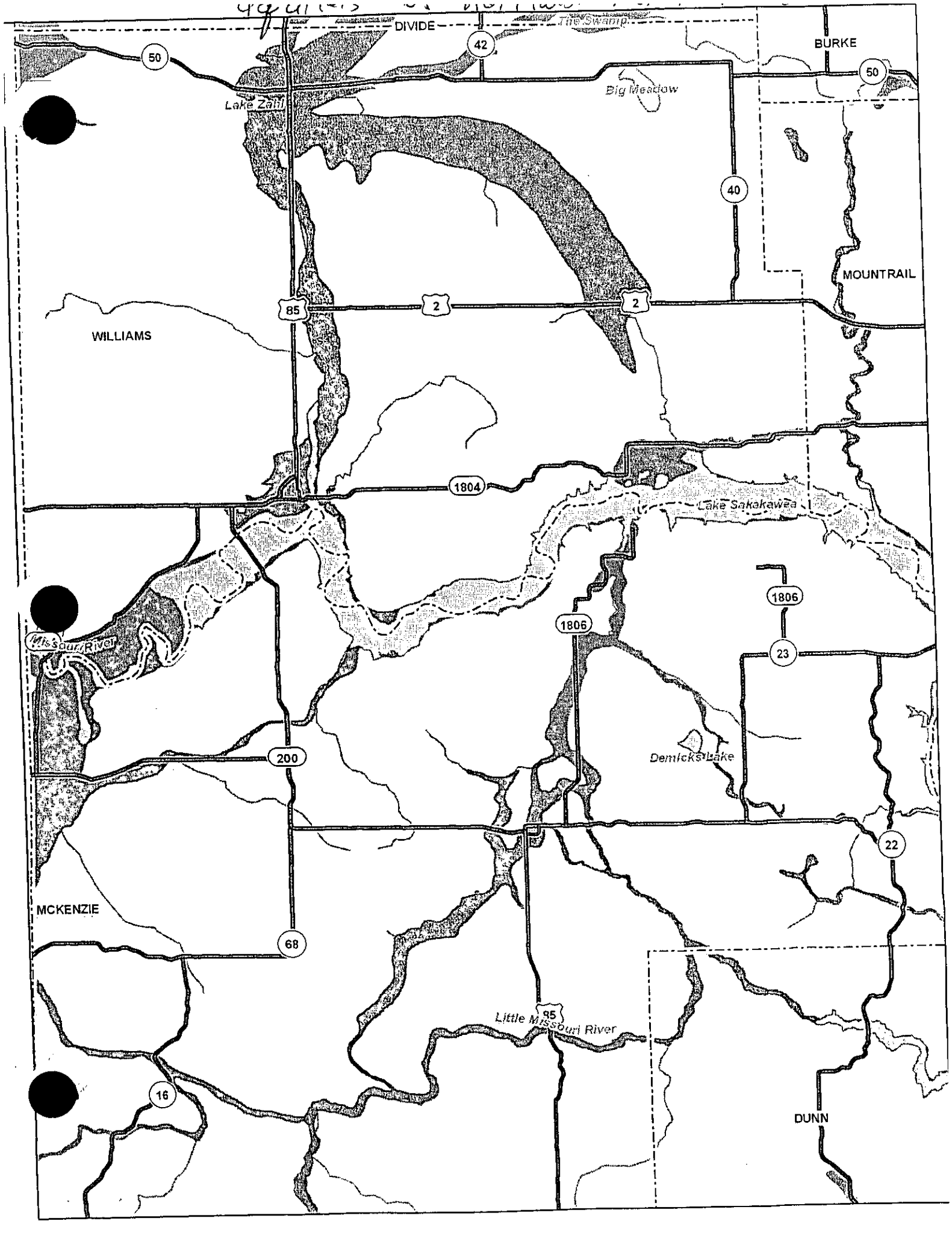
Engineer: Advanced Engineering and Environmental Services, Inc.
1815 Schafer Street, Suite 301, Bismarck, ND 58501
Tel: 701-221-0530 / Fax: 701-221-0531

Respectfully Submitted By: Cory Chorne

Cory Chorne, PE

HS bill 1206 concerns

1. Unnecessary cost of treating 80% of the water – treated water is not necessary for the oil industry and the authority plan projects 80% of their water will be used for the oil industry.
2. R & T already has 6 million for expansion of their water treatment plan. At a R & T board meeting in February the board chairman said their only need of the project was for a backup system.
3. Doesn't make sense to bond – through the state water commission
4. The project will compete with private industry
5. Should be done in phases
6. Cost of bond issue could drive up the cost to 180-200 million. Reserve fund will be 15-20 million.
7. This will greatly affect other water projects if the bonds go bad.
8. This project is totally contrary to anything done in the past. ND Water Commission has never been omitted from a water project of this size.
9. Should be a state water commission project.
10. The water commission could build faster if bonds are required and everything being equal(funding identical).if legislature gave the water commission the same funding as the authority.
11. The bill should have wording that states "there will not be restrictions on present and future private industrial permit holders and applicants.
12. The aquifers will not be depleted without the authority water depots
13. Why does Advanced Engineering receive all the water project work in western ND?
14. The authority is a political subdivision of the state? A government agency
15. #23 of the 1206 bill state "a large component of the water project expense is being incurred to meet the demands of industrial users."
16. The bill also states that the authority will reimburse the member municipalities for lost revenue attributed to the project.
17. The sponsors of the bill are liable for only 20% between the 4 members.
18. The city of Williston will benefit the most with a 71 million dollar upgrade in their water treatment plant.
19. Who will own the Williston treatment plant?
20. Where would the oil industry be now without the private water providers?
21. No signed contracts or commitments from the oil industry
22. Price of the water
23. Advance engineering stated the authority would need to sell an additional 3 million gallons per day to cash flow the project
24. ADV ENG also stated that the authority would need to sell the water for $20.00 per 1,000 gals to break even. Private providers currently sell 1,000 gal for $11.90.
25. ADV ENG also stated that Advanced Engineer's fee would be 10% - 15 million dollars. They have a vested interest in a higher number, but NO risk.


DIVIDE
The Swamp
BURKE
50
42
50
Big Meadow
Lake Zahl
40
MOUNTRAIL
85
2
2
WILLIAMS
1804
Lake Sakakawea
1806
1806
23
Missouri River
200
Demicks Lake
22
MCKENZIE
68
Little Missouri River
85
16
DUNN

A BRIEF SUMMARY OF WATER AVAILABILITY, USE AND MANAGEMENT IN NORTHWESTERN NORTH DAKOTA

By
The Water Appropriations Division
North Dakota State Water Commission

March 2011

WATER AVAILABILITY IN NORTHWESTERN NORTH DAKOTA

- We are not depleting aquifers in northwestern North Dakota
- Additional ground water is available for appropriation in northwestern North Dakota
- We do not know how much additional water is available on a sustainable basis from aquifers in northwestern North Dakota
- Due to hydrologic system uncertainty we must allocate additional ground water using an "incremental development" approach
- The "incremental development" approach takes many years to allocate the volume of ground water that is sustainable
- The "incremental development" approach to ground water management prevents full allocation of water quickly and in a timely manner
- The Missouri River/Lake Sakakawea is a very reliable water source in terms of both water quality and quantity
- The State Engineer can grant approval on water permit applications from the Missouri River/Lake Sakakawea quickly and in a timely manner (generally within 90 days)
- Recent actions by the US Army Corps of Engineers (COE) has limited access to Lake Sakakawea pending the results of a 100,000 acre-foot reallocation study
- COE may levy a "surplus storage" fee of $20.91 per acre-foot of water allocated (not used) on an annual basis for diverting water within the COE "take line" that requires a real estate permit or that is covered under a flowage easement
- "Surplus storage" fees may be levied on any new municipal, irrigation, and industrial developments requiring a real estate permit or from land covered under a flowage easement from the COE
- "Surplus storage" fees may inhibit the diversion of water from Lake Sakakawea
- In response to the COE limiting access to Lake Sakakawea, the State Engineer developed policy to temporarily allow for the conversion of irrigation water permits to industrial water permits
- For 2011, the State Engineer has approved 1587 acre-feet (517 million gals) of ground water for industrial use under the temporary conversion policy

Water Availability and Management Issues in Northwestern North Dakota

The State Engineer allocates ground water from aquifers to maximize beneficial use while maintaining long-term sustainability of the resource. The primary goal is to prevent ground-water depletion resulting from sustained ground-water mining. Aquifers function as underground reservoirs that both store and transmit water. During periods of drought, more water will be withdrawn from storage and aquifer water levels will temporarily decline. During wetter periods, aquifer water levels will rise as the aquifer is recharged and more water moves into storage. In times of severe drought, as experienced, for example, during the 1930's, pumping by permit holders with more junior priority dates may be temporarily curtailed to protect the rights of permit holders and other water users with senior priority dates.

With increased demand for water for oil field use (hydro-fracing), concern has been expressed about how aquifers in western North Dakota have responded to increased pumping. As a result, the State Engineer has stepped up monitoring in aquifers throughout most of western North Dakota. Attached are aquifer maps and associated hydrographs showing water-level trends in the Little Muddy, Hofflund, West Wildrose, Killdeer, and Tobacco Garden aquifers. Except for the Killdeer aquifer, most of the water-level fluctuations show an annual cycle of falling and rising water levels that result from irrigation pumping. There is no evidence of sustained ground-water mining and depletion in these aquifers. There is some concern with water-level trends in the West Wildrose aquifer and water levels in this aquifer area will continue to be closely monitored. If continued pumping should indicate a trend that would result in aquifer depletion, pumping will be curtailed by the State Engineer to protect the rights of water users with senior priority dates including domestic/stock water supplies. The large water-level decline in the Hofflund aquifer from about 2001 through 2009 is due almost entirely to the decline in

water levels of Lake Sakakawea, because Lake Sakakawea is hydraulically connected to the Hoffland aquifer.

There is additional ground water available for appropriation in most aquifers in western North Dakota. At this point in time, it is not possible to determine the maximum volume of ground water that can be withdrawn annually on a sustainable basis from each aquifer. Due to climate variability, aquifer recharge and discharge are characterized by a significant amount of uncertainty. Considerable uncertainty also exists with respect to aquifer geometry and hydraulic properties. In addition, large-scale pumping in some aquifers may cause water quality degradation.

Given the above uncertainties, the State Engineer allocates ground water using an "incremental development" approach. Initially, conservative amounts of ground water are approved for appropriation in a given aquifer by the State Engineer and action on additional water permit applications is deferred pending the analysis of aquifer response data. Based on the fact that aquifers respond rather slowly to increased pumping, it can take two to three years or more of water level/quality monitoring before additional water permit applications can be approved. In short, additional ground water is available for appropriation in most of the aquifers in western North Dakota. At this time, we do not know what that maximum sustainable amount is and we will not be able to allocate that maximum sustainable amount in a very timely manner.

There is one water source in western North Dakota that can easily meet the needs of the oil industry, and that source is the Missouri River/Lake Sakakawea. The Missouri River/Lake Sakakawea is a reliable water supply in terms of both quantity and quality. Due to the large volume of flow in the Missouri River in northwest North Dakota and small levels of demand

relative to the large volume of natural flows, water permit applications requesting to divert water from the Missouri River can be processed by the State Engineer in a timely manner (about 90 days).

At present, the US Army Corps of Engineers is restricting access to lake Sakakawea pending completion of a 100,000 acre-foot re-allocation study. If the 100,000 acre-foot water re-allocation is approved by the Corps, a "surplus storage" fee may be levied on municipal, irrigation, and industrial water users. The proposed fee is $20.91 per acre-foot of water allocated on an annual basis, not what is actually used on an annual basis. This "surplus storage" fee may inhibit the diversion of water for beneficial use from Lake Sakakawea.

Access to other areas of the Missouri River and other tributary streams and rivers covered by Corps flowage easements may also be restricted and pumping may be subject to "surplus storage" fees. This issue is currently under evaluation by Corps legal staff in the Omaha office.

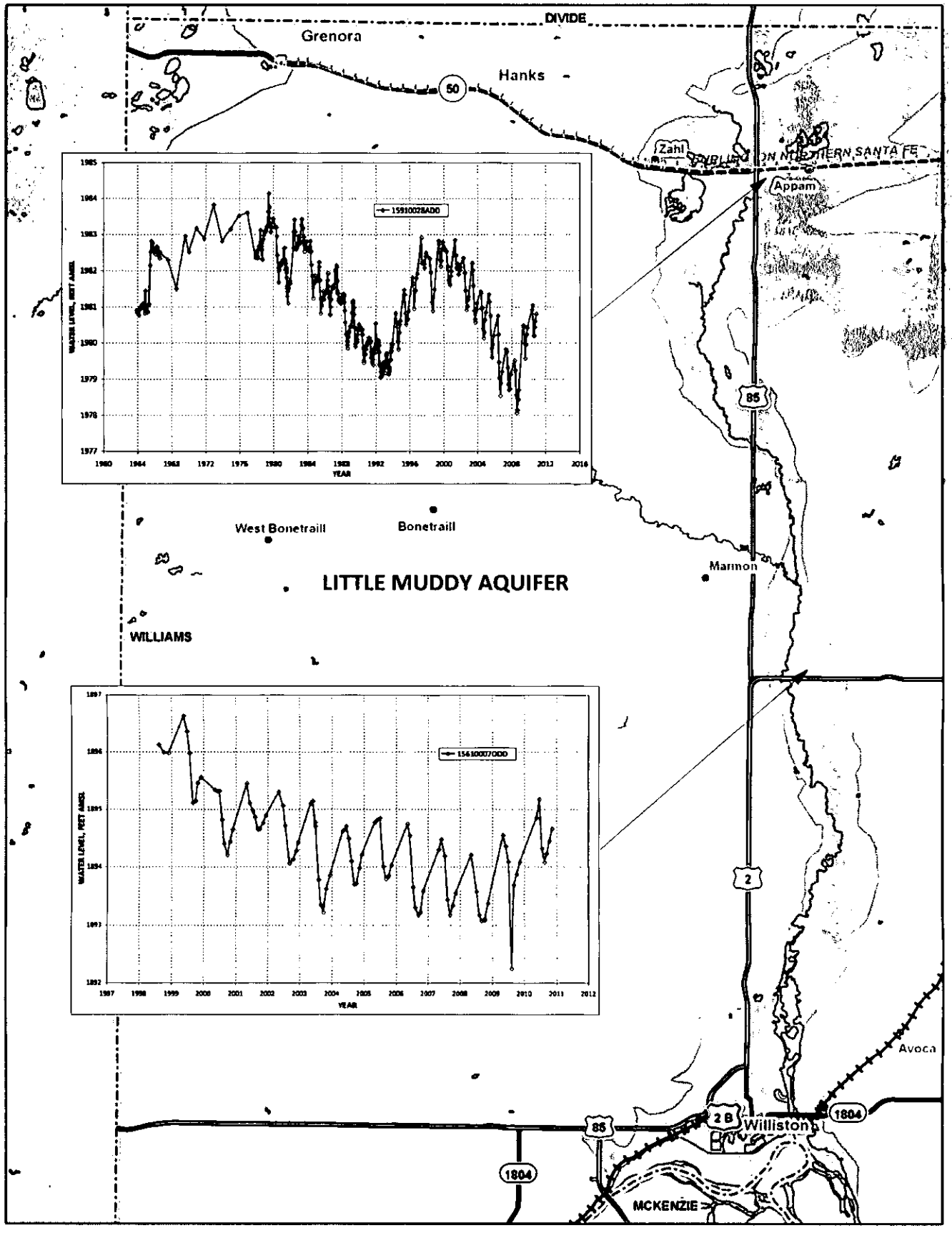
In addition to the above, the COE will be placing the following conditions on new water intakes in Lake Sakakawea. These are:

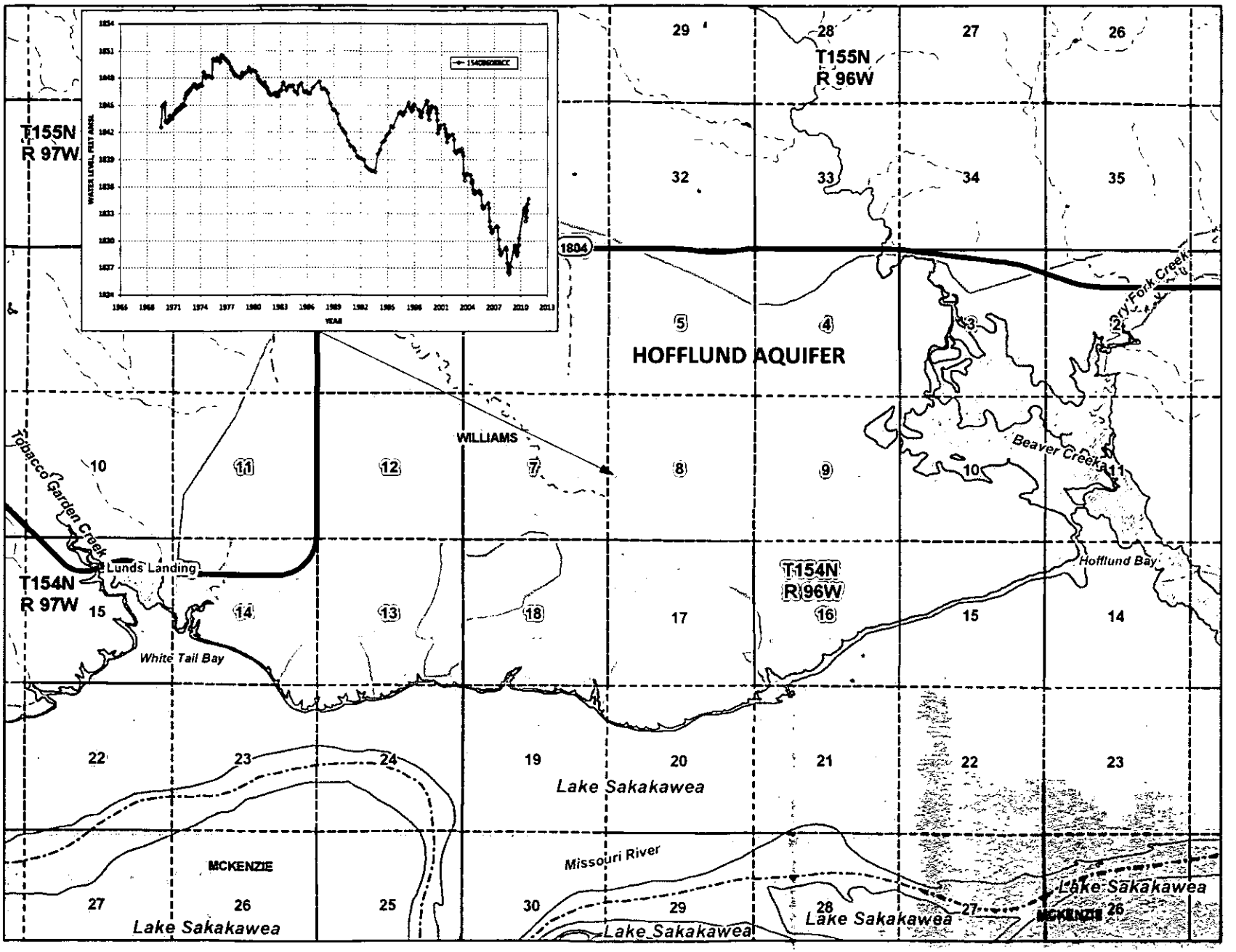
1. No less than a 25-mile radius between industrial intakes that are authorized on Lake Sakakawea.
2. A market study will be required.
3. Existing infrastructure will be considered (main roads, utilities, etc.)
4. An Environmental Assessment is required.
5. There are several environmental requirements as well to protect critical habitat, migratory birds, threatened and endangered species, etc.

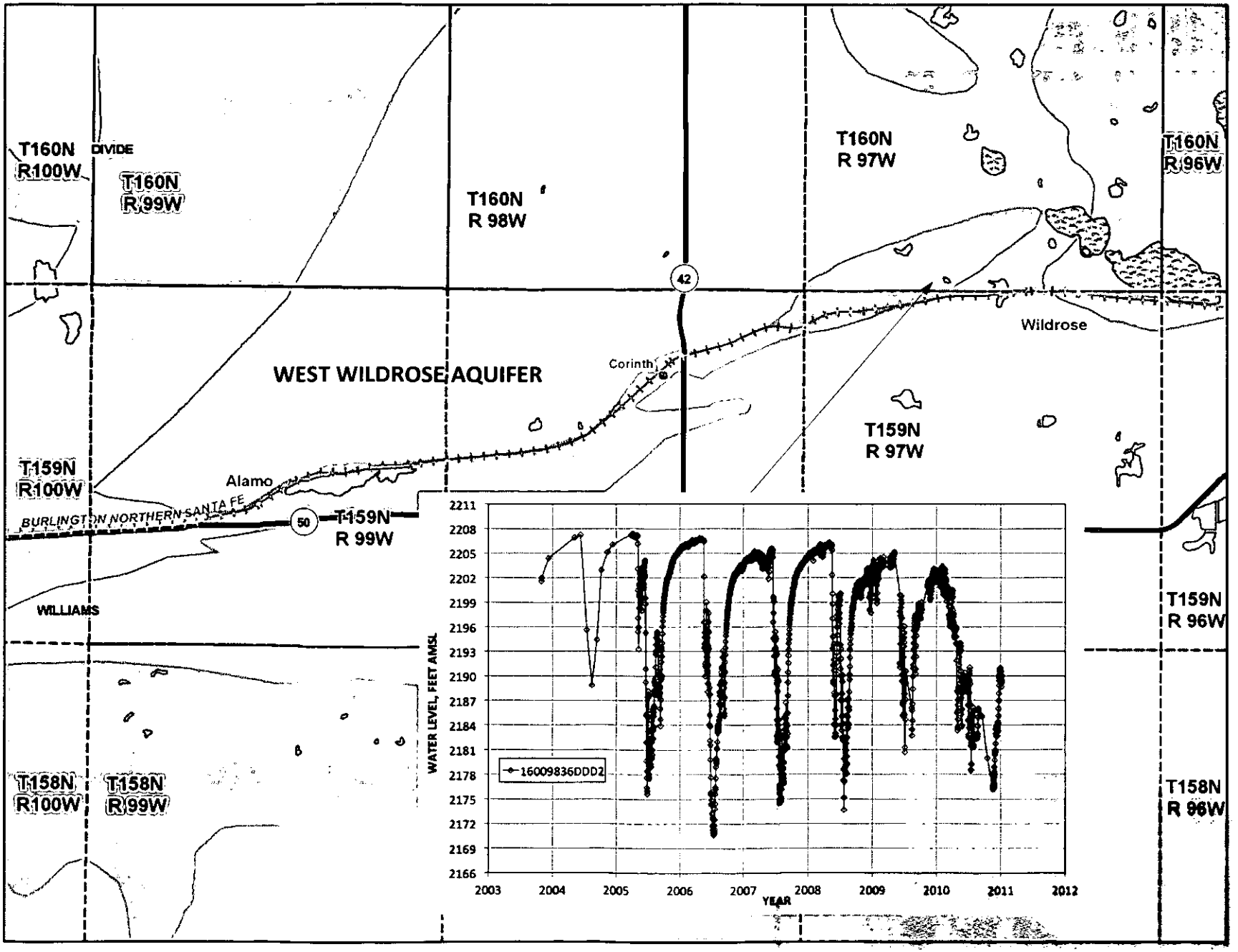
Given these requirements, permit evaluations and the issuance of permits by the COE will likely not be completed in a timely manner.

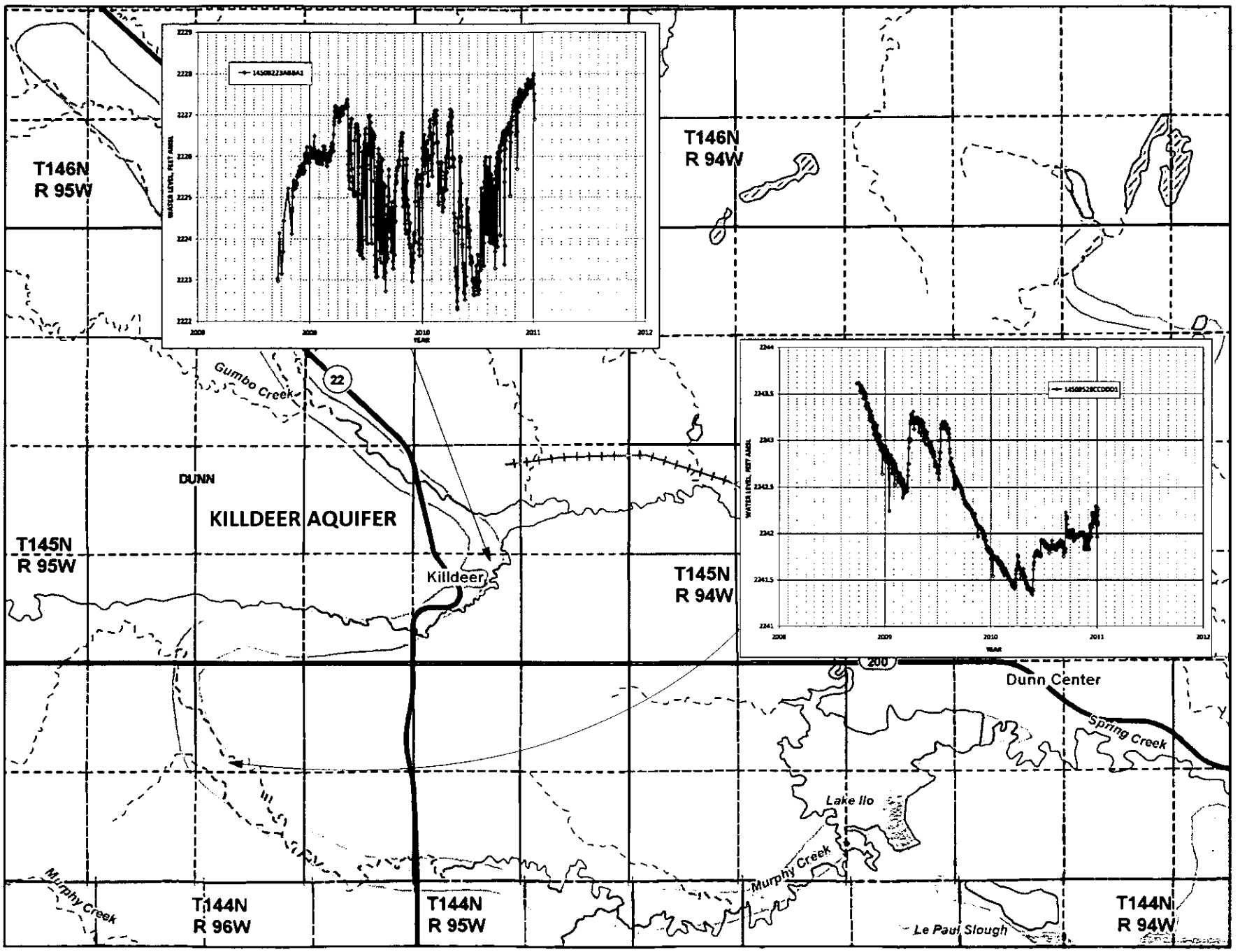
Due to recent Corps restrictions in accessing water from Lake Sakakawea and the demand for water to facilitate oil production, the State Engineer developed a policy to temporarily allow conversion of irrigation permits to industrial (water depot) permits. The temporary conversion permits are valid for a calendar year and the permit holder must forgo irrigation for that calendar year. Temporary conversion permits may be granted in successive years depending on oil field industrial demand. Except for water permits from the Missouri River and Lake Sakakawea, the amount of water that can be temporarily converted to industrial use will be based on the historical average annual irrigation use.

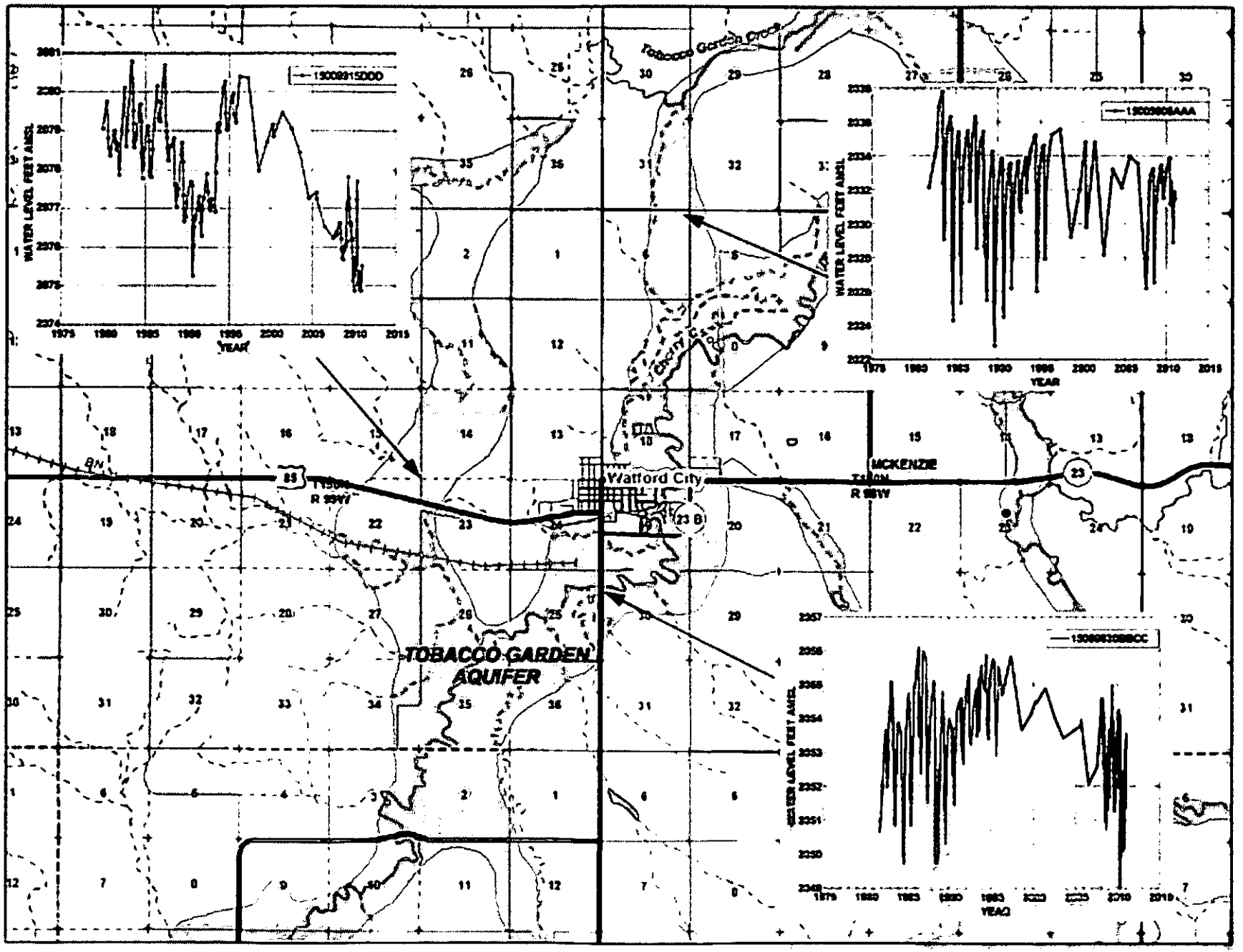
Included is a summary page showing the current (as of March 11) status of industrial water permits and applications for oil field use (water depots) in western North Dakota. A table showing industrial (water depot) ground water use from 2004 through 2010 also is provided. Maps are also included showing the location of approved and pending industrial use (water depot) water permits and applications. In addition, a table listing temporary water permit conversions from irrigation to industrial use for 2011 is included.


DIVIDE
Grenora
Hanks
50
Zahl
Appam
85
West Bonetraill
Bonetraill
Marmon
LITTLE MUDDY AQUIFER
WILLIAMS
2
Avoca
85
2 B
Williston
1804
1804
MCKENZIE
YEAR
YEAR


T155N
R 97W
T155N
R 96W
T154N
R 97W
T154N
R 96W
HOFFLUND AQUIFER
WILLIAMS
1804
Tobacco Garden Creek
Lunds Landing
White Tail Bay
Beaver Creek
Dry Fork Creek
Hofflund Bay
Lake Sakakawea
Missouri River
MCKENZIE
WATER LEVEL, FEET ABOVE
YEAR


T160N
R100W
DIVIDE
T160N
R 99W
T160N
R 98W
T160N
R 97W
T160N
R 96W
42
Wildrose
Corinth
WEST WILDROSE AQUIFER
T159N
R 97W
T159N
R100W
Alamo
BURLINGTON NORTHERN SANTA FE
50
T159N
R 99W
T159N
R 96W
WILLIAMS
T158N
R100W
T158N
R 99W
T158N
R 96W
WATER LEVEL, FEET AMSL
2211
2208
2205
2202
2199
2196
2193
2190
2187
2184
2181
2178
2175
2172
2169
2166
16009836DDD2
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
YEAR


T146N
R 95W
T146N
R 94W
Gumbo Creek
22
DUNN
KILLDEER AQUIFER
T145N
R 95W
Killdeer
T145N
R 94W
200
Dunn Center
Spring Creek
Lake Ilo
Murphy Creek
Murphy Creek
T144N
R 96W
T144N
R 95W
Le Paul Slough
T144N
R 94W


Tobacco Garden Creek
Watford City
MCKENZIE
R 95W
R 96W
TOBACCO GARDEN AQUIFER
WATER LEVEL FEET AMSL
YEAR

WATER DEPOTS – PERMITS AND APPLICATIONS

To serve the oil industry in Northwest North Dakota

NDSWC/Office of the State Engineer – March 11, 2011

Water permits issued (depots):	**44**	**39 groundwater, 5 surface water**
Issued before 2007:	11	
Issued 2007 or later:	34	(2007-4; 2008-8; 2009-7; 2010-15)

Annual quantity of groundwater permitted: 3,554 acre-feet (1.2 billion gal)
Annual quantity of surface water permitted: 19,929 acre-feet (6.5 billion gal)
Includes 18,000 acre-feet recently granted by SWC from Lake Sakakawea
Uncertainty exists with USACOE regarding timely access to Lake Sakakawea
NDSWC-SW Pipeline permit: about 500 af/yr for Red Trail Ethanol, leaving about 630 af/yr for Dodge depot
Additional water is being sold under municipal permits (apps. pending)
Quantity of water (all ground water) permitted to date under temporary conversion from irrigation to industrial policy: 1587 acre-feet (517 million gal)

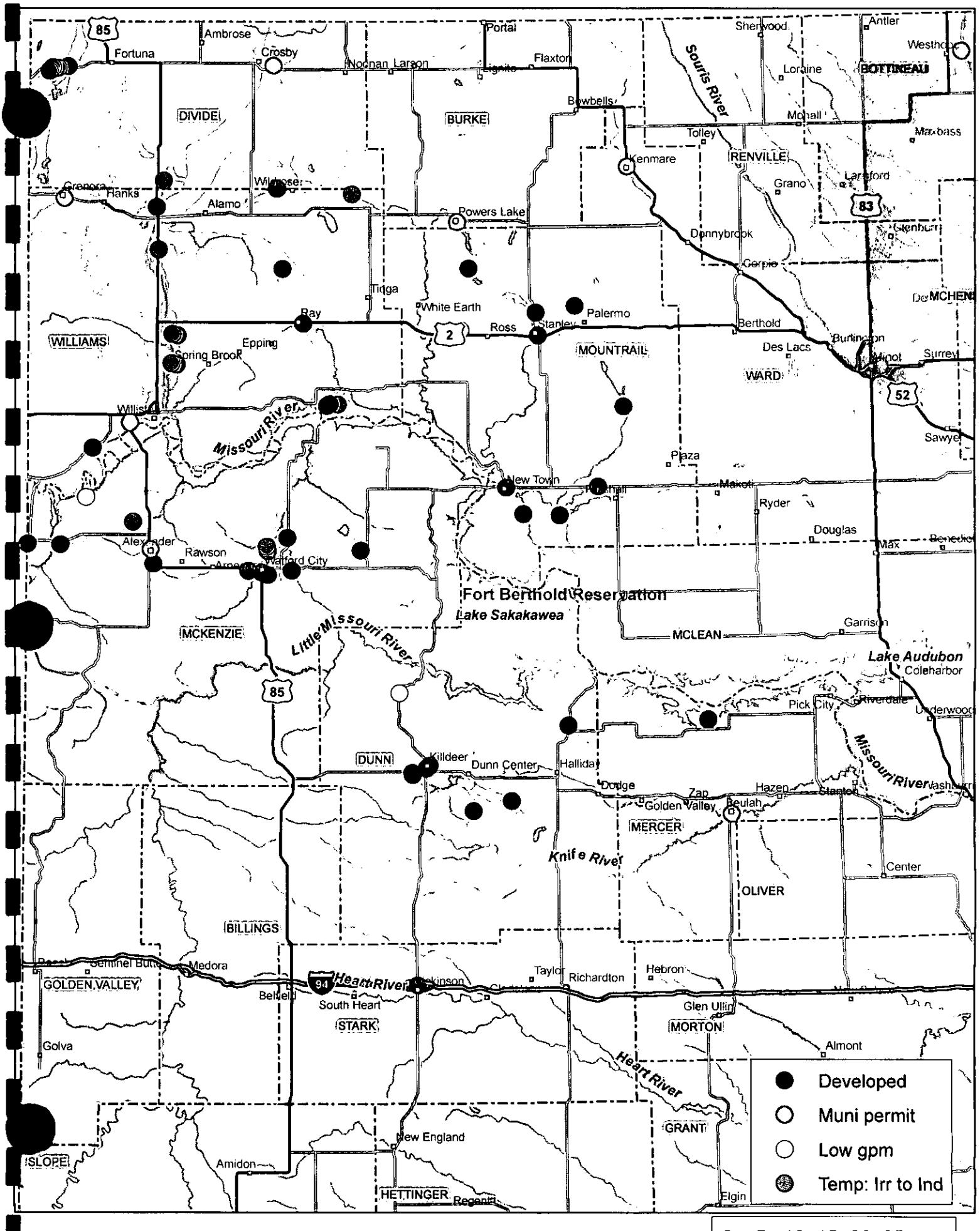
Permits with a portion held in abeyance:	**9**	**All groundwater: 2,099.4 ac-ft/yr (684 million gal)**
Permit applications denied:	**7**	**6 groundwater, 2 surface water**
Permit applications to be reviewed:	**76**	**55 groundwater, 21 surface water**

Annual quantity of groundwater applied for: 14,290 acre-feet (4.7 billion gal)
Annual quantity of surface water applied for: 48,301acre-feet (16 billion gal) (32,450 acre-feet (10.6 billion gal) from Lake Sakakawea)

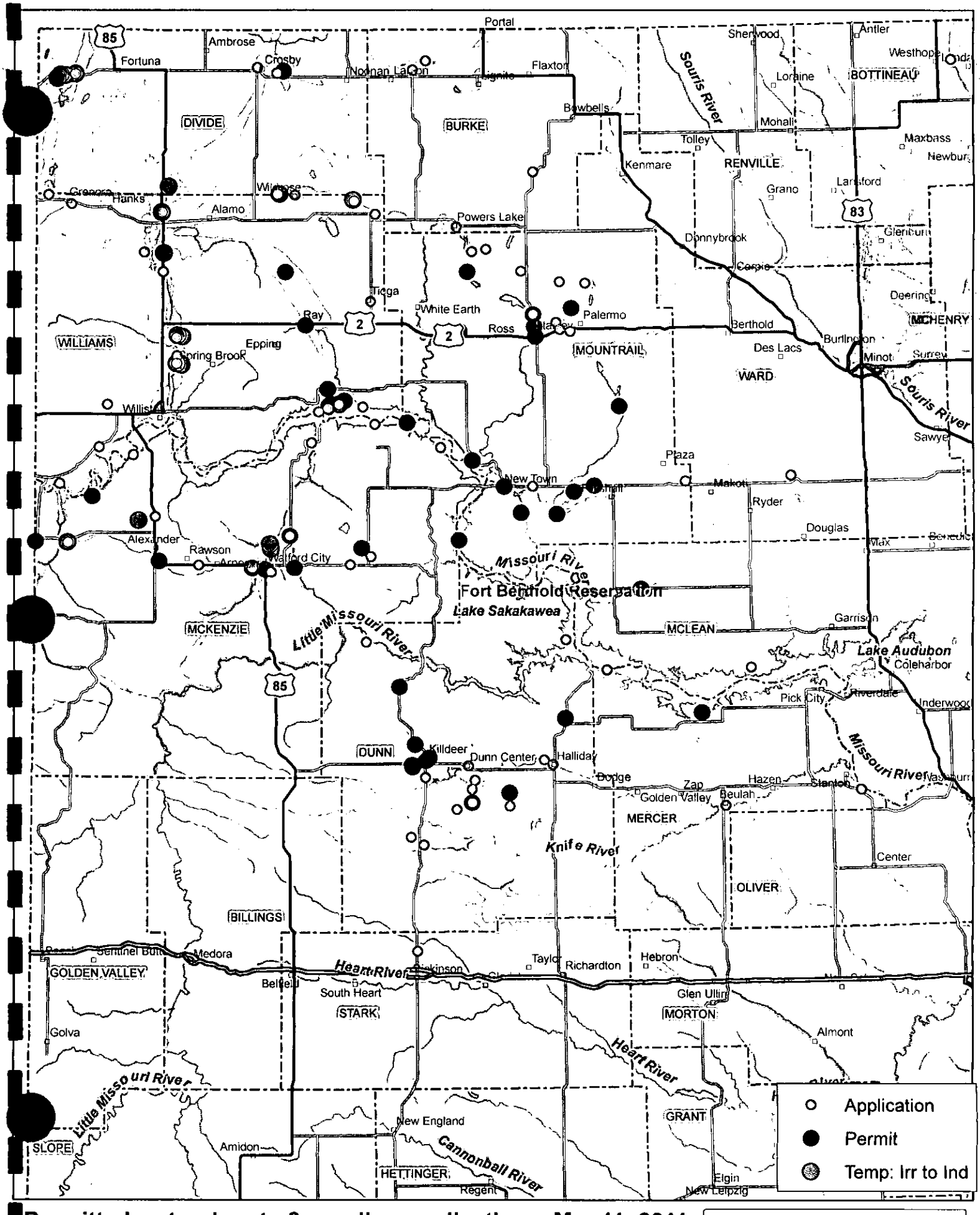
Applications with a priority date in 2006: 1
Applications with a priority date in 2007: 2
Applications with a priority date in 2008: 10
Applications with a priority date in 2009: 7
Applications with a priority date in 2010: 45
Applications with a priority date in 2011: 11

Oil well drilling rigs in operation on March 11, 2011: 172

McKenzie 48; Mountrail 36; Williams 38; Dunn 26; Divide 10; Stark 4; Burke 4; Billings 1; Bowman 1; Renville 2; McLean 2; Bottineau 0; Slope 0; Golden Valley 0; Ward 0, (source: NDIC - Oil & Gas Division website)



Operating water depots on March 11, 2011



Permitted water depots & pending applications, Mar 11, 2011
Including irrigation to industrial temporary conversions

0 6 12 18 24 30 Miles

ANNUAL WATER USE FOR INDUSTRIAL/MUNICIPAL WATER PERMITS THAT PROVIDE WATER FOR WATER DEPOTS FROM GROUND WATER SOURCES

Permit_Numbe	Date_Issued	Name		2004 AcFt	2005 AcFt	2006 AcFt	2007 AcFt	2008 AcFt	2009 AcFt	2010 AcFt
1097	9/27/63	TIOGA, CITY OF		**No Use**	**No Use**	**No Use**	**No Use**	**No Use**	**No Use**	**No Use**
1209	9/24/64	ALEXANDER, CITY OF		0.1	0.1	0	0.1	41	42	38
3218	2/29/80	FISCHER, LEO		0.4	0.2	3.1	1.7	**No Use**	**No Use**	**No Use**
3586	1/19/83	ALEXANDER, CITY OF		25.1	47.5	88	99.3	55	54	47.1
3689	4/11/84	SIGNALNESS, LARRY J.		5.8	4.4	4.4	4.4	4.4	46.8	119.3
3701	5/8/84	PAVLENKO, WILLIAM		7.7	10.9	25.7	71.3	114.7	147.7	27.2
3792	7/23/85	LANDTECH ENTERPRISES LTD. CO.		28.6	42.6	29.1	9	10.7	7.9	16.7
3813	1/27/86	MASON, W.J.		1.5	5	7.2	7.7	7.8	5.1	12.1
3882	9/11/86	SIMONSON, ALICE		7.1	10.1	17.9	17.9	13	55.2	59.6
3889	10/15/86	ANDERSON, STANLEY AND JANET		13.1	10.5	6.3	11.2	11.8	7.6	**No Data**
3909	7/16/87	TIOGA, CITY OF		2.5	0.4	0.2	15.4	113.1	45.4	82.9
4063	4/20/89	SCHOLLMEYER, CLARENCE D.		3.6	0	1.5	1.8	**No Data**	15.1	6.9
5426	4/10/01	WESTHOPE, CITY OF		57.9	56.7	59.7	57.7	67.1	68.6	69.7
5723	4/21/05	AMES, JOHN M. and AMES, JANIS G.		Not Devl	3	9.4	23.8	36.7	25.2	24.2
5761	2/8/06	ORTLOFF, TERENCE		Not Devl	Not Devl	0.4	9.4	12	11	10.3
5761A	2/8/06	ORTLOFF, TERENCE		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	0.4
5814	10/17/07	SVANGSTU, ALAN		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl
5828A	1/10/07	AMES, JOHN M. AND JANIS G.		Not Devl	Not Devl	Not Devl	37.9	38.5	5.7	19.5
5843	2/22/08	SHEEHAN, MIKE		Not Devl	Not Devl	Not Devl	Not Devl	10	7	**No Data**
5915	10/17/07	TRUCHAN, MANLEY		Not Devl	Not Devl	Not Devl	Not Devl	159.6	20.3	20
5949	4/3/09	NEW TOWN, CITY OF		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	143.8	74
5952	12/11/08	OLSON FARMS		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	23.8	99.2
5960	7/14/08	WURTZ, JERRY AND RICHARD		Not Devl	Not Devl	Not Devl	Not Devl	**No Use**	**No Use**	**No Use**
5968	7/3/08	EDWARDS, JAMES WILLIS		Not Devl	Not Devl	Not Devl	Not Devl	27.7	53.5	21.3
5973	4/21/09	AMES, JOHN M. and AMES, JANIS G.		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	18.2	29.1
5974	3/8/10	AMES, JOHN M. and AMES, JANIS G.		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	27.5
5975	7/14/08	WURTZ, JERRY & RICH - AMES, MIKE		Not Devl	Not Devl	Not Devl	Not Devl	5.2	**No Data**	61.3
5988	7/11/08	DENNIS, JAMES E.		Not Devl	Not Devl	Not Devl	Not Devl	**No Use**	**No Use**	**No Use**
5989	5/1/09	TRUCHAN, MANLEY		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	132.2	131.1
6005	6/17/09	DUNN COUNTY GOLF COURSE		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	35.8	75.7
6006	6/17/09	KILLDEER, CITY OF		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	74.4	66.8
6007	7/15/08	NORDSVEN, GREG		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	**No Use**	66.4
6023	3/9/10	STANLEY, CITY OF		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	100.5
6024	3/8/10	RISMON, CLARK O. AND JANE V.		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	85.3
6027	12/12/08	R & T WATER SUPPLY		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	596
6032	1/21/09	SCHAPER, JIM		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	2.9	107
6033	4/27/10	BARSTAD, RODNEY W.		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	**No Use**
6036	5/3/10	SAX, THORAL AND PATRICIA		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	18.3
6049	6/7/10	JENSEN, EARL L.		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	117.8
6091	3/31/10	MOLL, ARNOLD		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl
6106	6/21/10	SIMONSON, ALICE		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	155.6
6156	8/31/10	AMES, JOHN M.		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	180.5
6157	12/17/10	BAKER, ROGER AND MARILYN		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl
6170	12/17/10	BAKER, ROGER AND MARILYN		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl
857	7/18/60	KENMARE, CITY OF		Municipal	Municipal	Municipal	Municipal	Municipal	Municipal	38.8
6180	00/00/00	SIMPSON, DONALD N.		Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	Not Devl	17.6
1217		Powers Lake		Municipal	Municipal	Municipal	Municipal	Municipal	Municipal	172.5
752		City of Crosby		Municipal	Municipal	Municipal	Municipal	Municipal	Municipal	39.7
1188	7/29/64	City of Grenora	*	6.7	7.9	9.2	8.3	9.6	22.1	27.1
1213p & 3992		Watford City	*	324.7	303.9	338.8	381.6	423	483.7	554.1
783	12/19/60	MINOT, CITY OF	*	2965.3	1514.9	2771	1793.5	2075.5	1883.3	2251.7
1743	2/26/71	MINOT, CITY OF	*	3374.8	4502.4	3586.3	4235.6	3851.6	3826.4	3667.1
		Totals of All Permits		**6,824.9**	**6,520.5**	**6,958.2**	**6,787.6**	**7,088.0**	**7,264.7**	**9,335.9**
		Totals without Grenora-Watford-Minot		**153.4**	**191.4**	**252.9**	**368.6**	**728.3**	**1,049.2**	**2,835.9**

* Municipal & Industrial use combined.

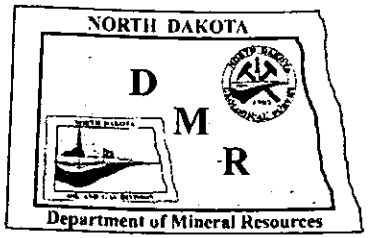
Not Devl = The permit was either not in existence, or the permit holder had not developed the permit site.

No Use = The permit holder reported that the well was not pumped for that year.

No Data = The permit holder did not return a Annual Use Form.

NORTH DAKOTA STATE ENGINEERS OFFICE
WATER APPROPRIATION DIVISION
IRRIGATION PERMITS WITH
TEMPORARY CONVERSIONS TO INDUSTRIAL USE

IRR PERMIT NUMBER	PERMIT HOLDER	POINT OF DIVERSION	GW/SW	SOURCE	TEMP NUMBER	INDUSTRIAL ALLOCATION	UNITS	START DATE	END DATE
				2010					
3010	MARK JOHNSRUD	15009806A	GW	Tobacco Garden Aquifer	2010-4138	151	AF	5/6/10	12/31/10
3511	MARK JOHNSRUD	15109831D	GW	Tobacco Garden Aquifer	2010-4139	128	AF	5/6/10	12/31/10
2510	DON REISTAD	15310234C	GW	Skjermo Lake Aquifer	2010-4259	50	AF	7/1/10	12/31/10
2454	JOHN M. AMES, et. tal.	16009732D	GW	West Wildrose Aquifer	2010-4256	50	AF	8/11/10	12/31/10
1077	ALVIN JACOBSON	15510017BB	SW	Little Muddy River	2010-4337	60.4	AF	9/15/10	12/31/10
4983	KRABSETH FARMS LLC	15810021B	GW	Little Muddy Aquifer	2010-4350	68	AF	10/15/10	12/31/10
5208	GERALD W. BERGER	15610005C	GW	Little Muddy Aquifer	2010-4342	33	AF	11/4/10	12/31/10
5209	JEFFREY W. BERGER	15610005C	GW	Little Muddy Aquifer	2010-4342	33	AF	11/4/10	12/31/10
						Total = 573 AF			
				2011					
2454	JOHN M. AMES, et. tal.	16009732D	GW	West Wildrose Aquifer	2010-4343	112	AF	1/1/11	12/21/11
4669	L. DUANE BERG	15910017D	GW	Little Muddy Aquifer	2010-4351	114	AF	1/1/11	12/31/11
4983	KRABSETH FARMS LLC	15810021B	GW	Little Muddy Aquifer	2010-4348	68	AF	1/1/11	12/31/11
5427A	JOHNSON, BRUCE	15510017A	GW	Little Muddy Aquifer	2010-4397	45	AF	1/1/11	12/31/11
3750	GREG QUARNE	15909505C	GW	Undefined aquifer	2010-4400	129	AF	1/1/11	12/31/11
5560	DALLAS LALIM	15409616B	GW	Hofflund Aquifer	2010-4333	145	AF	1/11/11	12/31/11
1077	ALVIN JACOBSON	15510017BB	SW	Little Muddy River	2010-4353	28.1	AF	1/11/11	12/31/11
3010	MARK JOHNSRUD	15009806A	GW	Tobacco Garden Aquifer	2011-4410	151	AF	1/1/11	12/31/11
3511	MARK JOHNSRUD	15109831D	GW	Tobacco Garden Aquifer	2011-4411	128	AF	1/1/11	12/31/11
2510	DON REISTAD	15310234C	GW	Skjermo Lake Aquifer	2011-4412	100	AF	1/1/11	12/31/11
3493	RICHARD GJEDSAL ESTATE	16310232S	GW	Skjermo Lake Aquifer	2011-4437	15	AF	1/1/11	12/31/11
3493	RICHARD GJEDSAL ESTATE	16210206N	GW	Skjermo Lake Aquifer	2011-4439	11	AF	1/1/11	12/31/11
3493	RICHARD GJEDSAL ESTATE	16310231E	GW	Skjermo Lake Aquifer	2011-4440	1	AF	1/1/11	12/31/11
3974	RICK SORENSON	15610020C	GW	Little Muddy Aquifer	2011-4418	91	AF	1/18/11	12/31/11
5677	RICK SORENSON	16010028D	GW	Smoky Butte Aquifer	2011-4419	70	AF	1/18/11	12/31/11
5239	TERRY SMITH	15610021C	GW	Little Muddy Aquifer	2011-4420	274	AF	1/25/11	12/31/11
5386	TIM DWYER	15110214B	GW	Charbonneau Aquifer	2011-4435	106	AF	4/15/11	10/15/11
						Total = 1587 AF			
			GW = ground water				AF = acre-feet(1 acre-foot = 325,850 gallons)		
			SW = surface water						



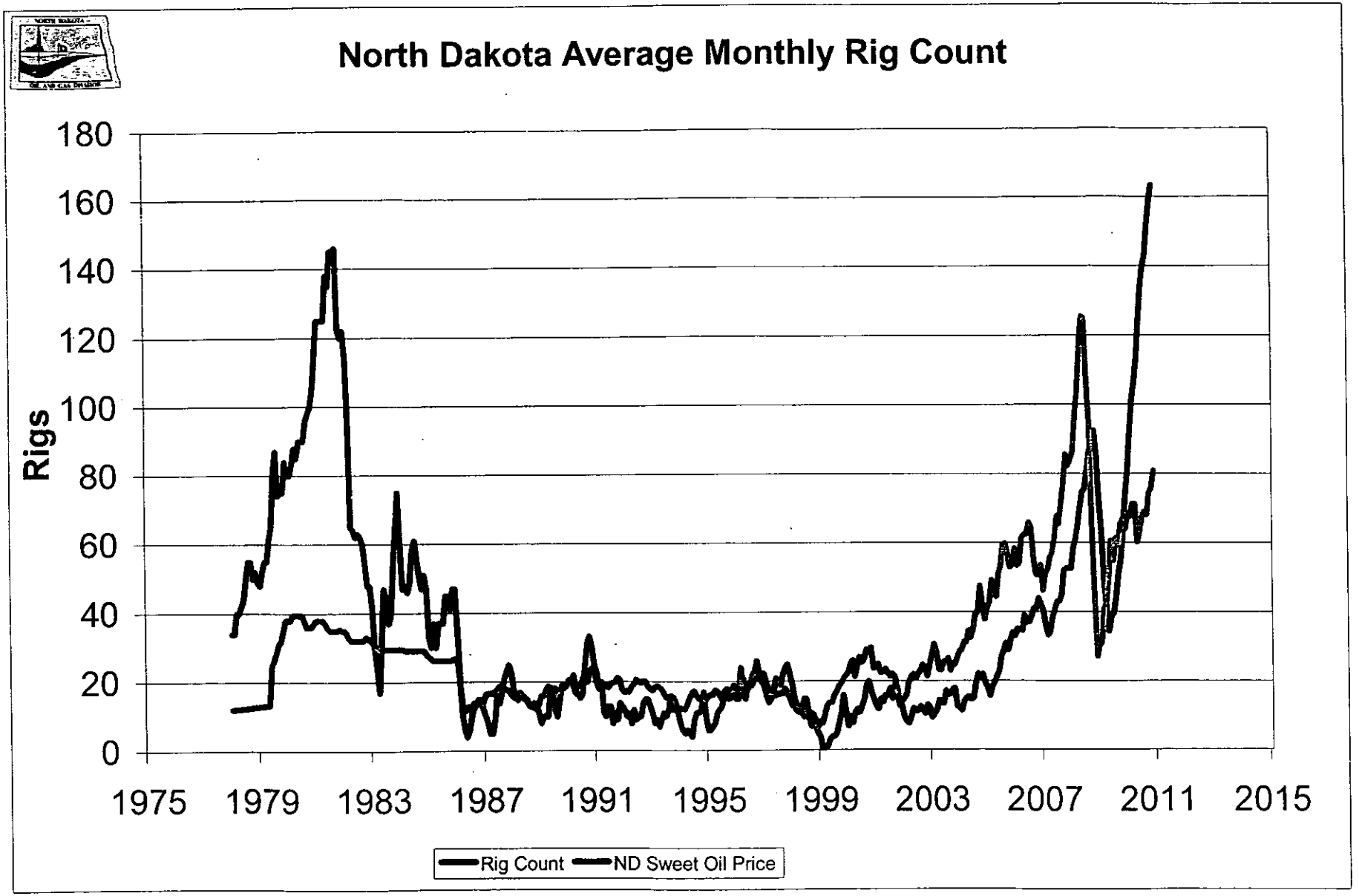
Senate Industry Business and Labor Committee

House Bill 1206

March 16, 2011

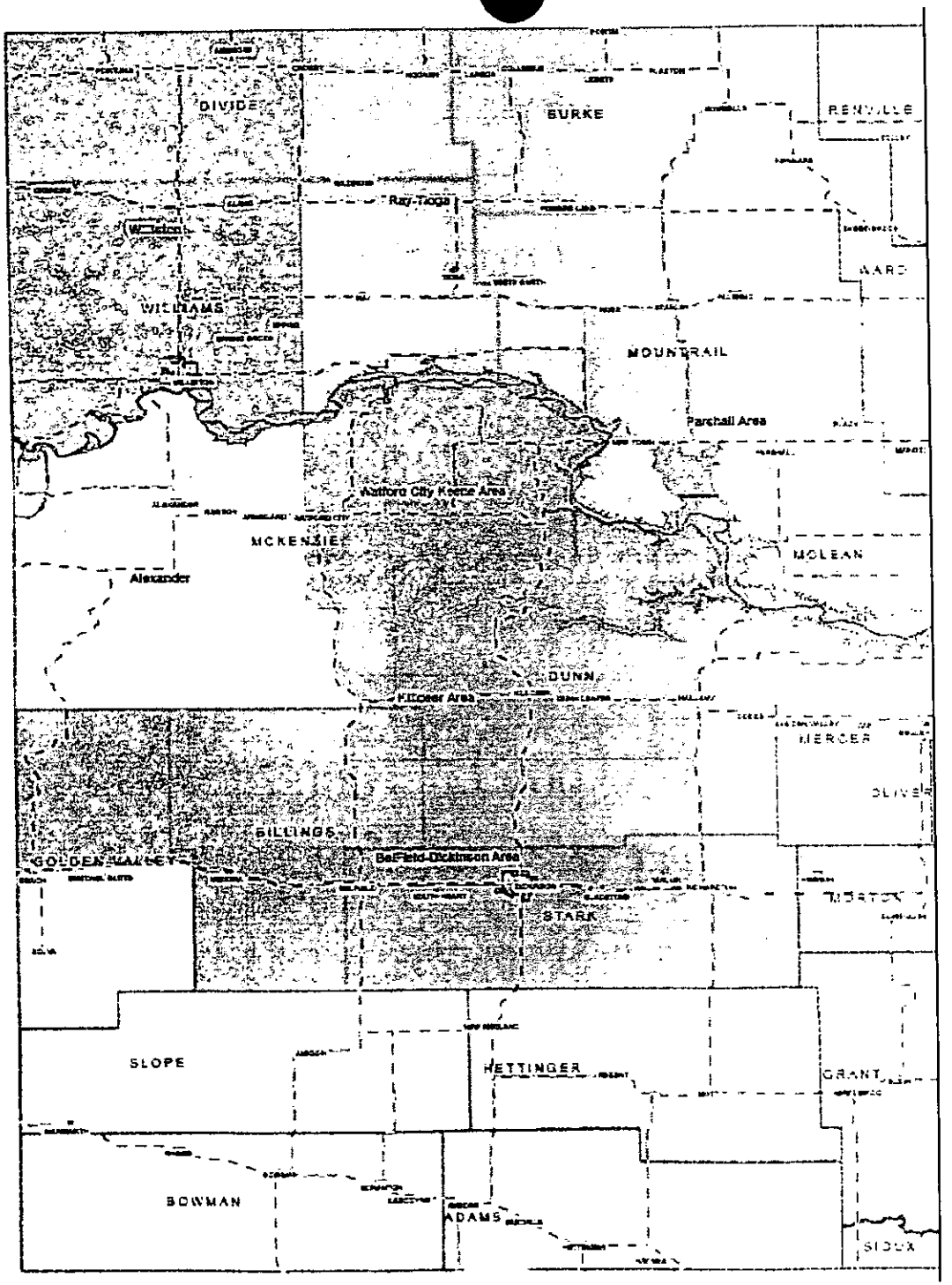
Lynn D. Helms, Director
Department of Mineral Resources
North Dakota Industrial Commission

(A2)


North Dakota Average Monthly Rig Count
Rigs
180
160
140
120
100
80
60
40
20
0
1975
1979
1983
1987
1991
1995
1999
2003
2007
2011
2015
Rig Count
ND Sweet Oil Price

Western North Dakota

- 1,100 to 2,700 wells/year = 2,100 expected
  - 100-225 rigs = 12,000 – 27,000 jobs = 21,000 expected
- 15 - 30 million gallons frac water/day
- 10 to 20 years
  - 26,000 new wells = long term jobs


DIVIDE
BURKE
RENVILLE
Ray-Tioga
Watford City Keene Area
WILLIAMS
MOUNTRAIL
Parshall Area
MCKENZIE
Alexander
MCLEAN
DUNN
Killdeer Area
MERCER
OLIVER
BILLINGS
GOLDEN VALLEY
Belfield-Dickinson Area
STARK
SLOPE
HETTINGER
GRANT
BOWMAN
ADAMS
SIOUX

Williston Area

- 150 to 450 wells per year – 250 expected
  - 15-50 rigs = 1,800 – 6,000 jobs
- 2 – 6 million gallons frac water/day
- 10 to 20 years
  - 3,750 new wells = long term jobs

Alexander Area

- 150 to 300 wells per year – 200 expected
  - 10-20 rigs = 1,200 – 2,400 jobs
- 2 – 4 million gallons frac water/day
- 10 to 15 years
  - 2,500 new wells = long term jobs

Ray-Tioga Area

- 300 to 600 wells per year – 400 expected
  - 20-45 rigs = 2,400 – 5,400 jobs
- 3 – 6 million gallons frac water/day
- 10 to 20 years
  - 6,000 new wells = long term jobs

Watford City - Keene Area

- 250 to 500 wells per year – 350 expected
  - 15-30 rigs = 1,800 – 3,600 jobs
- 3 – 4 million gallons frac water/day
- 5 to 7 years
  - 2,100 new wells = long term jobs

Killdeer Area

- 250 to 550 wells per year – 400 expected
  - 15-30 rigs = 1,800 – 3,600 jobs
- 2 – 4 million gallons frac water/day
- 5 to 7 years
  - 2,400 new wells = long term jobs

Parshall Area

- 300 to 550 wells per year – 500 expected
  - 20-40 rigs = 2,400 – 4,800 jobs
- 2 – 3 million gallons frac water/day
- 7 to 10 years
  - 4,250 new wells = long term jobs

Belfield-Dickinson Area

- 100 to 200 wells per year – 150 expected
  - 5-10 rigs = 600 – 1,200 jobs
- 1 – 3 million gallons frac water/day
- 7 to 10 years
  - 1,000 new wells = long term jobs

State Bonding

General Obligation Bonds

General obligation bonds are secured by the full faith and credit and the general taxing power of the state.

Article X, Section 13 of the North Dakota Constitution provides for the issuance of general obligation bonds of the State as follows:

- The State may not incur general obligation debt unless evidenced by a bond issue authorized by law for clearly defined purposes.
- Every law authorizing a general obligation bond issue must:
  - Provide for a levying of an annual tax, or make some other provision, sufficient to pay the interest semiannually and the principal within 30 years from the date of issuance.
  - Specifically appropriate the proceeds of the tax levy, or such other provision, to the repayment of the principal of and interest on the bonds.
- The appropriation referred to above may not be repealed, or the tax or other provision discontinued, until both the principal of and interest on the bonds have been paid.
- General obligations bonds in excess of $2,000,000 must be secured by a first mortgage upon either of the following:
  A. A first mortgage on real estate for no more than 65% of the value of the real estate.
  B. A first mortgage on real or personal property of State-owned utilities, enterprises or industries for no more than the value of the utilities, enterprises or industries. The State may not issue or guarantee bonds secured by property of State-owned utilities, enterprises or industries in excess of $10,000,000.
- The State may not issue debt in excess of the limit set out in this section except for one of the following purposes:
  A. Repelling invasion.
  B. Suppressing insurrection.
  C. Defending the State in time of war.
  D. Providing for the public defense in case of threatened hostilities.

Currently, there are no outstanding General Obligation Bonds of the State.

Appropriation Bonds

Appropriation bonds do not carry a moral obligation as defined below nor are they general obligations of the state; they are payable solely from biennial appropriations of a specific source or from pooled revenues from various sources. For example, the Water Commission was given authority to issue bonds for water development projects with the primary source of payment being appropriations from the Water Development Trust Fund. N.D.C.C. §61-02.1--04 [The Water Development Trust Fund has as its source of funding the monies received from the Tobacco Settlement Trust Fund. If there are insufficient funds available in the Water Development Trust Fund from tobacco settlement payments, then funds are to be drawn from a) the Resources Trust Fund, b) other available current revenues, c) other revenues of the Water Commission and d) certain biennial earnings of the Bank of North Dakota.]

The North Dakota Building Authority issues revenue bonds which are a form of appropriation bonds. The Authority looks to a financing agreement (either a loan agreement or a lease agreement which provide for a financing payment every six months) entered into between the Authority and the State Agency to repay the outstanding bonds. The financing agreements are structured for successive two-year terms. In the case of the Building Authority the majority of the financing payments from the State Agency come from the General Fund that is appropriated each biennium by the Legislature,

(although some payments originate from federal or other funds available to a State Agency). These bonds are sold with the understanding that the lease rentals or loan payments are repayable (primarily) from biennial appropriations and that the Legislature is not required to appropriate funds for the financing payments in future biennia.

Moral Obligation Bonds

A moral obligation pledge will generally require that the state agency issuing the bonds must notify the Governor or other executive branch office by a certain date in the fiscal year that a bond reserve fund deficiency exists or is expected to occur. The Governor or other executive officer is then required to submit in the executive budget a request for an appropriation that will be sufficient to restore or cover the reserve fund deficiency. The State Legislature then has a moral (but not legal) obligation to provide the requested appropriation to replenish the reserve fund.

For example, bonds issued by the Public Finance Authority (previously known as the Municipal Bond Bank) are (unless otherwise specified) moral obligation bonds. Subsection 1 of NDCC §6-09.4-10 requires the Public Finance Authority to establish and maintain a reserve fund equal to the maximum annual debt service on all outstanding Public Finance Authority bonds. (Rating agencies require a two-year annual debt service reserve since North Dakota operates on a biennial basis.) Subsection 4 of NDCC §6-09.4-10 provides that the legislative assembly is morally obligated to appropriate and pay to the Public Finance Authority for deposit in its reserve fund such sum as is certified to the Legislature by the Industrial Commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve.

Revenue Bonds

Revenue bonds are not general obligations of the State; they are payable solely from revenues from a specific source or from pooled revenues from various sources. There are different sources for repaying revenue bonds. State issued revenue bonds are as follows:

Mortgage Revenue Bonds

The North Dakota Housing Finance Agency issues mortgage revenue bonds. The proceeds from these bonds are used to buy certain first-time home loans from lenders and the repayment of these loans provides funds for the primary debt service on the bonds. HFA bonds are not debt of the State, but are full faith and credit obligations of the HFA (to the extent of available funds).

Other Revenue Bonds

- There are several other types of revenue bonds issued by the state. First, the Industrial Commission issues student loan revenue bonds (which are similar to mortgage revenue bonds). The proceeds from the student loan revenue bonds are used to purchase student loans primarily from the Bank of North Dakota. The payments made by students on the loans (the revenues) are then utilized to repay the bonds.
- The University System has issued several different types of revenue bonds. Parking lots are often financed by revenue bonds with the parking fees (revenues) used to repay the debt. The same applies for student housing, student unions and technology bonds.
- The Water Commission has issued revenue bonds for part of the Southwest Pipeline Project and for a small portion of the NAWS Project. The main source of repayment is water user fees.
- The Department of Transportation issued one issue of revenue bonds in 2005. The proceeds from the Transportation bonds were used for specified transportation projects. The repayment

sources for these bonds are anticipated Federal highway grant and revenue funds and appropriated State's Highway Fund revenues.

- Both the Transmission Authority and the Pipeline Authority have been given authority to issue revenue bonds. As of January 1, 2011 neither Authority has issued any bonds. During the 2009 Legislative Session a bill was passed to allow up to $240 million of Transmission Authority bonds to be backed by the State's moral obligation.

Payment Sources

Each type of issue reflects a different source of repayment should there be a default. The only bonds that require that a tax be levied to pay for debt service are the general obligation bonds. The State has no general obligation bonds outstanding at this time.

All the other bonds must clearly state in the legal documents and official statements that the bonds are not a general obligation of the State of North Dakota and the bondholder can only rely on the revenue or other sources that are pledged. Typically an official statement for the bond issue will include a paragraph that states something similar to the following:

> "The Bonds do not constitute debt of the State or any agency or political subdivision thereof, neither the faith or credit nor the taxing powers of the State or political subdivision thereof are pledged to the payment of the principal or interest on the bonds."

Bonding Authority

Attached is a chart which shows what entities have authority to issue bonds, the security and repayment sources for each type of bonds, any limitations, amounts outstanding and the statutory reference.

Karlene Fine
328-3722

01/24/11

Issuer	Type of Bond	Security Source*	Source of Repayment	Various Limitations**	Amount Outstanding	Statutory Reference
Ind. Commission/ Agricultural Bonds	Revenue Bonds	Agricultural loans	Loan Repayments	***	$0	4-36
North Dakota Building Authority	Lease Revenue/ Appropriation Bonds	Deed/lease held on the facilities either constructed or rehabilitated	Biennial appropriations (including General Fund, Local Match Funds & for ConnectND – student fees)	**General Fund** appropriation cannot exceed 10% of 1% of the sales use, motor vehicle tax ****	$89,050,000 (as of 1-1-11)	54-17.2
State Fair Association	Revenue Bonds	Revenues and earnings	Revenues	***	$605,000 (as of 9-30-10)	4-02.1
Housing Finance Agency	Mortgage Revenue Bonds	Revenues from Mortgages held on homes and multi-family facilities	Mortgage loan repayments and reserve/ investment income	***	$1,049,460,000 (as of 11-1-10)	54-17
Industrial Commission/ Lignite Research Program	Revenue Bonds	Lignite tax revenues	Biennial appropriations from the Lignite Research Fund	No limitations except to the extent of funds available in the Lignite Research Fund for debt service payments	$0	54-17.5
Pipeline Authority	Revenue Bonds	Revenues and earnings/Lease Agreements	Revenues	$800,000,000	$0	54-17.7
Public Finance Authority	Moral Obligation Revenue Bonds	Political Subdivision bonds	Loan repayments from political subdivisions	Capital Financing Program has rating agency & IC limitation of $75,000,000. Industrial Development Revenue Bonds (small manufacturers) limitation of $2 million per project. SRF Program ***	$151,605,000 (as of 11-1-10)	6-09.4
Governor & Treasurer – Real Estate Bonds	General Obligation	Real Estate mortgages & a commitment to levy a statewide mill levy	Payments from Real Estate Loans and Statewide Mill levy	$150,000,000/65% of the value of real estate mortgages	$0	54-30
Industrial Commission/ Student Loan Program	Revenue Bonds Residual Bonds	Student Loans guaranteed by Guarantee Agency and Federal Government	Student Loan payments	***	$5,200,000 (as of 1-1-11)	54-17
Transmission Authority	Moral Obligation Revenue Bonds	Revenues and earnings / Lease agreements	Revenues	$800,000,000 (Moral obligation is limited to $240 million of the $800 million)	$0	17-05
Department of Transportation	Grant Anticipation Revenue Bonds	Anticipated Federal Highway Grant & Revenue Funds & appropriated State Highway Fund Revenue	Anticipated Federal Highway Grants & Revenue Funds & appropriated State Highway Fund revenue	Limited to financing for two specific projects	$41,675,000 (as of 11-1-10)	24-02-40.1

University System	Revenue Bonds	Revenues from the fees	Parking Fees, Housing Fees, Student Fees	Each project must be approved by the Legislature. No overall limitation	$218,648,488 (as of 6-30-10)	15-55
Water Commission	Revenue Bonds Appropriation Bonds	Revenues and earnings	Collection of User Fees; Water Development Trust Fund appropriation	Statutory limitation of an aggregate of $2 million unless Legislature authorizes a higher amount for a specific project (SW pipeline has a limitation of $25,000,000; Red River Valley Water Supply project has a limitation of $40,000,000; Northwest Area Water Supply project does not have such a limitation.)	$91,251,759 (as of 11-1-10)	61-24.3, 61-24.6, 61-02, 61-02.1

*Security Sources also include reserve funds and other invested funds and accounts that are provided for in each bond issue. Generally these reserve funds represent up to one year's debt service or 10% of the bond issue. Balances in the reserve funds are generally used to make the final debt service payment.

**The Federal Government has established an overall volume cap for Private Activity Bonds that is $277,820,000 for calendar year 2011. The Student Loan Revenue Bonds and the Housing Finance Agency Revenue Bonds fall within the Private Activity Bond Volume Cap.

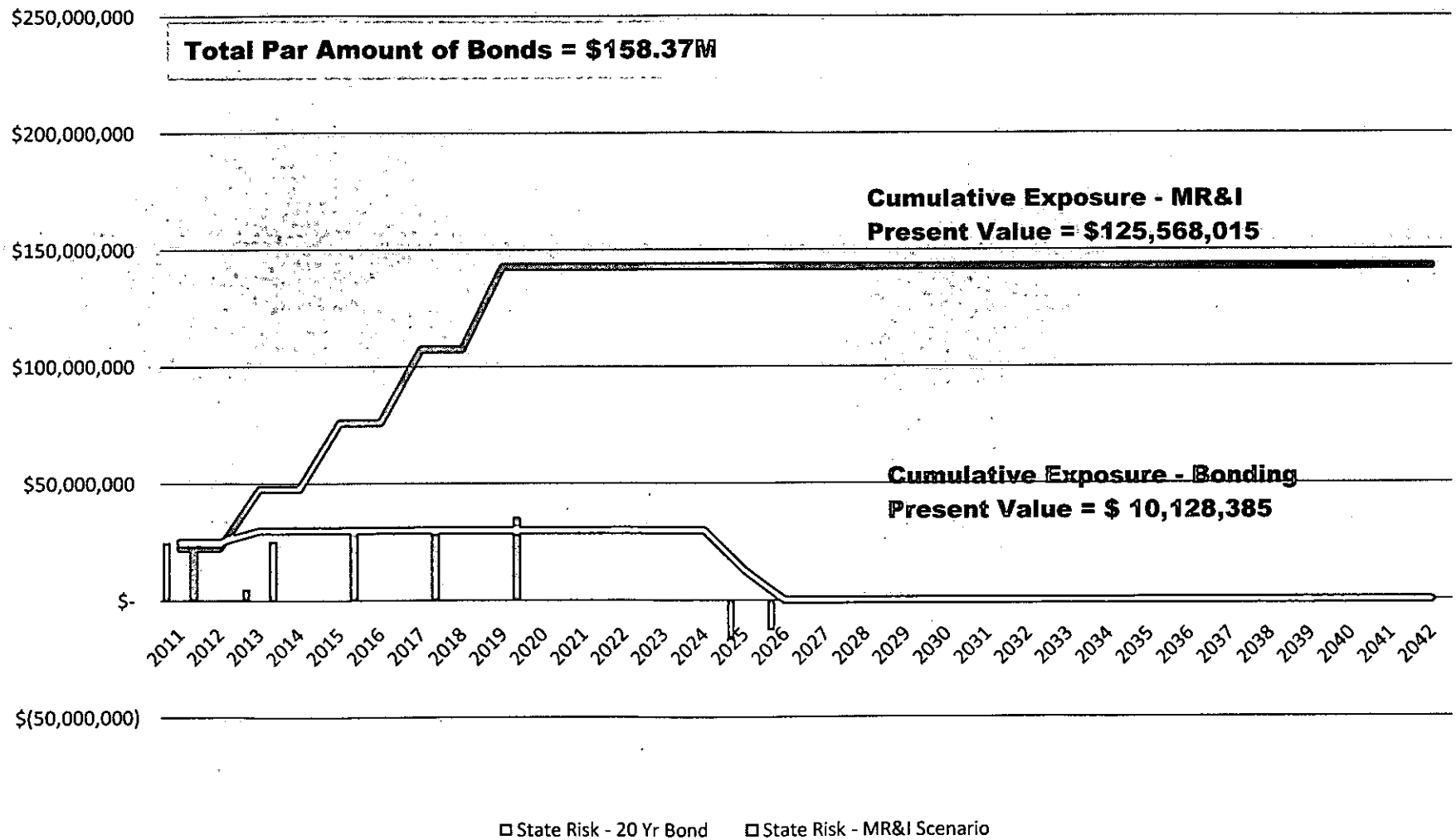
***The issuance of bonds is subject to adherence to bond document requirements and satisfactory program cash flows.

****North Dakota Building Authority Bonds issued for Energy Conservation Projects and ConnectND, by law, are not under the 10% of 1% sales tax limitation. ***Revised 01/21/11***

WAWSP State Maximum Financial Exposure

100% Modeled Industrial Water Sales

20 - Year Bond



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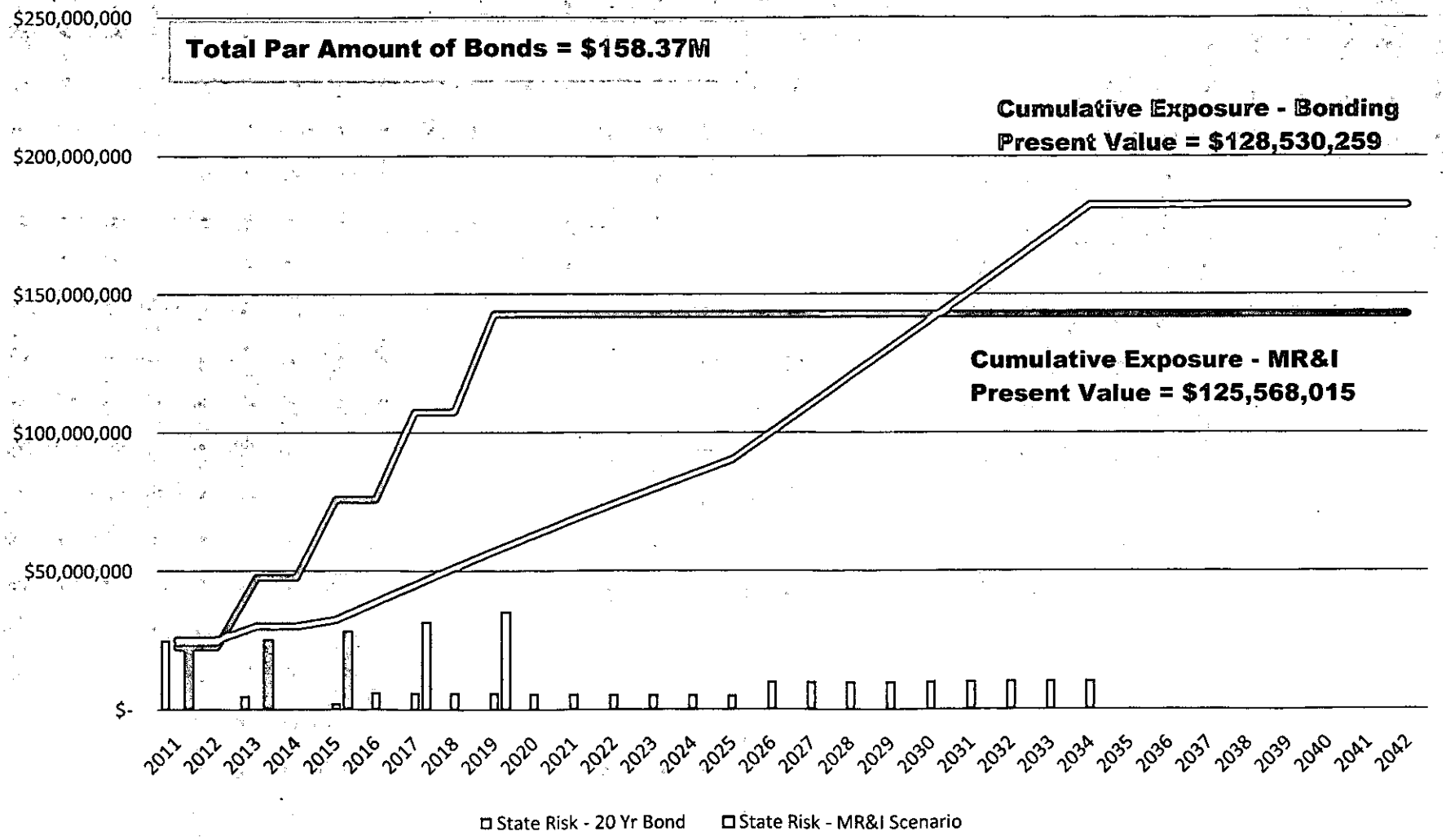
WAWSP State Maximum Financial Exposure

0% Industrial Water Sales

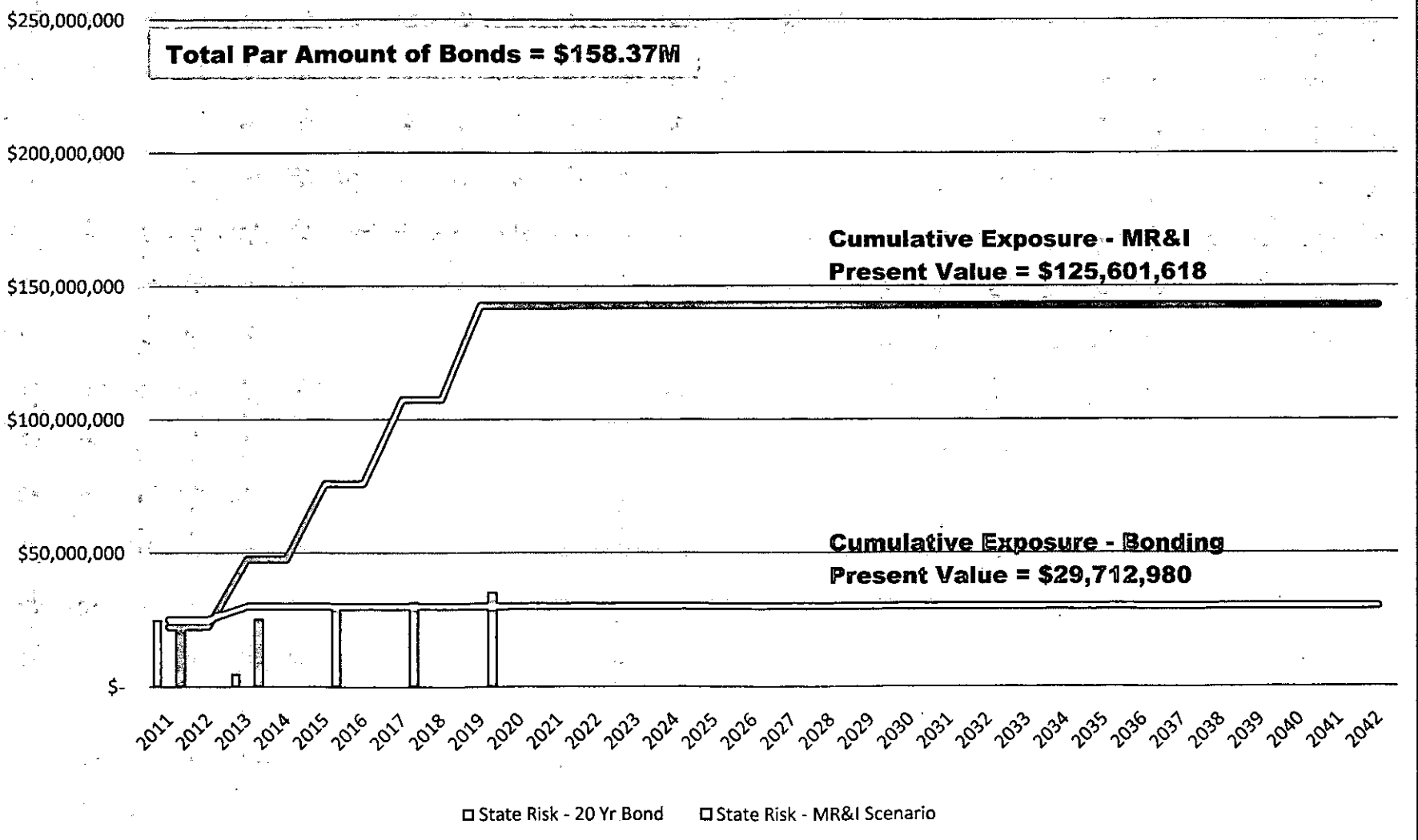
20 - Year Bond



WAWSP State Maximum Financial Exposure

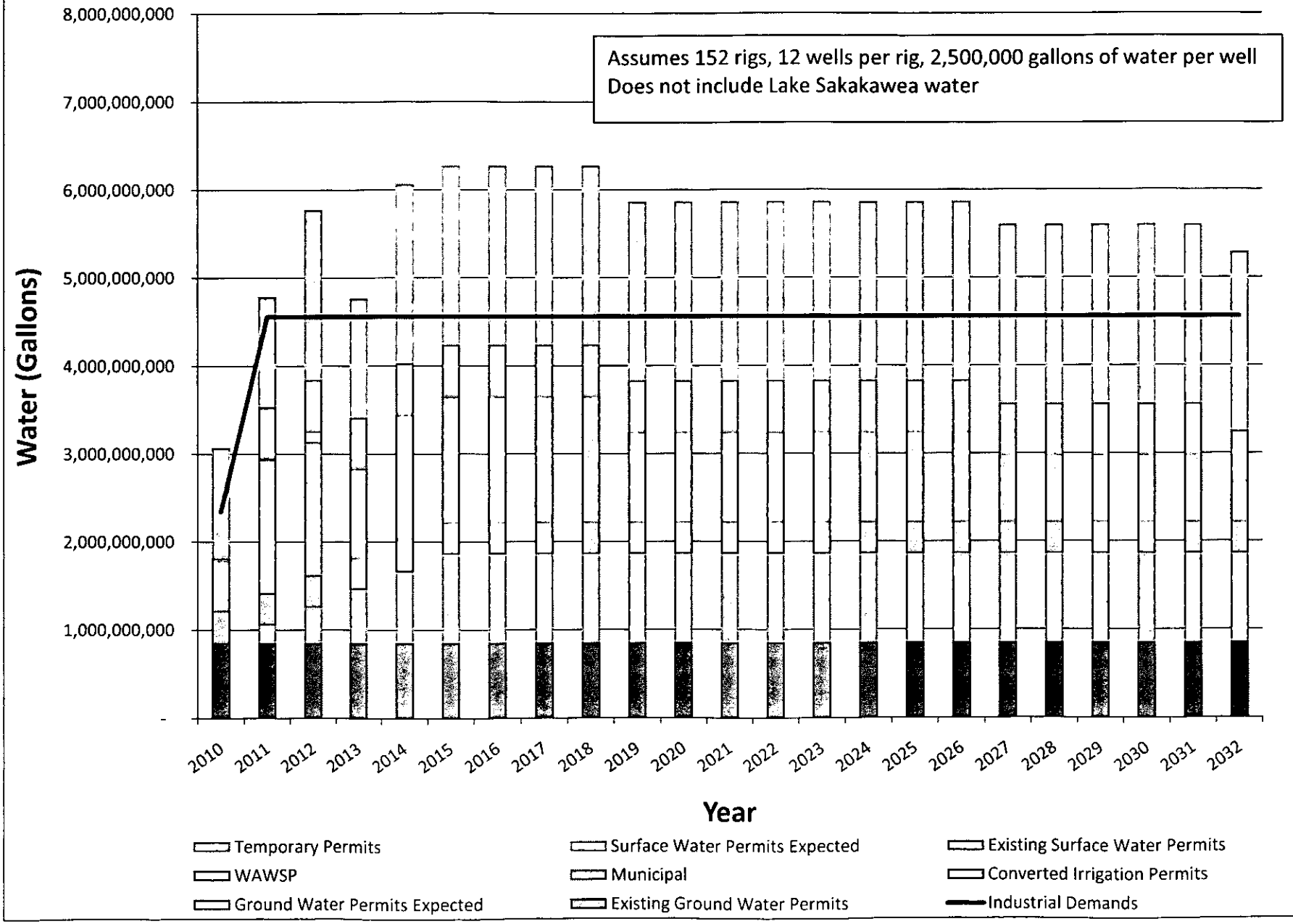
50% Modeled Industrial Water Sales

20 - Year Bond



Anticipated Industrial Water for WAWSP Service Area

WAWSP Extended Drill Out Period



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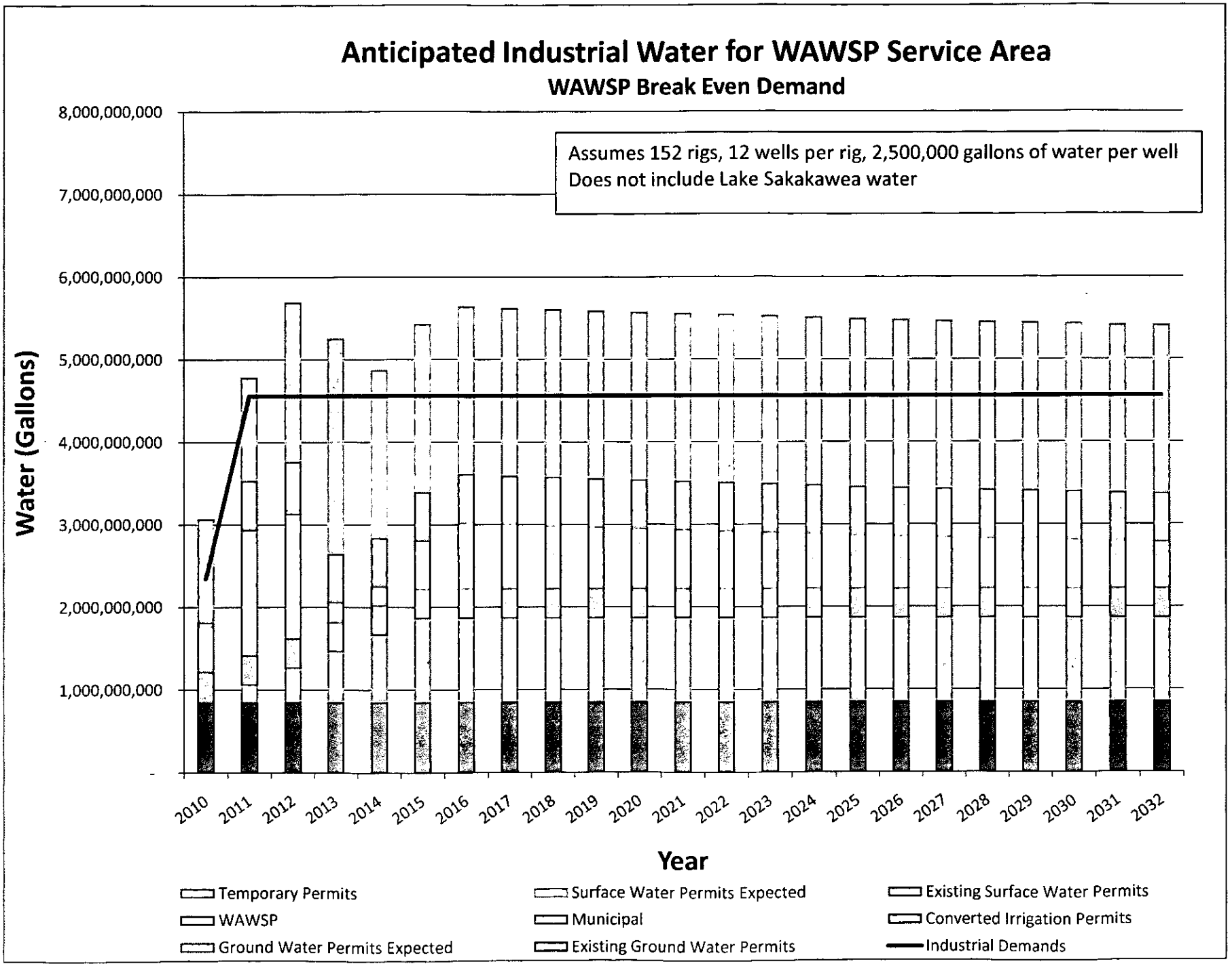
Anticipated Industrial Water for WAWSP Service Area
WAWSP Break Even Demand
Assumes 152 rigs, 12 wells per rig, 2,500,000 gallons of water per well
Does not include Lake Sakakawea water
Water (Gallons)
8,000,000,000
7,000,000,000
6,000,000,000
5,000,000,000
4,000,000,000
3,000,000,000
2,000,000,000
1,000,000,000
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2031
2032
Year
Temporary Permits
Surface Water Permits Expected
Existing Surface Water Permits
WAWSP
Municipal
Converted Irrigation Permits
Ground Water Permits Expected
Existing Ground Water Permits
Industrial Demands

Senator Nething

Amendments to HB 1206

1. Delete Section 2, on page 13 and 14, and insert a new Section 2 as follows:

Section 2. Section 61-01-26.2 of the North Dakota Century Code is amended and reenacted as follows:

61-01-26.2. Statewide water development goals. The legislative assembly will support to the extent funds are available from the water development trust fund the comprehensive statewide water development program developed pursuant to section 2 of chapter 587 of the 1995 Session Laws and to the state water management plan established under section 61-01-26. In order to implement the state water management plan, the legislative assembly will support the following:

1. During the 1999-2001 biennium:
   a. Southwest pipeline project: Six million dollars in state funds and eleven million five hundred thousand dollars in federal funds, assuming Perkins County water system payment to the state water commission of four million five hundred thousand dollars.
   b. Northwest area water supply project: Eight million two hundred thousand dollars in local funds and fourteen million eight hundred thousand dollars in federal funds, with an option being considered of the state water commission bonding the local cost-share with local repayment of the total principal, interest, and cost of issuance of the bonds to the state water commission.
   c. Other municipal, rural, and industrial projects: Twenty-five million five hundred thousand dollars in local funds and thirty-nine million nine hundred thousand dollars in federal funds.
   d. Grand Forks flood control: Twenty-five million dollars in local funds, twenty-five million dollars in state funds, and thirty-eight million five hundred thousand dollars in federal funds. The state total cost-share of fifty-two million dollars or so much of the total cost-share that is required may be bonded, requiring a loan repayment estimated at three million nine hundred thousand dollars per year with repayment beginning in 2001.
   e. Devils Lake outlet to the Sheyenne River and to west Stump Lake: Seventeen million five hundred thousand dollars in state funds and thirty-two million five hundred thousand dollars in federal funds. The total state cost-share

of seventeen million five hundred thousand dollars includes mitigation costs and will be bonded, requiring a local repayment estimated at one million five hundred thousand dollars per year, with the split between state and local loan repayment to be determined. Before bonds may be issued for a Devils Lake outlet, construction of the outlet must be approved by the state water commission.

2. During the 2001-03 biennium:

a. Water to eastern North Dakota: Seventeen million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Southwest pipeline project: Five hundred thousand dollars in local funds, one million seven hundred thousand dollars in state funds, and twelve million five hundred thousand dollars in federal funds.

c. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Thirty-five million seven hundred thousand dollars in local funds, twenty-seven million dollars in state funds, and sixty-two million nine hundred thousand dollars in federal funds; annual bond payments of three million nine hundred thousand dollars. Components of the Grand Forks flood control project involve water treatment plant improvements. Those federal costs are reflected in subdivision d because of potential cost-sharing using Garrison diversion municipal, rural, and industrial funds. Other projects, such as greenway, are listed under subdivision.

f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

g. General projects: Thirty-one million seven hundred thousand dollars in local funds, twenty-five million nine hundred thousand dollars in state funds, and thirty-nine million eight hundred thousand dollars in federal funds.

3. During the 2003-05 biennium:

a. Water to eastern North Dakota: Six million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Southwest pipeline project: One million dollars in local funds, five million dollars in state funds, and eleven million four hundred thousand dollars in federal funds.

c. Northwest area water supply project: Eleven million eight hundred thousand dollars in local funds and twenty-one million eight hundred thousand dollars in federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.

f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

4. During the 2005-07 biennium:

a. Water to eastern North Dakota: Eighty-four million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Southwest pipeline project: One million dollars in local funds, nine million five hundred thousand dollars in state funds, and nineteen million five hundred thousand dollars in federal funds.

c. Northwest area water supply project: Five million eight hundred thousand dollars in local funds and ten million nine hundred thousand dollars in federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

5. During the 2007-09 biennium:
a. Water to eastern North Dakota: Fifty-nine million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
b. Northwest area water supply project: Three million seven hundred thousand dollars in local funds and seven million dollars in federal funds.
c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

6. During the 2009-11 biennium:
a. Water to eastern North Dakota: Two million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
b. Northwest area water supply project: One million seven hundred thousand dollars in local funds and three million three hundred thousand dollars in federal funds.
c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and

thirty-two million eight hundred thousand dollars in federal funds.

d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.

e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

~~7. Beyond the year 2011:~~

~~a. Water to eastern North Dakota: The local cost has not been determined and will be determined after project configuration is complete.~~

~~b. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.~~

~~e. Other municipal, rural, and industrial projects: One hundred thirty million two hundred thousand dollars in local funds and two hundred forty-one million two hundred thousand dollars in state funds. The anticipated three hundred forty-five million dollars in federal cost-share has been used in the previous biennium's and the remaining cost-share for projects has been identified as a potential state cost-share.~~

~~d. Grand Forks flood control: A total of fifty-eight million five hundred thousand dollars in bond repayments is anticipated.~~

~~e. Devils Lake outlet to Sheyenne River and to west Stump Lake: A total of fifteen million dollars in bond repayments.~~

~~f. General projects: Two hundred twenty million two hundred thousand dollars in local funds, one hundred fifty-six million four hundred thousand dollars in state funds, and thirty-four million three hundred thousand dollars in federal funds.~~

7. During the 2011-2013 biennium:

a. Devils Lake Flood Control: Construct an east end outlet to Devils Lake, provide improvements to the water treatment plant in Fargo, and construct an appropriate control structure on the Tolna Coulee outlet from Stump Lake.

b. Fargo Flood Control: Continue the Fargo Flood Control project.

c. General water management and flood control projects: Address local water management and flood control projects in Beulah, Hazen, Mott, Valley City, Jamestown, Linton, and rural areas.
d. Grand Forks Water Treatment: Investigate and study long-term Grand Forks water treatment needs.
e. Irrigation: Continue irrigation projects along the McClusky Canal
f. Municipal, Rural and Industrial Projects: Continue rural water projects as prioritized by the rural water systems.
g. Northwest Area Water Supply: Continue pipeline infrastructure for the NAWS project.
h. Red River Valley Water Supply Project: Continue right of way, permitting and environmental services, operation, and preliminary design of the red river valley water supply project, pursuant to Section 61-01-26.1 and chapter 61-24.7, NDCC.
i. Southwest Pipeline Project: Continue the southwest pipeline in the Zap and Center service areas and the Killdeer main transmission line and related facilities.
j. Western Area Water Supply: Construct the first phases of the western area water supply in McKenzie and Williams counties.

8. During the 2013-2015 biennium:
   a. Devils Lake Flood Control: Continue to provide flood control measures in the Devils Lake basin.
   b. Fargo Flood Control: Continue the Fargo Flood Control project.
   c. General water management and flood control projects: Address local water management and flood control projects in rural areas.
   d. Grand Forks Water Treatment: Upgrade and expand the Grand Forks water treatment plant for regional capacity and use.
   e. Irrigation: Continue irrigation projects along the McClusky Cnal and Oakes test area.
   f. Municipal, Rural and Industrial Projects: Continue rural water projects as prioritized by the rural water systems.
   g. Northwest Area Water Supply: Construct water treatment facilities.
   h. Red River Valley Water Supply Project: Begin construction of the red river valley water supply project, pursuant to Section 61-01-26.1 and chapter 61-24.7, NDCC.
   i. Southwest Pipeline Project: Complete the southwest pipeline in the Zap and Center service areas and the Dunn County service area.
   j. Western Area Water Supply: Construct the final phases of the western area water supply project in adjacent counties.

9. During the 2015-2017 biennium:
   a. Devils Lake Flood Control: Operate the west and east end outlets and continue flood protection measures.
   b. Fargo Flood Control: Continue the Fargo Flood Control project.

c. General water management and flood control projects: Address local water management and flood control projects across North Dakota.
d. Irrigation: Complete irrigation projects as authorized by the Dakota Water Resources Act of 2000.
e. Municipal Water Treatment: Support the upgrade and expansion of other municipal water treatment facilities.
f. Municipal, Rural and Industrial Projects: Continue rural water projects as prioritized by the rural water systems.
g. Northwest Area Water Supply: Complete the NAWS project.
h. Red River Valley Water Supply Project: Continue construction of the red river valley water supply project, pursuant to Section 61-01-26.1 and chapter 61-24.7, NDCC.
i. Southwest Pipeline Project: Complete all phases of the southwest pipeline and related facilities.
j. Western Area Water Supply: Complete the Williston water treatment upgrade and expansion.

10. During the 2017-2019 biennium:
a. Devils Lake Flood Control: Complete protection measures for Devils Lake.
b. Fargo Flood Control: Continue the Fargo Flood Control project.
c. General water management and flood control projects: Address local water management and flood control projects.
d. Irrigation: Support irrigation projects along the Missouri River.
e. Municipal Water Treatment: Investigate and study long-term municipal water treatment needs.
f. Municipal, Rural and Industrial Projects: Continue rural water projects as prioritized by the rural water systems.
g. Northwest Area Water Supply: Complete the NAWS project.
h. Red River Valley Water Supply Project: Continue construction of the red river valley water supply project, pursuant to Section 61-01-26.1 and chapter 61-24.7, NDCC.
i. Southwest Pipeline Project: Complete any remaining features of the southwest pipeline.
j. Western Area Water Supply: Complete any remaining features of the western area water supply project.

Section 3. After any bonds or refunding bonds have been paid in full by the western area water supply project, and after the provision of adequate revenues for operation and maintenance and revenues for replacement and extraordinary maintenance, revenues from the western area water supply project shall be deposited in the resources trust fund, established pursuant to Section 57-51.1-07.

Section 4. Emergency. This Act is declared to be an emergency measure.

Department of Mineral Resources

Lynn D. Helms – Director

North Dakota Industrial Commission

www.dmr.nd.gov

Western North Dakota Water Needs

- 1,100 to 2,700 wells/year = 2,100 expected
- 100-225 rigs = 12,000 – 27,000 jobs = 21,000 expected
- 15 - 30 million gallons frac water/day

100 rigs is the expected case for an oil price of $50-60 per barrel
225 rigs is the expected case for an oil price of $95-105 per barrel
Current rig count is 170 ± 4 rigs

In 2010 industry drilled 1,213 wells, hydraulic fractured approximately 1,000, and filed completion data on about 750 leaving an inventory of over 200 wells waiting to be fractured due to weather and crew availability. That means that last year was roughly equivalent to the 100 rig/15 million gallon per day figure. This year is expected to equal or exceed the 225 rig/30million gallon per day estimate.

These numbers are for drilling and fracturing only, workers and communities have additional needs due to the 21,000 added jobs bringing in workers and their families.

Current water commission permitted and deliverable volume is 7 million gallons per day,
- 3.2 million from ground water – small incremental increases possible
- 0.5 million from temporary agricultural to industrial permit conversions
- 3.3 million from surface sources

The remaining 8 million gallons per day in 2010 was from municipal and private surface water sources.

There are permits pending for 16 million gallons per day that depend on Corps of Engineers approval.

Oil and gas operators do not buy water on long term contracts. They order water for each well FOB at the well site.
Transportation is by far the largest portion of cost and is a combination of distance and time waiting to fill at a depot.
Water haulers will use their own supply first.
Water haulers will go as far as necessary to get water, but prefer to go no more than 50 miles and if at all possible use a depot within 25 miles.

A public funded system should be designed to minimize truck traffic on county and township roads as well as minimize competition with private sources (NDIC areas along with Water Commission aquifer maps and permitted to locations)

10 to 20 years of drilling are expected to result in 26,000 new wells and long term jobs

2

600 E Boulevard Ave - Dept 405, Bismarck, North Dakota 58505-0840 Phone (701)328-8020 Fax (701)328-8022

Testimony of Gene Veeder

McKenzie County Water Resource District
HB 1206 Hearing

Bismarck, North Dakota

March 31, 2011

Re: Support for House Bill 1206

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in support of House Bill 1206

My name is Gene Veeder and I am a board member on the McKenzie County Water Resource District. I am here today as the lead entity from the four entities, City of Williston, R&T Water Association, Williams Rural Water District, and the McKenzie County Water Resources District, that have signed a memorandum of understanding to proceed with the development of the Western Area Water Supply Project. The region that these entities serve is experiencing rapid growth and also has primary and secondary drinking water problems that need to be solved. We became aware of a growing water demand in the oil field prior to the rapid increase in needs for the extraction of oil through hydraulic fracturing of the Bakken formation in the Williston Basin

McKenzie County saw growing conflict between agricultural users and the energy industry over the use of Fox Hills water in western McKenzie County over 7 years ago. Competition for that aquifer and depletion of water quality became the focus of McKenzie County and the McKenzie County Water Resource District.

Working with the State Water Commission, we explored alternatives and it became evident the natural solution to our county was to look to the Missouri River and Lake Sakakawea which borders our county to the north and east. We saw a solution to the high cost of delivering water to rural

residents through the inclusion of volume customers in the oil field. Those volume sales spread that infrastructure cost over more users and increased sales to support loans to build the project. Our first project is under construction in eastern McKenzie County, partnering with the Three Affiliated Tribes, State Water Commission and Hess and the county water district. This project has taken over 5 years to develop and it now appears demand far outreaches the capacity of that system, even before the project is completed.

Since that time, water needs for hydraulic fracturing have exploded. A recent housing study sponsored by the North Dakota Department of Commerce, the North Dakota Housing Finance Agency, and the Bank of North Dakota has predicted unparalleled growth in western North Dakota. Over the next 10 to 20 years, the most conservative estimates expect the population in western North Dakota to increase by 30,000 and the most optimistic estimates suggest the population may increase by as many as 45,000. Whichever estimate you subscribe to, a community nearly the size of Minot or Grand Forks is moving to Western North Dakota.

Of the people yet to come to, 10 to 20 thousand are expected to move into northwest North Dakota. This expanding population and the energy industry that have brought many of them to northwest North Dakota, have and will continue to strain the water resources of northwest North Dakota.

The following is a summary of the water supply problems that the region is facing.

- Crosby and BDW are in need of a new water treatment plant and the current water supply is of poor water quality, limited in supply and expensive to treat.

- R&T Water Association that currently serves Ray, Tioga, Stanley, Wildrose and in the near future Crosby and BDW Rural Water District is constructing a water treatment plant but the future water demand projections exceed the safe yield capacity of their aquifer.

- Williams Rural Water District has several rural water users that have been waiting for water for several years and they also have had several requests for water in their growth area around Williston that they had to turn down because they have no capacity.

- Williston is growing, needs to provide fire flow in its growth area, and has pressure problems in its growth areas.

- The demand for industrial water is putting extreme pressure on the aquifers and causing tremendous road damage.

- McKenzie Rural Water System has rural water users that have been waiting for water and is currently using water from the City of Watford City. The Watford City water supply quality has been deteriorating and the City has voted to change its source to the Missouri River.

In other words, the entire region needs a quality water supply of robust quantity and good quality. Most of the public water systems are struggling to find ways to keep ahead of the ever increasing demands. The only supply to meet these requirements is the Missouri River and the City of Williston has graciously stepped forward to be a partner in assisting the region with their existing supply and treatment facilities. This is very important because it is a supply that has ample permitted capacity and is currently in place and does not need any further permits from the Corp of Engineers to access the Missouri River.

In response to these circumstances, leaders of the McKenzie County Water Resource District, R&T Water Supply Association, the Williams Rural Water District, and the City of Williston are looking at the Missouri River to solve the region's water crisis. We have been collaborating on a

regional water system to deliver Missouri River water from the Williston Regional Water Treatment Facility to the entire region through a project known as the Western Area Water Supply Project.

The proposed Western Area Water Supply Project would construct a series of transmission pipelines, reservoirs, pump stations, and bulk fill depots throughout McKenzie, Williams, Divide, and portions of Mountrail Counties. In addition, a series of expansions to the Williston Regional Water Treatment Facility would also be included as part of the project. When completed, the Western Area Water Supply Project will deliver Missouri River water to provide for the domestic and industrial water supply needs for a majority of northwest North Dakota.

Upon completion, the nearly $150,000,000 proposed Western Area Water Supply Project will be capable of delivering over 21 million gallons of water per day throughout northwest North Dakota just to meet the peak municipal and rural water needs of the region. Public water supply systems are designed to meet peak day demands over a relatively long-term planning horizon. The highest peak day demands are typically limited to the driest years of the planning horizon with the highest populations. Peak day demands are also typically limited to a few days each year. Consequently, the Western Area Water Supply Project will have significant unused capacity during non-peak domestic demand periods available for other purposes without having to significantly increase the size or the cost of the water supply, treatment, or distribution facilities. As conceptually designed, the Western Area Water Supply Project would be capable of providing over 13,000 acre-feet of water to the oil and gas industry annually while having the design flexibility to expand and nearly double that amount.

For the last 2.5 years we have been doing our due diligence to develop this project and to make sure that it is economically feasible. To date the following efforts have been completed.

- We participated in an economic study with the Garrison Diversion Conservancy District to determine if the regional system or individual high tech water treatment plants would be the most cost effective.

- We have had engineering cost estimates and completed for the project. We have had the existing intake and water treatment plant at Williston evaluated

- We have completed a financial plan and looked at several water demand scenarios to evaluate the financial viability of the funding plan

- We are currently examining the available water supplies to ensure that there is a need for the industrial water supply.

- Two years ago, we participated in an economic feasibility study with the assistance of the Garrison Diversion Conservancy District and the State Water Commission to determine the most economical way to solve the water supply and treatment issues in the region. The study showed that the solution to these issues is a regional approach that goes beyond the boundaries of McKenzie County Water District.

The solution is the Western Area Water Supply Project or WAWSP. WAWSP is a comprehensive regional approach that will supply quality water for new customers, future economic development, and industrial demands.

The Northwest area is in the middle of the largest oil development in the history of the State of North Dakota. The economic impacts are tremendous to our area and to the State as a whole. Water is a

critical component to this success. Providing water to the oil industry will allow continued growth and is the first step in supplying infrastructure needs that will allow controlled growth, housing, and stabilize the regional economy .

This approach has the support of the key water infrastructure stakeholders in the region. McKenzie County Water District, the City of Williston, Williams Rural Water District, and R&T Water Supply Association, Burke Divide Water District and the Cities of Watford City, Ray, Tioga, Stanley, Crosby, and Genora . The communities and water districts mentioned agree that WAWSP will address their challenges while providing numerous benefits. The oil industry and other oil related agencies also support this project as it creates a water supply for drilling and other growth; reduce the hauling distance of water to the oil fields, and increases safety.

The WAWSP working group has spent considerable time analyzing numerous financial scenarios in order to be able to suggest the best use of state and local dollars. We remember the 80's oil boom and bust and how it affected our communities, we refuse to commit to any plan that may put undue burden on our systems, our communities, and our State. The total project is proposed to cost $150 million with a $25 million grant from the state, bonding that will be issued by the Western Area Water Authority, and a moral obligation from the state in the unlikely event that the required debt reserves cannot be maintained by the system. Through rigorous analysis, we have determined that the project has a potential payback period of 10 years through sufficient income for debt services (water rates) if started immediately. The need is immediate, so the start date must be immediate.

The result of the project will provide the area with water infrastructure and distribution to the people as well as the capability of supplying future needs following the success of the Bakken drilling. Consequently, when drilling declines, the area will have adequate resources to potentially provide water for a potash plant, gasification plant, or agriculture processing plant. Therefore, this plan not only helps the area prosper in the immediate future but for years following the Bakken drilling.

Overall, WAWSP has the potential to solve water challenges on multiple levels, while positioning the region for an economic windfall. The creation of the Western Area Water Supply Authority and the moral obligation from the State of North Dakota as a back stop for bonding to construct the project is critical to meeting the needs of the rural citizens and communities in the region, the oil and energy sector, and the growth associated with it. We, the members of WAWSP, respectively request that the state provide the necessary tools to meet these needs and propel the region, and ultimately the State of North Dakota in economic prosperity.

Thank you for your time and consideration of this project.

Dear North Dakota Senators,

I am writing you this e-mail asking for your support of HB 1206.

This is the bill that would create the Western Area Water Authority to supply the domestic, municipal, and industrial water needs of Northwest North Dakota. Poor ground water quality, along with limited access to groundwater aquifers, and the demand for water for oil industry needs have created a real challenge for this area.

This project would utilize the Missouri River and the Williston Regional Water Plant, which has a large allotment of water permitted from the Missouri.

This Western Area Water Supply Project has involved a united effort between the city of Williston, Williams Rural Water District, McKenzie Water Resource District, and R & T Water Supply Association (including the communities of Ray, Tioga, and Stanley).

The project is designed to cost approximately $150 million, with $30 million of that being a grant up front, and the remaining $120 million to be bonded with the moral obligation of the State of North Dakota to back the bonds. They would also be required to pay back the grant, after the bonds are paid off. A majority of the bond repayment would be paid off with revenue generated from sales to the oil industry, which by all indications will have a presence in the area for years to come.

As a manager of a water district on the east side of the state in the north end of the valley, I applaud the initiative taken in the planning and proposed financing of this project.

The way the project is structured, this project will not be competing with current water needs of the state in future bienniums, especially the MR & I funding.

The needs of the area are real and immediate, and will not be going away for some time.

Yes, it does require some faith and obligation on the state's part, but it appears to be a "win-win" proposal not only for northwestern North Dakota, but for the whole state in expediting critical water infrastructure need.

I urge you to support HB 1206!

Gordon L. Johnson, Manager
North Valley Water District
13532 Hwy 5
Cavalier, ND 58220

4 A

CITY OF CROSBY

PO Box 67 ~ Crosby, North Dakota 58730

March 24, 2011

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project

Dear Senator Klein:

I am writing to urge the Legislative support for HB 1206 as it relates to the Western Area Water Supply Project. The City of Crosby has analyzed an expansion of its water treatment plant however; it was determined to be cost-prohibitive. In July 2010, the residents of the City of Crosby voted by a **97 percent** margin to source water through the R&T Water Supply Association. The R&T WSA is one of the project sponsors to the WAWSP and is in great need of this additional water supply source to meet mounting water demands in the northwestern corner of North Dakota.

The WAWSP treats the State's most-plentiful water supply, the Missouri River, and distributes it throughout this corner of the State. The WAWSP has created an opportunity to create a regional organization to address a large, regional issue that cannot be addressed by the area water systems independently. Given the magnitude and swiftness of oil exploration and recovery in the Bakken Formation, it is imperative to have this core drinking water infrastructure in place as quickly as possible.

Thank you for your attention to this matter and I would appreciate your support of HB 1206.

Sincerely,

/s/ Les Bakken

Les Bakken
Mayor

Cc: Senate Appropriations Committee
Senator John Andrist

B

March 25, 2011

The Honorable Ray Holmberg, Chair
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

The Honorable Jerry Klein, Chair
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 - Western Area Water Supply Authority

Dear Senators:

I would like to show my support of HB 1206 – the Western Area Water Supply Project (WAWSP). As a community in the midst of oil boom activities, Killdeer is keenly aware of the importance of water infrastructure. Killdeer has seen tremendous activity in the past year and is anticipating $2-3 million in water infrastructure needs. Currently, the City is on a state project priority list that includes over 150 other important drinking water projects in North Dakota. The need of this area and, in fact, the entire State is great.

The growth in our region is unprecedented and shows no sign of stopping soon. Communities and industry need water to meet this demand. All projects that address these critical needs in west North Dakota, without competing for much needed state grants and loans, is a boon for the entire state. The proposed project does this through a thoughtful approach of phased implementation balanced by fiscal responsibility to the region and the State. HB 1206 includes a financial plan in which the Western Area Water Supply Authority will finance the project utilizing, in part, the good fortune of the area. The proposed financing structure reduces competition from large state sponsored projects for the funding the pool available and allows assistance for other critical water projects.

The urgency of a quality drinking water system with a financing plan in northwest North Dakota is clear. As a community in the middle of this activity, I pledge my support to this project, and urge you to do the same.

Sincerely,

Dan J Dolechek

Dan Dolechek
City Commission President

cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Larry Robinson

C

Dan Stenvold, Mayor

Tom Larson, Business Manager
Ann Berg, Deputy Auditor

City of Park River

PO Box C
Park River, ND 58270-0702
Phone: 701-284-6150
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prcity@polarcomm.com

March 25, 2011

The Honorable Ray Holmberg, Chair
The North Dakota Senate
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project (WAWSP)

Dear Senator Holmberg and Senator Klein:

I'm writing to urge your support for HB 1206. The Western Area Water Supply Authority proposes to completely finance the $150 million WAWSP which therefore, eliminates a long-term ongoing financial commitment from the State Water Commission. The SWC has proposed a $235 million budget for the 2011-2013 biennium and the ND Water Coalition is seeking an additional $100 million due to the many, large scale water projects throughout the State. Within that budget there is a $15 million appropriation to the Municipal, Rural, and Industrial (MR&I) Program.

The City of Park River has great need for financial assistance through the MR&I Program. We currently have a $2.3 million water project on our horizon. Without financial assistance through either the State or Federal government, the City estimates rates will have to be increased from the monthly average rate of approximately $56/month to $77/month – a 38 percent increase. This increase would also represent an "unaffordable" average user rate that is 3.03 percent of the City's median household income. The American Water Works Association suggests an "affordable" rate is less than 2 percent of the median household income.

Though the City's water project received preliminary federal support in the 2011 budget process, it has not received a federal funding commitment. The elimination of earmarks in the 2012 federal budget process will likely drive local projects such as this to the State Water Commission's (SWC) Municipal, Rural, and Industrial Program for funding. Given the SWC 2011-2013 proposed budget includes only $15 million in MR&I funding, it is vital that water projects across the state be creative with their financing just as HB 1206 would do in northwestern North Dakota.

PR

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Regards,

Mayor Dan Stenvold

Cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Joe Miller

Grand Forks Traill Water District

BOX 287
1401 7th AVENUE N.E.
THOMPSON, NORTH DAKOTA 58278
"Rural Water for a Better Rural Life"

Office: 1 Mile West of Thompson
Phone: 701-599-2963
Fax: 701-599-2056
e-mail: gftwu@invisimax.com

March 25, 2011

The Honorable Ray Holmberg, Chair
The North Dakota Senate
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project (WAWSP)

Dear Senators:

I am writing to urge you to support HB 1206, the Western Area Water Supply Project. This crucial project will provide key water infrastructure that supports the development of the communities it will serve in the northwestern portion of the State. The growth in the western area of the State serves to benefit the rest of North Dakota, as well.

One of the most favorable aspects of WAWSP is the fact that it will fund a significant portion of the project through water sales, lessening the burden on the Water Trust Fund. This leaves funds available for other critical water infrastructure projects throughout the State. Currently, Grand Forks-Traill Water Users District is listed on the Project Priority with a $5.6 million water system expansion project, so we truly understand the need for funding to support water infrastructure development to serve our communities and rural citizens while maintaining financial sensibility.

The oil industry relies upon a significant quantity of water hauled in by truckload to frac wells. At this point in time, it takes roughly three and a half hours of waiting in line before each truck can be filled with water. This project will help reduce the waiting time for filling trucks to mere minutes, due to the increase of water depots available. The increase in productivity would financially benefit not only the growing oil industries in the area, but the economy of the entire state.

I have personally attended each State Water Commission meeting for the last six months. After hearing all the facts, I believe HB 1206 supports the demand and development of the area, provides a secure financial plan, and is in the best interest of the State of North Dakota.

Sincerely,

Neil Breidenbach, Manager
Grand Forks-Traill Water Users District

Cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Dwight Cook

E

OFFICE OF MAYOR
MICHAEL R. BROWN

City of Grand Forks

(701) 746-2607
FAX # (701) 787-3773

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

March 24, 2011

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
600 East Boulevard
Bismarck, ND 58505

The Honorable Ray Holmberg, Chair
The North Dakota Senate
Senate Appropriations Committee
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project

Dear Senator Klein and Senator Holmberg:

I'm writing in support of HB 1206. The Western Area Water Supply Project (WAWSP) provides a critical water source to northwestern North Dakota to support the rapid population growth in the area. By utilizing local debt financing for the WAWSP with State backing, the project strives to minimize the financial impact on the State Water Commission's (SWC) Resources Trust Fund, whereby, indirectly providing support for other vital water projects statewide including the City of Grand Forks' new Regional Water Treatment Plant (WTP).

Given the state of the Federal budget, water users throughout North Dakota have the good fortune of the Resources Trust Fund which is funded by 20 percent of the oil extraction tax. The SWC estimates $235 million will be available in the Resources Trust Fund during the 2011-2013 biennium. But even at this level, the water needs of the State outweigh the Resources Trust Fund available funds. As a result, the ND Water Coalition, with the City of Grand Forks as a member, seeks to increase the level of water system funding for this biennium by an additional $100 million. Natural disasters, such as the Devils Lake Emergency Outlet and Fargo Flood Protection, are slated to receive the majority of water system funding, which is appropriate.

Funding for quality drinking water treatment and delivery to the citizens of North Dakota needs to also be supported. The City of Grand Forks has ranked a new regional WTP as the top infrastructure priority at a cost of approximately $125 million. Though the City firmly commits local resources to 50 percent of the project costs, we're in need of State and Federal resources for the balance to offset significant local water rate impacts. Please find attached a copy of our funding strategy for the WTP project for your reference.

HB 1206 outlines a prudent financial approach to provide for a long-term domestic water supply under local control, while allowing the opportunity for the Resources Trust Fund to be used by other critical water projects in the State. I highly recommend the passage of HB 1206.

Sincerely,

Michael R Brown

Dr. Michael R. Brown
Mayor

Cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Connie Triplett
Representative Curt Kreun

F

Scanned/emailed

CITY OF Fargo

Mayor Dennis R. Walaker
200 3rd Street North
Fargo, North Dakota 58102
Phone (701) 241-1310
Fax (701) 476-4136

March 3, 2011

The Honorable Ray Holmberg, Chair
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

Dear Senator Holmberg,

The City of Fargo has been informed of the need for water in the western part of North Dakota for municipal and industrial uses, especially in this period of rapid oil exploration and drilling. This need coincides with the Red River Valley need for flood protection. In discussing State funding to address both delivery of water to western communities and flood protection in the east with legislators, it is apparent both interests can be met during this legislative session. Moreover, we don't see the legislative effort to fund both needs as a conflict.

With this mind, I would respectfully encourage you to consider the Western Area Water Supply Project funding request. The plan appears to be a good approach to delivering water to the communities and businesses in the northwest part of North Dakota.

Thank you for all your work during this legislative session.

Sincerely,

Dennis R. Walaker
Mayor

DRW:se
ww11senapprmar3

Printed on Recycled paper.

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Western Area Water Supply Project
Summary
March 21, 2011

History and Need for WAWSP

As oil exploration and recovery activities began ramping up in 2007, the proposed Western Area Water Supply Authority (WAWSA) members, including the City of Williston, Williams Rural Water District (WRWD), McKenzie County Water Resource District (MCWRD), and R&T Water Supply Association (WSA), began identifying water supply infrastructure needs. These systems were instructed by the State Water Commission, Garrison Diversion Conservancy District, and the ND Water Coalition to collaborate and determine water funding priorities for the 2009 Legislative Session. As a result, funding was provided to:

- Upgrade the water treatment plant at R&T WSA
- Connect Wildrose to the R&T system
- Upgrade the capacity to the City of Stanley
- Construct a line from the City of Williston water treatment plant south under the Missouri River and into McKenzie County

All of these projects are either nearing completion or will be constructed this year. The R&T WSA water treatment plant expansion was delayed approximately one year because of complicating factors during the pilot study phase. The MCWRD project was also delayed approximately one year due to delays in securing environmental clearance to complete directional drilling under the Missouri River.

The proposed region in the Western Area Water Supply Project (WAWSP) service area was once the western part of the North West Area Water Supply (NAWS) project. The City of Williston opted out of the NAWS project primarily because the State of North Dakota proposed a "postage stamp" rate which would have increased the water rates for the City of Williston, when the City was already located immediately adjacent to the Missouri River.

Expansion of R&T WSA to serve Cities of Stanley and Wildrose

Two years ago, in response to the rapid growth and need for water at the City of Stanley, the Garrison Diversion Conservancy District, in coordination with the State Water Commission, completed an economic study of the region to determine if the area could be served more economically with regional water service out of the City of Williston or with several advanced treatment plants in the local communities such as the Cities of Watford City, Crosby, Ray, and Tioga. These communities have ground water sources. The study concluded it was more economical for the area to be served by a regional water system. However, the Cities of Ray and Tioga chose to continue to use their aquifer and upgrade their treatment plant for the R&T WSA because it was thought that it would be a quicker means to increase the capacity for the City of Stanley. However, R&T WSA also recognized the eventual need for additional water. The City of Wildrose had primary water quality standard violations and elected to be served by the R&T WSA system.

City of Crosby Residents Vote to Purchase Water from R&T WSA

The City of Crosby also evaluated a water treatment plant expansion. During pilot testing, it was determined that the water treatment plant that was originally proposed would not adequately treat the water and a more costly water treatment plant (WTP) would be needed. On July 20, 2010, residents of the City of Crosby voted to change its water source to the R&T WSA with an overwhelming majority of **over 97 percent**. This further accelerated the R&T WSA need for additional water. In 2010, the R&T WSA utilized its full allocation of water from the aquifer. In order to get a substantial amount of additional water, the R&T WSA will need to change its well field design and do further testing of the aquifer.

City of Alexander Water Permit Denied, City of Watford City Residents Vote to Purchase Missouri River Water

In McKenzie County, the City of Alexander evaluated an expansion of its water system to serve the rural area surrounding the City. The City is currently served by the Fox Hills Aquifer, and the State Water Commission has denied the permit application for increased water allocation. This denial resulted in MCWRD planning to purchase water from City of Williston for the rural residents around the City of Alexander. Also, the City of Watford City evaluated upgrading its WTP due to degrading water quality in the Tobacco Garden Aquifer. The City of Watford City concluded that its best option was to partner with MCWRD and purchase water from the City of Williston. In June 2010, the citizens of the City of Watford City voted to change its water source to the City of Williston with voter approval of **over 90 percent**.

City of Williston Growth and Need for Core Infrastructure

The City of Williston has been experiencing tremendous growth which requires an expansion of the infrastructure for industrial development areas, commercial retail areas, and houses. The City's recently completed Capital Improvements Plan identified $180 million in infrastructure and community needs necessary to accommodate this rapid population and economic growth. WAWSP will provide the core infrastructure to provide water to growth areas in the northwestern area of the City which is currently undeveloped. This area of the City is the only viable option for large scale expansion as the City has rugged terrain to the east and a river boundary to the south. **In 2011, 400 homes and 1100 apartment units are planned for this area. Additionally, three large industrial facilities and a large new commercial area are planned. The City needs to provide the core infrastructure while the internal distributions will be provided by developers or the City.** The lack of this core infrastructure is already starting to limit growth.

The proposed WAWSP will be served by the Williston Regional Intake and WTP on the Missouri River, which has a current capacity of 10 million gallons per day (MGD). Domestic water demand projections indicate the WTP needs to be expanded immediately to 14 MGD to serve WAWSP, with a second expansion to 21 MGD required as soon as 2013.

Williams Rural Water District is Out of Water Capacity

WRWD, which is supplied by the City of Williston, is currently at capacity and has pending requests for at least 2,000 residential water hook ups. Additional requests are made on a daily basis. These hookups cannot be served without expanded capacity which this project will provide. In addition, the WRWD has two identified expansion areas that have been awaiting water service for many years.

Summary

In summary, the region has undertaken a great deal of research, analysis, and planning necessary to determine the most prudent and viable options to complete the WAWSP. All of the communities in northwestern North Dakota are experiencing tremendous population growth which has maximized and strained the existing infrastructure and now need to invest in infrastructure improvements to facilitate the continued extensive growth. These necessary improvements include roads, schools, parks, water, sewer, and emergency services. In total, the region anticipates much more than a billion (road improvements alone are nearly $1 billion on just township and county roads) dollars in necessary improvements over the next ten years while oil tax revenues in North Dakota are projected to exceed $2 billion in the coming biennium. Communities in northwestern North Dakota are addressing these issues to the best of their ability with limited financial resources. The oil industry would prefer to have a stable, permanent workforce; however, the region is bursting at the seams. Without adequate core infrastructure, the industry will utilize man camps and a transient work force to complete the exploration and recovery of oil throughout the Bakken region. The urgency for WAWSP is an effort to accommodate this hyper population growth.

Statistics of WAWSP Service Area

Population (2000 Census):	20,196
Population (2010 Census):	27,173 (35% growth from 2000 Census)
Projected peak population of the service area:	48,000 (138% growth from 2000 Census)
Rural residents to be served:	8,710 (18%)
City residents to be served:	39,290 (82%)

A detailed breakdown of the existing and projected population of each of the WAWSP users is included as Attachment A.

Governance

During the last two years, the WAWSP partners have evaluated several forms of governance which included:

- State Water Commission ownership of the project
  - Local control was desired
- Joint powers agreement between the entities - no new entity
- Joint powers agreement –new legal entity
- New political subdivision created by legislation
- New political subdivision using the commerce authority

The WAWSP partners have opted for a new political subdivision created by legislation as proposed under HB 1206.

Existing Governance of the Founding WAWSP Member Systems

City of Williston

- Commission form of city government
- Five elected commissioners
- Home rule city

McKenzie County Water Resource District

- Board of Directors with five members
- Appointed board by the McKenzie County Commissioners

Williams Rural Water District

- Board of Directors with seven members
- **Elected by members**

R&T Water Supply Association

- Board of Directors with five members
  - Mayor of Ray
  - Mayor of Tioga
  - One Council member from Ray
  - One Council member Tioga
  - One member of the Williams Water Resource District

Proposed WAWSP Governance

Initial Governance Developed By Founding WAWSP Member Systems:

- Board of Directors of eight members
- Two Board Members appointed from each member system
  - City of Williston
  - R&T Water Supply Association
  - McKenzie Water Resource District
  - Williams Rural Water District
- Additional political subdivisions or water systems may be given membership on the Board upon two-thirds majority vote of the Board of Directors.
- Weighted voting is allowed to recognize size differences between entities. This also allows the total number of Board Members to be manageable.
- Currently developing by-laws
  - Subject to approval by the North Dakota Attorney General

Governance Proposed By Senate Amendments to HB1206:

- Board of Directors of eleven members with terms of one year and may be reappointed.
- One Board Members appointed from each member system
  - City of Williston
  - R&T Water Supply Association
  - McKenzie Water Resource District
  - Williams Rural Water District
  - BDW Water System Association
- One Board Member appointed from each of the following County Commissions:
  - Burke County
  - Divide County
  - McKenzie County
  - Mountrail County
  - Williams County
- One Board Member appointed by the Governor from the North Dakota State Water Commission.
- Additional political subdivisions or water systems may be given membership on the Board upon two-thirds majority vote of the Board of Directors.
- Weighted voting is allowed to recognize size differences between entities. This also allows the total number of Board Members to be manageable.
- Currently developing by-laws
  - Subject to approval by the North Dakota Attorney General

Oversight of WAWSP Design and Construction Provided by HB 1206

HB 1206 provides for five levels of State oversight.

- Bank of North Dakota
- Public Finance Authority
- ND State Water Commission
- ND Legislature Budget Section
- Attorney General

As specified in HB 1206, State Water Commission cost share policy and procedures must be complied with including the following:

- Overall concept plan review and approval
- Construction plans and specifications review and approval
- Bidding and contract award review and approval
- Financial expenditures review and approval
- Quarterly project progress reports
- Project close out and final field inspection

A similarly-sized project of this type is currently underway with the South Central Regional Water District in the Bismarck area. The South Central Regional Project is locally-owned and controlled by a Board of Directors. State oversight is currently provided using the existing MR&I Program guidelines.

Prioritized Use of WAWSP Revenue

The member systems have made the commitment to contribute a minimum of 20 percent of the WAWSP capital cost from domestic water sales and the Operation and & Maintenance (O&M) costs for the domestic water delivery.

The WAWSP guiding principles established by the member systems provided the following priorities for the industrial water sales revenue:

- Production and transmission expenses of industrial water
- Debt repayment
- O&M Reserves

Upon full payment of the original debt, the WAWSA will develop a Capital Reserve Fund intended to fund system replacement costs in the long-term. Upon the full repayment of the WAWSP original debt and the establishment of all necessary Reserve Funds, the State loan will be repaid.

Following the repayment of the State loan, a formula will be applied to distribute any unobligated cash to the member systems or expand the system.

Financial Scenarios and Resulting Maximum Risk to State

- **WAWSP funding through typical grant funding through the Municipal, Rural, and Industrial (MR&I) Water Supply Program**
  - 75% grant funds
  - Funding WAWSP over the next five biennia would require $87.9 million (2011 dollars) in MR&I funds

- **WAWSP is able to meet industrial water sales projections**
  - Cost to the State approximately $8 million (2011 dollars)

- **WAWSP is able to sell only half of the industrial water it projects**
  - Project is able to cash flow throughout 20-year bond payment schedule
  - Project is able to repay $30 million State Water Commission long-term loan, however repayment is projected to be delayed until 2033
  - Cost to the State approximately $14.1 million (2011 dollars)

- **WAWSP is not able to sell ANY industrial water**
  - Project would require $111.7 million (2011 dollars) over the next twelve biennia
  - Only under this scenario, which is considered to be unlikely, does the cumulative impact of the proposed funding strategy exceed the costs of the grant funded project.

Advantageous current conditions for constructing WAWSP in the near term:

- Immediate need for domestic water
- Large, growing industrial water demand
- Record low interest rates
- Relatively low construction costs because of poor national economy

Private Water Supplier Opposition

"Project cost is likely to be $200 million not $150 million"

- The construction cost of the project is estimated at **$150 million**.
- The issuance cost of the bond is estimated at $2.4 million.
- The capitalized interest cost through the construction period is estimated at $30 million.
- The method of funding the required Debt Service Reserve can result in an increase in the par bond issue by as much as $41 million.

"The project is over- sized and should be reduced"

- WAWSP is sized to meet the peak day domestic water demands over a 20-year planning horizon which is the industry standard for long-term infrastructure planning.
- The WAWSP cost estimate represents the domestic water needs of the rural/regional water districts and municipalities in the WAWSP area.

"The business plan is not solid"

- The WAWSP worst case scenario of NO industrial water sales essentially results in similar funding for the project as would be provided through the traditional MR&I Program.

"Public water systems should not compete with private water systems"

- The price of the treated water from the WAWSP system is expected to be higher than the private provider pricing and therefore should not place unfair competition on the private providers.
- The industrial water demands in western North Dakota are excessive and it is expected that these needs will be met through many different water providers.
- The existing public water systems have been planning a regional water system for several years and have been individually selling industrial water in this region much longer than the private sector.
- The private providers will need to expand existing water capacity to meet the full industrial water demands - even after the WAWSP is fully implemented.

Other Topics

- There is strong local support for the project.
- The local systems have organized to resolve territorial disputes caused by rapid growth.
- The local systems have worked to develop a comprehensive, long-term solution to the region.
- The project organization is founded on local control which is closest to the people.
- The project is designed to accommodate long-term projected population growth while utilizing latent capacity during the growth period for industrial water sales.
- This is a unique opportunity to construct extensive core water infrastructure with little impact to the State funds and the local water rates.
- Forty percent of oil rig truck traffic applies to hauling freshwater for hydraulic fracturing purposes. The WAWSP is estimated to reduce township and county roadway infrastructure roads impacts between $29.4 million and $51.5 million.
- The conversion of irrigation permits to industrial water use is estimated to negatively impact the agricultural economy by as much as $11.7 million and $36.3 million over a twenty year period by diverting the water from crop enhancement. This is based upon information from the SWC in January 2011 on 13 irrigation permits temporarily converted to industrial use for a total of 1,121 acre feet of water and impacting 2,837 agricultural acres.

Attachment A

WAWSP Sponsors and Participants, Current Population, Expected Peak Population, Percentage Growth

Project Participants	2000 Census	2010 Census	Estimated Current Population	Expected Peak Population[1]	% Growth 2000 to Peak
City of Williston					
City of Williston	12,512	14,716	17,500[1]	27,000	116%
Williams Rural Water District	707	3,200[2]	3,200[2]	4,960	602%
City of Grenora	202	244	200[2]	310	53%
Blacktail Dam Service Area Exp.	0	400[3]	400[3]	620	620%
Ray/Tioga Service Area Expansion	0	500[3]	500[3]	780	780%
Trenton Water Users Cooperative	187	460[2]	460[2]	710	280%
R&T Water Supply Association					
City of Ray	534	592	600[2]	930	75%
City of Tioga	1,125	1,230	1,600[1]	2,400	113%
City of Stanley	1,279	1,458	1,750[1]	2,600	103%
City of Wildrose	129	110	140[2]	220	71%
City of Crosby	1,089	1,070	1,090[2]	1,690	55%
City of Ross	48	97	300[3]	470	879%
BDW Rural Water System					
City of Fortuna	31	22	25[2]	40	29%
City of Ambrose	23	26	75[2]	120	422%
City of Noonan	154	121	150[2]	230	49%
City of Columbus	151	133	150[2]	230	52%
McKenzie County Water Resource District					
City of Watford City	1,435	1,744	1,950[1]	3,050	113%
MCWRD – System I	175	450[3]	450[3]	700	300%
MCWRD – System II	300	300[3]	300[3]	470	57%
MCWRD – System IV	0	300[3]	300[3]	470	470%
Total Current Estimated Service Population	**20,196**	**27,173**	**31,140**	**48,000**	**138%**

1 "North Dakota Communities Acutely Impacted by Oil and Gas Development" Ondracek, Witwer, and Bertsch, December 2010
2 North Dakota Department of Health, Municipal Facilities, Public Water Systems Total Population Served, 2007
3 Estimated

WESTERN AREA WATER SUPPLY PROJECT
DRINKING WATER SYSTEM FACT SHEET

WATER FOR THE PEOPLE AND INDUSTRY

- The Western Area Water Supply Project (WAWSP) is a comprehensive domestic water project utilizing Missouri River water to meet the municipal, rural, and industrial water needs for all or parts of McKenzie, Williams, Divide, Burke, and Mountrail Counties (including the Cities of Williston, Watford City, Ray, Tioga, Stanley, Wildrose, and Crosby).
- The primary focus of the project is to supply drinking water for the estimated regional population peak of 48,000 expected in 2032.
- The system will utilize its unused capacity during the growth period to sell water to the oil industry, which is projected to pay for 80 percent of the initial project cost.

Local Unified Support:

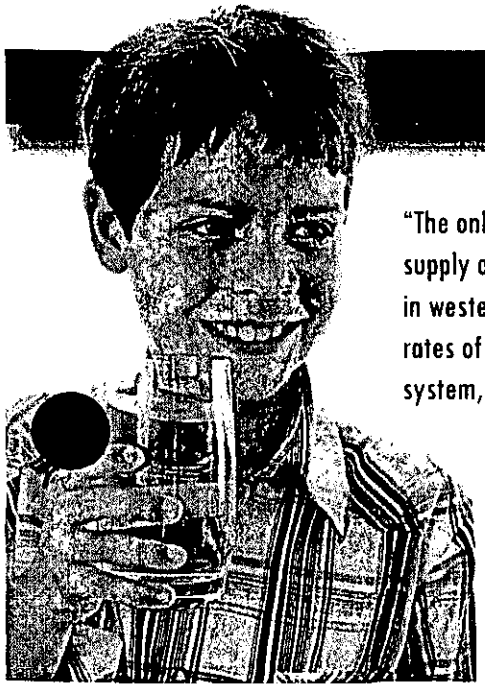
- City of Williston
- Williams Rural Water District
- McKenzie County Water Resource District
- R&T Water Supply Association

These systems have been developing a solution to the water needs in the region for several years and concluded the formation of the Western Area Water Supply Authority (WAWSA) to corroboratively address drinking water needs of the current population and the estimated 20,000 people that will be moving into the region over the next 15 to 20 years is the best solution.

AQUIFERS CANNOT SUPPLY QUANTITY AND QUALITY WATER

According to studies by the State Water Commission, the regional aquifers cannot adequately handle the amounts of water needed to supply the oil industry and the growth in the region.

- R&T Water Supply Association has reached the safe yield capacity of its aquifer (in 2010, the system exceeded its groundwater appropriation from the Ray Aquifer). Additional appropriations cannot be obtained quickly.
- Regional and municipal water systems in the region currently utilizing groundwater, including BDW Rural Water District and McKenzie County Water Resource District, are suffering numerous challenges such as poor water quality and insufficient quantity.
- The State Water Commission is charged with protecting the rights of senior water permit holders. In doing so, the permit review and approval process for additional groundwater permits may take years to complete.



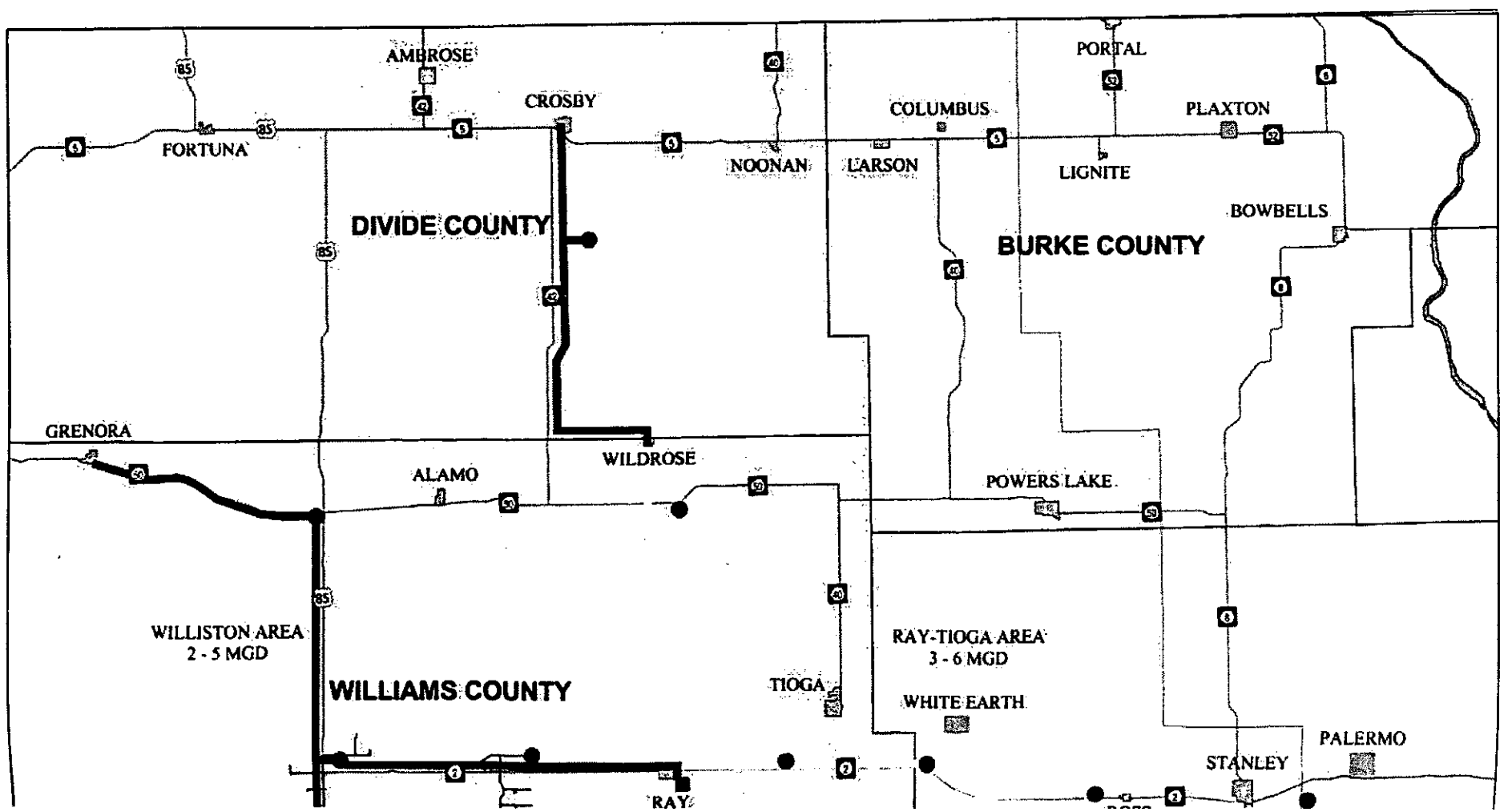
THE BEST SOLUTION TO MEET REGIONAL NEEDS

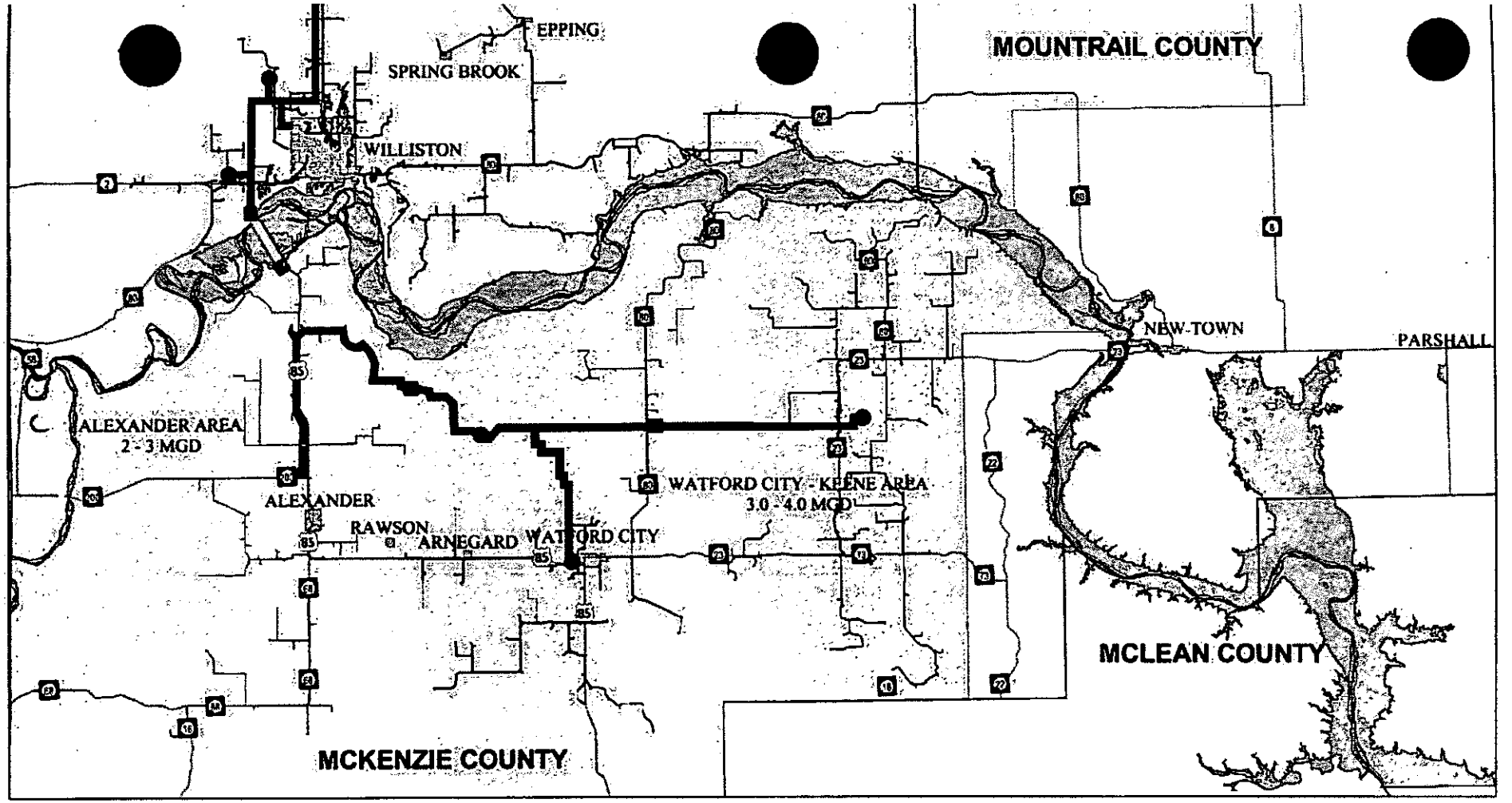
"The only plentiful and dependable supply of water for the oil industry in western North Dakota, at projected rates of extraction, is the Missouri River system, including Lake Sakakawea"

ND State Water Commission Investigation #49

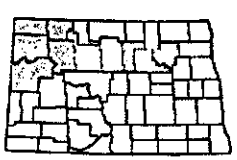
- The City of Williston utilizes the Missouri River as its source and holds a senior water permit already, reducing the role of the US Army Corp of Engineers.
- This plan maximizes infrastructure already in place and combines the efforts of many entities for the good of the entire region and State.
- An independent study conducted by the Garrison Diversion Conservancy District concluded that a regional approach, such as WAWSP, was the most economical solution to solve the water supply problems of the region.

MAP OF WAWSP AREA





- WTP/INTAKE EXPANSION/IMPROVEMENTS
- PUMP STATION
- RESERVOIR/BULK FILL
- EXISTING DISTRIBUTION SYSTEM
- PROPOSED RURAL WATER DISTRIBUTION SYSTEM
- DISTRIBUTION SYSTEM UNDER CONSTRUCTION
- NORTH SERVICE AREA (3 MGD OIL INDUSTRY WATER DEMAND)
- SOUTH SERVICE AREA (4 MGD OIL INDUSTRY WATER DEMAND)
- EXISTING/FUNDED TRANSMISSION LINES
- McKENZIE/WILLIAMS RURAL WATER DISTRICT IMPROVEMENTS PROJECT
- RAT WATER SUPPLY ASSOCIATION IMPROVEMENTS PROJECT
- CITY OF WILLISTON IMPROVEMENTS PROJECT



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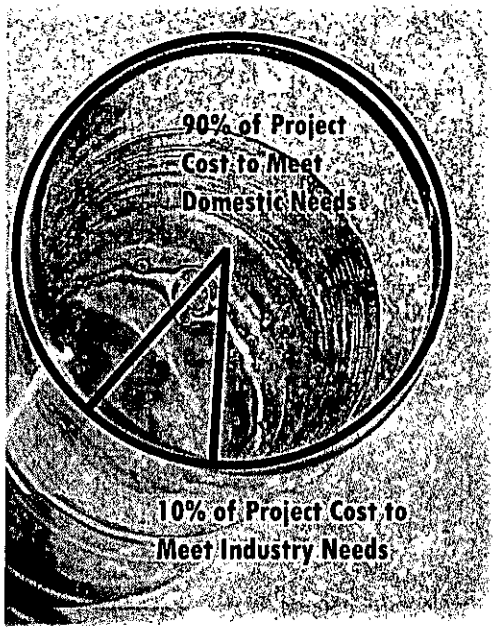
Scale in Feet

WESTERN AREA WATER SUPPLY PROJECT
DRINKING WATER SYSTEM FACT SHEET
MARCH 2011

;CAL RESPONSIBILITY IS A TOP PRIORITY



- WAWSP has an estimated project cost of $150 million. Approximately 90 percent of this project cost is to meet the domestic water use (drinking water needs) of the entire region. Ten percent of the project cost is to meet the needs of the oil industry.
- The 10 percent investment in meeting oil industry needs will in turn finance approximate 80 percent of the project.
- A typical regional water supply project utilizes a 75 percent State or Federal grant and 25 percent local match formula. Most regional projects need to acquire the 75 percent grant to make it feasible to affordably provide a clean, adequate drinking water. In addition, there is often a 10-year wait to implement the project.
- Conversely, WAWSP proposes a 20 percent State "grant" over two biennia, covering the remaining project balance through a revenue bond issuance by local WAWSA entities, with a moral obligation from the State of North Dakota as a back stop.
- Projections include repayment scenarios of all grant funds which will be repaid following the debt repayment period.

GNIFICANT STATE OVERSIGHT

- First, a private review of the bond must occur to identify investors. Next, project financing must undergo examination by the North Dakota Public Finance Authority, the Bank of North Dakota, and the Budget Section of the North Dakota Legislature.
- The WAWSA bylaws must be reviewed and approved by the Attorney General.
- WAWSA will also report to the State Water Commission on project financing and project planning, design, and construction.
- The project grant funds are included in the State Water Commission budget, which is subject to approval by the North Dakota State Legislature.

ADDITIONAL BENEFITS TO REGION AND TO THE STATE

- Preliminary studies have shown that a water system such as WAWSP will save an estimated $29-51 million over the next 20 years in wear and tear on county and township road systems due to reduced oil industry traffic.
- In addition, less truck traffic on the roadways also translates into priceless safety benefits.
- This funding plan which primarily uses bond financing reduces competition for dollars to complete the other needed water infrastructure projects in North Dakota such as Fargo flood control, Devils Lake outlet, Grand Forks treatment plant, and other rural water projects.
- This project will utilize a State resource (Missouri River) for the good of the region, and in turn will boost the economic health of the entire State.

For questions or to request additional information about WAWSP, please contact:

Gene Veeder
(701) 444-2804
gveeder@co.mckenzie.nd.us

Mayor Ward Koeser
(701) 701-577-8100
ward@nccray.net

TESTIMONY FOR HB1206
April 1, 2011

Good morning Chairman Holmberg and committee members. My name is Ward Koeser and I serve as Williston's mayor. I am here today to ask for your support of HB1206.

Northwest North Dakota has a valuable natural resource that needs to be developed and it's not oil. It's water. Over 90 per cent of the surface water that flows through North Dakota is in the Missouri River and it flows right past Williston. HB 1206 allows for the development of that resource as part of a regional system that would serve communities and rural customers in this rapidly growing area.

Williston has experienced a 35% population growth in the past 4 years and anticipates further rapid growth over the next 10 years, possibly a doubling of our population. With that growth comes the need for additional treated water as we serve not only our citizens but those of neighboring communities and those who choose to live in a rural setting.

We have always wanted to find a way to involve the oil industry to help pay for the necessary infrastructure as they work in our region. HB 1206 does just that by allowing the Western Area Water Supply authority the ability to sell water to the oil industry, funding the development of the expanded system. After the oil resource is developed and drilling stops, this expanded water system will be a tremendous asset to the region and state allowing for industries that require a substantial amount of treated water.

It is estimated that the oil industry will purchase between $70 and $100 million dollars worth of water in 2011. If HB 1206 passes and we begin construction of the system this year, the cash flow from those sales made by the authority will be put to good use in the

public interest. At present a number of communities as well as independent water suppliers are selling to the oil industry. We see this scenario continuing with all water sellers being successful.

Williston has long promoted the regional concept when it comes to promoting and building the Northwest corner of the state. We have a good working relationship with those who supply water to the surrounding rural areas and communities and will continue to work together with them to make sure an adequate supply of treated water is available for our future growth.

We believe that a locally operated system will be the most responsive to the water needs of the region and that utilizing Williston's water treatment plant to supply the needed treated water from the Missouri River is the best solution to meet the growth challenges of the region.

Thanks in advance for your support of HB 1206.

April 1, 2011
The Honorable Senator Ray Holmberg
& Committee Members
Bismarck, ND
Re: Support for Bill HB1206 – Western Area Water Authority

Mr. Holmberg and Members of the Committee:

Thank you for this opportunity to testify in support of HB1206.

The WAWSP would be a huge benefit to Williams Rural Water District, R & T Water Supply, City of Williston and McKenzie County Rural Water.

Williams Rural Water District is nearing maximum capacity on the West and North lines of our system and there are several requests every day from individuals, commercial and industrial users, some of which use several thousand gallons of water every month.

We currently have several hundred possible hookups. They are as follows:

Blacktail Dam Recreation Area – 116 possible hookups
Phase 4 – 43 possible hookups
Waiting to get hooked up – approx. 70
Future hookups – Rich Vestal – large commercial building
Bob Horab – Ready mix plant & shop
Rangeland Colt – subdivision – needs to fill three 5 million gallon tanks
Jay Stetson – 300 home subdivision
Northern Improvement – 40 hookups for shop & man camp
David Everson – 27 hookups for subdivision
Russ & Debbie Gibson – 200 home subdivision
Jon Heller – 10 home subdivision
Charles Cartier – Little Muddy Estates – 45 home subdivision
Knife River – Ready Mix Plant, 5 trailers & shop – 35,000 gpd
A possible 1,700 home subdivision
Strata Corp – Ready Mix Plant – 35,000 gpd

Williams Rural Water District does not have the capacity to serve any of the possible hookups at this time. It would be a minimum of one year before we can serve anyone, if at all.

Williams Rural Water District cannot justify charging higher rates to the existing customers.

The Williston area is seeing tremendous growth because of the oil industry and our system is not capable of growing without the help of the Western Area Water Supply Project.

What happens if WAWSP isn't passed? Without WAWSP, what are the chances of Williams Rural Water District getting the money needed to expand our system and increase our capacity to serve the user's mentioned earlier?
Even if Williams Rural Water District were to receive some funding, where would our water come from? Without WAWSP, the City of Williston will not be able to expand their water treatment plant, so we would not be able to purchase more water, which means that our source of water would still be limited for all of current and future requests.

We urge you to support this bill so that we can continue to build the infrastructure we need to keep up with the expected growth of our area.

Rick Olson

April 1, 2011

Re: Support for HB 1206

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify in support of HB 1206. My name is Jerry Ranum and I am the President of the R&T Water Supply Association. The Association serves the cities of Ray, Tioga, Stanley, Wildrose and the Hess Gas Plant. We are scheduled to connect the City of Crosby and the BDW rural water system next year.

The City of Stanley has turned down multiple requests to connect to its pipeline, the City of Ross has asked for water service, and the Hess Gas Plant is doubling its capacity. Housing and commercial developments in the area are looking to develop along the R&T Water line for a reliable water source. There are lines 10 trucks or more long many times at the bulk water sales depots.

Demand is increasing for water in our area and the Ray aquifer alone cannot meet the demand. Farmers who irrigate their land have expressed concern to the board regarding depleting ground water sources. R&T Water is already producing at its maximum permitted usage. We will need to get water from the Missouri River in order to continue to grow.

The R&T Water Supply Association and its members pledge complete support of the Western Area Water Supply Project.

Thank you for your time.

NORTH DAKOTA PETROLEUM COUNCIL

Ron Ness
President

Marsha Reimnitz
Office Manager

120 N. 3rd Street • Suite 200 • P.O. Box 1395 • Bismarck, ND 58502-1395
Phone: 701-223-6380 • Fax: 701-222-0006 • Email: ndpc@ndoil.org

House Bill 1206

Senate Appropriations Committee

April 1, 2011

Chairman Holmberg and Members of the Committee. My name is Ron Ness; I am the President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 280 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. I appear before you today in **support of HB 1206**.

In November of 2009, the oil industry, state leaders, and the western water community started meeting to discuss the need for adequate water resources for the Bakken play in western North Dakota. The Bakken Play is an incredible resource but with today's technology, it requires a substantial amount of water to fracture stimulate these wells. The industry plans to drill 1,500 – 2,500 wells per year for the next 10 years (roughly 15,000 – 25,000) and potentially thousands of in-field wells thereafter. Considering the range of 1.9 – 3.8 million gallons per well, we estimate it would take approximately 3,000 fracs to pay for this water system. These production estimates would provide sufficient demand to fund repayment of the state bonds.

Quick Statistics: *Source: Corps of Engineers Surplus Water Study Dec 2010, (6-12 AF consumption) NDIC Presentation to House Appropriations Committee Jan 2011*

- Each well requires **1.9 - 3.8 million gallons of water**
- 2,100 new well x 1.9 – 3.8 million = **3.99 – 7.98 billion gallons per year**
- 3.99 – 7.98 billion gallons of annual water / 365 days = **11 - 22 million gallons per day**
- The current water commission permitted and deliverable volume is **7 million gallons per day**
- City municipals have been trying to compensate for what private water cannot provide (currently about **8 million gallons of water per day**)

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LETTER OF INTENT TO PURCHASE BULK WATER FROM THE WESTERN AREA WATER SUPPLY PROJECT

The undersigned company is an active participant in the oil and gas play in Western North Dakota. Along with other oil and gas industry businesses, we rely on a reliable source of quality water to support our resource exploration efforts. We expect that our water needs will continue and may even increase in the future, so a reliable water supply is important to our operations.

We have reviewed the planning documents for the Western Area Water Supply Project (WAWSP), which proposes to distribute treated water from the Williston Treatment Plant throughout Western North Dakota. The WAWSP includes options for water supplies through water depots and also through a pipeline directly to a private water supply location, such as a business or a well for production. We are also aware of the pricing proposed for this water supply, which may range from $15.00-20.00 per 1,000 gallons.

If the Western Area Water Supply Authority is created and this WAWSP is constructed, it is the intent of the undersigned that it would purchase water from the Authority for a bulk water supply so long as the water was available for a reasonable price and was generally available in the area where the undersigned needs water.

By: _____ Date: March 24, 2011

An Authorized Representative of:

COMPANY: XTO Energy Inc

ADDRESS: 210 Park Avenue #2350 OKC, OK 73102

HESS CORPORATION
3520 N. Broadway
Minot, ND 58701

March 25, 2011

To Whom It May Concern:

We support HB 1206 currently under consideration in the State Senate, which establishes the Western Area Water Supply Project (WAWSP). A reliable water supply and distribution system are critical not only to the oil industry but other industries and the rural communities of western North Dakota. We believe the WAWSP will play an important part, along with private water producers, in the orderly development of industry and the establishment of a robust water supply system to support all the needs for western North Dakota.

Respectfully,

Jeff Wirth, on behalf of the Hess North Dakota Leadership Team

Hess North Dakota Leadership Team

Jeff Wirth
Manager, North Dakota Operations

Rory Nelson
Manager, Tioga Gas Plant

David McKay
Director, Bakken Project Team

Scott Sollee
Manager, Bakken Growth Team

12 A

Samson

SUITE 3000
370 17TH ST
DENVER CO 80202
USA
720/587-2500
FAX: 720/904-1392

March 22, 2011

McKenzie County Water Resource District
P.O. Box 699
Watford City, North Dakota 58854

Gentlemen:

Samson Resources Company is a privately held oil and gas exploration company started 40 years ago in Tulsa, Oklahoma, and is an active participant in the Bakken oil and gas play in Western North Dakota. We rely, as do other exploration companies and vendors, upon a reliable source of quality water to develop this North Dakota natural resource. We anticipate that the need for an adequate supply of water to explore our leases will continue at its present level and will likely increase in the future.

Recognizing that there are many interests in the State that rely on water, both as users and providers, we support the proper management of this resource for the benefit of all in the State in order to maximize the overall positive economic impacts while minimizing any unintended consequences. We recognize that there can be impacts on the roads and the citizens of the State when significant quantities of water are transported via truck, and we feel that the Western Area Water Supply Project (WAWSP) provides a solution to reduce these impacts.

We have reviewed the planning documents for the WAWSP, which proposes to distribute treated water from the Williston Treatment Plant throughout Western North Dakota via water depots and pipelines directly to private water supplies. We are also aware that the pricing proposed for this water supply may range from $15.00-20.00 per 1,000 gallons and that 80% the projected cost of $150 million would be borne by the oil and gas industry. In light of these understandings we support the WAWSP and its related HB 1206 that is now being considered by the North Dakota legislature.

If the Western Area Water Supply Authority is created and this WAWSP is constructed, Samson would give serious consideration to utilizing this source for water and, based on currently available information, intends to purchase water from the Authority so long as the water is available for a reasonable price and is generally available in the areas of our operations.

Sincerely,

SAMSON RESOURCES COMPANY

Rich Frommer
Vice President

Cc: North Dakota Petroleum Council
North Dakota Industrial Commission

B

HALLIBURTON

Comments Given by Brent Eslinger, District Manager, North Dakota

North Dakota State Senate: Industry, Business, and Labor Committee
Hearing on Western Area Water Supply Project
March 3, 2011

Good morning. My name is Brent Eslinger and I am the North Dakota, District Manager for Halliburton. I have been employed by Halliburton for 23 years and am responsible for the company's operations in the state of North Dakota. I have been asked to speak to you today about the growth of Halliburton's business operations in the state, and our industry's long-term water needs here. Halliburton provides jobs, tax revenue, charitable donations and support for North Dakota and its residents – and our commitment to the state continues as we expand our operations here.

Halliburton is not new to North Dakota. We've been an employer here since 1984 — during down cycles as well as boom times. We currently provide jobs for more than 750 people in the state, and we are hiring more all the time. We are committed to providing our customers with the expertise and services they need as they continue developing the vast resources of the western area.

Halliburton currently operates six facilities in North Dakota, and we continue to expand in places like Williston and Minot. This boom in North Dakota is definitely different from previous upticks in activity. For example, new, advanced technologies have been introduced into the market that make it more feasible to sustain production. Also, indications are that the industry will be drilling new wells for years to come. On Jan. 2, The Associated Press (AP) quoted North Dakota Department of Mineral Resources Director Lynn Helms as saying that in the next four to seven years, oil

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production could double. According to the AP, government and industry officials are also projecting that the total recoverable oil in the Bakken and Three Forks-Sanish formations may be more than twice the current estimates. Ron Ness, president of the North Dakota Petroleum Council, told the AP that he expects up to 2,000 new wells to be drilled in the state this year. Moreover, even after all the wells are drilled, they will still need to be maintained.

North Dakota is poised to become the No. 2 oil-producing state in the country by 2015, and Williston is the strategic location to provide the required services for the oil industry, but a lack of infrastructure is slowing North Dakota's economic growth — costing the state, local communities and businesses money and jobs. In addition to the need for more housing developments, water is vital to oil-industry activities — from drilling and well completion to maintenance and refining.

Halliburton does not purchase or dispose of water — it is the responsibility of oil companies, which are our customers, to provide water for our operations. Halliburton then uses the water on-site to complete fracturing operations. This is a standard process for all service companies.

Halliburton is a leading provider of hydraulic fracturing technology, which is the key to unlocking these unconventional reserves. The main elements of a typical frac job are water, sand and pressure. For example, an average of 2 million gallons of water is required for completing each new well. As a leading provider of hydraulic-fracturing

technology for our industry, Halliburton understands that water is a precious resource. We continue to develop industry-leading technologies, such as dry-gel blending and water recycling, that seek to reduce the amount of potable water needed to perform our operations.

That being said, operators are expected to drill approximately 2,000 wells this year in Western North Dakota, and the total amount of water required to fracture those wells ranges from 11 million to 23 million gallons *per day* — and this is considering only Bakken and Three Forks/Sanish wells. Horizontal well completions are now also being contemplated for several other oil- and gas-bearing formations in the region. Looking forward over the next 10 to 20 years, the industry is projected to need 40 to 80 billion gallons of water to drill, fracture, stimulate and refracture thousands of wells in the state.

Halliburton looks forward to serving our customers for many years to come in North Dakota, and we support any efforts by the state that provide the essential resources needed to continue the development of energy resources in the region. The Western Area Water Supply Project represents an important investment in the Williston area — one that will encourage development and permanent growth, and will have long-term benefits for the state, its residents and its businesses.

Whiting Oil & Gas Corp
528 21st St. West
Dickinson, ND 58601

Mr. Ron Ness
President
ND Petroleum Council
120 N. 3rd St. Suite 200
Bismarck, ND 58501

Mr. Ness,

I am sending this letter in support of the Western Area Water Supply Authority bill that comes before the Industry, Business and Labor Committee this Thursday morning. I don't believe there is any question that this bill should not be supported by anyone living or working in North Dakota. First and foremost as a lifelong resident of western North Dakota, I believe this is a golden opportunity to provide our residents with an abundant supply of quality water from a state owned resource that needs to be tapped and utilized not only for us but for a growing base of future generations in western North Dakota.

The growth and expansion of the communities and business culture in western North Dakota will largely depend on the natural resources we are able to put to use in an environmentally safe and secure atmosphere. Quality water is the key to any thriving business ecosystem whether it is residential, farming, ranching, energy or recreation.

With the growth in our population, related mostly to the energy sector, and current need to sustain our healthy energy economy which has benefited all of North Dakota, we need this supply of quality water to keep western North Dakota moving forward. As the demand only increases from our residents and business climate, the current supply of water can not sustain our growth. With each oil well using over two million gallons of water during completion procedures (times 160 wells per month) and the number of people transplanting here and in need of quality water; it very clear this bill not only needs to pass but do so expediently so as to move this project on a fast track to fruition.

Please express my support and concerns to committee chairs Senators Klein and Nodland on this extremely important and beneficial bill that will keep all of North Dakota a great place to live and work.

Blaine Hoffmann

Superintendent
Whiting Oil & Gas Corp

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Testimony of Steve L. Burian, P.E.
ND Senate Appropriations Committee
HB1206 Western Area Water Supply Project
Bismarck, North Dakota – April 1, 2011

INTRODUCTION

Chairman Holmberg and members of the Committee, my name is Steve Burian and I am the CEO of Advanced Engineering and Environmental Services, Inc. (AE2S). Our firm has been selected by the four sponsoring entities of the Western Area Water Supply Project (WAWSP), McKenzie County Water Resource District (MCWRD), City of Williston, Williams Rural Water District (WRWD), and R&T Water Supply Association (R&T WSA). In October of last year, these partners joined forces through a memorandum of understanding to collaboratively work to solve the region's water supply issues through a regional water supply system and have asked AE2S to assist them in solving the water supply issues for the people in a timely fashion to keep up with the growth in oil country.

My written testimony today is broken up into five parts which include: the need for the project, projected population and water demands for the region, the project description, the business plan and financial analysis, and some supplemental analyses that were completed to answer questions as the legislative session has proceeded.

SUMMARY OF KEY POINTS

In a somewhat unorthodox approach, please let me summarize my testimony before I provide additional details as desired. I would like to lead with the following key points:

- The WAWSP is being driven by significant population growth and associated strains on the existing domestic water supplies in northwestern North Dakota.
- The WAWSP was proposed by local sponsors with strong local support to serve the projected peak day domestic water demands of the region at an estimated cost of $150 million.
- Feedback from the State indicated that the WAWSP could not be funded in a timely fashion under the conventional MR&I grant program from the Resources Trust Fund without impacting other priority water projects.
- A creative approach to funding the WAWSP through $30 million of long-term loans from the State and local bonds backed by the State was proposed under HB1206. The creative approach requires strategically placed water depots along the already proposed domestic transmission line routes. Revenues from the combination of domestic and industrial water sales would then be used to pay back the loans and bonds.
- Considerable technical and financial analyses through the WASWP business planning process suggest the proposed funding strategy will successfully limit the State's contribution to the project to the carrying costs of the long-terms loans, preventing further competition for the

Resources Trust Fund. In the event of a default, the project sponsors are required to assume 20 percent of any annual revenue shortfall.

- Bonds backed by the State require due diligence examination by the Public Finance Authority and the Bank of North Dakota. In addition, the bonds cannot be issued unless and until the Budget Section approves the financing plan.
- In addition to the financial analysis we have completed on the project, extensive analysis will also be completed by the investment bankers in their due diligence process. Bob Campbell, Barclays Capital, has provided ongoing financial advisement throughout this planning process and in consideration of the Committee's allotted time for accepting verbal testimony, please accept his written testimony relating to HB1206.
- New information on projected industrial water demands from Lynn Helms, Executive Director, North Dakota Department of Mineral Resources, since completion of the original draft Business Plan indicates that only 13 to 15 percent of the industrial water demands in northwestern North Dakota will need to be supplied by the project for the proposed funding strategy to be successful. These new developments have considerably lowered the risk of the proposed financing strategy for the State and project sponsors, while leaving substantial additional water sales for other public as well as private interests.
- Amendments to HB1206 limiting the bond issue to $75 million plus other costs in the 2011 to 2013 biennium are expected to increase the feasibility of the proposed funding strategy as the bonded indebtedness is significantly decreased while the anticipated revenues from water sales are only slightly reduced. Under this limitation, the second expansion of the Williston Regional Water Treatment Plant (WTP) will not be completed and rural water users and the City of Grenora will not be served until additional bonds or funds are authorized in a future biennium.
- Risk projections for the State indicate that only under the most extreme case of **no** industrial water sales will the proposed funding strategy have a higher present value cost than the more typical MR&I funding strategy.

NEED FOR THE PROJECT

Expanding energy-related activities have brought great opportunity to northwestern North Dakota, but at the same time have also brought significant challenges. One of the most significant challenges facing the region is meeting the growing water demands due to the large work force moving into the area. The labor demands associated with this oil boom have resulted in tremendous regional population growth over the past couple of years. Recent housing studies have predicted populations may increase by as much as 50 percent for several of the larger communities in the northwest region including the cities of Williston, Watford City, Tioga, and Stanley. This extreme growth is unprecedented and follows a lengthy period of population decline in the region. Therefore, the growth has strained existing municipal and rural water systems' ability to provide the ever growing domestic water demands.

Each of the WAWSP partners has compelling justification for the immediate need for WAWSP implementation, including:

- **McKenzie County Water Resource District.** The MCWRD is working to get service to well over 500 rural users that currently rely on untreated water supplies. In June 2010, the citizens of the City of Watford City also voted to change its water source to the City of Williston with voter approval of **over 90 percent** to address water quality issues.
- **City of Williston.** The City of Williston needs to expand and the only viable option for large scale expansion is in the higher elevations northwest of the City, as the City has rugged terrain to the east and a river boundary to the south. In 2011, 400 homes and 1,100 apartment units are currently planned for this area. Additionally, three large industrial facilities and a large new commercial area are planned. The lack of core water infrastructure is already starting to limit growth. The capacity of the water treatment plant will also become a limiting factor unless the facility is expanded to meet the regional water needs.
- **R&T Water Supply Association.** The R&T WSA is currently working to expand its water treatment system to increase the domestic capacity for the City of Stanley and has also agreed to provide water to the City of Wildrose, City of Crosby, and Burke, Divide, Williams Rural Water. In July 2010, the citizens of the City of Crosby voted to change its water source to the R&T WSA with an overwhelming majority of **over 97 percent**. In 2010, the R&T WSA utilized its full allocation of water from the aquifer.
- **Williams Rural Water District.** The WRWD is supplied water by the City of Williston. The rural system has no additional capacity for expansion. The WRWD has pending requests for over 2,500 residential water hook ups as well as several commercial users. Additional requests are made on a daily basis. These hook ups cannot be served without expanded capacity which this project will provide.

PROJECTIONS

Population

The projected domestic water demands used in this evaluation were based on population projections from each entity anticipated to receive water service from the WAWSP. The population projections were based on the housing demand studies recently completed by the firm, Ondracek, Witwer, and Bertsch located in Minot, ND. To estimate the population that the WAWSP will serve, similar growth patterns were assumed for all project participating communities based on growth patterns from the report titled "*North Dakota Communities Acutely Impacted by Oil and Gas Development*". Table 1 provides a summary of the WAWSP project participants and their historical and projected populations. It is anticipated the population will peak at 48,000 people within the WAWSP service area. As presented in Table 1, the projected peak population demonstrates a range of population growth between **29 to 879 percent growth** since the 2000 Census. Overall, the average population growth during this time period is projected to be 138 percent. The resulting domestic water demands cannot be met through existing water supply and infrastructure alone.

Domestic Water Demands

Projected average day and annual domestic water demands for residential, commercial, institutional, and municipal water users were estimated by multiplying the population projections by an assumed per capita

Project Participants	2000 Census	2010 Census	Estimated Current Population	Projected Peak Population[1]	% Growth 2000 to Peak
City of Williston					
City of Williston	12,512	14,716	17,500[1]	27,000	116%
Williams Rural Water District	707	3,200[2]	3,200[2]	4,960	602%
City of Grenora	202	244	200[2]	310	53%
Blacktail Dam Service Area Exp.	0	400[3]	400[3]	620	620%
Ray/Tioga Service Area Expansion	0	500[3]	500[3]	780	780%
Trenton Water Users Cooperative	187	460[2]	460[2]	710	280%
R&T Water Supply Association					
City of Ray	534	592	600[2]	930	75%
City of Tioga	1,125	1,230	1,600[1]	2,400	113%
City of Stanley	1,279	1,458	1,750[1]	2,600	103%
City of Wildrose	129	110	140[2]	220	71%
City of Crosby	1,089	1,070	1,090[2]	1,690	55%
City of Ross	48	97	300[3]	470	879%
BDW Rural Water System					
City of Fortuna	31	22	25[2]	40	29%
City of Ambrose	23	26	75[2]	120	422%
City of Noonan	154	121	150[2]	230	49%
City of Columbus	151	133	150[2]	230	52%
McKenzie County Water Resource District					
City of Watford City	1,435	1,744	1,950[1]	3,050	113%
MCWRD – System I	175	450[3]	450[3]	700	300%
MCWRD – System II	300	300[3]	300[3]	470	57%
MCWRD – System IV	0	300[3]	300[3]	470	470%
Total Current Estimated Service Population	**20,196**	**27,173**	**31,140**	**48,000**	**138%**

1 "North Dakota Communities Acutely Impacted by Oil and Gas Development" Ondracek, Witwer, and Bertsch, December 2010
2 North Dakota Department of Health, Municipal Facilities, Public Water Systems Total Population Served, 2007
3 Estimated

Table 1: WAWSP Sponsors and Participants, Current Population, Projected Peak Population, and Projected Percentage Growth since 2000

water demand, or gallons per capita per day (gpcd). Based on historical water use patterns for western North Dakota, a per capita demand of 160 gpcd was utilized to establish the average day and annual water demands. A peaking factor of 3.0 was utilized to establish peak day water demands. The projected domestic peak day water demands for WAWSP are anticipated to peak at approximately 23 million gallons per day (MGD) in 2032 and decline to approximately 19 MGD at the end of the population planning period in 2035. Figure 1 illustrates the projected domestic average and peak day water demands.

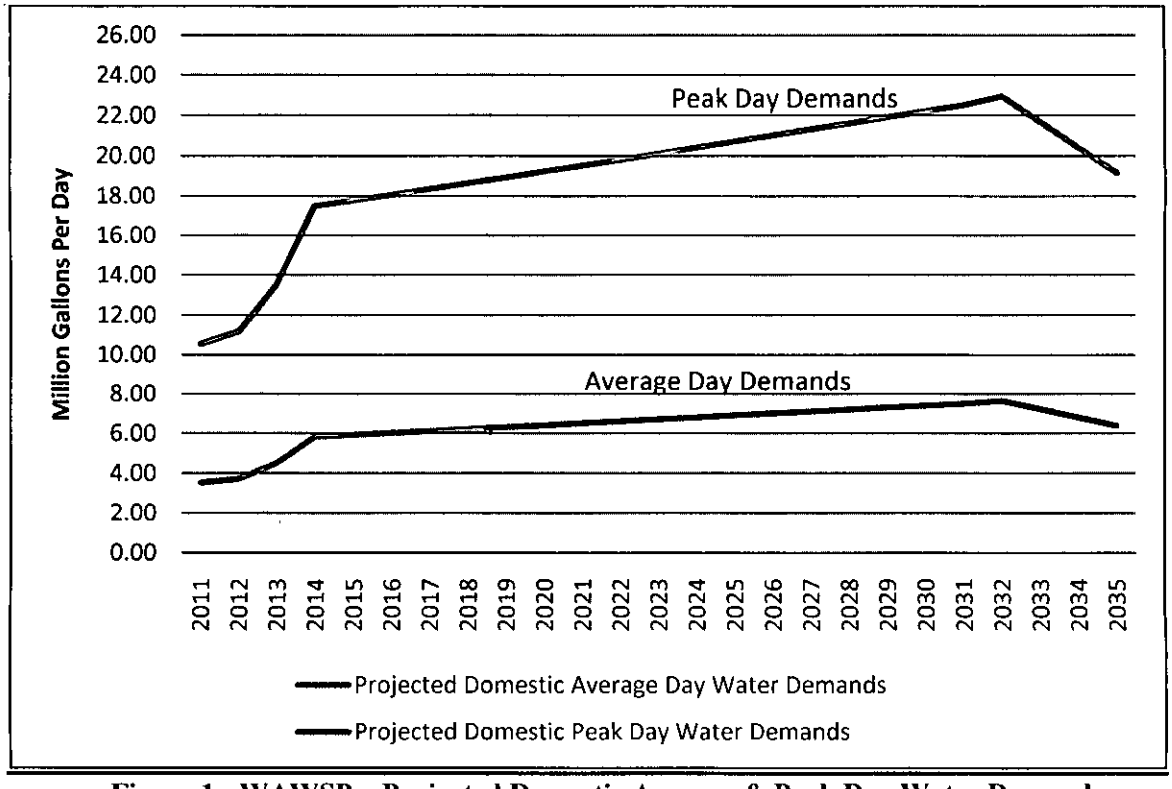

Figure 1: WAWSP – Projected Domestic Average & Peak Day Water Demands

PROJECT DESCRIPTION

Developed to Serve Existing Water Systems and Sized to Meet Long-Term Domestic Water Demands

In order to serve the anticipated regional domestic water demands, a conceptual design was been developed for the WAWSP. The conceptual design included the following major components: 1) an expansion of the Williston Regional WTP; 2) a main transmission system through Williams County providing service to northwest Williams County and connecting to existing R&T WSA transmission lines serving eastern Williams and western Mountrail counties; 3) an extension of the existing R&T WSA transmission main from Wildrose to Crosby; 4) a main transmission system through McKenzie County; and 5) several rural water distribution systems throughout the WAWSP service area.

The WAWSP includes the construction and/or expansion of rural water distribution systems. The MCWRD plans to expand System I in the rural Watford City area. It will also construct System IV, a new rural water distribution system in western McKenzie County. The WRWD has several rural water system expansions planned, including expansions adjacent to Williston, north of 13 Mile Corner in the Black Tail Dam area, and in the rural Ray and Tioga area.

As proposed, the region would have peak water supply and treatment capacities ranging from 13.2 MGD initially up to 24 MGD through the initial construction phases of the WAWSP. The system should have

sufficient capacity to meet the projected domestic peak day water demands based on the stated population growth assumptions.

While domestic water supply and treatment systems are designed to meet projected peak day demands, these demands are typically not realized until near the end of a planning horizon, and the intermittent peak day demands that domestic water systems experience are typically short-lived. As such, domestic water supply systems generally have significant unused capacity. This significant latent capacity was estimated to be approximately 12,000 acre feet per year for the Williston Regional WTP as expanded.

The estimated cost of the WAWSP project is $150 million. These estimated costs generally include Supply/Treatment $45 million, Core Transmission $88 million, and Rural Water Service $17 million. A copy of the most recent project phasing plan for the WAWSP is presented as Table 2.

Immediate Need for Funding

The project's urgency is being driven by the pace of oil development. Lynn Helms, North Dakota Department of Mineral Resources, recently described the oil activity as a "thirsty freight train." The oil rig count has been rapidly climbing over the past six months and is expected to peak at 225 rigs this year and remain at that level for the next 5-7 years. This period will be followed by an in-fill drilling period requiring 125 to 150 rigs for the next 13 years. The anticipated 225 drill rigs will create 27,000 jobs. The region has long since reached full employment. Therefore the increased jobs will be filled by newcomers to the area. The region can't accommodate this expected population growth without additional water resources.

Because the existing water supply infrastructure is inadequate to serve the rapidly growing domestic water demands, the WAWSP partners have been seeking financing methods that can quickly address this need. The WAWSP partners analyzed methods to pay for the proposed system and approached the State for guidance on the availability of State funds. Traditionally, regional water projects in North Dakota are funded with 65 to 75 percent grant funds through the Municipal, Rural, and Industrial (MR&I) Water Supply Program. Large, regional water systems can often take more than 30 years to complete. The State indicated the WAWSP cannot be funded with traditional methods without pulling funds away from other critical projects in the near term.

STERN AREA WATER SUPPLY PROJECT
PROJECT PRIORITIZATION, COST, AND TIMELINE SUMMARY
PHASING PLAN IV - MAIN TRANSMISSION SYSTEM PRIORITY
3/28/2011

PROJECT PRIORITY	ORIGINAL PROJECT PRIORITY	PROJECT DESRCRIPTION	ESTIMATED PROJECT COST	PROJECT START DATE
Phase I				
1.	1a.	Williston Phase I By-Pass Transmission Lines & Bulk Fill Stations; Service to WRWD West Service Area	$4,500,000	April 1, 2011
2.	1b.	NW Williston Regional Reservoir (5 MG)	$5,000,000	April 1, 2011
3.	2.	Regional Water Service to NW Williston - Tie Back to 26th Street Reservoir & NW Annexation Areas	$5,725,000	April 1, 2011
4a. 4b.	4a. 4b.	Regional Water Service to Western McKenzie County MCRWS System IV Improvements.	$4,800,000 $3,700,000	April 1, 2011 April 1, 2011
5.	3.	Regional Water Service From R&T Water Supply Association to the City of Crosby	$4,000,000	April 1, 2011
		Total Estimated Cost Phase I	**$27,725,000**	
Phase II				
6	8.	Williston Regional Water Service - WTP Expansion from 10 MGD to 14 MGD	$11,000,000	April 1, 2011
7	5.	Regional Transmission Line to 13 Mile Corner, Reservoir (2 MG), and Bulk Fill Station	$13,700,000	October 1, 201
8a. 8b.	6a. 6b.	Regional Water Service to Watford City Supplemental Water Service to MCRWS System II	$14,900,000 $5,600,000	October 1, 201 October 1, 201
9	7.	Regional Water Service to R&T Water Supply Association, Expanded Service to Stanley	$17,200,000	October 1, 201
10.	11a.	Regional Water Service to Intersection of Highways 85/50	$4,600,000	October 1, 201
11.	1b, 9, 10 , 11b, 12, 13	Phase III Engineering, Legal, Administration	$5,230,000	January 1, 201
		Total Estimated Cost Phase II	**$72,230,000**	
		Total Estimated Cost Phase I & II	**$99,955,000**	
Phase III				
12.	1b.	Williston Phase II By-Pass Transmission Lines	$8,460,000	July 1, 2013
13.	9.	Williston Regional Water Service - WTP Intake Expansion Expansion 14 MGD to 21 MGD	$11,700,000	July 1, 2013
14.	10.	Williston Regional Water Service - Intake & WTP Expansion from 14 MGD to 21 MGD	$21,000,000	July 1, 2013
15.	12.	WRWD Regional Water Service to West Central Williams County (Black Tail Dam Area) - Estimated	$1,350,000	July 1, 2013
16.	13.	WRWD Regional/Rural Water Service to East Central Williams County (Ray & Tioga Area) - Estimated	$4,500,000	July 1, 2013
17.	6c.	MCRWS System I Expansion	$2,250,000	July 1, 2013
18.	11b.	Service to Grenora	$810,000	July 1, 2013
		Total Estimated Cost Phase II	**$50,070,000**	
TOTAL ESTIMATED PROJECT COST			**$150,025,000**	

Table 2: WAWSP Phased

AES
Think Big. Go Beyond.

CT ATE	OPERATIONAL DATE	2011				2012				2013				2014			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
)11	December 31, 2011																
)11	June 30, 2012																
)11	December 31, 2011																
)11	September 30, 2012																
)11	December 31, 2012																
)11	September 30, 2012																
)11	June 30, 2013																
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Proposed Alternate Funding Strategy

The sponsoring entities sought to create a funding plan that would achieve construction in the near-term without requiring significant funding from the MR&I program. As water systems are designed to accommodate peak day water demands through 20-year planning horizons or longer and peak day water demands are intermittent and short-lived each year, there is built-in excess latent capacity throughout the planning period that could be utilized elsewhere as illustrated in Figure 2. Given the significant and growing water demands of the oil industry, a funding strategy was proposed that would strive to sell some of this available capacity to meet a portion of the oil industry water demands in the region.

To serve the domestic water needs, through expansion of the Williston Regional WTP and a series of outlying main transmission lines, pump stations, and reservoirs, the project's estimated cost was $135 million. It was further determined that with minor project modifications and the addition of bulk fill depots along the main transmission lines, the WAWSP could provide industrial water service with a relatively minor financial impact to the overall project. These additions brought the estimated total project cost to $150 million. In other words, approximately 90 percent of the WAWSP initial construction costs are attributed to serving domestic water users and 10 percent of the costs are associated with elements to allow service to the industrial water users.

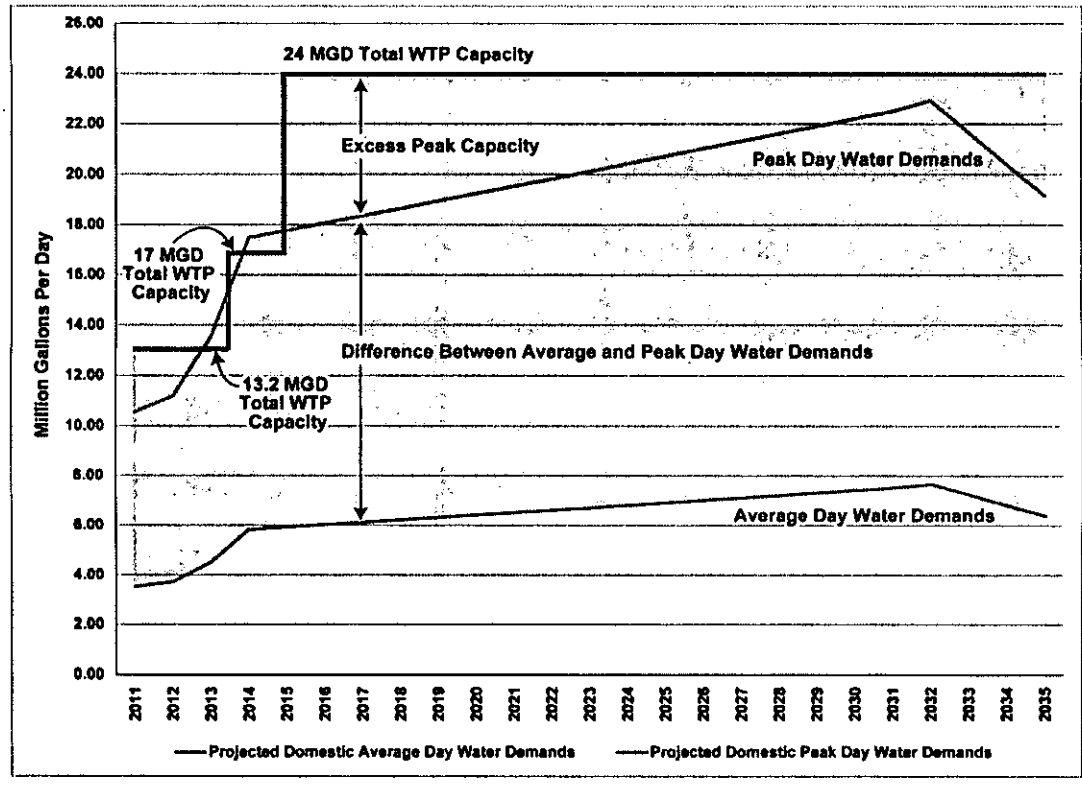
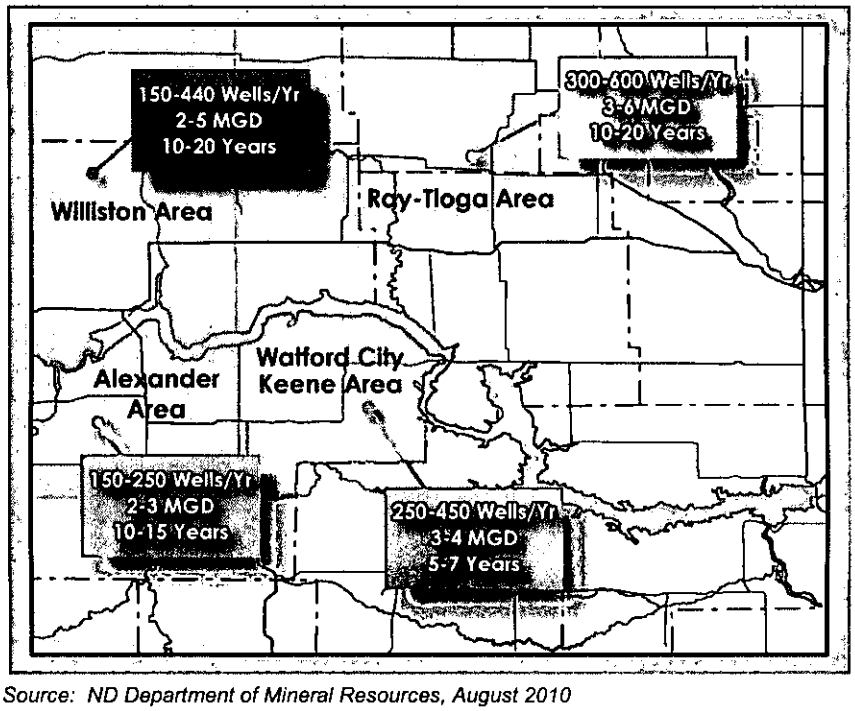


Figure 2: Latent Water Capacity Available for Industrial Water Demands

Spatial Analysis to Determine Possibility of Partial Service to the Oil Industry

The ND Department of Mineral Resources has quantified the projected oil exploration activity and associated water demands for the expected drilling activity in northwest North Dakota. Figure 3 highlights the projected water demands for the region. The magnitude of these demands demonstrated that there is a significant industrial market for water sales for suppliers that meet the fundamental needs of the industry, including proximity of the water supply, reliability, water supply water quality consistency, and an efficient water delivery system.

To determine if the WAWSP would be a likely and preferred water supply source for industrial demands, the drill rig locations were mapped along with the anticipated water supply points of the WAWSP. A spatial analysis between the rig locations and the proposed WAWSP fill depots was completed to predict the volume of water the WAWSP may provide to the industry. The spatial analysis concluded that the volume of water the WAWSP could reasonably expect to provide to the industry was substantial.



Source: ND Department of Mineral Resources, August 2010

Figure 3: Summary of Daily Hydraulic Fracturing Water Demands for WAWSP Service Area Northwest North Dakota

FINANCIAL ANALYSIS

Financial Plan

Having completed the technical analysis of potential water sales to the oil industry, the project sponsors tasked AE2S with completing a financial analysis and developing a comprehensive model. Multiple in-depth financial analyses were completed to determine the financial feasibility and viability of the proposed financing strategy for the WAWSP. These analyses were utilized to determine the optimum debt financing structure. The WAWSP fundamental financial goals utilized in these analyses were as follows:

- ☐ Cover annual Operating and Maintenance (O&M) expenses
- ☐ Fund and meet adequate ongoing reserves
  - o Debt Service
  - o O&M
  - o Capital
- ☐ Reimburse political subdivisions for lost industrial water sales during the initial debt repayment period of the WAWSP
- ☐ Pay the existing debt for components of individual water systems that will be utilized as part of the WAWSP
- ☐ Repay the initial debt as quickly as financially viable using available revenues from domestic and industrial water sales
- ☐ Repay any initial long-term loan dollars from the NDSWC
- ☐ Meet an annual Debt Service Coverage requirement of 150 percent
- ☐ Maintain reasonable rates for domestic users

A series of six financial analyses, which are summarized in Table 3, were completed to gauge the financial viability of the proposed project. Scenarios 1 through 4 assumed a 10-year amortization term due to the stakeholders' desire to achieve full debt repayment within a short window given the volatility of the oil industry as well as continually changing oil well drilling and hydraulic fracturing water needs. To demonstrate the impact to financial requirements under a less aggressive repayment structure, Scenarios 5 and 6 were based on a 20-year amortization schedule with a 10-year call provision. To directly compare Scenarios 5 and 6 to Scenarios 1 through 4, it was assumed that the debt in Scenarios 5 and 6 would be retired well before the 20-year maturity and as close as possible to the 10-year call provision of the bonds.

Other than the amortization term, the two key variables that changed for each scenario were the Debt Service Reserve Fund requirements and the pace of the projected level of industrial water demands based on extended and rapid oil well drill-out. The drill-out periods assumed the same number of oil wells (14,000) will be drilled in the region with varied assumptions on the time frame for the drill-out periods (20 to 12 years). The projected initial WAWSP industrial water rate of $20 per thousand gallons (kgal) is within the current range of prevailing reported market rates of $11.90 to $25/kgal. An A+ bond rating was assumed for all scenarios.

Scenario	Industrial Water Demand Periods	Industrial Price/Kgal	Amortization Term	Bond Rating	Years of Debt Reserve
1	Extended Drill-Out	$20	10-year	A+	2 years
2	Extended Drill-Out	$20	10-year	A+	Not Funded from Bond Proceeds
3	Rapid Drill-Out	$20	10-year	A+	2 years
4	Rapid Drill-Out	$20	10-year	A+	Not Funded from Bond Proceeds
5	Extended Drill-Out	$20	20-year	A+	2 Years
6	Extended Drill-Out	$20	20-year	A+	Not Funded from Bond Proceeds

Table 3: Financial Scenario Summary

The original HB1206 proposed an 80 percent moral obligation from the State on the bonds. Through consultation with bond rating agencies, it was determined that this level of support would likely result in a BBB- bond rating which would lead to more costly debt. By providing a 100 percent moral obligation, the State actually limits its overall exposure by providing the ability to establish an A+ bond rating. Should a revenue short-fall arise preventing WAWSA from meetings its annual debt obligations, the legislation specifies that WAWSP will be responsible for 20 percent of the shortfall, thereby reducing the State's maximum exposure to the originally proposed 80 percent. The State's maximum exposure is reduced by approximately $42 million through providing with a more favorable bond rating (based on a 10-year amortization and capitalization of a two year Debt Service Reserve Fund).

Further, the provision of the moral obligation does not guarantee the WAWSP's ability to sell the associated bonds. It is my understanding that the bond rating agencies and investment bankers will be thoroughly analyzing the bonds based upon extensive due diligence and the merits of the project, not the moral obligation.

Each of the scenarios includes the following assumptions:

- ☐ Extended or rapid drill-out demand for industrial water sales
- ☐ Industrial water rate of $20.00 per 1,000 gallons
- ☐ A+ Bond Rating
- ☐ Domestic water rates based on existing supply, treatment, and transmission rates for each system
- ☐ Bonds with a 10-year amortization or 20-year amortization with a 10-year call provision
- ☐ Capitalized interest included in the bonds and no principal payments during the construction period
- ☐ O&M Reserve funded at 6 months of system operating expense
- ☐ 2-year Debt Service Reserve, if applicable, capitalized in the bond issue
- ☐ Capital Reserve funded at 25 percent of the original project cost after the debt service is retired followed by an additional 2.5 percent of the original project cost per year
- ☐ $30 million long-term loan from NDSWC, repaid upon debt retirement and when Capital Reserve Fund is funded at 25 percent of the original project cost
- ☐ Annual unobligated cash assumed to be depleted each year after debt repayment is complete

☐ Required debt coverage of 150 percent

To minimize the project's financial risk, a 10-year amortization of the debt was evaluated in Scenarios 1-4. These analyses revealed that all of the desired provisions could only be met under this more ambitious debt schedule through shaping of the debt. A 20-year debt schedule with a 10-year call provision, as considered under Scenarios 5 and 6, allowed for greater flexibility to meet all project revenue requirements and Debt Service Coverage requirements. By establishing adequate flexibility in the financial analysis by utilizing a 20-year or longer amortization term, investment bankers will have greater confidence in the WAWSP to generate sufficient revenues over a longer period of time to meet revenue requirements, meet Debt Service Coverage requirements, and maintain its financial goals.

Scenario 6 was identified as the most viable financing structure. Scenario 6 was based upon extended drill-out industrial water demands (most conservative), a debt service reserve not funded from bond proceeds, and a 20-year amortization with a 10-year call provision. Scenario 6 projected adequate total cash would be generated to pay off the bonds by the call provision in 2024 and meet all other revenue requirements. In this scenario, the system is able to meet all annual revenue requirements and maintain annual Debt Service Coverage of 150 percent in every year of debt repayment. Figure 4 illustrates the projected performance of Scenario 6.

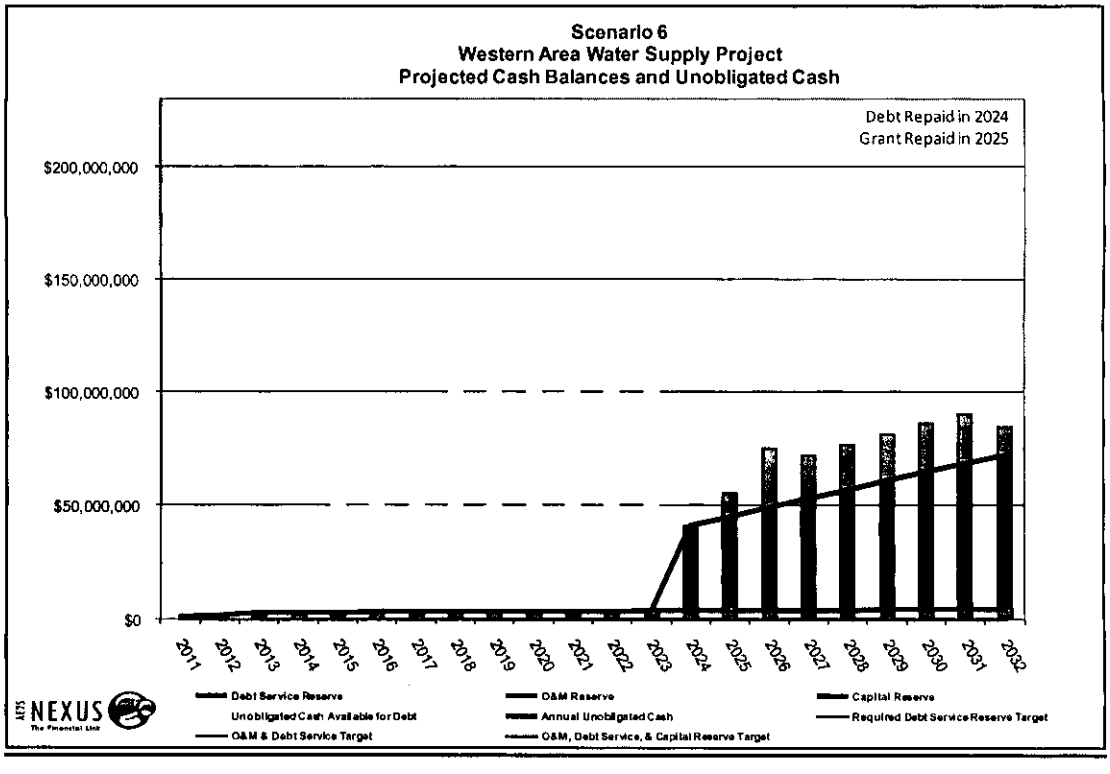


Figure 4: Financial Scenario 6: Financial Projection of Extended Drill-Out Period, $30 million NDSWC Funds, 20-Year Amortization, and $20/kgal Industrial Rate

Updated Number of Wells and Water Demands

During the development of the WAWSP draft Business Plan, the project team utilized oil well projections provided by the NDDMR in August 2010 which projected 20,000 oil wells to be drilled, 14,000 (70 percent) of which were projected in the WAWSP service area. On January 7, 2011, the NDDMR increased the expected oil wells to 50,000 – **an increase of 150 percent**.

In his testimony to the Senate Industry, Business, and Labor (IB&L) Committee on March 16th, Helms predicted that the number of drilling rigs would increase to 225 in western North Dakota by the end of 2011 and remain at this level for five to seven years. The number of rigs was then predicted to drop to between 125 and 150 for 13 years for in-fill drilling. These recent projections have not been fully incorporated into the WAWSP draft Business Plan at this time. Figure 5 was prepared, however, to compare revised industrial water demands associated with the new rig count and number of wells to the industrial water demands modeled for the WAWSP in the draft Business Plan and the industrial water demands required by WAWSP to meet all revenue requirements. Figure 5 demonstrates that WAWSP is only required to serve 13 to 15 percent of the projected industrial water demands in northwestern North Dakota for the proposed funding strategy to be successful. These new developments considerably lower the risk of the proposed financing strategy for the State and project sponsors, while leaving considerable additional water sales for other public as well as private interests.

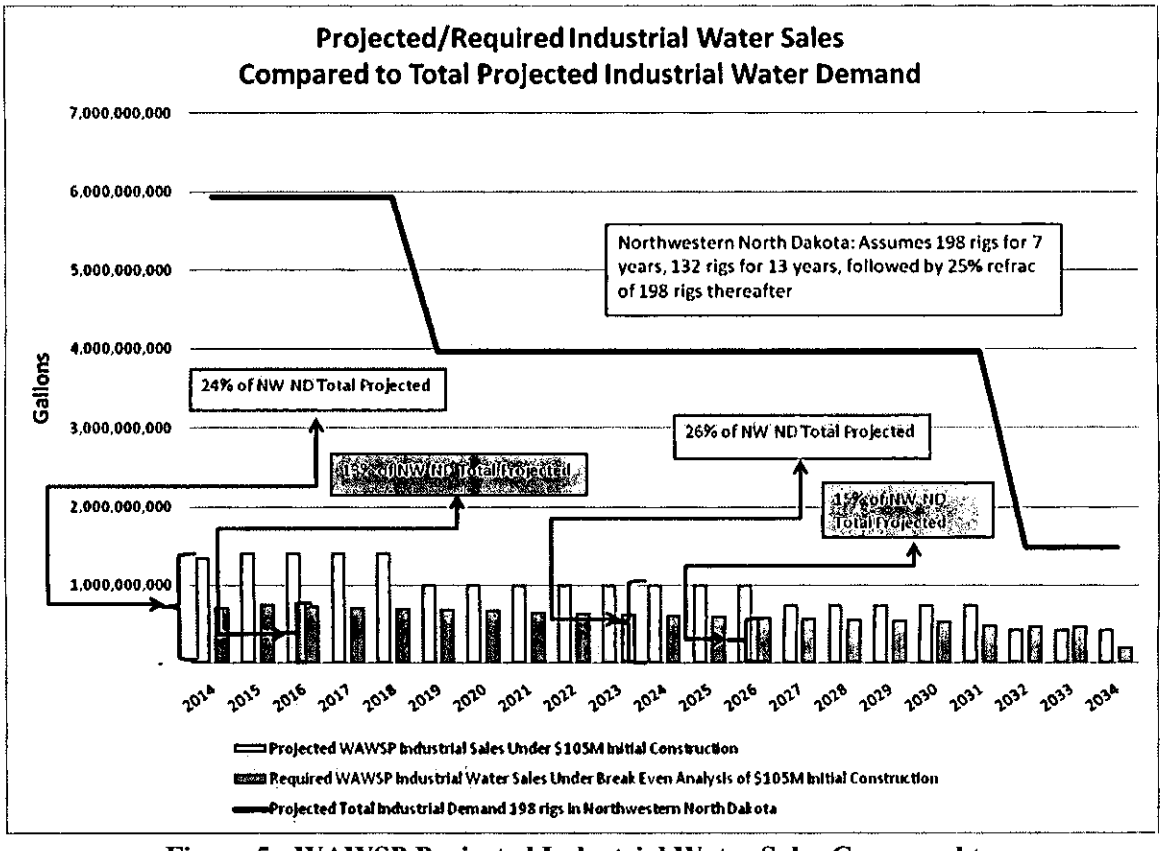


Figure 5: WAWSP Projected Industrial Water Sales Compared to Total Projected Industrial Water Demand in Northwestern North Dakota

New/Updated State Impact Analysis - HB 1206 as amended

Amendments to HB1206 were approved by a voice vote of the Senate on Thursday, March 31st. The primary financial amendment limited the bonding by WAWSA in the 2011 to 2013 to $75 million plus issuance costs, credit enhancements, capitalized interest, and debt service reserve costs. This limits the total construction budget for the 2011 to 2013 biennium to $75 million in bond proceeds and $25 million in long-term loans from the NDSWC as presented in Phases 1 and 2 of Table 2. It is anticipated that the initial phases will include the first expansion of the Williston Regional WTP, the main transmission lines around Williston, north of Williston, east to the R&T WSA, and within McKenzie County, and the Phase IV service area in McKenzie County. This phasing strategy will reach all of the major domestic customers and all of the bulk water depots intended for industrial service. At the same time, the bonded indebtedness for the project will be significantly reduced compared to funding the entire project at once. As a result, the initial phases of the WAWSP under the amended HB1206 are anticipated to be more feasible than the project analyzed as part of the draft Business Plan. Amended HB1206, however, will require additional bonding authority or alternate funding in the future to further expand the Williston Regional WTP, serve the City of Grenora, and provide service to the remaining rural areas of the project.

As part of testimony to the Senate IB&L Committee on March 16th, I presented projected State impact analysis graphics for HB1206 based on various percentages of modeled industrial water demands. The graphics compared cumulative State costs and the present value of these State costs for the project funded over five biennia using a 75 percent State grant to the projected performance of the proposed funding strategy at various levels of industrial water sales. In response to the Senate approved amendments to HB1206, updated projected State impact graphics are presented as Figures 6 through 9 based on 100, 0, 25, and 50 percent of the projected industrial water sales by WAWSP from the draft Business Plan.

If the initial phases of the project authorized in amended HB1206 were funded using a 75 percent grant over five biennia, the cumulative State costs are projected to equal approximately $100 million. The present value of this cost using a 3 percent discount factor equals approximately $87.9 million. Conversely, the cumulative State costs of the proposed funding strategy with 100 and 50 percent of the modeled industrial water demands are both zero, with present values of $8 million and $14.1 million, respectively, representing the holding costs of the long-term loans. For 25 percent of the modeled industrial water demands, the State would be required to back small short falls in 2027, 2028, 2029, 2032, and 2033, and WAWSA would not be in a position to repay the long-term loans. The present value of this scenario, however, at $39 million is still much less than the present value of the grant funded project. Only under the scenario of zero industrial water sales, which is considered unlikely, does the cumulative impact of the proposed funding strategy exceed the costs of the grant funded project.

Although there admittedly is some risk, the State impact graphics demonstrate several likely scenarios under which there are no nominal costs to the State for backing the project.

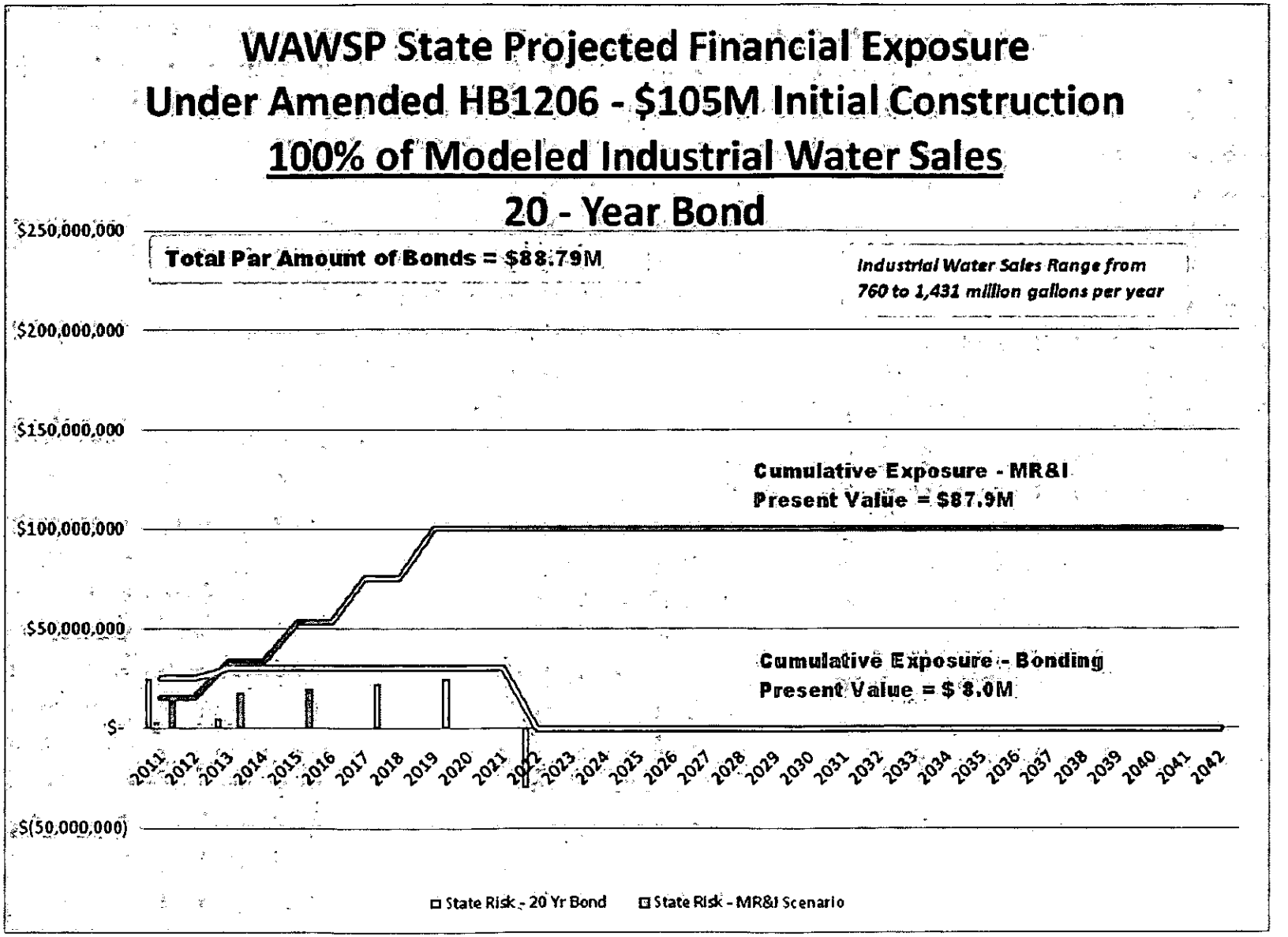


Figure 6: WAWSP State Projected Financial Exposure Based on 100% of Modeled Industrial Water Sales

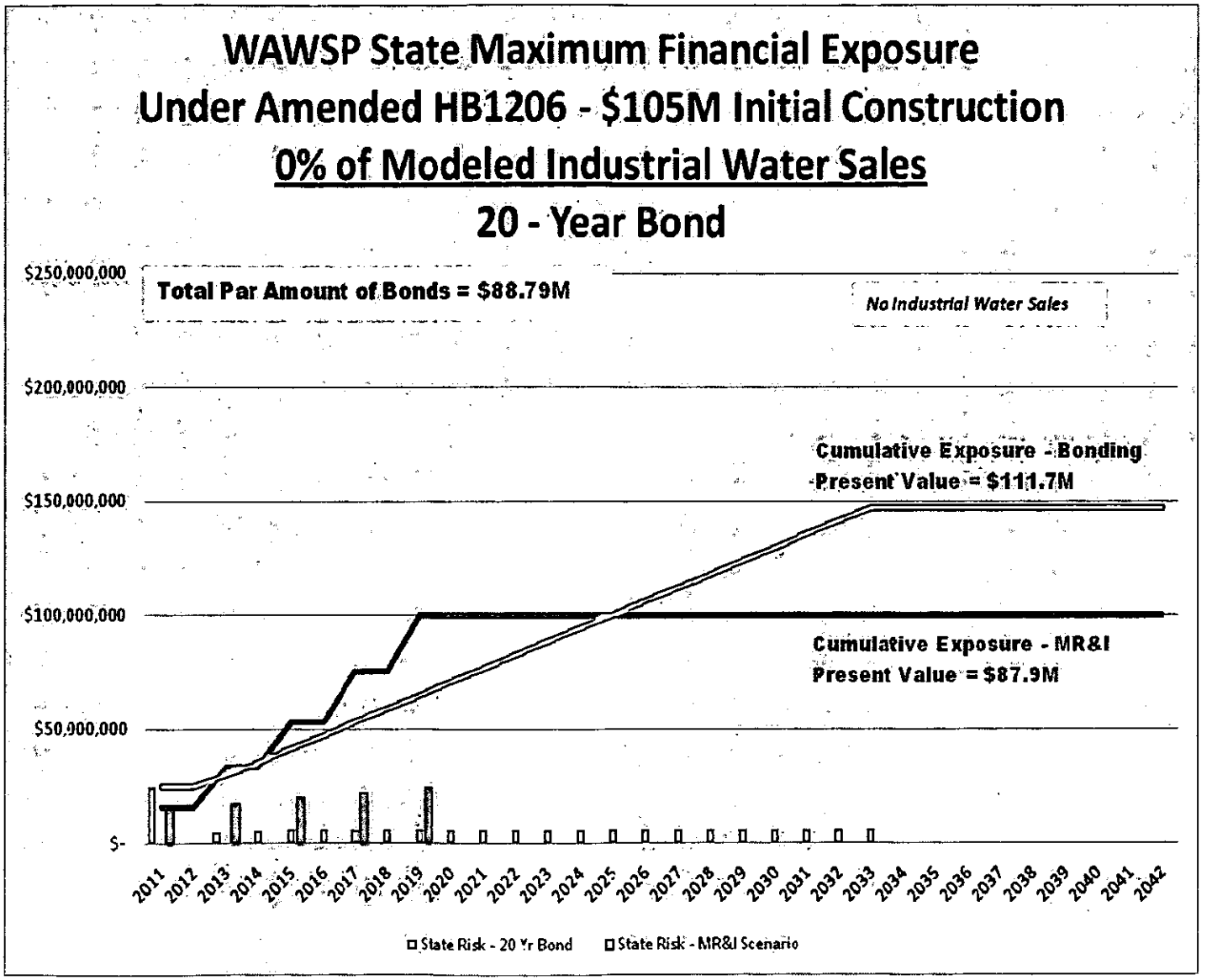


Figure 7: WAWSP State Maximum Financial Exposure Based on 0% of Modeled Industrial Water Sales

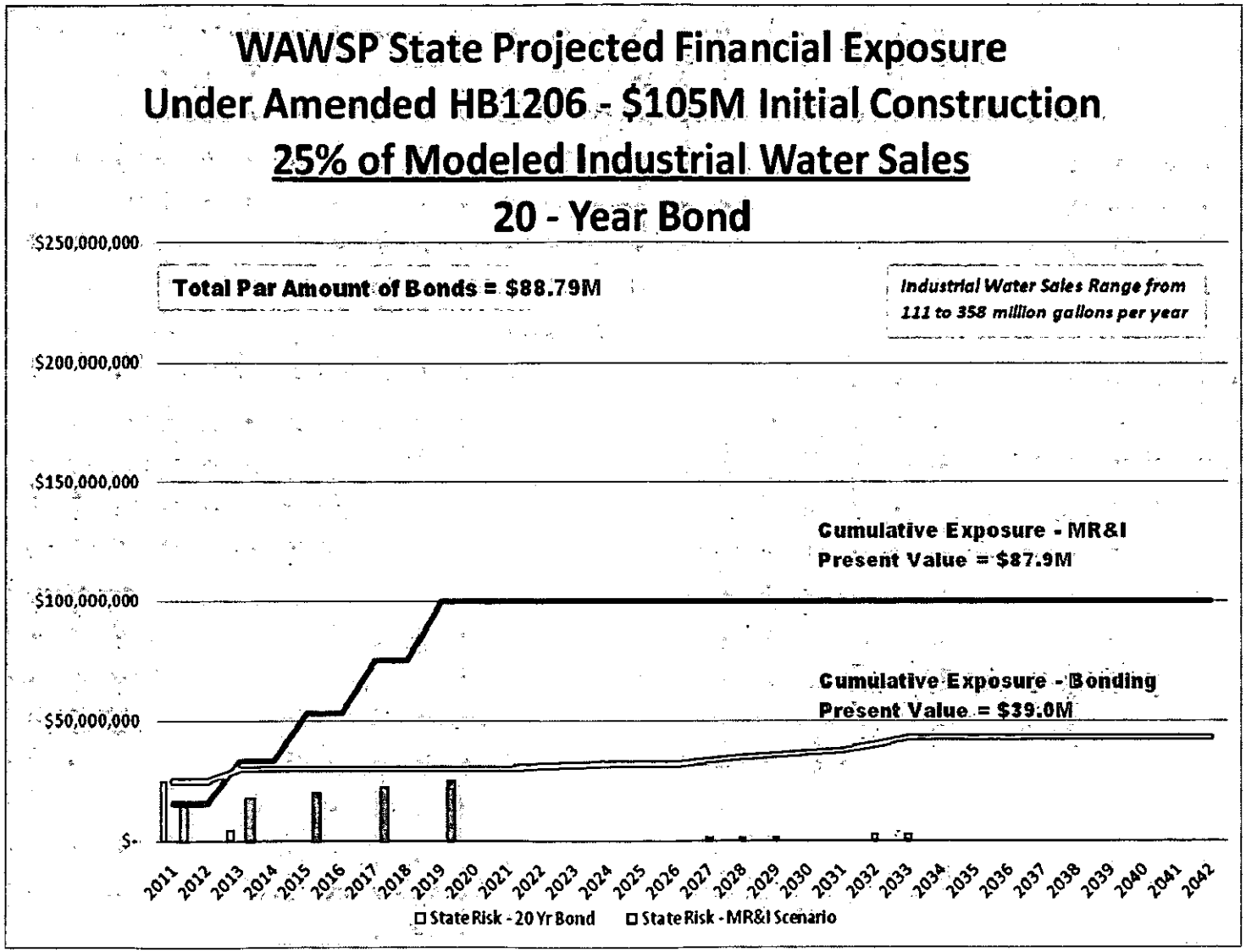


Figure 8: WAWSP State Projected Financial Exposure Based on 25% of Modeled Industrial Water Sales

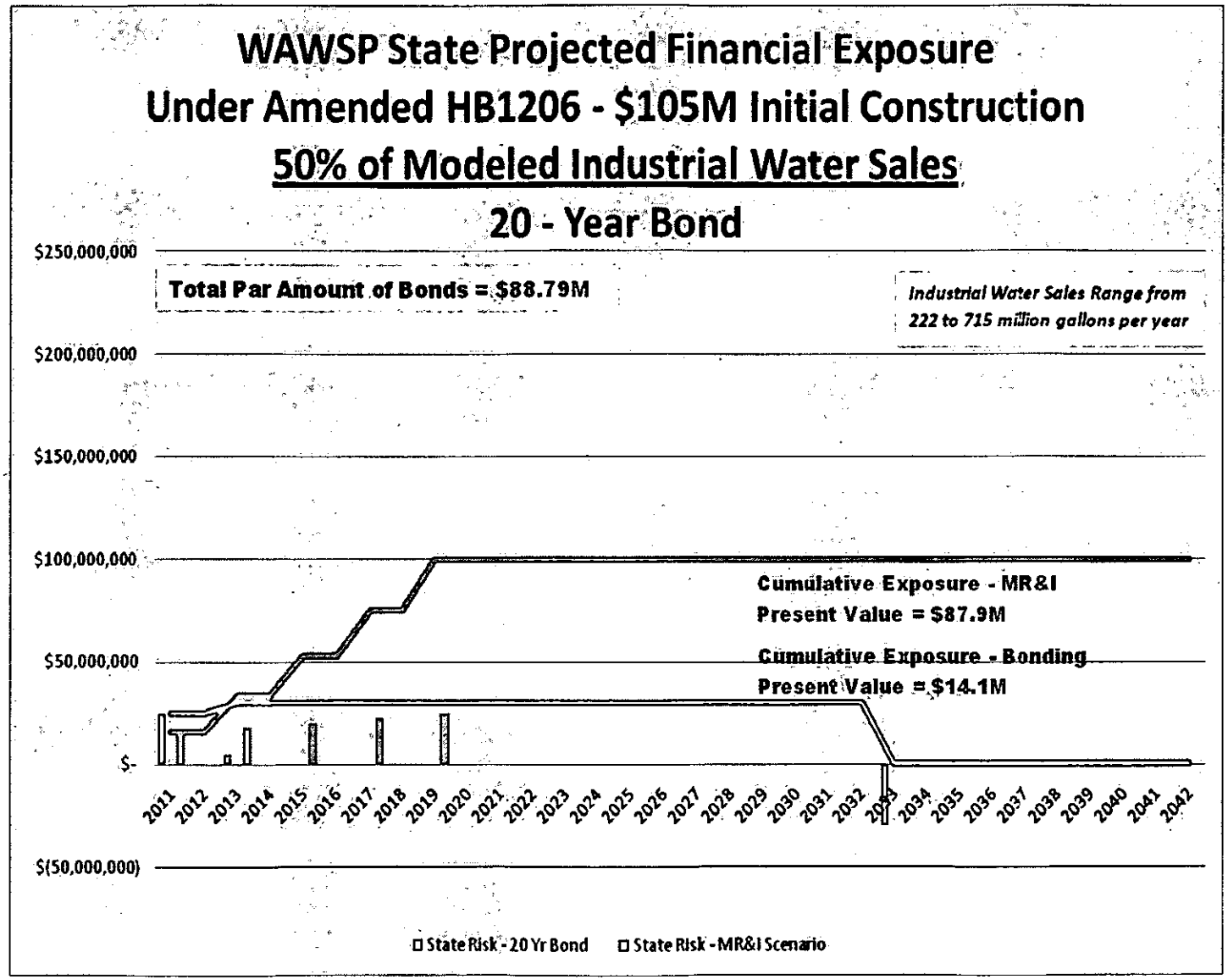


Figure 9: WAWSP State Projected Financial Exposure Based on 50% of Modeled Industrial Water Sales

SUPPLEMENTAL INFORMATION

Transportation Analysis

Supplemental analysis was completed on the potential transportation infrastructure savings that may be attributed to WAWSP. In December 2010, the Upper Great Plains Transportation Institute released an oil impact study on township and county roads entitled "Additional Road Investments Needed to Support Oil and Gas Production and Distribution in North Dakota." The study concluded 40 percent of oil rig truck traffic applies to hauling freshwater for hydraulic fracturing purposes. By reducing the truck haul miles by broad disbursement of water throughout the region, it was estimated WAWSP would reduce township and county roadway infrastructure roads impacts between $29.4 million and $51.5 million through 2031.

Irrigation Analysis

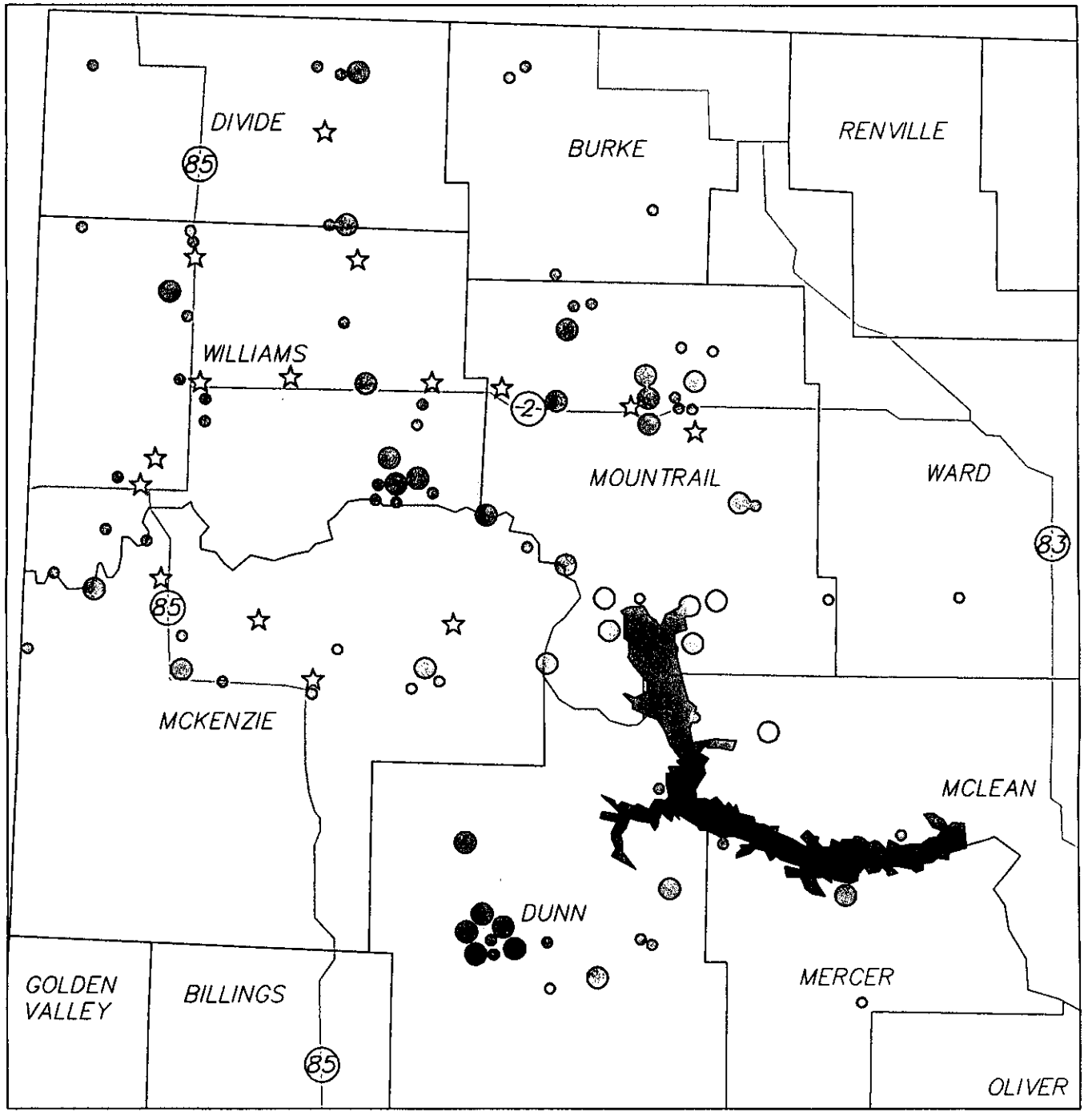
To address short-term industrial water demands, the State Water Commission has provided temporary approval of the conversion of irrigation water permits to industrial water permits on a case-by-case basis for a one year period. In February 2011, the State Water Commission had provided temporary conversion of 13 irrigation water permit to allow industrial water sales for a total of 1,121 acre feet of water impacting 2,837 agricultural acres.

In June 1991, NDSU Department of Agricultural Economics completed a study on the enhanced production benefits irrigation provides to farmers. In 2011 dollars, the enhanced crop return ranges from $56 to $173.50 per acre attributed to irrigation. The conversion of irrigation permits to industrial water use is estimated to negatively impact the agricultural economy by as much as $11.7 million and $36.3 million over a twenty year period by diverting the currently concerted water from crop enhancement.

CONCLUSION

In conclusion, I would like to re-iterate three key points of my testimony:

- The WAWSP is a local project with strong local support. The local systems have organized to resolve territorial disputes caused by rapid growth and have worked to develop a comprehensive, long-term water supply solution for the region.
- Population growth is driving the need for the project and existing water infrastructure inadequacies are already limiting growth within the WAWSP service area. WAWSP is designed to accommodate long-term projected population growth while utilizing latent capacity during the growth period for industrial water sales.
- This is a unique and rare opportunity to construct extensive domestic water infrastructure with little impact to the State funds and the local water rates.



INDEPENDENT WATER PROVIDERS	OVERALL PLAN VIEW	DATE: 1/31/11	SCALE: 1"=20 MI
NORTH DAKOTA	WATER DEPOT MAP	WESTERN AREA WATER SUPPLY PROJECT	

14

2010 Total Water Depot Acre-Feet

Tabulated by Office of the State Engineer (March 25, 2011)

			Percent Total
Annual water use for industrial/municipal water permits sources that provide water for water depots from ground water sources.			
Year 2010 Total Acre-Feet	2,870.30	Acre-Feet	48%
	935	Million Gallons	
Annual water use for industrial/municipal water permits sources that provide water for water depots from surface water sources			
Year 2010 Total Acre-Feet	1,605.50	Acre-Feet	27%
	523	Million Gallons	
Temporary surface water permits for industrial/oilfield purposes			
Year 2010 Total Acre-Feet	1,115.50	Acre-Feet	19%
	363	Million Gallons	
Temporary conversion of irrigation to industrial water depots permits			
Year 2010 Total Acre-Feet	349.30	Acre-Feet	6%
	114	Million Gallons	
Grand Total Acre-Feet	5,940.60	Acre-Feet	100%
	1936	Million Gallons	
Water Provided by Private Sellers	4,335.10	Acre-Feet	73%
	1413	Million Gallons	
Water Provided by Cities, Towns, and Rural Water	1,605.50	Acre-Feet	27%
	523	Million Gallons	

Calculations Provided by Independent Water Providers

Grand Total industrial Water Use-2010

5,941	Acre-Feet
46,089,551	bbl
1,936	Million Gallons

Estimated Value In Millions At "X" Cost Per Barrel-2010

					Private Sellers @ 73%		Municipal Sellers @ 27%
$ 0.50	per bbl	$ 11.90	per 1000/Gal	$ 23.0	$ 16.82	$	6.23
$ 0.63	per bbl	$ 15.00	per 1000/Gal	$ 29.0	$ 21.19	$	7.85
$ 0.84	per bbl	$ 20.00	per 1000/Gal	$ 38.7	$ 28.25	$	10.46

Wells Hydrofractured-2010 1000 Wells

Average water usage per well-2010

5.9	Acre-Feet
46,090	bbl
1.94	Million Gallons

Estimated Hydrofractured Wells-2011 1200 Wells

Estimated Total Water Usage-2011

7129	Acre-Feet
2323	Million Gallons

Estimated Value In Millions At "X" Cost Per Barrel-2010

					Private Sellers @ 73%		Municipal Sellers @ 27%
$ 0.50	per bbl	$ 11.90	per 1000/Gal	$ 27.7	$ 20.18	$	7.47
$ 0.63	per bbl	$ 15.00	per 1000/Gal	$ 34.8	$ 25.43	$	9.42
$ 0.84	per bbl	$ 20.00	per 1000/Gal	$ 46.5	$ 33.90	$	12.56

Total Volume of Water Present Permits Industrial Water Sales

Ground Water	3494 Acre-Feet	Percentage Used 2010	82%
Surface Water	19299 Acre-Feet	Percentage Used 2010	8%
Temporary	2850 Acre-Feet	Percentage Used 2010	51%

Total Volume of Water Present and Future Permits Industrial Water Sales

All Sources	55974 Acre-Feet	Percentage Used 2010	11%
	18239 Million Gallons		

THE HARMS GROUP

Senate Appropriations Committee
April 1, 2011

Amendments to HB 1206

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 61-40 of the North Dakota Century Code, relating to a western area water supply project and authority; to provide an appropriation and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

Section 1. A new section to Chapter 61-40 is created and enacted as follows:

The legislative assembly declares that areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply. The legislative assembly therefore authorizes construction of a western area water supply project to treat, store, supply, and distribute water to the people of western North Dakota for domestic, rural, municipal, livestock, industrial, oil and gas development, and other uses, to provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota.

In order to implement this project, the legislative assembly will support:

1. In the 2011-2013 biennium: Funding from the resources trust fund of $25 million, from the permanent oil trust fund $30 million for construction.

2. In the 2013-2015 biennium: Funding from the resources trust fund in the amount of $55 million for construction.

3. In the 2015-2017 biennium: Funding from the resources trust fund in the amount of $40 million for construction.

Section 2. A new section to Chapter 61-40 is created and enacted as follows:

1. Construction. Construction of the western area water supply infrastructure as authorized herein shall be done by the State Water Commission under Chapter 61-02. Possession of any facilities constructed by the State Water Commission under this Act shall be transferred to local entities for management, operation and control pursuant to agreement.

Section 3. A new section to Chapter 61-40 is created and enacted as follows:

Independent Water Providers. Any facilities constructed under this chapter may not include water depots for oil and gas development within fifteen miles of any water depot, for which a permit application has been filed with the State Engineer or a permit has been issued by the state at the time of the effective date of this legislation.

Section 4. A new section to Chapter 61-40 is created and enacted as follows:

Western area water supply Authority. The legislative assembly herby authorizes the creation of a western area water supply authority. The western area water supply authority consists of participating entities located within McKenzie, Williams, Burke, Divide, and Mountrail Counties, including the city of Williston, the McKenzie County Water Resource District, the Williams County Water District, and the R & T Water Supply Association.

1. The initial board of directors of the western area water supply authority consists of one representative from each participating entity.

2. Board of directors - Officers - Meetings. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, and financial participation structure for membership in the authority. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.

3. The initial board bylaws must direct board voting protocol, and must be approved by member entity boards.

4. The authority shall not interfere with, or attempt to influence through lobbying, providing comments, testifying at public meetings or hearings or by any other means, the approval, permitting, or development of any future private water development in the state, at any level of government.

Section 5. A new section to Chapter 61-40 is created and enacted as follows:

Miscellaneous Provisions.

1. Water Rates. Water Rates shall be determined by local entities.

2. Existing Facilities. Existing facilities, and facilities constructed under this chapter, shall be operated and maintained by local entities.

3. Easement granted for ditches, canals, tramways, and transmission lines on any public lands. In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation and the state

engineer must approve plans with respect to the use of right of way of roads before the grant becomes effective.

4. Proceedings to confirm judicially contracts and acts. The commission, or any local entity, before making any contract, issuing bonds, or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

Section 6. A new section to Chapter 61-40 is created and enacted as follows:

Payments. All revenues which exceed revenues necessary for operation, maintenance, and extraordinary maintenance and replacement, shall be deposited into the resources trust fund.

Section 7. A new section to Chapter 61-40 is created and enacted as follows:
Appropriation: There is appropriated out of any moneys in the permanent oil trust fund in the state treasury, not otherwise appropriated, the sum of $30,000,000, or so much of the sum as may be necessary, for the construction of features of the western area water supply project during the biennium beginning July 1, 2011, and ending June 30, 2013.

Section 8. A new section to Chapter 61-40 is created and enacted as follows:

Emergency. This Act is declared to be an emergency measure.

THE HARMS GROUP

Senate Appropriations Committee
State Capitol
Bismarck, ND

DO NOT PASS: HB 1206
April 1, 2011

Chairman Holmberg and Members of the Senate Appropriations Committee

For the record, my name is Robert W. Harms, and I am the lobbyist for the Independent Water Providers, a group of 25 entrepreneurs, ranchers and farmers in northwestern North Dakota, who have serious concerns about HB 1206. First let me say that we think you should pass a bill that begins with HB 1206—but not in the present form. We'll explain why and offer what we think is a better plan.

We support building additional-appropriately sized water infrastructure in northwestern North Dakota. We also support accessing the Missouri River and Lake Sakakawea to appropriate water for the future of our state. A number of our members have permit applications pending for that very purpose.

<u>Our amendments represent a better proposal and have 4 key components:</u>

1. Authorize the project features which will be built by the Water Commission and possession transferred to local entities or WAWSP;
2. Authorize the WAWSP Authority without mandating the structure.
3. Eliminate bonding and pay cash over 5 years; revenue to be returned to the State. $25 million as per Governor's budget; add $30 million from permanent oil trust fund.
4. Protect private sector investment from harm by publicly funded industrial water supply

15A

Handout:

1. Map
2. Water available; costs
3. State Water Commission Resolutions
4. Letter from Mayor of Alexander
5. Financing summary; $500 million revenue stream

Concerns regarding current structure of HB 1206: Some of those concerns are:

1. HB 1206 as written:
    a. authorizes sale of water to venues outside North Dakota
    b. Structure of the Board is complex and erodes accountability
    c. Unwritten bylaws are to be approved by attorney general
    d. $100 million of public funds can be obligated without a public vote of members
    e. No local or federal funds are obligated towards this project. (ALL funds are state funds)
    f. State water commission does not have CLEAR authority to APPROVE the project, but rather is asked for its "concurrence" and to "report" to the state water commission.
    g. Efforts to "protect" the state, including board membership are cosmetic and dispersed among water commission, attorney general, BND, public finance and budget section.
    h. Construction placed with untested-yet to be established Authority
    i. State is ultimately responsible for the payment of $100 million for the project
    j. (Sets stage for more funding; more liability)
    k. All revenues ($500 million) retained locally; yet State holds ultimate responsibility
    l. Little/no local "skin" in the game (5 mill obligation applies ONLY to avoid default)

2. Larger than the domestic needs of area residents, to provide water to the oil industry, hoping the industry will pay 80% of the cost. (Based upon a theory we can have something that someone else will pay for, and if they don't the state will pay for it). This strategy is faulty because:
    a. Oil industry demand for water may falter because of EPA regulation of "fracing"
    b. Price of oil may falter (two years ago oil was at $30).
    c. New technology may reduce need for fresh water for "fracing"
    d. Price of water (potable) is above market price for fresh water (see hand out)
    e. Industry does not need treated (potable) water for fracing
    f. Water industry has new entrants regularly (more competition)

3. $100 million cost will grow ($200 million) including engineering, attorneys etc, for which, the citizens of North Dakota (and other water projects) are 100% responsible if the project defaults.
    -Asserted "20%" local share is not in the legislation
    -100% State funded.

4. Proponents assert the project is "urgent" in order to capture "sales" of water in the current market.
   -Not urgent....but if it is urgent, then get water to PEOPLE first. (First leg is for water depots south of Williston, NOT for the people of Watford City where it is needed).
   --If it is urgent...SWC can build it faster than the current bill/structure because:
      -authority is yet to be formed—likely to take months to get organized
      -must have by-laws, management process in place

5. Ignores current expansions already underway. For example, R & T is expanding from 1 MMgal/day to 3MMgal/day at a cost of $3 million dollars. (R & T does not <u>need</u> WAWS extra capacity, which will be redundant).
   a. Likewise Brigham line in place 2011—1.0-1.5 mgd (1100 acre feet @ year).

6. Funding: All other state water projects pay BACK to the Resources Trust fund. (HB 1206--pays back the bonds and the grant, and then retains all future revenue. (If ND is going to guarantee 100% of a 100% bonded project, then ND should get the revenue.....JUST like Southwest Pipeline. (ND owns the project, and gets the revenue, with which to finance other water projects in ND).

7. Oil industry: Oil is currently applying for/building its own water supply features: Brigham Oil and Gas; Continental Resources, Zavana and Whiting ALL have water permits pending.
   a. NOT ONE contract has been signed for water on this project from the industry
   b. And why WOULDN'T you "support" the bill, if it creates more outlets that you have no financial responsibility for----it might even lower your costs.

8. Local Cost Share: There is no local cost share, or obligation. (Contrast NAWS, where Minot has spent millions of sales tax dollars in support of the NAWS project). Local contribution applies ONLY upon default.

9. Governance structure is complex and provides little public accountability: attempts to use the Lake Agassiz model that failed (4 different entities coupled with weighted vote based upon water sales).

10. Current price of water:
    a. $.50 a bbl. private sector ($11.90 @ 1000 gal)
    b. $.63 a bbl. municipal market ($15 @ 1000 gal)
    c. $.84 a bbl., project price ($20 @ 1000 gal)

11. Flawed assumptions
    a. Assumes 50% of market share;
    b. Will cash flow at $20/1000 gallons—high end of market price
    c. $15/1000 gallons—only high and average industrial use will cash flow.

d. Drilling activity to proceed unabated. (2010—1100 wells were fraced; utilized 1.9 billion (6,000 acre feet) of water). Plan assumes 3-4 times that rate.

A better approach

A different approach will allow the project to move forward with an objective, experienced agency without a vested interest in the outcome that can balance the state's public interest, and minimize the risk to the public treasury.

-Experienced staff

-Significant public water project experience

-Objective assessment of need, with appropriate design, planning and construction

-Final hand off to WAWSP after it is established.

-Follows proven model/moderates risk to public

-Does not jeopardize proven, well established policies/processes for future projects.

-SWC: Governor/Ag Commissioner/Attorney General, and seven statewide members
-experience, knowledge and strength for such projects
-bonding, engineering and legal background for such projects
-accountable to the public, and Legislature

We urge a DO NOT PASS of HB 1206 in its current form, and ask the Committee to adopt the amendments we have submitted or similar amendments developed before adjournment.

Thank you.

Robert W. Harms
The Harms Group

On behalf of the Independent Water Providers,
Williston, North Dakota

ADDENDUM:

1. Value of 1 Mill as per County Auditor 3/30/2011
   Burke County – $1080.22

   Divide County – $12,180.00

   McKenzie County – $21,509.93

   Williams County – $68,000.00 =$102,770.15

2. 3,000 fracs will not pay for the project.
   -will take closer to 30,000 fracs at current market prices and 10% ROI
   (ND fraced 1100 wells in 2010).

3. "Asserted road savings is not likely, because the increase in water demand assumed in the proponents business plan necessitates significant increase in truck traffic (3-4 times current).

4. "Is this a domestic water supply or an industrial water supply"?
   -industrial component has been described as being "only 10%"
   -industrial component has been described as being "20%"
   -Legislation provides "large component of the project expense is being incurred to meet the demands of the industrial users".....see bill section: 61-40-05 (23)

   -Neither Grenora, nor Alexander is included in the project. (See letter from Alexander Mayor)

5. "Irrigation" authorization was removed from the bill in the House because "water is too expensive" for irrigation.

6. "Aquifers at risk"----State Water Commission has stated very clearly in early hearings "WE ARE NOT DEPLETING AQUIFERS IN NORTHWESTERN NORTH DAKOTA" (March, 2011)

Resolution on Construction

WHEREAS:

1. WAWS infrastructure in northwest North Dakota is necessary.

2. The exact same WAWS infrastructure may be built over five years with limited bonding and significant savings.

3. The State Water Commission has constructed extensive water supply infrastructure, and has experience, ability, resources and management to construct the WAWS infrastructure.

4. The State Water Commission is responsible for balancing water infrastructure funding across North Dakota.

5. The State Water Commission is also responsible for balancing competing water interests and water allocation, such as with WAWS sponsors and private water providers

THEREFORE:

1. The State Water Commission should construct the WAWS infrastructure, and negotiate an agreement with WAWS sponsors to transfer ownership, operation, and management of WAWS infrastructure to local entities.

(Adopted by ND Water Commission March 28, 2011)

UNOFFICIAL
Redraft by Robert W. Harms

Resolution on Resources Trust Fund

WHEREAS:

1. WAWS sponsors are seeking 100% upfront state funding/guarantee of WAWS infrastructure, in the form of grants and bond guarantees.

2. WAWS sponsors are seeking 100% state funding/guarantee without any local sales tax, 25% cost share, or capital repayment to the Resources Trust Fund.

3. If WAWS infrastructure and proposed bond repayment does not meet projections, bond guarantees/payments will come from the Resources Trust Fund having an impact on funding for all other water infrastructure projects in North Dakota.

4. Upon completion of obligations, WAWS sponsors are proposing to keep all revenues, rather than depositing such revenues in the Resources Trust Fund, to help other needed water infrastructure in North Dakota.

5. North Dakota has significant future water infrastructure needs, including Fargo Flood Control, Red River Valley Water Supply, NAWS treatment plant and completion, MR&I projects across North Dakota, Grand Forks water treatment plant, completion of the Southwest Pipeline Project, and other projects.

THEREFORE:

Since the State is paying or providing guarantees for 100% of WAWS infrastructure project costs, it is recommended that revenues exceeding operations and maintenance, and loans, be paid to the Resources Trust Fund, and that such revenues be made available for critical North Dakota water infrastructure projects.

(Adopted by ND Water Commission March 28, 2011)

UNOFFICIAL
Redraft by Robert W. Harms

March 13, 2011

The City of Alexander would support the McKenzie County Water District's proposed House Bill 1206 granting a Western Area Water Supply Authority from north of Williston to the Watford City area. Alexander, itself, has an RO (reverse osmosis) system for the city and does not need the rural water pipeline for the city's water usage at the present time.

However, we are concerned with the water depots the Western Area Water Supply Authority House Bill 1206 if passed, would develop along the route. Alexander, along with other private or public businesses, in and around Williston, Tioga, Crosby, Ray, Wildrose, Watford City and others, have their own water depots.

Alexander's water salesman (depot) has been beneficial for the city in many ways. It is a necessity for the town. It is our income. For without it, we could not and WOULD NOT be able to pay for many of our city bills; salaries of employees, plus benefits along with the upkeep and maintainance of the RO system, including the filters, insurance, electricity, and sewer costs among many other city expenses. The water salesman has helped pay for the cost of numerous water projects, as a new water tower and a new city water well. In the works, is replacement of the city's water main that runs down Hwy 85 right through town. Alexander would be "getting by", if that, if we did not have the water depot. I will reiterate, the water depot in Alexander IS a necessity, otherwise we, as a small town in McKenzie County would NOT be able to afford these necessary improvements to our community. The proposed House Bill 1206 to develop water depots under the Western Area Water Supply Authority would have a detrimental effect on our city and others in the same situation if we could not profit from our depot.

The area water depot businesses are just that, businesses, and they would be dramatically effected. The Advanced Engineering and Environmental Services, Inc. (AE2S) stating their business plan would need 50% of the water business to be viable! The available water depots are cost competitive and along with their locations help with the local economy and employment. Taking one-half of the water would devastate the locally owned and operated water depot businesses.

Cannot the AE2S come up with a plan that the pipeline could be financially efficient to pay for itself without hurting or disabling current businesses that are already operating in the area. The McKenzie Water District has not informed the potential patrons of the hook up cost, minimal usage/cost nor, what the cost (depending on usage, of course) would be estimated per month. Will they be making most of their profit off the depots or running a needed water supply for the area community/people of McKenzie County??

So, the City of Alexander would support the McKenzie County Water District pipeline for farmers, ranchers and residents along the route for the purpose of water service BUT has reservations and concerns on the depots selling water for without the water depot, it would financially impact us in paying our daily expenses and besides helping our town to grow and develop with the potential and opportunity that is at hand at the present time with the growth of the oil industry and impact in the area.

City of Alexander
Alexander, North Dakota

Kay Glick, Mayor

Kay Glick, Mayor

FALLACY OF BONDING: 10 YEAR

1. Project Cost: $150 million
2. Grant: $25 million RTF
3. Bond Issue: $200 million
4. Interest Rate: 5%
5. Annual Payments: $25,455,600 million - 10 year payoff
6. Total Payments: $254,556,000 million
7. Total Project Cost: **$280,000,000** million ($254,556,000 + $25,000,000)

FALLACY OF BONDING: 20 YEAR

1. Project Cost: $150 million
2. Grant: $25 million
3. Bond Issue: $200 million
4. Interest Rate: 5%
5. Annual Payments: $15,838,800 - 20 year payoff
6. Total Payments: $316,776,000
7. Total Project Cost: **$340,000,000** ($316,776,000 + $25,000,000)

ALTERNATIVE PLAN: NO BONDING

1. 2011-2013 RTF Funding: $45 million ($25 million + $20 million)
2. 2013-2014 RTF Funding: $65 million
3. 2015 RTF Funding: $40 million
4. Total Project Cost: $150 million
5. Annual Payments to RTF: $25,455,600 million - 10 year
6. Total Payments to RTF: 10 years $254,556,000
7. Years 10-20 Payments to RTF: $254,556,000
8. Total Available for Other Water Infrastructure: **$509,112,000**
9. Annual Payments to RTF: $15,838,000 - 20 year
10. Total Available for Other Water Infrastructure: **$316,760,000**

ALTERNATIVE PLAN: $50 MILLION BONDING

1. 2011-2013 RTF Funding: $25 million
2. Bond Issue $50 million: ($30 million construction)
   a. Payments: 5% at 10 years $6,363,900 x 10 = $63,639,000
3. 2013-2014 RTF Funding: $55 million
4. 2015 RTF Funding: $40 million
5. Total Project Cost **$163,639,000**
6. Annual Payments to RTF: 20 year $15,838,800 - $6,363,900 = $9,474,900 x 10 = $94,749,000
   $15,838,800 x 10 = 158,388,000
   $253,137,000

   10 year $25,455,600 - $6,363,900 = $19,091,700 x 10 = $190,926,00
   $25,455,600 x 10 = $254,556,000
   $445,482,000
7. Total Available for Other Water Infrastructure:
8. **Water Infrastructure Needs RRVWSP: $220,000,000**
   Fargo Flood Control: $225,000,000
   Water Supply: $300,000,000
   (MR&I, NAWS, SWPP)

ADDENDUM:

1. Value of 1 Mill as per County Auditor 3/30/2011
   Burke County – $1080.22

   Divide County – $12,180.00

   McKenzie County – $21,509.93

   Williams County – $68,000.00 =$102,770.15

2. 3,000 fracs will not pay for the project.
   -will take closer to 30,000 fracs at current market prices and 10% ROI
   (ND fraced 1100 wells in 2010).

3. "Asserted road savings is not likely, because the increase in water demand assumed in the proponents business plan necessitates significant increase in truck traffic (3-4 times current).

4. "Is this a domestic water supply or an industrial water supply"?
   -industrial component has been described as being "only 10%"
   -industrial component has been described as being "20%"
   -Legislation provides "large component of the project expense is being incurred to meet the demands of the industrial users".....see bill section: 61-40-05 (23)

   -Neither Grenora, nor Alexander is included in the project. (See letter from Alexander Mayor)

5. "Irrigation" authorization was removed from the bill in the House because "water is too expensive" for irrigation.

6. "Aquifers at risk"----State Water Commission has stated very clearly in early hearings "WE ARE NOT DEPLETING AQUIFERS IN NORTHWESTERN NORTH DAKOTA" (March, 2011)

#1206

Steven Martinson

part of the WAWSP transmission system. There is outstanding debt of approximately $23,275,000 on these existing systems. The associated debt services have been included as revenue requirements in the cash flow analysis. Further, as a result of this project, the City of Williston will be expanding its service area into an area of existing and future service for WRWD, which will lead to lost WRWD revenue from existing customers. As a result, the WAWSP cash flow analysis assumed responsibility of the WRWD existing debt and also included revenue from the existing WRWD water rate, which include provisions for existing debt service. Should some of the WRWD users be served by the City of Williston, the associated debt service responsibilities will be addressed through the WAWSP rate design for the City of Williston and WRWD.

Operation and Maintenance Costs

Revenue requirements associated with operation of the raw water intake, treatment, pumping, storage, and transmission systems were included in the O&M revenue requirements in the cash flow analysis. The financial analysis did not account for costs associated with transmission and distribution systems and billing within each entity, as it was assumed that such costs will remain the responsibility of the individual entities. Annual O&M costs were estimated based on projected peak day demands, projected average day demands, and the projected timeline for the system becoming operational.

Current Industrial Revenue Losses

For the purpose of the cash flow analysis, the revenue requirements included reimbursements for the potential industrial revenue losses to communities in the region as a result of the WAWSP for the time period of debt service repayment. The projected reimbursements are based on 2010 industrial water sales and indexed annually by three percent.

Will they ~~[illegible]~~ reimburse Private depots for loss revenue?

Reserve Fund Requirements

Three reserve funds were developed within the financial analysis. These reserve funds included: Debt Service, O&M, and Capital. These reserve funds will provide for stability within the system by building adequate reserve funds to address debt payment assurances, emergency issues, fluctuations in cash flow throughout the year, and required maintenance and rehabilitation.

Debt Service Reserve Fund

The establishment of the Debt Service Reserve Fund assured that there will be adequate funds to make the annual debt service payment. The Debt Service Reserve Fund was also utilized to make the final debt service payment for the project. As a standard requirement associated with bond financing, the amount of required Debt Service Reserve Fund, if any, was capitalized into the bond issue for each scenario.

O&M Reserve Fund

As a common and prudent practice, funding of an O&M Reserve Fund was assumed to help manage future utility expenses and provide essential services in the event of short-term financial downturn. The O&M Reserve Fund would also provide for revenue stability in any given month, as revenues and expenses fluctuate throughout the year. Operating reserves are typically established to provide for one to three months of operating expense. The financial analysis included consideration for funding of an O&M Reserve Fund that would provide for six months of system operating expense. The six-month target was

1206
Steven Martinson

POINTS:

TOTAL WELLS FRAC IN 2010: 1000 WELLS TOTAL ACRE FEET OF WATER SOLD: 6000 ACRE FEET
PRIVATE SUPPLIES SOLD 73% OF THE WATER NEEDS
MUNICIPALITIES AND RURAL WATER SOLD 27%

STATE WATER COMMISSION HAS CURRENTLY GRANTED 44 PRIVATE INDUSTRIAL PERMITS WITH 21,771 ACRE-FEET OF WATER AVAILABLE THERE IS AND ADDITIONAL 61 INDUSTRIAL WATER PERMITS BEING REVIEWED BY THE STATE WATER COMMISSIION WITH 31,353 ACRE FEET BEING REQUESTED UTILIZING GROUND AND MISSOURI RIVER WATER

CITIES SELLING INDUSTRIAL WATER: TIOGA, ALEXANDER, WESTHOPE, NEW TOWN, KILLDEER, STANLEY, RAY, POWERS LAKE, CROSBY, WATFORD CITY, WILLISTON, KENMARE, PARSHALL

LOCAL SALES
2010 SALES

1. WILLISTON SOLD	$1,400,000
2. R&T WATER SOLD	$1,585,227
3. STANLEY & TIOGA	$ 714,525
TOTAL	$4,129,991

THIS BILL IS NOT ABOUT BRINGING TREATED WATER TO THE AREAS THAT NEED IT. IT IS ALL ABOUT THE WATER SALES TO THE OIL INDUSTRY AND THE EMERGENCY PART OF THIS BILL IS TO QUICKLY GET IT BUILT AND TRY TO GET AS MANY WATER SALES AS POSSIBLE WHILE THE MARKET IS THERE.

WE ALL ARE FOR THE SALES OF INDUSTRIAL WATER BY THE LOCAL MUNICIPALITIES IT IS A GREAT SOURCE OF REVENUE FOR THEM BUT WE OPPOSE THE PROJECT PLAN OF GOING OUT AND ESTABLISHING WATER DEPOTS AMONG PRIVATE DEPOTS. [redacted]ROJECT STATES THEY ARE GOING TO GUARANTEE THE REVENUE TO THESE MUNICIPALITIES THAT ARE SIGNED UP ON [redacted]WS AND PAY THEM BEFORE ANY PAYMENTS ARE MADE FOR THE PROJECT.

THE ADVANCED ENGINEERING BUSSINESS PLAN EXECUTIVE SUMMARY STATES ON PAGE 14 CURRENT INDUSTRIAL REVENUE LOSSES.

I QUOTE: "FOR THE PURPOSE OF THE CASH FLOW ANALYSIS, THE REVENUE REQUIREMENTS INCLUDED REIMBURSEMENTS FOR THE POTENTIAL INDUSTRIAL REVENUE LOSSES TO COMMUNITIES IN THE REGION AS A RESULT OF THE WAWSP FOR THE TIME PERIOD OF DEBT SERVICE REPAYMENT. THE PROJECTED REIMBURSEMENTS ARE BASED ON 2010 INDUSTRIAL WATER SALES AND INDEXED ANNUALLY BY THREE PERCENT." (WESTERN AREA WATER SUPPLY PROJECT/ BUSINESS PLAN EXECUTIVE SUMMARY)

WHAT OTHER PROJECT HAS THE STATE GUARANTEING THE FINANCING AND NOT RECEIVING ANY REVENUE OR CAPITAL REPAYMENT TO ENHANCE OTHER PROJECTS IN THE STATE?

OUR GROUP HAS BROUGHT A DIFFERENT PLAN TO THE TABLE. WE HAVE OFFERED NUMEROUS TIMES TO MEET WITH THE WAWS PROJECT TO WORK OUT SPACING ISSUES BETWEEN DEPOTS. THE STATE WATER COMMISSION HAS PASSED RESOLUTIONS SUPPORTING THE STATE WATER COMMISSION BUILD, DESIGN, FINANCE AND TRANSFER TO THE WAWS TO MANAGE AND RUN IT WITH A CAPITAL REPAYMENT COMING BACK TO THE STATE OF NORTH DAKOTA SIMILAR TO THE SOUTH WEST WATER PIPELINE.

WE HAVE ALL THE WATER WE NEED TO FRAC THE WELLS BEING DRILLED NOW AND IN THE FUTURE. THE STATE IS GETTING MORE APPLICATIONS DAILY FROM PRIVATE BUSSINESS AND OIL COAMPANES WHO WILL ADDRESS THE MISSOURI RIVER FOR ITS NEEDS FOR INDUSTRIAL PERMITS. THE PRIVATE INDUSTRY HAS WENT OUT AND BUILD WATER PIPELINES OF 9 MILES [redacted]AVE LATERALS OF 8 MILES THIS WILL DO MORE FOR THE ROADS THAN ANY OTHER PLAN.

WE [redacted]RE ASKING YOU AS A COMMITTEE TO PLEASE ADDRESS THE PROBLEMS WITH THIS BILL AND ADMEND IT TO BE FAIR WITH EVERYONE INCLUDING THE PEOPLE OF NORTH DAKOTA

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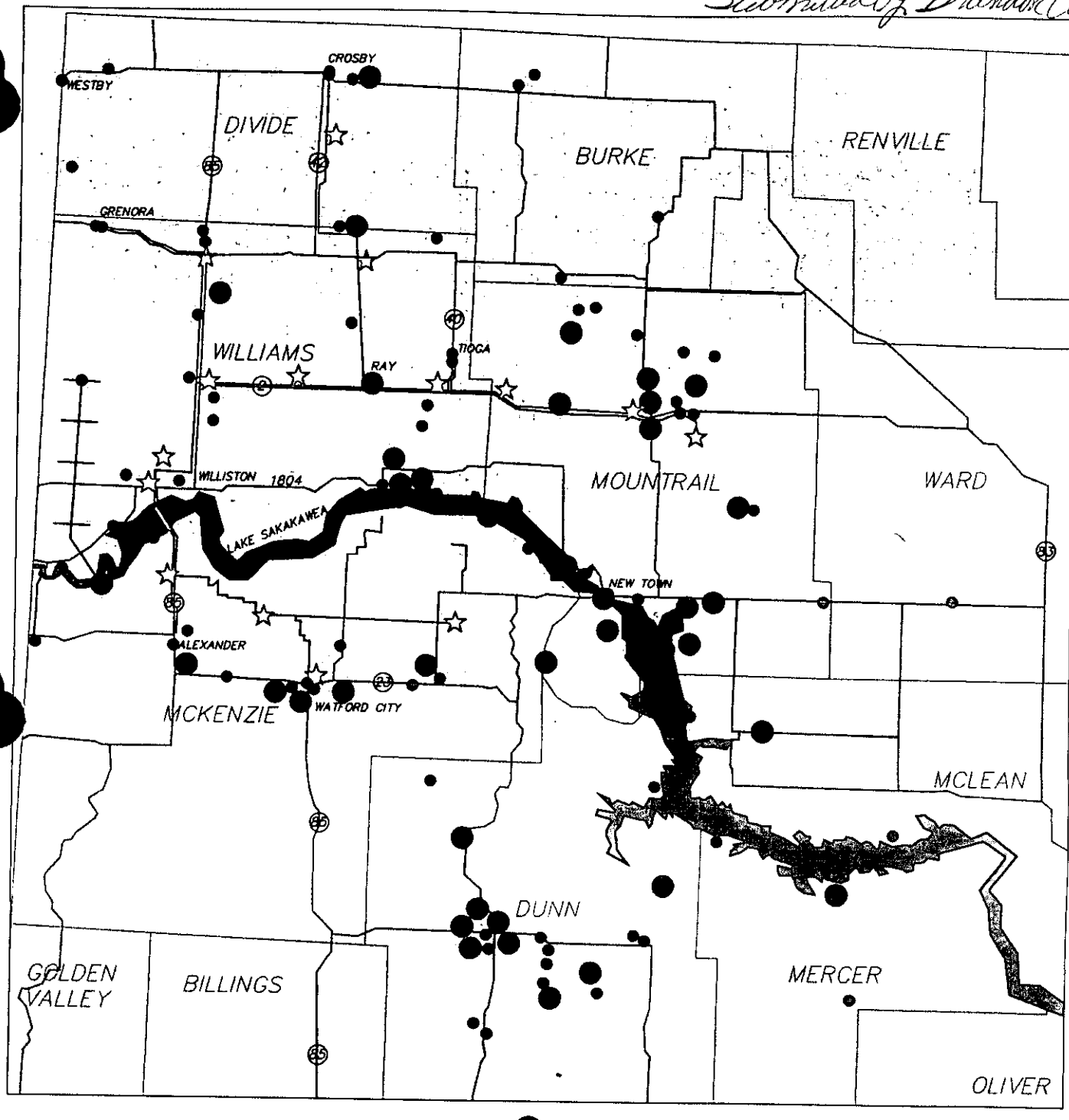
Submitted by Brandon Ames



- EXISTING PRIVATE WATER DEPOT
- APPLICATION FOR PRIVATE WATER DEPOT PERMIT
- WESTERN AREA WATER AUTHORITY PROPOSED DEPOTS
- WESTERN AREA WATER AUTHORITY PROPOSED PIPELINE
- R&T EXISTING PIPELINE

N

INDEPENDENT WATER PROVIDERS	OVERALL PLAN VIEW	DATE: 1/31/11	NTS
NORTH DAKOTA	WATER DEPOT MAP	WESTERN AREA WATER SUPPLY PROJECT	19A

North Dakota nd.gov Official Portal for North Dakota State Government

Submitted by Brandon Ames North Dakota Legislature

State Water Commission

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ND State Water Commission

The primary responsibility of the North Dakota State Water Commission is to provide effective management of North Dakota's water resources. The Water Commission is governed by the following principles:

Vision

Present and future generations of North Dakotans will enjoy an adequate supply of good quality water for people, agriculture, industry, and fish and wildlife; Missouri River water will be put to beneficial use through its distribution across the state to meet ever increasing water supply and quality needs; and successful management and development of North Dakota's water resources will ensure health, safety, and prosperity, and balance the needs of generations to come.

Mission

To improve the quality of life and strengthen the economy of North Dakota by managing the water resources of the state for the benefit of its people.

Philosophy and Values

In the delivery of services to the citizens of North Dakota, we the employees of the State Water Commission and the Office of the State Engineer value fairness, objectivity, accountability, responsiveness, and credibility. We pledge to use professional and scientific methods to maintain only the highest of standards in our delivery of services to our constituents.

Agency Goals

- To regulate the use of water resources for the future welfare and prosperity of the people of North Dakota.
- To develop water resources for the future welfare and prosperity of the people of North Dakota.
- To manage water resources for the future welfare and prosperity of the people of North Dakota.
- To educate the public regarding the nature and occurrence of North Dakota's water resources.
- To collect, manage, and distribute information to facilitate improved management of North Dakota's water resources.
- To conduct research into the processes affecting the hydrologic cycle to improve the management of North Dakota's water resources.

North Dakota State Water Commission
900 East Boulevard Ave. • Bismarck, ND • 58505-0850 • 701-328-2750

19B

My name is Will Berry, I am a fourth generation Mckenzie County resident. I farm and ranch with my family at Cartwright. Our farm consists of both irrigated and dry land crops along with cattle. We currently have drinking water for our families and our cattle from multiple water wells including wells from the shrinking Fox Hills Aquifer. Over the years we have spent hundreds of thousands of dollars to get good drinking water for us and our cattle. We do however have pastures that are still unusable due to lack of good water. Rural water is needed to keep consistent water to our ranch. A water system that could provide drinking water and would serve the long time and permanent residents of the area first is in need. We were here long before the oil and oil companies were. Without our hard work and contributions as farmers and ranchers we would not have the businesses and developments we do in our area.

As this bill stands it does not serve residents first. We have been promised water for years, and I look forward to the day that we have good drinking water at our ranch. I am not happy that we have to take a back seat and wait for the County to build water systems for the oil industry rather than getting water to the people. If this project is about getting water to the people of northwest North Dakota---then why don't we simply do that? We have the need, we have the money. Get it done and stop fooling around with water depots for the oil industry so the City of Williston and McKenzie County can collect more money. ~~With eminent domain it merely tramples on the rights of landowners to serve as a state owned, taxpayer funded industrial water supply line. Why does the state have the right to come through our citizens private property without permission? If it is to serve the people of the state that is one thing but to serve the oil industry that's another.~~

Recently bids were taken on a portion of what will become the future Western Area Water Supply. The low bid for Mckenzie County Water System Phase 1 came in at $10.3million. One year ago as estimated by the ND state water commission this phase was estimated at $7 million, an increase of 47% before the project has even begun. This is part of what my concern is also----we are in an oil boom----so everything is more expensive...and the more we hurry with this project the more expensive it will become. The money for this project was set aside to deliver water to Watford City, a town in need of water, but instead this 10.3 million is to be spent on 10 miles of pipeline and one industrial water depot to sell water to the oil field. Not a single resident of North Dakota will be supplied with

drinking water at this 10 million dollar cost to the taxpayer.

As this bill stands, Western Area Water Supply is simply a taxpayer funded oil field water supply and not a domestic water supply system. According to phase I, not a single resident will receive drinking water from it.

March 28, 2011

Dear State Water Commission:

We have tried to explain our situation concerning HB 1206.

We support a WAWS water infrastructure, and we understand the benefits of Missouri River water. However, like all private enterprise, we have invested tens and hundreds of thousands of dollars, responding to the need created by oil exploration, and simply can't have our state and local government threaten our livelihood, expose us to serious financial loss and possibly even bankruptcy. If each of you had invested a large sum, only to have your government threaten to substantially increase your risk, without any accomodation, you would feel our concern.

While water starts out as a public resource, the state allocates that water on a prior appropriation system, to individuals, companies, and other businesses, which then provide economic development with that water right. Examples include refineries, coal generation plants, gasification plants, ethanol plants, irrigation, agriculture processing plants, construction companies, and others.

The reason we have pushed so hard to have the State Water Commission build this infrastructure is because it provides an objective entity to balance the interest of WAWS sponsors and private water providers. We have been simply run over, disregarded, and completely ignored by the WAWS sponsors, and it is clear to us that if the project is turned over to the WAWS sponsors, we will have no choice but to litigate our interests, seeking just compensation and other remedies. Again, if you had invested tens or hundreds of thousands of dollars as a private enterprise, and government proposed to destroy that investment without any effort to accommodate, replace, or collaborate, you would be equally concerned.

Because we are in the business of providing water, we also believe the WAWS sponsors have grossly over-stated the potential, and are putting at risk funding for all water projects across the state. With the promise of oil money, you are on the verge of setting aside conservative fiscal principles and disregarding water policy that has enabled us to build significant water infrastructure in North Dakota. We urge you to follow fiscal principles and water policy so much needed water infrastructure across North Dakota, including WAWS infrastructure, can continue to be built. Thank you.

Sincerely,

Bill Sheldon

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HB 1206

Williams Rural Water District

RICK OLSON, MANAGER
P.O. BOX 1285

22 WEST 2ND STREET
WILLISTON, ND 58802
OFFICE (701) 774-8915
FAX (701) 774-8708
PAGER (701) 774-9909

March 16, 2010

Honorable John Hoeven
Governor of North Dakota
Dept. 101
600 E. Boulevard Ave.
Bismarck, ND 58505-0001

RE: Williams Rural Water District Water Development & Management Plan

Honorable Governor Hoeven:

The Williams Rural Water District (WRWD) has been providing potable water service to rural Williams County for over two decades. More recently, the WRWD has been planning several rural water distribution system expansions in response to increased demand for rural water service. Simultaneously, we have recognized an opportunity to provide bulk water service to support the expanding energy industry and its water needs in northwest North Dakota. As a result, the WRWD has developed a Water Development and Management Plan to meet the long term domestic and industrial water needs for Williams County.

As stated previously, we have been planning our water supply and delivery systems over the past two decades. The following briefly summarizes the systems we have been developing and the areas they serve. More detailed information is enclosed for each of the systems.

Phase 1: **Williston Area Expansion:** Construction of new transmission and distribution mains to expand service around rural Williston. Approximately 200 new residential and commercial users in rural Williams County (west of the City of Williston) have requested water service from WRWD.

Phase 2: **Bulk Water Supply System:** Construction of new transmission mains and storage reservoirs to provide 5 MGD of bulk water delivery to 13 Mile Corner in support of regional domestic and oil exploration water needs. The project may include future phases to deliver water service to other areas of Williams County to provide water service in closer proximity of oil exploration activity and also service other domestic customers.

Phase 3: **Construction of WRWD Phase IV Expansion:** Expansion of the existing North Service area to provide service to approximately 130 rural users in and adjacent to the Black Tail Dam Recreation Area in Williams County.

Phase 4: **Construction of WRWD Phase V Expansion:** Construction of a new rural water system in the Ray and Tioga areas, the scope of which is to be determined during the Feasibility Study.

The following table summarizes the total estimated project costs and the proposed cost share for each of the projects in our water development and management plan still seeking funding.

Project Phase	Estimated Total Project Cost (2010)	Proposed Year of Construction - Indexed Project Costs		Potential Funding Sources	
				75% Federal MR&I	25% Local (USDA/ DWSRF Loans)
Phase 1*	$ 1,000,000	2010	$ 1,000,000	$ 750,000	$ 250,000
Phase 2	$15,880,000	2012	$17,175,000	$12,880,000	$ 4,295,000
Phase 3	$ 3,250,000	TBD	TBD	TBD	TBD
Phase 4	$ 5,000,000	TBD	TBD	TBD	TBD
Total	$25,130,000		TBD	TBD	TBD

*Phase 1 has received $750,000 in federal WRDA funding.

As is typical with rural water systems in North Dakota, we are proposing a 25 percent local cost for the listed projects. However, in regards to the regional water service project, we would be willing to discus an alternative economic model due to the potential revenue that project may generate through bulk water sales to the oil industry. For that project, we would be willing to discuss a loan/grant guarantee with a reduced grant percentage, to help off-set the risk of investing in infrastructure to serve the oil industry. As long as bulk water sales revenue projections were met, we would be willing to accept reduce grant funding for that project.

The WRWD believes timely implementation of our water development plan is crucial to the economic development success for Williams County as well as the State of North Dakota. As we move forward, we would like to continue to work with you, your staff, and other key leaders in the water and energy sectors to discuss potential funding options that may be available to complete these projects. Please feel free to have your staff contact Rick Olson at 701-774-8915 if you have any questions or need additional information. Once again, thank you for your efforts in addressing water needs in our region. We look forward to working together to make these projects a reality and a success for all of North Dakota.

Sincerely,

Jake Stokke, President
Williams Rural Water District

Nick Leier
Williams Rural Water District

MCKENZIE COUNTY, NORTH DAKOTA
Water Resources District Board
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December 23, 2009

Honorable John Hoeven
Governor of North Dakota
Dept. 101
600 E. Boulevard Ave.
Bismarck, ND 58505-0001

RE: McKenzie County Water Development & Management Plan

Honorable Governor Hoeven:

The McKenzie County Water Resource District (MCWRD) would like to thank you and your staff for holding a meeting to discuss the water needs in North Dakota's oil country at the Water User's Convention in Bismarck. The MCWRD and the McKenzie County Commission have long understood the importance of delivering potable water for domestic needs as well as meeting the agricultural and increasing oil industry needs throughout McKenzie County. Through all of our planning efforts over the last two decades, the MCWRD has developed a Water Development and Management Plan for the county that evaluates the county's water supply challenges and needs and provides solutions to resolve these challenges and meet all of the water needs of McKenzie County.

The MCWRD and County Commission began water development planning efforts in the 1990's in response to rural residents' desires for more reliable and higher water quality sources. As those initial and more recent planning efforts were completed, it became clear that other water supply challenges and needs were present county-wide. These challenges include:

- **Poor Water Quality:** Water quality and supply surveys, completed by users interested in rural water service, indicated that a majority of the available water supplies are of poor quality with many residents obtaining drinking water from alternative sources. Common water quality complaints by potential users include: (1) stained fixtures from high iron concentrations, (2) hydrogen sulfide odors, (3) high sodium, (4) high hardness, and (5) high alkalinity. In addition, many of the county's groundwater supplies exceed the maximum contaminant level for fluoride as set by the Safe Drinking Water Act.

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Limited & Depleting Groundwater Resources: Glacial till aquifers cover only a small portion of McKenzie County. As a result, most of the rural residents rely on deep bedrock aquifers. These aquifers are generally characterized by poor water quality, low yield rates, and low recharge rates. The low recharge rates of these aquifers is resulting in them being mined just from the relatively low municipal, rural, and industrial uses today, and they cannot be relied upon for the growing water needs of the county, particularly those of the oil industry.

Remote and Sparsely Populated Rural Areas: The remoteness and sparsely populated rural areas of McKenzie County made it difficult to develop cost effective rural water systems that provided for domestic needs only except those areas already served by rural water.

Increasing Oil Exploration Water Demands: All of McKenzie County covers the Bakken and other oil bearing shale formations resulting in significant increases in oil exploration in recent years. To economically develop these shale formations, massive quantities of water are needed, anywhere from 1 million to up to 4 million gallons for each well. Like many other areas, McKenzie County simply does not have the water resources to meet the projected water needs to fully develop these shale formations.

Increasing Energy Industry Truck Traffic: While the boom in the energy industry has been a welcome boost to our economy, it has resulted in a significant increase in truck traffic. A major portion of this traffic is in response to the water needs of the industry traveling to the few locations in the County where supplies are available.

In order to overcome these challenges, the MCWRD and the County Commission have developed a long-term strategic water development and management plan. The commitments in this plan include the following:

Developing the Missouri River as a Water Supply: McKenzie County has more shore line with the Missouri River than any other county in North Dakota. However, only the Fort Berthold Rural Water System has tapped this tremendous water resource within McKenzie County. The MCWRD and the County Commission have recognized that the Missouri River is the only water source capable of meeting our long-term water supply needs and have committed to developing it as a resource except the area south of the Little Missouri River already served by Southwest Water Authority..

Creating Regional Water Development Partnerships: In an effort to develop more cost effective water supply solutions, the MCWRD has developed partnerships with other regional water suppliers to meet our needs in lieu of building our own water treatment facilities. The MCWRD has partnered with Watford City, the Three Affiliated Tribes, and the Southwest Water Authority (SWA) to provide bulk water service to three of our existing rural water systems. In addition we are currently working with Williston to develop a regional water system to provide Missouri River water to the entire County.

Economic Development through Water Development: Due to our limited and sparse rural populations, the MCWRD has incorporated economic development as an integral part of water development planning efforts. The MCWRD, along with the Three Affiliated Tribes and Hess Corporation, created a partnership where several Hess facilities in eastern McKenzie County would receive Missouri River water for their production needs. By incorporating this economic development aspect into the project, the MCWRD was able to reduce water rates for the rural residents, mitigate impacts to our groundwater resources, and increase oil production for these facilities through abundant, higher water quality. The MCWRD and the County Commission are committed to incorporating economic development strategies into our water development planning efforts to meet all of our domestic and industrial water needs while providing affordable water service and growing our local economy.

As stated previously, we have been planning our water supply and delivery systems over the past two decades. The following briefly summarizes the systems we have been developing and the areas they serve. More detailed information is enclosed for each of the systems.

System 1: System I serves the rural areas adjacent to Watford City through a water supply agreement with the City. This system currently serves 125 users with requests from approximately 100 additional users seeking water service in central McKenzie County as far north as the Tobacco Garden recreation area.

System 2: System II serves eastern McKenzie County (Charlson, Keene, and Johnson's Corner areas) through a water purchase agreement with the Three Affiliated Tribes. This system currently serves one Hess facility but has been fully funded is in the final design stages to add approximately 140 new users, including 6 more Hess facilities.

System 3: System III serves approximately 90 users in the Grassy Butte area of southern McKenzie County. This system was incorporated into the SWA through an agreement with the McKenzie County Commission. This project has been fully funded and is nearing completion.

System 4: System IV is currently in the planning stages to provide water service to 90 rural users and 10 oil production sites in the Alexander area of western McKenzie County. The system will be served with Missouri River water from the Williston Regional Water Plant.

Regional Water Service from Williston: The MCWRD spent much of 2009 on planning efforts to bring Missouri River water from the Williston Regional Water Treatment Facility to serve a majority of northern McKenzie County. This project would include facilities to meet the water needs of Watford City, System I, and System IV as well as provide supplemental water service to System II. Initial planning efforts provided for a 3 million gallon per day capacity to meet the needs of the county. Additional planning efforts will evaluate a 4 to 5 million gallon per day option as well as water filling stations to meet the projected water needs of the oil industry to develop the Bakken formation.

The following table summarizes the total estimated project costs and the proposed cost share for each of the projects in our water development and management plan still seeking funding.

The following table summarizes the total estimated project costs and the proposed cost share for each of the projects in our water development and management plan still seeking funding.

Project	Estimated Total Project Cost (2009)	Proposed Year of Construction - Indexed Project Costs		Potential Funding Sources/ Proposed Cost Share	
				Federal/ State	Local Cost Share
System I	$ 2,270,000	**2011**	$ 2,450,000	$ 1,837,500	$ 612,500
System IV	$ 4,230,000	**2011**	$ 4,500,000	$ 3,375,000	$ 1,125,000
Regional Water Service (4 MGD)	$23,375,000	**2010/2011**	$24,300,000	$12,150,000	$12,150,000
Total	$29,875,000		$31,250,000	$17,362,500	$13,887,500

As is typical with rural water systems in North Dakota, we are proposing a 25 percent local cost for the distribution system projects (System I and System IV). However, in regards to the regional water service project, we are proposing an alternative economic model due to the potential revenue that project may generate through bulk water sales to the oil industry. For that project, we are proposing a 50 percent cost share, with the local cost share being provided as a loan/grant guarantee, to help off-set the risk of investing in infrastructure to serve the oil industry. As long as that project met bulk water sales revenue projections, we would be willing to reimburse the State for up to 50 percent of total project costs. In addition, we feel strongly that we need to address the industrial and domestic water needs simultaneously. A partial funding solution that only addresses the needs of the oil industry without meeting the domestic and ranching needs would not be well received by our residents.

The MCWRD and the McKenzie County Commissioners believe timely implementation of our water development plans are not only crucial to the economic development success for McKenzie County, but are also crucial to the continued economic success for the State of North Dakota as well as energy development for our country. As we move forward, we would like to continue to work with you, your staff, and key legislators to discuss potential funding options that may be available to complete these projects and will be in contact to facilitate these discussions. Please feel free to have your staff contact Jaret Wirtz at 701-444-3616 ext. 7 or Gene Veeder at 701-444-2804 if you have any questions or need additional information. Once again, thank you for your efforts in addressing water needs in our region. We look forward to working together to make these projects a reality and a success for all of North Dakota.

Sincerely,

Denton Zubke, Chairman
McKenzie County Water Resource District

Rick Lawlar, Chairman
McKenzie County Commission

Alternate Plan for Western Area Water Supply

Provide for the water needs or McKenzie Rural Water, Watford City, and William Rural Water without the expense of dedicated capacity for industrial water supply.

Potential savings: $150-200 Million

Projected Costs:

McKenzie County

16" Water Line to Alexander	$9,540,800
12" Water Line to Watford City	$6,323,200
10% Engineering Fee	$1,586,400
Rural Distribution Estimate (12/23/2009 Letter to Hoeven)	$7,549,600
Sub Total	$25,000,000

Williams County (figures from 3/16/2010 Letter to Hoeven)

Williston Area Expansion	$1,000,000
Phase 2 Expansion W/O Water Depot	$2,500,000
Phase 3 Blacktail Expansion	$3,250,000
Phase 4 Ray and Tioga Expansion	$5,000,000
Pipeline to Grenora	$2,500,000
Sub Total	$14,250,000

Williston Water Treatment Plant

Clear Well Intake W/O Bulk Fill Station	$15,000,000
Plant Expansion 10 MGD to 14 MGD	$5,000,000
Sub Total	$20,000,000
Total Project Costs	$59,250,000

Funding sources:

State of North Dakota Grant	$30,000,000
Bonding	$30,000,000

Water Demand Projections:

Williams Rural Water

Current Usage 170,000 GPD
Users 3200
Per Capita Usage 52 GPD

Calculations Provided by Independent Water Providers

Grand Total industrial Water Use-2010 (SWC Report) 5,941 Acre-Feet

Independent Water Providers	4337 Ac ft.	73% of Market
Municipals Provide	1604 Ac ft.	27% of Market

Estimated Value Of Water Per Barrel- 2010

$ 0.50 per bbl	$ 11.90 per 1000/Gal	$ 23,000,000.00
$ 0.63 per bbl	$ 15.00 per 1000/Gal	$ 29,000,000.00
$ 0.84 per bbl	$ 20.00 per 1000/Gal	$ 38,700,000.00

Wells Hydrofractured-2010 1000 Wells

Average water usage per well-2010 5.9 Acre-Feet or 46,000 bbl
46,090 bbl

Estimated Hydrofractured Wells-2011 1200 Wells

Estimated Total Water Usage-2011 7129 Acre-Feet

Estimated Value Of Water Per Barrel- 2011

$ 0.50 per bbl	$ 11.90 per 1000/Gal	$ 28,000,000.00
$ 0.63 per bbl	$ 15.00 per 1000/Gal	$ 35,000,000.00
$ 0.84 per bbl	$ 20.00 per 1000/Gal	$ 46,000,000.00

Total Volume of Water Present Permits Industrial Water Sales

Ground Water	3494 Acre-Feet	Percentage Used 2010	82%
Surface Water	19299 Acre-Feet	Percentage Used 2010	8%
Temporary	2850 Acre-Feet	Percentage Used 2010	51%

Total Volume of Water Present and Future Permits Industrial Water Sales

All Sources	55974 Acre-Feet	Percentage Used 2010	11%

Journal Publishing
Newspapers for North Dakota's Great Northwest

Tioga Tribune
105 North Main Street -- Tioga, North Dakota

Latest News

New policy could curtail future industrial water sales

Posted 3/15/11 (Tue)

By Traci Papineau

A new minimum levels policy set for R&T Water Supply at a meeting Monday night may greatly affect the sale of industrial water in the future.
Concerns over keeping acceptable minimum levels of water in reserve prompted the new policy.
If water levels drop below 16 feet at the reserve tank and 8 feet at the plant, the plant operator will call for an immediate halt to bulk sales of water.
The cities of Ray, Tioga and Stanley would also have to halt industrial sales at such times.
One exception to the new policy is the Hess plant, which has a contract with R&T for 200 gallons of water a minute. Plant access to water will not be shut down except in an emergency.
Sale of agricultural and potable water sold to farmers would be allowed to continue by dtles and at the Ray Farmers Elevator unless levels continue to fall.
"Farmers were here to start with, before the oil and will be here after the oil leaves," said plant operator Greg Larson, "They shouldn't get shut off."
The water depot at Stanley has a PIN system but the Tioga and Ray depots may need to have someone monitor sales.
Water levels would have to reach 24 feet in the reserve tank and nine feet at the plant for R&T to restore water sales. The reserve tank measures 27 feet when full.

Water permits

Tioga board representatives were asked for an update on the permit situation with the Tioga water sales.
Mayor Nathan Germundson explained the permit affected was the Tioga well water.
The problem arose when the state checked to see how much water was being sold for industrial use. It was discovered the city in 2010 sold about four times the amount of water allowed by the permit. It will take a minimum of 75 days to receive a new permit. (See sidebar).
R&T also ran over their allowed sales for industrial water in 2010, by about 10 million gallons, and will be requesting an increase from the state.

Piping from Lake Sakakawea

Engineer Cory Chorne informed the board that state senators have been contacted by private developers who wish to run large diameter pipelines from Lake Sakakawea inland for industrial water sales. They would start with temporary above-ground pipelines.
Board members questioned how the Army Corps of Engineers will react and how it would affect R&T's water sales. Very little information is known at this time but opinions of board members were not in favor.
"This needs to go to the vote of the people," said Board President Jerry Ranum.
"Can we take this to the Corps of Engineers and oppose it?" asked board member Keith Skaare.
With so little information yet available, Chorne said he will monitor the situation.

Improvements

Bid opening for the new R&T water plant will be held Thursday, April 7 at 4 p.m. at Ray City Hall.
Construction of the plant is anticipated to be finished by March 2012, with the plant being in full operation by the fall.
In addition, early this summer, three more water wells will be drilled which hopefully will be fully used by fall.

City of Wildrose

R&T is in the end stages of the process to supply water to the City of Wildrose.
With some minor wording changes, the water purchase agreement between R&T and the City of Wildrose was approved.
R&T is working to locate and finalize the taking over of water lines that run from Ray to Wildrose.

New employee

After extensive discussion into the need for additional help in the form of a pipeline manager, a new position was created.
The pipeline manager will work mostly in the field being available for locates, tie-ins to R&T water, meter reads, maintenance and covering at the plant when needed.
Another important role for this employee will include being on site when companies are working around water lines, such as for pipelines being laid.
Kent Bickler, who is currently the assistant manger, will be moved into the newly created position.
A current employee at the plant will be moved into the assistant manger position, which leaves a need for a full-time plant operator.
It was voted on and approved to start advertising for a plant operator.
A request by the City of Wildrose for a contract employee was not approved.
Board members agreed that after all funding is in place and the pipeline from Wildrose to Ray was turned over to R&T, it may be looked at again.
However, members also agreed that they would have to pay the cost of the additional employee if hired.

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Title.

Prepared by the Legislative Council staff for
Senator Klein
March 22, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 61-40 of the North Dakota Century Code, relating to a western area water supply project and authority; to provide for the payment of additional revenues; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply project and authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that in conjunction with a water authority created to advise as to the construction of the project and to operate and maintain the project, the state water commission provides for the treatment, storage, supply, and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The state water commission may acquire, construct, improve, develop, and own water supply infrastructure and the commission may enter water supply contracts, or do the same through the authority, with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries of the state. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds under chapter 61-02, unless otherwise provided by this chapter, to finance the costs of the projects.

61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the state water commission. Other cities and water systems, within or outside the project counties' boundaries, including cities or water systems in Montana, may contract for a bulk water supply. The authority is a

political subdivision of the state, a governmental agency, body politic and corporate, with the authority to operate and maintain the project as specified by the commission and provide an advisory role in the construction priorities of the project.

61-40-03. Western area water supply authority - Board of directors.

1. The initial board of directors of the western area water supply authority consists of one representative from:

   a. The Williams rural water district who is a member of the district;

   b. The McKenzie County water resource district who is a member of the district;

   c. The Burke, Divide, McKenzie, Mountrail, or Williams County water resource districts who resides in Burke, Divide, McKenzie, Mountrail, or Williams County;

   d. The city of Williston who is a resident of the city;

   e. A city other than Williston in Burke, Divide, McKenzie, Mountrail, or Williams County;

   f. The Burke, Divide, and Williams water system association who is a member of the association;

   g. The Ray and Tioga water supply association who is a member of the association; and

   h. The state water commission.

2. The governing body of the particular district, city, association, or commission shall chose the representative. In the case of multiple districts and cities, each governing board of each qualifying district or city may submit one candidate representative to the state water commission and the commission shall choose at random from the submitted candidates. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. If a vacancy arises for a member entity, that member entity shall select a new representative to act on its behalf on the authority board. Directors have a term of one year and may be reappointed.

3. Nothwithstanding any other provision of this section, within two years of the first delivery of water under the project, the board members, other than the state water commission member, must be from a city or a water system that has entered a water service contract for the provision of water under the project.

61-40-04. Board of directors - Officers - Meetings.

1. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, and financial participation structure for membership in the authority. Bylaws need to be approved by member entity boards.

2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.

3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

4. The initial board bylaws must direct board voting protocol.

5. Before the bylaws become effective, the bylaws must be reviewed and approved by the state water commission.

61-40-05. Authority of the western area water supply authority.

The board of directors of the western area water supply authority shall serve in an advisory role to the state water commission in determining priorities for the construction of the project. The authority shall collect revenue and pay debts as directed by the commission. The authority shall operate and maintain any water system made under the project.

61-40-06. Commission authority over projects.

1. The state water commission may issue bonds for the construction and own water system projects as allowed in this chapter. Bonding is limited to create a project that uses the capacity of the Williston water treatment plant of up to fourteen million gallons per day.

2. The commission shall construct and own water projects and water depots. The water depots are for the sale of water for industrial use.

3. The state water commission may exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the project. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the commission, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the

landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

61-40-07. State engineer - Employment of staff.

The state engineer may employ full-time personnel and may employ other personnel as are necessary for the administration of this chapter and as available funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this chapter may be used for salaries and expenses of persons employed under this chapter.

61-40-08. Commission to fix water rates for the western area water supply project.

The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the western area water supply project. The payments for water service must include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs and payments to the resources trust fund, which may be fixed at a higher rate for industrial users. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the western area water supply project reserve fund for replacement and extraordinary maintenance of western area water supply project works. The amount of the reserve fund for replacement must be determined by the commission.

61-40-09. Resolution authorizing the issuance of revenue bonds.

The issuance of revenue bonds or refunding bonds must be authorized by the state water commission. The resolution to issue bonds takes effect immediately. Each resolution for the issuance of bonds provided for in this chapter must set forth the purpose or purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

61-40-10. Sale of bonds.

Revenue bonds or refunding bonds may be sold at public or private sale on the terms, conditions, and payment provisions as the state water commission deems appropriate.

61-40-11. Bonds or certificates issued pending preparation of bonds.

Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the state water commission.

61-40-12. Validity of bonds.

Revenue bonds or refunding bonds bearing the manual or facsimile signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the

persons whose signatures appear on the bonds have ceased to be officers of the issuing authority. The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

61-40-13. Bonds exempt from taxation.

Notwithstanding any restriction contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, credit unions, savings and loan associations, investment companies, and other persons carrying on a banking business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the authority under this chapter, and the bonds are authorized security for public deposits. Bonds, including refunding bonds, issued under this chapter and their income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

61-40-14. Liability of authority for bonds.

Revenue bonds and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to payment of the bonds and the authority issuing the bonds may not be subject to any pecuniary liability. The holder of these bonds may not enforce payment of the bonds against any property of the authority. Bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the authority, other than the revenues pledged to their payments.

61-40-15. Duties of commission and officers relative to the issuance of bonds.

To adequately secure the payment of bonds and interest on the bonds, the commission and its officers, agents, and employees shall:

1. Pay or cause to be paid, punctually, the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the resolution authorizing its issuance.

2. Make certain any project financed by the commission is operated in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. The fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, to at least:

   a. To pay all current expenses of operation and maintenance of any project;

   b. To make all payments required under any water purchase contract executed under the project;

   c. To pay the interest and principal on the commission's bonds as they become due;

d. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the bonds; and

e. To meet any other obligations of the commission that are charges, liens, or encumbrances upon the revenues of the commission.

3. Operate, maintain, preserve, and keep every part of any tangible project financed and owned or operated by the authority in good repair, working order, and condition.

4. Enforce the provisions of all water purchase and sales contracts that produce revenues pledged to the payment of bonds.

5. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.

6. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid, might become by law a lien or charge on all or part of the revenues superior to the lien of the bonds or which might impair the security of the bonds.

7. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the decision authorizing the issuance of the bonds or, if the resolution is modified, as provided in the modified resolution.

8. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the authority are subject to inspection by the holders of ten percent or more of the outstanding bonds or by representatives authorized in writing. The duties contained in this section may not require any expenditure by the commission of any funds other than revenue received from a project or water sale contract. The performance of the duties enumerated in this section is of the essence of the contract of the commission with the bondholders.

61-40-16. Easement granted for ditches, canals, tramways, and transmission lines on any public lands.

In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of right of way of roads before the grant becomes effective.

61-40-17. Proceedings to confirm judicially contracts and other acts.

The commission, before making any contract, issuing bonds, or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must

comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-40-18. Debt service reserve - Legislative appropriation requirement.

In order to assure the maintenance of any required debt service reserve, including a letter of credit or similar instrument, for bonds issued under this chapter, the legislative assembly shall appropriate to the state water commission for deposit in the reserve fund or funds for the bonds, such sums if any, as are certified by the authority to the state water commission as necessary to restore the reserve fund or funds to an amount equal to the required debt service reserve. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state any amount as is certified to the commission by the authority. If the governor does not include in the executive budget the amount certified, the state water commission shall request independently an appropriation from the legislative assembly for the certified amount.

SECTION 2. STATE WATER COMMISSION IN PAYMENT OF REVENUE INTO RESOURCES TRUST FUND. After any bonds or refunding bonds have been paid in full by the authority and after the provision of adequate funds for capital reserves and operation and maintenance reserves, the state water commission shall provide for the receipt of additional revenue into the resources trust fund.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

61-40-03. Western area water supply authority - Board of directors.
1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, and R&T water supply association. Each member entity shall select two representatives to the authority board. If a vacancy arises for a member entity, that member entity shall select a new representative to act on its behalf on the authority board. In addition, the Governor may select one member of the state water commission who will sit as a state water commission designee on the authority board. The Governor may replace this authority board member at any time.

61 - 40 - 06. Oversight of authority projects .
The authority shall ~~report to the~~ comply with the state water commission rules in administrative code 89-12-01 with regard to~~on~~ the bidding, planning, and construction of project. The authority will report to and consult with the state water commission regarding~~,~~ operation~~,~~ and financial status of the project, as requested by the state water commission. In relation to ~~initial construction of the system and~~ debt repayment, the authority shall present the overall plan ~~and contract plans and specifications for the project~~ to the state water commission for concurrence.

61 - 40 - 07. Resolution authorizing the issuance of revenue bonds.
The issuance of revenue bonds or refunding bonds must be authorized by a resolution of the board adopted by the affirmative vote of a majority of the board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted. Each resolution providing for the issuance of bonds provided for in this chapter must set forth the purpose or purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds. The authority may not issue more than $100 million in revenue bonds during the 2011-2012 biennium. Any remaining revenue bonds to be issued in later bienniums require legislative approval prior to issuance.

Western North Dakota

- 1,100 to 2,700 wells/year = 2,100 expected
    - 100-225 rigs = 12,000 – 27,000 jobs = 21,000 expected

100 rigs is the expected case for an oil price of $50-60 per barrel
225 rigs is the expected case for an oil price of $95-105 per barrel
Current rigs count is 173

In 2010 1,213 wells were drilled and approximately 1,000 were hydraulic fractured leaving an inventory of approximately 200 wells waiting on fracturing due to weather and crew availability. That means that last year was roughly equivalent to the 100 rig/15 million gallon per day figure. This year is expected to equal or exceed the 225 rig/30million gallon per day estimate.

These numbers are for the drilling and fracturing only, workers and communities have additional needs due to the 21,000 added jobs bringing workers and families in.

- 15 - 30 million gallons frac water/day

Current water commission permitted and deliverable volume is 7 million gallons per day,
3.2 million from ground water – small incremental increases possible
0.5 million from temporary agricultural to industrial permit conversions
3.3 million from surface sources

The remaining 8 million gallons per day is municipal sales.

There are permits pending for 16 million gallons per day that depend on Corps of Engineers approval.

Oil and gas operators do not buy water on long term contracts. They order water for each well FOB at the well site.

Transportation is by far the largest portion of cost. Transportation is a combination of distance and time waiting to fill at a depot.

Water haulers will use their own supply first.

Water haulers will go as far as necessary to get water, but prefer to go no more than 50 miles and if at all possible use a depot within 25 miles.

A public funded system should be designed to minimize truck traffic on county and township roads as well as minimize competition with private sources (NDIC areas along with Water Commission aquifer maps and permitted to locations)

- 10 to 20 years
    - 26,000 new wells = long term jobs

WAWSP Projected Domestic vs. Industrial Sales

	2014	2019	2024	2029	2032
Projected Domestic Sales*					
Williston	1,223,596,800	1,343,200,000	1,455,328,000	1,473,432,000	1,618,264,000
Williams Rural Water District	266,304,000	283,824,000	299,592,000	305,432,000	343,976,000
McKenzie County Water Resource District	210,824,000	222,504,000	241,192,000	245,280,000	273,896,000
R&T Water Supply Association	322,952,000	343,392,000	367,920,000	374,344,000	419,312,000
Total Projected Domestic Sales (Gallons)	2,023,676,800	2,192,920,000	2,364,032,000	2,398,488,000	2,655,448,000
Modeled Industrial Sales (Gallons)	1,421,838,000	1,021,920,000	1,021,920,000	759,516,000	444,757,000
Percent Domestic Sales	59%	68%	70%	76%	86%
Percent Industrial Sales	41%	32%	30%	24%	14%

*Projections based on anticipated population grown and 160 gallons per person per day.

WAWSP Supply, Treatment, and Transmission Rates and Revenues

Domestic Entity	2014 Projected Demand (Gallons)[1]	2014 Rate per Kgal[2,3]	2014 Projected Revenue
Williston	1,223,596,800	$1.26	$1,537,616
Williams Rural Water District	266,304,000	$3.84	$1,021,401
McKenzie County Water Resource District	210,824,000	$2.19	$460,746
R&T Water Supply Association	322,952,000	$2.93	$945,768
Total	2,023,676,800		$3,965,531

[1] Projections based on anticipated population growth and 160 gallons per person per day.

[2]Existing cost for supply, treatment, and transmission indexed 3% per year for inflation.

[3]All entities pay separate and additional costs for distribution.

Industry	2014 Projected Volume (Gallons)[1]	2014 Rate per Kgal[2]	2014 Projected Revenue
Industrial Projected Demands	1,421,838,000	$21.85	$31,067,160

[1] Projections based on Extended Drill-Out Period, which is based on the August 3rd, 2010 presentation by the North Dakota Department of Mineral Resources, *Activity and Projections-Williston*. Note these projections are well below the current drilling pace.

[2]Rate based on $20 per thousand gallons indexed 3% per year for inflation.

Chairman Klein and members of the Committee.

I urge you to amend HB1206 into a smaller more practical project. The present form only competes with private business and has the potential to cost the state double. This will happen when Western Area Water is forced to drop its price to compete with the private operators. The private operators will be forced to drop their prices to out compete them. Where will it end.

Western Area water will not have the cash flow to pay the bills and the state will end up having to pay for the project. The private operators will not make any money either and the State will lose the income tax that they are currently paying. The State ends up losing double on this deal.

The only ones who come out ahead are the bond bankers until they no longer get their payment and turn to the State to pay the bill. The oil companies end up getting cheap water at the expense of the State and private water providers. I wonder why people don't see that this can happen.

Thank you

Jerry Wurtz

PO Box 55

Plaza ND 58771

EXECUTIVE SUMMARY

Western Area Water Supply Project
Business Plan

February 22, 2011

INTRODUCTION

In April 2008, the U.S. Geological Survey (USGS) released official estimates on undiscovered, technically recoverable oil in the Bakken Formation located in western North Dakota and eastern Montana at 3.0 to 4.3 billion barrels. This estimate represented a *25-fold increase* in the amount of oil that can be recovered compared to the agency's 1995 estimate of 151 million barrels of oil. In addition to the Bakken Formation, two other oil-rich shale formations, Three Forks and Tyler, have been identified in western North Dakota. Further assessments on these two additional formations have not yet been completed or officially released to the public.

As a result of oil recovery activities in the Bakken Formation, northwest North Dakota is experiencing tremendous growth region-wide. Expanding energy-related activities have brought great opportunity to the area, but at the same time have also brought significant challenges. One of the most significant challenges facing the region is meeting the growing water demands due to the large work force moving into the area. The labor demands associated with this oil boom have resulted in tremendous regional population growth over the past couple of years. Recent housing studies have predicted populations may increase by as much as 50 percent for several of the larger communities in the northwest region including the cities of Williston, Watford City, Tioga, and Stanley. This extreme growth is unprecedented and follows a lengthy period of population decline in the region. Therefore, the growth has strained existing municipal and rural water systems' ability to provide the ever growing domestic water demands.

Horizontal well drilling methods combined with hydraulic fracturing recovery technologies have led to the significant increase in recoverable oil from the Bakken Formation. The hydraulic fracturing ("frac") process used to extract oil from the shale formations is a water-intensive process. A typical Bakken oil well frac requires between two and four million gallons of freshwater. The North Dakota State Water Commission (NDSWC) concluded the ground water supplies in western North Dakota are limited and it is critical that ground water supplies be conserved for the use and sustenance of towns, homes, local industries, and farms and ranches after the completion of oil development.

incorrect Statement

> *"The only plentiful and dependable supply of water for the oil industry in western North Dakota, at projected rates of extraction, is the Missouri River System, including Lake Sakakawea."*
>
> - *W.M. Schuh, NDSWC, Water Resources Investigation #49, August 2010*

Access to water from Lake Sakakawea requires two permits issued by the U.S. Army Corps of Engineers which include real estate and regulatory permits. In May 2009, the U.S. Army Corps of Engineers announced that a three-to seven-year storage availability study would be required before any additional long-term water access permits could be approved from Lake Sakakawea. In December 2010, the U.S.

Army Corps of Engineers released for public comment the Draft Garrison Dam/Lake Sakakawea Surplus Water Report and environmental assessment that provides for temporary permits from surplus water out of Lake Sakakawea. The City of Williston has an established point of diversion on the Missouri River, providing a water supply option to serve a large portion of this municipal, rural, and industrial water demand without further permits from the U.S. Army Corps of Engineers. city does not have an industrial Permit from the state

In response to the rapidly increasing water demands, a consortium of northwest North Dakota communities and rural water systems has been working to develop a regional solution with lasting, long-term benefits. This regional solution has been entitled the Western Area Water Supply Project (WAWSP). The WAWSP will maximize and expand upon existing water infrastructure through a partnership of most of the communities and rural water providers in northwest North Dakota, providing a comprehensive solution to the ever-increasing water demands. While the WAWSP is designed to meet the long term peak day domestic water needs, the excess capacity in the interim will be available for industrial water sales. Further, storage reservoirs and bulk fill depots will be placed at strategic locations along major state highways to reduce wear and tear on county and township roads and facilitate efficient water delivery to bulk users throughout the entire region.

The WAWSP project participants include the project sponsors (shown in bold) and consecutive users listed in Table ES-1. The service area of the WAWSP is presented in Figure ES-1.

The WAWSP sponsors, through the McKenzie County Water Resource District, commissioned Advanced Engineering and Environmental Services, Inc. (AE2S), AE2S Nexus, and the Vogel Law Firm to evaluate both the concept and financial viability of the development of a large regional water system that would enhance water service to the project participants and provide bulk water service to the energy industry. The WAWSP Business Plan is comprised of a series of technical memoranda that analyze the project from several viewpoints. These technical memoranda include the following:

- Description of Existing Systems and Needs
- Water Demand Projections and Water Quality Requirements
- Proposed Project Description
- Organizational Structure
- Financial Plan
- Implementation Plan

This Executive Summary of the WAWSP Business Plan provides a synopsis of each of these memoranda.

DESCRIPTION OF EXISTING SYSTEMS AND NEEDS

The project sponsors and their consecutive users currently provide domestic, commercial, and industrial water service throughout much of northwestern North Dakota. Each of the project sponsors has identified water system problems related to the limited capacity and/or water quality issues which present challenges for serving the water demands of the region.

City of Williston

utilizing 3 million gallons per day now

The City of Williston currently operates a 10 million gallon per day (MGD) regional water treatment plant (WTP) treating Missouri River water. The City provides water for the City of Williston, WRWD,

WAWSP Project Participants	
City of Williston	R&T Water Supply Association
Trenton Water Users Cooperative	City of Ray
Williams Rural Water District	City of Tioga
City of Grenora	City of Stanley
Blacktail Dam Service Area Expansion	City of Wildrose
Ray/Tioga Service Area Expansion	City of Crosby
McKenzie County Water Resource District	City of Ross
City of Watford City	BDW Rural Water System
MCWRD – System I	City of Fortuna
MCWRD – System II	City of Ambrose
MCWRD – System IV	City of Noonan
	City of Columbus

Table ES-1: WAWSP Project Participants

and the TWUC and plans to supply MCWRD in late 2011. Recent estimates indicate the current City of Williston population is 17,500 people and is expected to conservatively reach 21,577 people by 2015, which represents a 40 percent growth rate anticipated over this five-year period. The City needs to expand its water supply and treatment system as well as its transmission and distribution system to make water service available in the expansion areas that its existing system cannot serve.

Williams Rural Water District

The WRWD currently operates a rural water system throughout Williams County. The WRWD is a consecutive user to the City of Williston with four supply points from the City of Williston's distribution system. Similar to the City of Williston, WRWD is also experiencing significant expansion of its user base and continues to receive requests for expanded water service on a daily basis, particularly in rural areas adjacent to the City of Williston. Due to limited supply, treatment, and transmission capacity, WRWD often must decline these requests. WRWD is also planning for future service to the City of Grenora, rural users in the Blacktail Dam Service Area, and rural users in the Ray/Tioga Service Area which will also require additional capacity.

McKenzie County Water Resource District

The MCWRD currently operates and maintains two rural water systems to meet the rural water needs of McKenzie County. System I purchases water from Watford City and provides water service to the rural areas surrounding the City of Watford City. System II purchases water from the Fort Berthold Rural Water System. System II is currently under expansion and provides water service to the rural areas of eastern McKenzie County. System III was sponsored by the MCWRD in the area south of the Little Missouri River and ultimately was served by the Southwest Water Authority. A fourth rural water system, System IV, is in the planning stages for western McKenzie County. In June 2010, the citizens of the City of Watford City elected to change their source water to the Missouri River via service from the MCWRD and the City of Williston. The City of Watford City has limited water supply capacity and several quality issues including high total dissolved solids, sodium, and sulfate. To address the comprehensive water

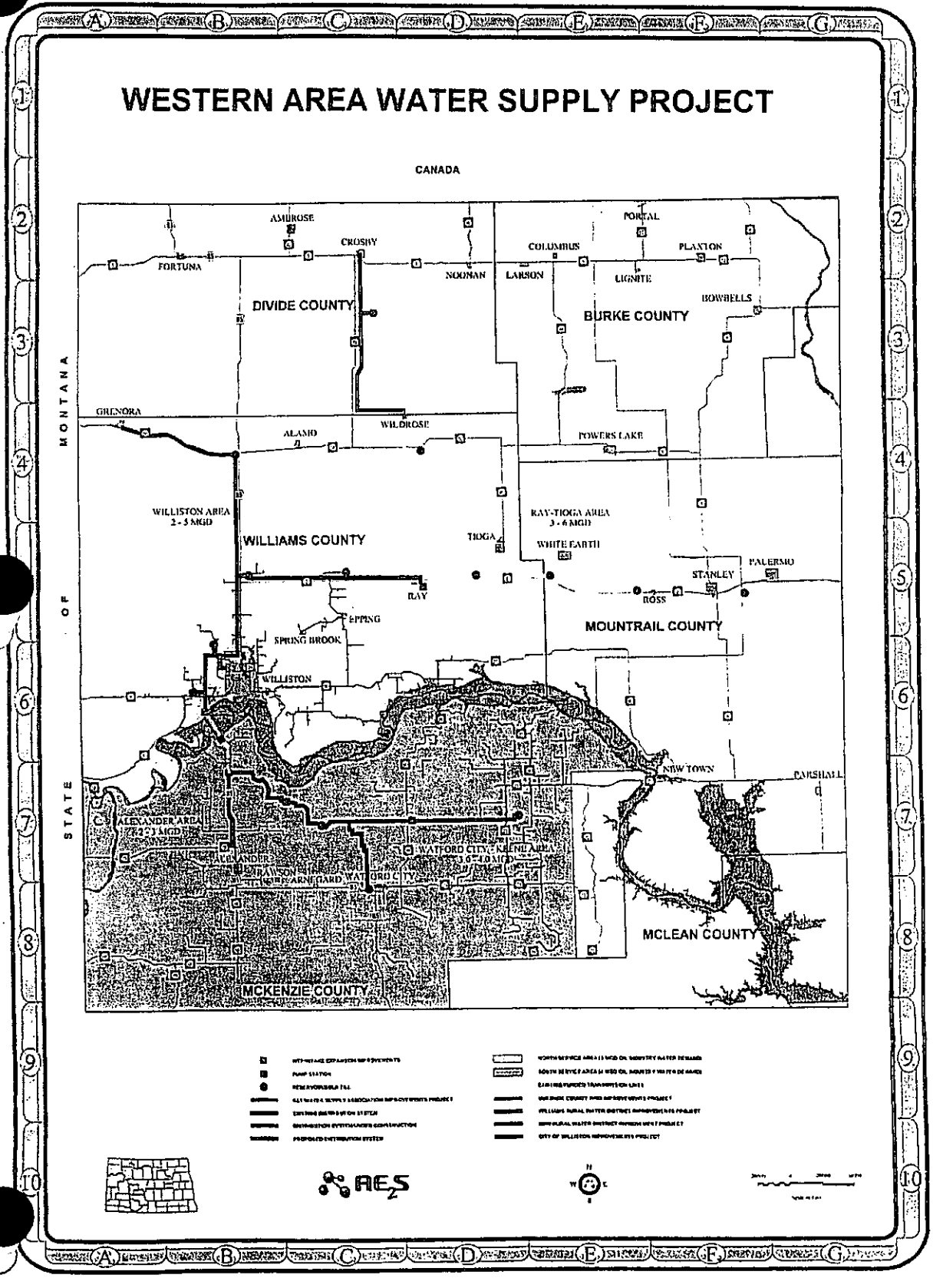


Figure ES-1: WAWSP Service Area and Proposed System Improvements

quality challenges, utilization of Missouri River water is a top priority of the MCWRD and the McKenzie County Commission.

R&T Water Supply Association

The R&T WSA was created to meet the municipal and industrial water needs of the Cities of Ray and Tioga and the surrounding region. The original system included a 1 MGD treatment plant with water from the Ray Acquifer. The City of Stanley has been served by R&T WSA since 1993 and is currently in the process of becoming a voting member of the R&T WSA. The R&T WSA also provides bulk water service to the Hess Tioga Gas Plant, the City of Wildrose, and has recently reached an agreement-in-principle to provide service to the City of Crosby and the BDW Rural Water System. Further, the R&T WSA serves a small number of rural residents along the main transmission line to the City of Tioga. The R&T WSA is currently in the process of expanding its water treatment system from 1 MGD to 3 MGD. However, the R&T WSA will not be allowed to continuously produce 3 MGD due to limited groundwater availability. In 2010, R&T WSA exceeded its current water allocation and according to a recent study completed by the NDSWC, it is unlikely the water system would gain additional water appropriations from the Ray Aquifer. Due to the limited availability of local groundwater resources, the R&T WSA has identified regional water service from the Williston Regional WTP as the preferred alternative to meet the regional long-term water supply needs in its service area.

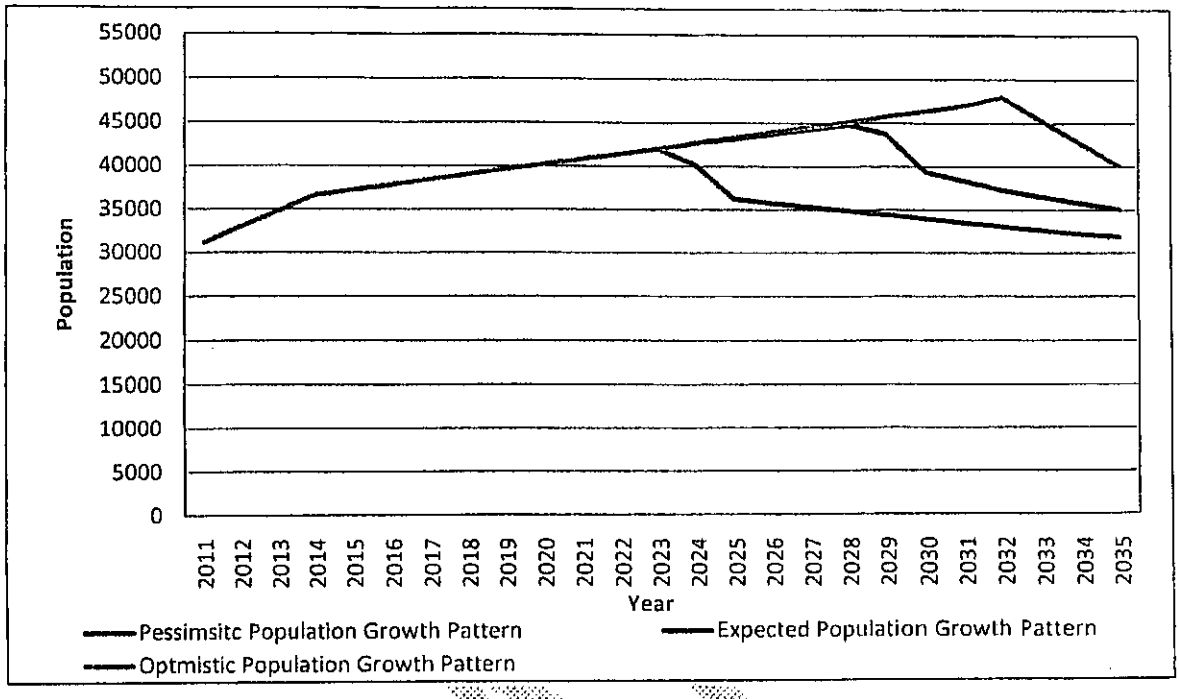
WATER DEMAND PROJECTIONS AND WATER QUALITY REQUIREMENTS

The expanding energy industry in northwest North Dakota has strained the existing water systems' ability to keep up with the growing domestic and industrial water demands. The almost crisis situation has made regional water service utilizing Missouri River water a top priority for the water stakeholders in the region. The water demand projections consider comprehensive and long-term domestic and industrial water supply needs.

Projected Domestic Water Demands

The projected domestic water demands used in this evaluation were based on population projections from each entity anticipated to receive water service from the WAWSP. The population projections were based on the housing demand studies recently completed by the firm Ondracek, Witwer, and Bertsch located in Minot, ND. These studies included pessimistic, expected, and optimistic permanent and transient population projections that correlated with the potential number of oil wells that will be drilled throughout the region as summarized in Figure ES-2.

Projected average day and annual domestic water demands for residential, commercial, institutional, and municipal water users were estimated by multiplying the population projections by an assumed per capita water demand, or gallons per capita per day (gpcd). Based on historical water use patterns for western North Dakota, a per capita demand of 160 gpcd was utilized to establish the average day and annual water demands. A peaking factor of 3.0 was utilized to establish peak day water demands. Table ES-2 summarizes the projected populations, average day water demands, average annual water demands, and peak day water demands through the planning period.



Basis of Projections – "North Dakota Communities Acutely Impacted by Oil and Gas Development," Ondracek, Witwer, and Bertsch, December 2010.

Figure ES-2: WAWSP Service Area Projected Population

Projected Industrial Water Demands

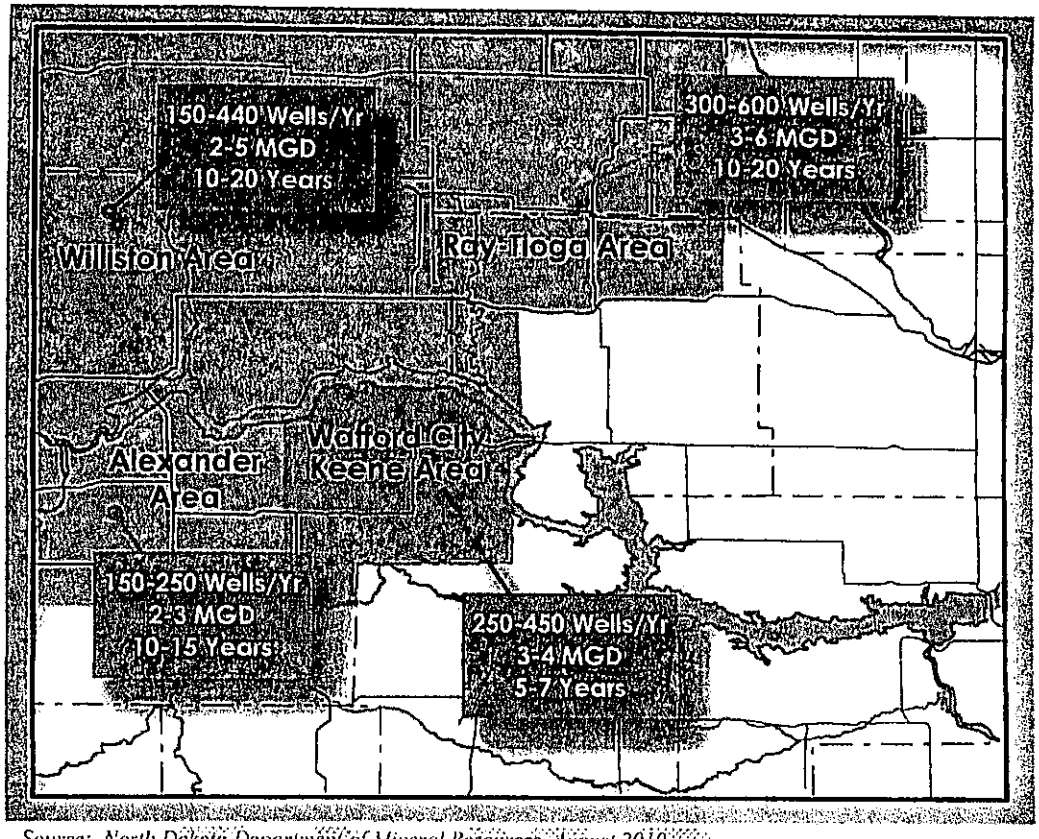
Development of the oil bearing shale formations of western North Dakota is a water intensive industry. The North Dakota Department of Mineral Resources (NDDMR) assessed the estimated average daily industrial water demands for various regions of western North Dakota. These industrial water demands for northwest North Dakota are shown in Figure ES-3.

Current treatment Plant is Large enough to supply needs

WAWSP Service Area	Projected Peak			End of Planning Period		
	Pessimistic	Expected	Optimistic	Pessimistic	Expected	Optimistic
Projected Population [1]	42,420	45,090	48,000	31,930	34,600	40,110
Average Day Water Demand (MGD)	6.8	7.2	7.7	5.1	5.5	6.4
Avg. Annual Water Demand (Acre-ft)	7,583	8,060	8,580	5,708	6,185	7,170
Peak Day Water Demand (MGD)	20.4	21.6	23.1	15.3	16.5	19.2

[1] *Basis of Projections – "North Dakota Communities Acutely Impacted by Oil and Gas Development," Ondracek, Witwer, and Bertsch, December 2010*

Table ES-2: Projected Populations and Domestic Average Day, Average Annual, and Peak Day Water Demands



Source: North Dakota Department of Mineral Resources, August 2010

Figure ES-3: Summary of Daily Hydraulic Fracturing Water Demands for WAWSP Service Area Northwest North Dakota

Regions within the proposed WAWSP service area, the anticipated drill-out periods, and the daily industrial water demands from the NDDMR for extended, intermediate, and rapid drill-out periods for each region are summarized in Table ES-3. The drill-out period is the time frame expected to drill all of the anticipated oil wells within each of the various regions. The extended drill-out period corresponds to the longer time frames shown in Table ES-3, while the rapid drill-out period corresponds to the shorter time frames. The intermediate drill-out period is an average of the extended and rapid time frames.

Region	Drill-Out Period (Years)	Drill-Out Period Industrial Water Demands		
		Extended (MGD)	Intermediate (MGD)	Rapid (MGD)
Williston Area	10-20	2.0	3.5	5.0
Ray-Tioga Area	10-20	3.0	4.5	6.0
Alexander Area	10-15	2.0	2.5	3.0
Watford City/Keene Area	5-7	3.0	3.5	4.0
TOTAL		10.0	14.0	18.0

Table ES-3: Daily Industrial Water Demand Projections

Analysis was completed to determine the level of industrial water demands that could be anticipated to be served by the WAWSP system within each region. The daily average industrial water demands that the WAWSP could reasonably be expected to serve were projected using the information in Table ES-3, the anticipated build-out period for the WAWSP, and the following assumptions:

- 14,000 oil wells to be drilled in the WAWSP service area
- 2.5 million gallons (7.8 acre-feet) to hydraulically fracture each well
- Hydraulic fracturing will occur only nine months per year
- Re-fractures will begin after the drill out period in each area
- Well re-fractures will occur on average at a 20-year interval
- WAWSP will provide 25 percent of water for well re-fractures

The proposed WAWSP will not meet all of the projected industrial water demands of the region. Spatial analysis was completed to compare the location of the proposed WAWSP bulk fill depots to existing and expected private depots. This analysis also considered the annual volume of water available at the existing and expected private bulk fill depots and the proposed WAWSP bulk fill depots. The analysis concluded the WAWSP will meet the following percentages of the anticipated industrial demands in each of the sub-areas of the WAWSP service area:

overestimation of sales. Private industry will secure these sales

- Williston Area: estimated 71 percent, on average, beginning in 2012
- Ray-Tioga Area: estimated 45 percent, on average, beginning in 2014
- Alexander Area: estimated 88 percent, on average, beginning in late 2011
- Watford City/Keene Area: estimated 69 percent, on average, beginning in 2013

As presented in Figure ES-4, the projected peak annual industrial water demands to be supplied by the

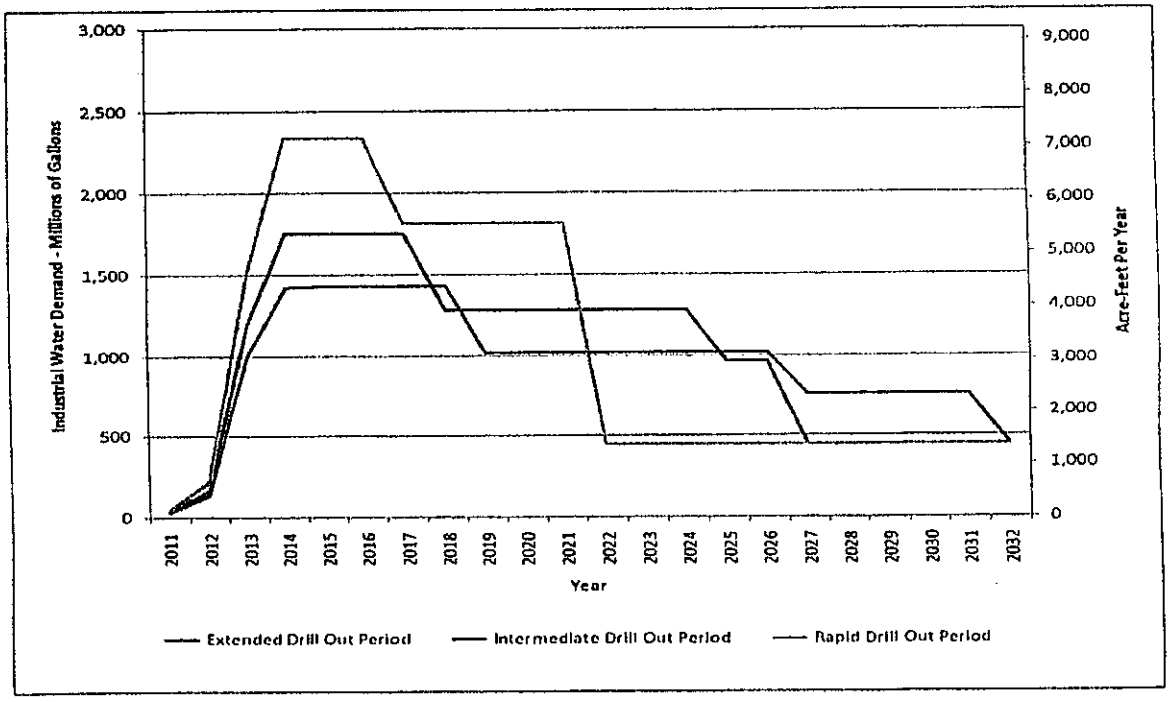


Figure ES-4: WAWSP Estimated Annual Industrial Water Demands

WAWSP for the 2011 to 2032 planning period were estimated at 1,430, 1,750, and 2,330 million gallons per year for the extended, intermediate; and rapid drill-out period projections, respectively. Assuming hydraulic fracturing occurs only nine months per year, the average daily industrial demands were estimated at 5.3, 6.5, and 8.6 MGD for the extended, intermediate, and rapid drill-out period projections, respectively.

During the development of the WAWSP Business Plan, it was anticipated that approximately 20,000 wells would be drilled in western North Dakota, with about 14,000 (70 percent) of those being in the WAWSP service area. The NDDMR presented updated projections to the ND House Energy and Natural Resources Committee on January 20, 2011, indicating that as many as 50,000 oil wells may be drilled throughout western North Dakota. The number of oil wells assumed in the Business Plan has not been adjusted to reflect this 150 percent increase at this time. As the development of the shale formations in western North Dakota progresses, it may be necessary to update and amend the WAWSP Business Plan as new information becomes available and water demands can be more accurately quantified.

Water Quality Needs

The minimum water quality characteristics for fracing were provided by the oil company, Halliburton. Water quality from both the Williston and R&T WSA water treatment plants was analyzed and determined to be well within the range for all water quality parameters listed, with the exception of a minor pH deviation, which does not appear to be problematic based on the volume of industrial water each facility is currently supplying. Interviews with oil field service companies indicated that consistent, filtered, and disinfected water reduces the amount of chemical and treatment that is required on site during the fracing process. The benefits of treated water for industrial use for fracing has not been further quantified.

PROPOSED PROJECT DESCRIPTION

Project Overview

In order to serve the anticipated regional domestic and a portion of the industrial water demands, a conceptual design has been developed for the WAWSP. The layout of the conceptual design is presented in Figure ES-1. The conceptual design included the following major components: 1) an expansion of the Williston Regional Water Treatment Plant (WTP); 2) a main transmission system through Williams County providing service to northwest Williams County and connecting to existing R&T WSA transmission lines serving eastern Williams and western Mountrail counties; 3) an extension of the existing R&T WSA transmission main from Wildrose to Crosby; 4) a main transmission system through McKenzie County; and 5) several rural water distribution systems throughout the WAWSP service area.

The WAWSP includes the construction and/or expansion of rural water distribution systems. The MCWRD plans to expand System I in the rural Watford City area. It will also construct System IV, a new rural water distribution system in western McKenzie County. The WRWD also has several rural water system expansions planned, including expansions adjacent to Williston, north of 13 Mile Corner in the Black Tail Dam area, and in the rural Ray and Tioga area.

The WAWSP system will have 13 reservoirs with a total storage capacity of 19 million gallons. Reservoirs will be constructed where required hydraulically and at the intersections of major state

highways. Bulk fill depots will be constructed adjacent to the reservoirs and at other strategic locations along the transmission lines to facilitate efficient water delivery to bulk users. Each bulk fill depot will be constructed initially with two to six fill ports with expansion capabilities. Each fill port will have a minimum fill rate of 300 gallons per minute per port. The WAWSP system will initially have 15 bulk fill stations with 54 fill ports. Several pump stations will also be required to transfer water throughout the WAWSP service area. The system will include six pump stations with total capacity of 29.5 MGD.

Water Supply and Treatment Systems

The WAWSP will utilize the existing intake and treatment system of the Williston Regional WTP, which will be expanded to stay ahead of the projected domestic peak day water demands. Public water supply systems are designed to meet peak day demands typically based on population projections over a relatively long-term planning horizon. The existing Williston Regional WTP was designed to readily accommodate filtration and pumping system expansions to increase capacity to 14 MGD. In addition, the facility was originally designed to add additional treatment trains in increments of 7 MGD as needed, with an ultimate build out capacity of 35 MGD based on current treatment technology and the existing site constraints.

As proposed, the region would have peak water supply and treatment capacities ranging from 13.2 MGD initially up to 26.2 MGD through the initial construction phases of the WAWSP. The system should have sufficient capacity to meet the projected domestic peak day water demands through 2026, based on the stated population growth assumptions. While domestic water supply and treatment systems are designed to meet projected peak day demands, these demands are typically not realized until near the end of a planning horizon, and the intermittent peak day demands that domestic water systems experience are typically short-lived. As such, domestic water supply systems generally have significant unused capacity a majority of the year. This significant latent capacity was estimated to be approximately 12,000 acre feet per year which would be available for industrial use.

Estimated Project Cost and Implementation Timeline

The WAWSP project entails 13 project segments throughout its service area with estimated start dates for key elements commencing immediately and completion dates ranging from the end of 2011 to full completion anticipated by 2014. The estimated cost of each project segment ranges from $1.5 to $23 million. The total opinion of probable cost for the WAWSP is currently estimated at $148.025 million in 2011 dollars. Table ES-4 provides a breakdown of the Project Summary, Capital Cost Estimate, and Project Timeline.

Estimated Operation and Maintenance Costs

Annual operation and maintenance (O&M) cost estimates were developed assuming the WAWSP would be operated as an integrated regional system. Accordingly, the fixed and variable O&M costs were distributed evenly across the entire system to estimate the water supply rate for the entire WAWSP. O&M expenses were projected for each year of operation from 2011 through 2032 for the extended and rapid drill-out period annual industrial water demands. These two scenarios were considered in an effort to bracket the high and low annual operating costs while keeping the number of financial scenarios manageable.

Project	Estimated Start Date	Estimated Completion Date	Estimated Construction	Description
Williston Regional WTP Pump Station Expansion & Clearwell; WRWD Regional Water Service Phase I	02/15/2011	12/31/2012	$18,900,000	WTP Pump Station and Clearwell Expansion; Williston By-Pass Transmission Lines, Reservoir (5 MG), and Bulk Fill Depot
Williston Regional Water Service to NW Williston	02/15/2011	12/31/2012	$5,725,000	Regional Water Service to NW Williston - Tie Back to 26th Street Reservoir and NW Annexation Areas
R&T WSA Regional Water Service to Crosby/BDW	02/15/2011	12/01/2011	$4,000,000	Pipeline from Wildrose to Crosby with Reservoirs and Bulk Fill Depots
MCWRD Regional Water Service System IV Improvements/Expansion	02/15/2011	6/30/2013	$8,500,000	Rural and Industrial Water Distribution System Improvements/Expansion to Western McKenzie County
WRWD Regional Water Service Phase II	03/01/2011	09/30/2013	$13,700,000	Regional Transmission Line to 13 Mile Corner, Reservoir (2 MG), and Bulk Fill Depot
MCWRD Regional Water Service Phase II	03/01/2011	09/30/2013	$23,000,000	Regional Water Service to Watford City, Supplemental Water Service to MCRWS System II, System I Expansion
WRWD Regional Water Service Phase III R&T WSA Regional Water Service to Stanley	03/01/2011	09/30/2013	$17,200,000	Regional Transmission Line from 13 Mile Corner to R&T WSA and Expanded Service to Stanley with Reservoirs and Pump Stations
Williston Regional WTP Expansion Phase III	03/01/2011	09/30/2013	$5,000,000	Williston Regional WTP Expansion from 10 to 14 MGD, Filter and Clearwell Expansion
Williston Regional WTP Expansion Phase IV	07/01/2011	03/31/2014	$15,000,000	Williston Regional WTP Intake Expansion from 14 to 21 MGD
Williston Regional WTP Expansion Phase IV	07/01/2011	03/31/2014	$25,000,000	Williston Regional WTP Expansion from 14 to 21 MGD
WRWD Regional Water Service Phase IV	07/01/2011	09/30/2013	$5,500,000	Regional Water Service to Intersection of Highways 85/50 and Service to Grenora
WRWD Rural Water Service Phase I	07/01/2011	12/31/2013	$1,500,000	WRWD Rural Water Service to West Central Williams County (Black Tail Dam Area) - Estimated
WRWD Rural Water Service Phase II	07/01/2011	12/31/2013	$5,000,000	WRWD Rural Water Service to East Central Williams County (Ray & Tioga Area) - Estimated
TOTAL PROJECT COST			$148,025,000	

Table ES-4: Project Summary, Capital Cost Estimate, and Project Timeline

ORGANIZATIONAL STRUCTURE

The Vogel Law Firm assisted the WAWSP members with the evaluation of the pros and cons of four organizational structures. The four options evaluated included:

- Creation of a separate entity through a joint powers agreement
- Joint powers agreement without creating a new entity
- Legislatively-created political subdivision
- Commerce authority

The WAWSP members considered all options and decided to seek legislation to create a new political subdivision, which will be called the Western Area Water Supply Authority (WAWSA). This structure has many advantages. It can be tailored to meet all the needs of the WAWSA and the WAWSP. There are no constraints on organizational, governance, and operational structure. It provides flexibility to create a new political subdivision exactly meeting the parties' needs, and it can be granted all of the required governmental powers. This would also be the most independent structure, insulated a bit from political influence. A new political subdivision has one disadvantage over the other options since the parties cannot simply choose to create it, but the legislature must be persuaded to create it.

FINANCIAL PLAN

A series of six financial analyses, which are summarized in Table ES-5, were completed to gauge the financial viability of the proposed project. Scenarios 1 through 4 assumed a 10-year amortization term due to the stakeholders' desire to achieve full debt repayment within a short window given the volatility of the oil industry as well as continually changing oil well drilling and hydraulic fracturing water needs. To demonstrate the impact to cash requirements under a less aggressive repayment structure, Scenarios 5 and 6 were based on a 20-year amortization schedule with a 10-year call provision. To directly compare Scenarios 5 and 6 to Scenarios 1 through 4, it was assumed that the debt in Scenarios 5 and 6 would be retired well before the 20-year maturity and as close as possible to the 10-year call provision of the bonds.

Other than the amortization term, the two key variables that change for each scenario were the Debt Service Reserve Fund requirements and the pace of the projected level of industrial water demands based on extended and rapid oil well drill-out. The drill-out periods assumed the same number of oil wells will be drilled in the region with varied assumptions on the time frame for the drill-out periods. The projected initial WAWSP industrial water rate of $20 per thousand gallons (kgal) is within the current range of prevailing reported market rates of $11.90 to $25/kgal. An A+ bond rating was assumed for all scenarios.

current Private Depot water charge - $11.90 p/1000

The objective of each of the financial analyses was to determine the financial viability of the project based on the following components: Revenue Requirements, Projected Revenue, and Cash Flow. Scenarios 1, 3, and 5 required the WAWSP to capitalize two years of debt payments in the Debt Service Reserve Fund from bond proceeds. Scenarios 2, 4, and 6 assumed an alternate method, such as a Letter of Credit from the Bank of North Dakota, would support the Debt Service Reserve Fund requirement.

Estimated Water System Revenue Requirements

Revenue requirements consisted of capital outlays throughout the construction period, debt service principal and interest payments, O&M expenses, reimbursement to communities for lost industrial revenues, contributions to reserve funds, and other expenses incurred for O&M of the water system.

Cost Difference
2.5 million gallons @ $20 p/1000 gal = $50,000 - WAWSP Cost
2.5 million gallons @ $11.90 p/1000 gal = 29,750 - Private Depots
$20,250 - Diffence per well

Scenario	Industrial Water Demand Periods	Industrial Price/Kgal	Amortization Term	Bond Rating	Years of Debt Reserve
1	Extended Drill-Out	$20	10-year	A+	2 years
2	Extended Drill-Out	$20	10-year	A+	Not Funded from Bond Proceeds
3	Rapid Drill-Out	$20	10-year	A+	2 years
4	Rapid Drill-Out	$20	10-year	A+	Not Funded from Bond Proceeds
5	Extended Drill-Out	$20	20-year	A+	2 Years
6	Extended Drill-Out	$20	20-year	A+	Not Funded from Bond Proceeds

Table ES-5: Financial Scenario Summary

Capital Costs

Capital costs of the project were assumed to be funded with grant funds and bond proceeds. Capital outlays for the WAWSP construction were represented in the cash flow analysis by projected annual debt payments. A breakdown of the annual construction expenditures over the anticipated four-year construction period from 2011 to 2014 was developed by the engineering team. This breakdown was utilized to create the associated debt schedules.

Debt Service

New Infrastructure Debt

In consideration of project financing to complete construction of the WAWSP, Barclays Capital, an investment banking firm, was consulted for guidance regarding debt structure strategies for the project to allow marketability of the bonds. Based on this input, it was assumed the total estimated project cost, less any grant funds, will be bonded upfront. It was anticipated that the NDSWC will provide a $25 million grant in the 2011-2013 biennium and an additional $5 million grant in the 2013-2015 biennium. The Financial Plan assumes the grant funds would be repaid to the NDSWC upon completion of debt service and capitalization of a Capital Reserve Fund at 25 percent of the initial project construction cost.

As part of the initial analysis, the debt schedules were developed based on the State of North Dakota providing an 80 percent moral obligation. After preliminary conversations with the various rating agencies, it was determined that the project could meet investment grade standards, but would most likely be granted a BBB- rating. It was further determined that the State of North Dakota's financial exposure, after the WAWSP financial guarantee responsibility of 20 percent, was greater when providing a 80 percent moral obligation at a lower investment grade than obtaining a higher investment grade with a 100 percent moral obligation.

Existing Infrastructure Debt

In addition to new infrastructure, components of the water systems currently operated by the City of Williston and MCWRD will be utilized as part of the WAWSP. Specifically, the Williston raw water intake and Williston Regional WTP will be used for the supply and treatment components of the WAWSP. Additionally, a transmission main currently under construction by MCWRD will be used as

part of the WAWSP transmission system. There is outstanding debt of approximately $23,275,000 on these existing systems. The associated debt services have been included as revenue requirements in the cash flow analysis. Further, as a result of this project, the City of Williston will be expanding its service area into an area of existing and future service for WRWD, which will lead to lost WRWD revenue from existing customers. As a result, the WAWSP cash flow analysis assumed responsibility of the WRWD existing debt and also included revenue from the existing WRWD water rate, which include provisions for existing debt service. Should some of the WRWD users be served by the City of Williston, the associated debt service responsibilities will be addressed through the WAWSP rate design for the City of Williston and WRWD.

Operation and Maintenance Costs

Revenue requirements associated with operation of the raw water intake, treatment, pumping, storage, and transmission systems were included in the O&M revenue requirements in the cash flow analysis. The financial analysis did not account for costs associated with transmission and distribution systems and billing within each entity, as it was assumed that such costs will remain the responsibility of the individual entities. Annual O&M costs were estimated based on projected peak day demands, projected average day demands, and the projected timeline for the system becoming operational.

Current Industrial Revenue Losses

For the purpose of the cash flow analysis, the revenue requirements included reimbursements for the potential industrial revenue losses to communities in the region as a result of the WAWSP for the time period of debt service repayment. The projected reimbursements are based on 2010 industrial water sales, and indexed annually by three percent.

Will they ~~on~~ reimburse Private depots for loss revenue?

Reserve Fund Requirements

Three reserve funds were developed within the financial analysis. These reserve funds included: Debt Service, O&M, and Capital. These reserve funds will provide for stability within the system by building adequate reserve funds to address debt payment assurances, emergency issues, fluctuations in cash flow throughout the year, and required maintenance and rehabilitation.

Debt Service Reserve Fund

The establishment of the Debt Service Reserve Fund assured that there will be adequate funds to make the annual debt service payment. The Debt Service Reserve Fund was also utilized to make the final debt service payment for the project. As a standard requirement associated with bond financing, the amount of required Debt Service Reserve Fund, if any, was capitalized into the bond issue for each scenario.

O&M Reserve Fund

As a common and prudent practice, funding of an O&M Reserve Fund was assumed to help manage future utility expenses and provide essential services in the event of short-term financial downturn. The O&M Reserve Fund would also provide for revenue stability in any given month, as revenues and expenses fluctuate throughout the year. Operating reserves are typically established to provide for one to three months of operating expense. The financial analysis included consideration for funding of an O&M Reserve Fund that would provide for six months of system operating expense. The six-month target was

recommended based on the complexity of the system and the likelihood that most of the industrial sales may only occur nine months out of the year rather than 12.

Capital Reserve Fund

A Capital Reserve Fund was established to ensure the long-term stability and capital needs of the WAWSP past the initial construction period. The Capital Reserve Fund was intended to provide for reinvestment within the system and necessary capital improvements over time. Contributions to the Capital Reserve Fund were estimated at 25 percent of the total project cost the first year after debt repayment and 2.5 percent of the total project cost annually thereafter.

Estimated Project Revenue

The Financial Plan considered two sources of anticipated revenue for the WAWSP - domestic water sales and industrial water sales.

Domestic Revenue

The revenue from domestic water sales was projected based on the projected domestic water demands. Domestic water rates were assumed to equal current rates being paid by each system for treated water or each system's current cost to produce water, indexed at three percent per year. The estimated domestic rates were assumed to cover supply, treatment, and transmission O&M costs associated with the delivery of water to member systems. These rates were not intended to include distribution or existing debt service costs for each member system. Only one scenario was assumed for domestic water demands, which were based on population projections and average per capita per day water demands.

Industrial Revenue

The revenue from industrial water sales was projected based on the projected industrial water demands. An industrial water rate of $20/kgal (in 2011 dollars) was modeled for both the extended and rapid drill-out demand scenarios. The industrial water rates were indexed at three percent per year. Interviews conducted by the project team with water hauling companies, oil well development companies, and oil producing companies revealed variables other than price which impact the selection of water source. These variables include water quality, location, and convenience.

Projected Cash Flow Scenarios

The cash flow analyses detailed the results of a series of six analyses and the degree to which the financial goals were met in each analysis. The variables for each scenario included amortization term, Debt Service Reserve Fund requirements, and projected industrial water demands and associated revenues. Scenarios 1 through 4 are summarized in Table ES-6. Scenarios 1 and 3 utilized a 10-year amortization period, extended and rapid drill-out industrial water demand periods, respectively, and the capitalization of the 2-year Debt Service Reserve Fund through bond proceeds. Scenarios 2 and 4 utilized a 10-year amortization period, extended and rapid drill-out industrial water demand periods, respectively, and the Debt Service Reserve Fund requirement met through an alternate method. As shown in Table ES-6, Scenario 1 did not successfully meet annual revenue requirements or Debt Service Coverage even with considerable debt service shaping. With considerable debt service shaping, Scenario 2 successfully met annual revenue requirements and Debt Service Coverage. With debt service shaping, Scenarios 3 and 4

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Industrial Water Demand Periods	Extended drill-out	Extended drill-out	Rapid drill-out	Rapid drill-out
Amortization Period	10 Years	10 Years	10 Years	10 Years
Debt Repayment	Complete by 2024	Complete by 2024	Complete by 2024	Complete by 2024
Debt Service Reserve Fund	2 years required; Funded from bond proceeds	Not funded from bond proceeds	2 years required; Funded from bond proceeds	Not funded from bond proceeds
O&M Reserve Fund	Funded by 2012	Funded by 2012	Funded by 2012	Funded by 2012
Capital Reserve Fund	Funded at 25 percent of project cost in 2024 and 2.5 percent per year thereafter	Funded at 25 percent of project cost in 2024 and 2.5 percent per year thereafter	Funded at 25 percent of project cost in 2024 and 2.5 percent per year thereafter	Funded at 25 percent of project cost in 2024 and 2.5 percent per year thereafter
Grant Repayment	Repayment in 2024 and 2025	Repayment in 2024	Repayment in 2024	Repayment in 2024
Debt Coverage Percentage – Annual	Does not meet 150 percent requirement in any year using constant annual debt payments	Meets 150 percent requirement in only two years using constant annual debt payments	Meets 150 percent requirement in only four years using constant annual debt payments	Meets 150 percent requirement in all but two years using constant annual debt payments
Conclusions	• Projected revenues rely on conservative near-term industrial water demands • Projected annual revenues are <u>not</u> sufficient to meet projected annual revenue requirements without the use of unobligated cash reserves • Annual required Debt Service Coverage is <u>not</u> met throughout the debt repayment period, even with considerable debt service shaping	• Projected revenues rely on conservative near-term industrial water demands • Projected annual revenues are sufficient to meet projected annual revenue requirements without the use of unobligated cash reserves • Considerable debt service shaping is required to meet the annual Debt Service Coverage of 150 percent throughout the debt repayment period	• Projected revenues rely on higher projected near-term industrial water demands • Projected annual revenues are <u>not</u> sufficient to meet projected annual revenue requirements without the use of unobligated cash reserves • Considerable debt service shaping is required to meet the annual Debt Service Coverage of 150 percent throughout the debt repayment period	• Projected revenues rely on higher projected near-term industrial water demands • Projected annual revenues are <u>not</u> sufficient to meet projected annual revenue requirements without the use of unobligated cash reserves • Minor debt service shaping is required to meet the annual Debt Service Coverage of 150 percent throughout the debt repayment period

Table ES-6: Summary of WAWSP Cash Flow Analyses – Scenarios 1 through 4

also successfully met all annual revenue requirements and Debt Service Coverage. It was recognized, however, that Scenarios 3 and 4 could look much like Scenarios 1 and 2 should the extended drill-out period materialize.

Due to the reliance on considerable debt service shaping under the 10-year amortization schedules for Scenarios 2 through 4, two additional analyses, Scenarios 5 and 6, were conducted using the extend drill-out demand scenarios (conservative water demands) and 20-year amortization debt schedules with a 10-year call provision. The assumptions and conclusions for Scenarios 5 and 6 are included in Table ES-7. The difference between these analyses is Scenario 5 included the capitalization of a two-year Debt Service Reserve Fund funded from bond proceeds and Scenario 6 utilized an alternate method to meet the Debt Service Reserve Fund requirement. While Scenario 5 demonstrated projected annual revenues were

	Scenario 5	Scenario 6
Industrial Water Demand	Extended drill-out	Extended drill-out
Amortization Period	20 Years – 10 year call provision	20 Years – 10 year call provision
Debt Repayment	Complete by 2024	Complete by 2024
Debt Service Reserve Fund	2 years required; Funded from bond proceeds	Not funded from bond proceeds
O&M Reserve Fund	Funded by 2012	Funded by 2012
Capital Reserve Fund	Partially funded toward initial goal of 25 percent of original project cost in 2024 and fully funded at 25 percent of original project cost in 2025. In addition, contribution of 2.5 percent of original project cost in 2025 and 2.5 percent per year thereafter.	Funded at 25 percent of original project cost in 2024 and 2.5 percent per year thereafter
Grant Repayment	Repayment in 2025 and 2026	Repayment in 2024 and 2025
Debt Coverage Percentage – Annual	Does not meet 150 percent requirement in the last 6 years using constant annual debt payments	Meets 150 percent coverage requirement in all years
Conclusions	• Projected revenues rely on conservative near-term industrial water demands • Projected annual revenues are sufficient to meet projected revenue requirements without the use of unobligated cash reserves • Debt repayment completed within 10 years of system construction despite a 20-year amortization • Debt repayment occurs after the call date of the bonds • Minor debt service shaping is required to meet the annual Debt Service Coverage of 150 percent throughout the debt repayment period	• Projected revenues rely on conservative near-term industrial water demands • Projected annual revenues are sufficient to meet projected revenue requirements without the use of unobligated cash reserves • Debt repayment completed within 10 years of system construction despite a 20-year amortization • Debt repayment occurs after the call date of the bonds • Required annual 150 percent Debt Service Coverage is achieved throughout the debt repayment period; debt service shaping is not required

Table ES-7: Summary of WAWSP Cash Flow Analyses – Scenarios 5 and 6

sufficient to meet projected annual revenue requirements and Debt Service Coverage, it did require adjusting debt payments throughout the repayment period. Scenario 6 demonstrated projected annual revenues were sufficient to meet projected annual revenue requirements and Debt Service Coverage without adjusting any debt payments.

A Financial Viability Graph was developed for each scenario to provide a graphical presentation of the WAWSP's ability to meet the various cash requirements. The graph lines are the targeted amounts for the following reserves: Debt Service, O&M, and Capital. The graph bars represent the estimated annual balances in reserves as well as cash available for debt service and annual unobligated cash. The projected surplus cash is held until the bonds become callable and funds can be applied towards the debt principal. Figure ES-5 is the Financial Viability Graph for Scenario 6.

Financial Plan Recommendations

Based on the results of the financial analysis in terms of achieving the financial goals of the WAWSP and meeting the required Debt Service Coverage during debt repayment, it was recommended the system issue bonds with a 20-year or longer amortization term with a 10-year call provision. The 10-year amortization did not provide sufficient latitude for any variations in project revenue that are likely to occur due to the volatility of the oil industry or other unforeseen forces. The 20-year or longer

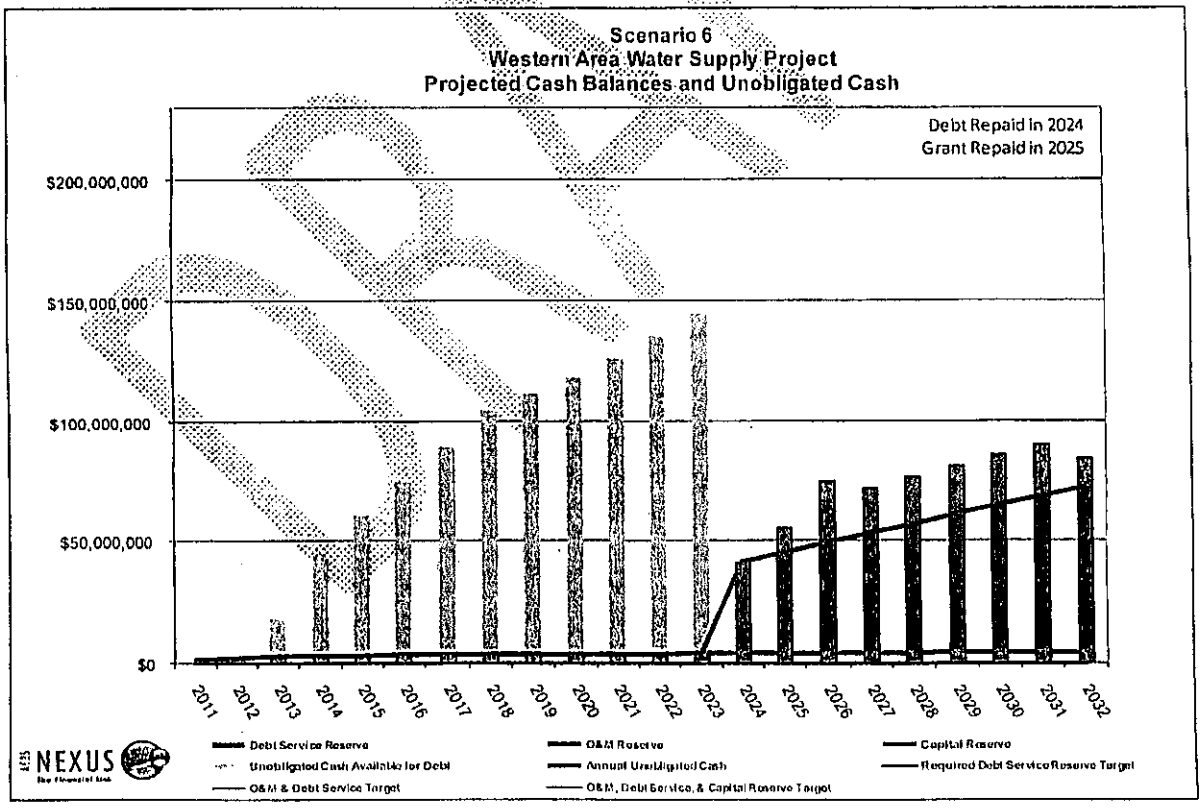


Figure ES-5: Financial Scenario 6: Financial Projection of Extended Drill-Out Period, $30 million NDSWC Grant Funds, 20-Year Amortization, and $20/kgal Industrial Rate

amortization debt schedules allowed for greater flexibility. By establishing adequate flexibility in the financial analysis, investment bankers will have greater confidence in the WAWSP to generate sufficient revenues over a longer period of time to meet revenue and Debt Service Coverage requirements and the WAWSP to maintain its financial goals.

It was also recommended that the stakeholders continue to monitor changes that could affect the financial performance of the system. These included but were not limited to:

- Number of oil well sites to be drilled
- Number and capacity of new groundwater permits
- Number and capacity of irrigation water permits converted to industrial water permits
- Number and capacity of permits to access Missouri River and Lake Sakakawea water
- Change in population projections
- Regulatory changes to the oil industry
- Price of oil
- Change in fracturing technology

IMPLEMENTATION PLAN

Several crucial and time-sensitive steps which are instrumental to the continued development of the WAWSP were identified as part of the Implementation Plan. These included:

- Introduction of Proposed Legislation
- Initiation of the Bond Issuance Process
- Rate Development
- Water Supply Contract Development
- Easements and Potential Construction and Regulatory Permitting Requirements

Introduction of Proposed Legislation

Legislation calling for the creation of the WAWSA and authorizing the issuance of bonds for the construction of the WAWSP was developed and introduced as North Dakota House Bill 1206. Due to the growing domestic demand, rapidly expanding oil industry, and associated industrial demands through this area, it was recognized by the proposed members of WAWSA that it is essential that this legislation be passed during the 2011 North Dakota Legislative Session.

Initiation of the Bond Issuance Process

Based on input from bond advisors, bond counsel, and investment bankers, potential bond structures were evaluated to issue a bond with the greatest success for both marketability and repayment. The proposed bond structure for the issuance assumed the WAWSA would issue the bonds and would also be responsible for debt payments. It was further assumed the State of North Dakota would provide a 100 percent moral obligation as a back stop for the bonds. In an effort to reduce the cost of financing, the legislation provides provisions to allow a Letter of Credit that would take the place of the Debt Service Reserve Fund.

In the unlikely event the WAWSA were unable to fulfill a payment on the bonds, the Debt Service Reserve Fund or Letter of Credit would be drawn upon for payment. Reimbursement of the funds taken

from the Debt Service Reserve Fund or Letter of Credit would be sought from the State of North Dakota at the next legislative session through the NDSWC.

The bond issuance is subject to the approval of the pending legislation. Should the legislation be approved, it is expected that the bond issuance process would commence immediately with a target date of bond issuance of as soon as August 2011.

Rate Development

It was anticipated that once details of the bond issue and corresponding annual debt service estimates are refined, a water rate structure will be developed and incorporated into water supply contracts between the WAWSA and the member systems. The rate development process will include a review of projected fixed and variable O&M costs, debt service principal and interest, and reserve fund contributions. The goal of the rate development effort will be to determine a schedule of fair and equitable charges for all users that will ensure the financial health and sustainability of the WAWSA through the debt repayment period and beyond.

Water Supply Contract Development

Treated water will be provided to the member systems by the WAWSA per the conditions outlined in the water supply contracts between each member system and the WAWSA. The contracts will be developed with input from legal counsel. For the purpose of the financial analysis component of the Business Plan, it was assumed that such water purchase contracts will require a minimum monthly water purchase to assure revenue each month of the year. what if this falls short?

Easements and Potential Construction and Regulatory Permitting Requirements

On behalf of the WAWSA, the project team will be required to obtain easements associated with construction of most facilities. Following determination of the construction routes, the appropriate state and federal agencies can be solicited for comment and easements can be obtained. Permits will include right of way crossing permits such as railroad, highway and county, U.S. Army Corps of Engineers Nationwide 404 Section 12, and industrial water allocation permit from the NDSWC. It is not anticipated that a federal environmental review is going to be required specifically for this project since it is funded with non-federal funds.

CONCLUSION

The communities and rural water systems in northwestern North Dakota have been experiencing and expect to continue experiencing rapid population growth attributed to the oil industry. Oil recovery is a labor-intensive business which has created a population boom throughout western and more specifically, northwest North Dakota, due to successful oil recovery operations. It is anticipated that the regional population within the WAWSP service area will grow by 20,000 people. The regional population may peak at 48,000 people which translated into a 23.1 MGD peak day water demand. This massive growth will require significant upgrades to water treatment and supply systems.

In addition to the increase in domestic water demands, the fracing methods of oil retrieval require enormous quantities of water with each oil well requiring between two and four million gallons of water

per well to complete a 20-day drilling and fracing process. Prompted by high drilling and recovery success rates and strong oil prices, the industry is proceeding at a swift pace to bring oil wells into production. The anticipated industrial water demands within the WAWSP service area range from 10 to 18 MGD. During the development of the WAWSP Business Plan, the project team utilized oil well projections provided by the NDDMR in August 2010 which projected 20,000 oil wells to be drilled, 14,000 (70 percent) of which were projected in the WAWSP service area. In January 2011, the NDDMR increased the expected oil wells to 50,000 – an increase of 150 percent. The impact on water demands and infrastructure needs of this significant increase has not been assessed at this time.

The projected municipal, rural, and industrial water demand quantities are such that the NDSWC has concluded the only plentiful and dependable supply of water for the oil industry in western North Dakota is the Missouri River system, including Lake Sakakawea. This water source is conveniently located in the heart of the WAWSP service area as well as the middle of the underlying, oil-rich Bakken Formation. The City of Williston has established infrastructure to access the Missouri River and would like partner with other regional systems to provide a dependable, high quality source of drinking water to the entire region.

The local public water supply entities of McKenzie County Water Resource District, City of Williston, Williams Rural Water District, and R&T WSA entered into a Memorandum of Understanding to work together to develop a regional water supply project to serve both domestic and industrial water demands. In an effort to conduct a thorough investigation of the feasibility and financial viability of developing the WAWSP, the proposed WAWSP partners undertook an extensive analysis of the existing water stakeholder systems as well as developed projected domestic and industrial water demands, proposed project conceptual design, financial plan, and implementation plan, which were each incorporated into the WAWSP Business Plan.

The municipal and rural water systems will be designed with latent capacity to meet long-term peak day domestic demands which would be utilized to meet the near-term industrial water demands. The WAWSP conceptual design utilized and maximized existing water infrastructure and major components included expansion of the existing Williston Region WTP, extension of transmission systems throughout the service area and the construction/expansion of rural water distribution systems. Additionally, the WAWSP will have 13 reservoirs and 15 bulk fill depots which will be strategically disbursed throughout the service area along the state highway system in an effort to both reduce truck traffic wear and tear and assist in addressing transportation safety concerns. Approximately 90 percent of the WAWSP initial construction costs were attributed to serving domestic water users and 10 percent of the cost were associated with elements serving the industrial water users.

The financial analysis indicated the infrastructure can be constructed and paid for within 10 years of construction completion if the project is promptly implemented and is able to capture industrial water sales revenue. The financial analysis projected 80 percent of the revenues will be attributed to industrial water sales and 20 percent attributed domestic water sales. Although the projections showed that the project could be paid for in 10 years under different scenarios, it was concluded that a 20-year or longer bond with a 10-year call provision is the most sensible financing option. This would provide flexibility to adapt to water demand variations, revenue variations, and reduce the potential financial risk to the State and local water systems.

Partnering with the State and its oversight agencies, the WAWSA will be able to create an overall regional system that will meet the needs of its current customers, future population increases, and industry demands. The system is strategically designed to meet long-term peak day domestic water demands, with near-term excess capacity directed to industrial water demands. The Business Plan demonstrates a

practical approach to construct the WAWSP which accomplishes these goals, while recapturing the investment costs in a relatively short period. The WAWSP is not only extremely important to the region to bring dependable, safe drinking water to rural and municipal entities, it is also crucial to the continued economic development of northwestern North Dakota and the State as a whole.

DRAFT

Testimony 2

WESTERN AREA WATER SUPPLY PROJECT
PROJECT PRIORITIZATION, COST, AND TIMELINE SUMMARY
PHASING PLAN IV - MAIN TRANSMISSION SYSTEM PRIORITY

Design Phase
Construction Phase

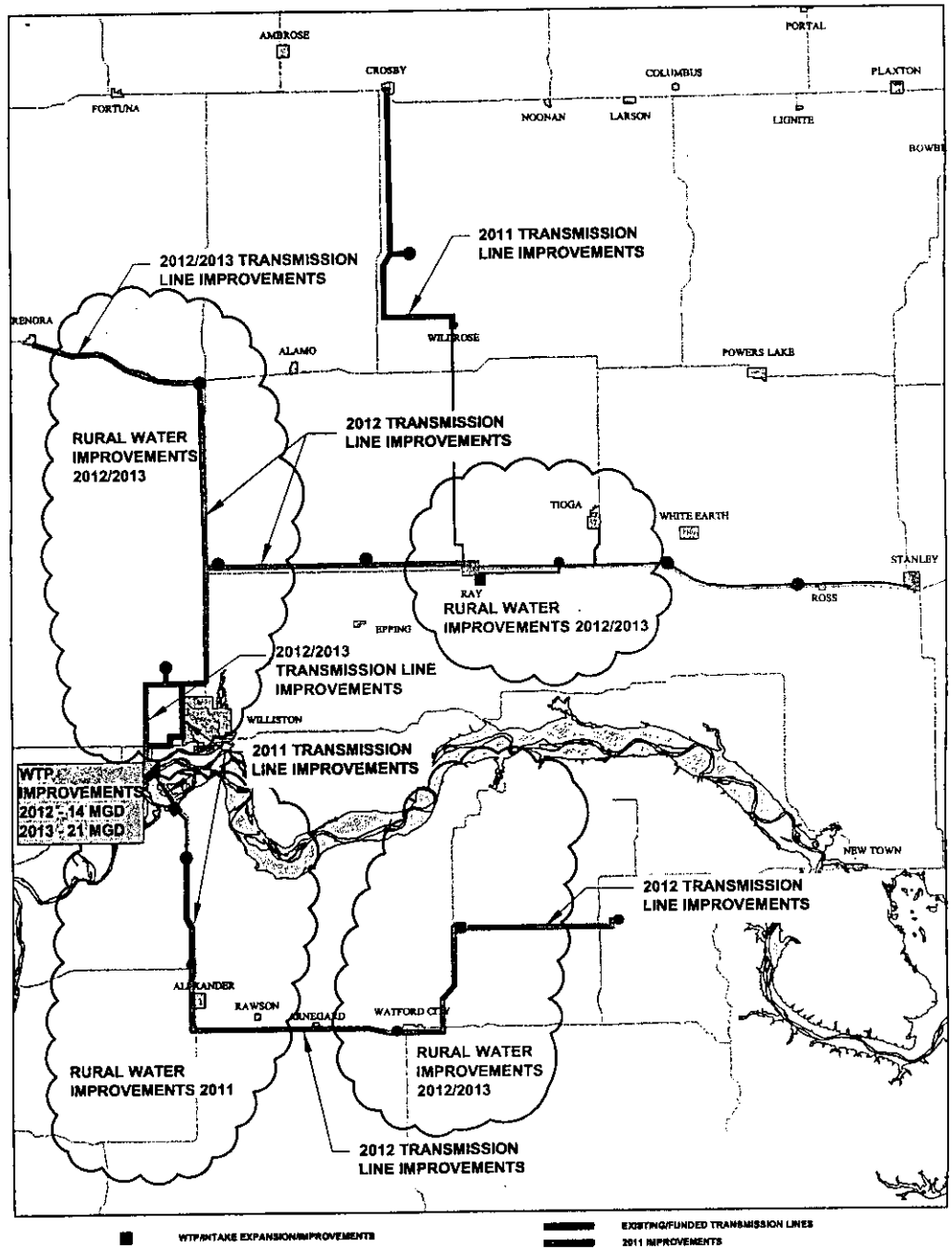
AE2S
Think Big. Go Beyond.

PROJECT PRIORITY	ORIGINAL PROJECT PRIORITY	PROJECT DESRCRIPTION	ESTIMATED PROJECT COST	PROJECT START DATE	OPERATIONAL DATE
Phase I					
1.	1a.	Williston Phase I By-Pass Transmission Lines & Bulk Fill Stations, Service to WRWD West Service Area	$4,500,000	April 1, 2011	December 31, 2011
2.	1b.	NW Williston Regional Reservoir (5 MG)	$5,000,000	April 1, 2011	June 30, 2012
3.	2.	Regional Water Service to NW Williston - Tie Back to 26th Street Reservoir & NW Annexation Areas	$5,725,000	April 1, 2011	December 31, 2011
4a. 4b.	4a. 4b.	Regional Water Service to Western McKenzie County MCRWS System IV Improvements	$4,800,000 $3,700,000	April 1, 2011 April 1, 2011	September 30, 2012 December 31, 2012
5.	3.	Regional Water Service From R&T Water Supply Association to the City of Crosby	$4,000,000	April 1, 2011	September 30, 2012
		Total Estimated Cost Phase I	**$27,725,000**		
Phase II					
6	8.	Williston Regional Water Service - WTP Expansion from 10 MGD to 14 MGD	$11,000,000	April 1, 2011	June 30, 2013
7	5.	Regional Transmission Line to 13 Mile Corner, Reservoir (2 MG), and Bulk Fill Station	$13,700,000	October 1, 2011	December 31, 2012
8a. 8b.	6a. 6b.	Regional Water Service to Watford City Supplemental Water Service to MCRWS System II	$14,900,000 $5,600,000	October 1, 2011 October 1, 2011	December 31, 2012 December 31, 2012
9	7.	Regional Water Service to R&T Water Supply Association, Expanded Service to Stanley	$17,200,000	October 1, 2011	December 31, 2012
10.	11a.	Regional Water Service to Intersection of Highways 85/50	$4,600,000	October 1, 2011	December 31, 2013
11.	1b, 9, 10, 11b, 12, 13	Phase III Engineering, Legal, Administration	$5,230,000	January 1, 2012	June 30, 2013
		Total Estimated Cost Phase II	**$72,230,000**		
		Total Estimated Cost Phase I & II	**$99,955,000**		
Phase III					
12.	1b.	Williston Phase II By-Pass Transmission Lines	$8,460,000	July 1, 2013	June 30, 2013
13.	9.	Williston Regional Water Service - WTP Intake Expansion Expansion 14 MGD to 21 MGD	$11,700,000	July 1, 2013	December 31, 2014
14.	10.	Williston Regional Water Service - WTP Expansion from 14 MGD to 21 MGD	$21,000,000	July 1, 2013	December 31, 2014
15.	12.	WRWD Regional Water Service to West Central Williams County (Black Tail Dam Area) - Estimated	$1,350,000	July 1, 2013	June 30, 2013
16.	13.	WRWD Regional/Rural Water Service to East Central Williams County (Ray & Tioga Area) - Estimated	$4,500,000	July 1, 2013	June 30, 2013
17.	6c.	MCRWS System I Expansion	$2,250,000	July 1, 2013	June 30, 2013
18.	11b.	Service to Grenora	$810,000	July 1, 2013	June 30, 2013
		Total Estimated Cost Phase II	**$50,070,000**		

TOTAL ESTIMATED PROJECT COST **$150,025,000**

WESTERN AREA WATER SUPPLY PROJECT

PHASING PLAN IV - MAIN TRANSMISSION SYSTEM PRIORITY



Testimony 3

MEMORANDUM

To: David Johnson, Operations Manager, AE2S

From: Dawn Keeley, Funding Strategist

Re: **Western Area Water Supply Project (WAWSP)**
County Mill Levy

Date: **April 14, 2011**

County Mill Levy

Counties have a 23 mill limitation to their General Fund or special county purposes. The 23 mill limitation applies to all tax levies which the county is authorized to levy for general and special county purposes, including taxes levied for road and bridge purposes. Other programs within the counties have permissive language indicating a maximum mill levy which may be levied for a specific purpose – such as airports, extension, county roads, etc. etc. These are all listed within the Century Code under Ch. 57-15-06.7. HB 1206 is that it provides permissive language to instill another mill specifically for WAWSP and Ch. 57-15-06.7 would be updated to include this new permission for up to 5 mills. The WAWSP 5 mills would not be taken from the counties' 23 mill General Fund limit.

HB 1206 includes language to require Burke, Divide, McKenzie, Mountrail and Williams Counties to levy up to five mills in the event of default of the Western Area Water Supply Project financing. If this language was approved, this would also change NDCC Ch. 57-15 by adding an additional levy provision for this purpose.

As written, the mill levy would not require a vote of the local citizens to enact.

Testimony / 4-14-2011

Debt Comparison

HB 1206
Western Area Water Supply Project
4/14/2011

Original WAWSP Financial Plan
Investment Bank - All Phases, Fully Funded
Original Plan - $30 million grant

	TOTAL Phases I, II & III
Construction Phases Completed with Funding	
Par Amount of Bonds	$ 157,875,000
Cost of Issuance	$ 2,368,125
Capitalized Interest through Construction	$ 30,755,554
Deposit to Project Construction Fund	$ 127,979,251
Total Principal and Interest	**$ 257,923,104**
Total Construction Costs Indexed	$ 158,848,653

State Proposed Plan - HB 1206
State Funded - Phased Projects without Capitalizing Interest
Phases I&II - $25 million grant / Phase III - $5 million grant

Construction Phases Completed with Funding	Phases I & II	Phase III	TOTAL Phases I, II & III
Loan Amount(s)	$ 74,083,992	$ 52,389,978	$ 126,473,970
Cost of Issuance	$ -	$ -	$ -
Accrued Interest through Construction	$ 2,819,101	$ 1,772,364	$ 4,591,465
Total Advances through Construction	$ 74,083,992	$ 52,389,978	$ 126,473,970
Total Principal and Interest	$ 124,988,096	$ 86,922,530	**$ 211,910,626**
Total Construction Costs Indexed	$ 99,083,992	$ 63,030,295	$ 162,114,287

State Proposed Plan - HB 1206
State Funded - Phased Projects without Capitalized Interest and Delayed Phase III
Phases I&II - $25 million grant / Phase III (Delayed) - $5 million grant

Construction Phases Completed with Funding	Phases I & II	Phase III	TOTAL Phases I, II & III
Loan Amount(s)	$ 74,083,992	$ 63,540,568	$ 137,624,560
Cost of Issuance	$ -	$ -	$ -
Accrued Interest through Construction	$ 2,819,101	$ 2,261,942	$ 5,081,043
Total Advances through Construction	$ 74,083,992	$ 63,540,568	$ 137,624,560
Total Principal and Interest	$ 124,988,096	$ 105,603,273	**$ 230,591,369**
Total Construction Costs Indexed	$ 99,083,992	$ 68,540,568	$ 167,624,560

Fund	County				
	Burke	Divide	McKenzie	Mountrail	Williams
General Fund/Road and Bridges (23 max.)		22.65	10.45	11.33	17.08
Human Services		16.91	10.15	11.50	
County Fair		1.23	0.87	0.58	0.60
County Agent		3.30	0.00	3.07	2.00
Veteran Service		0.49	0.00	0.36	1.16
Health Unit		2.62	2.62	2.62	2.62
Public Library		3.94	3.43	1.03	
County Park		0.65	1.00	1.00	
Social Security			0.00		
Atmospheric Resource District			2.90		
Historical Society		0.22	0.28	0.10	0.26
Water Resource District			1.92	0.47	1.82
Weed Control		2.29	4.00	3.00	3.00
Job Development Authority		2.46	1.61	1.65	
Special Road (Farm to Mkt)		19.70		10.00	15.00
Advertising		0.16		0.25	0.14
FICA					8.44
Older Persons					1.50
Poor Relief					20.00
Correctional Center		1.55		2.40	1.00
Emergency Poor					9.67
Insurance Reserve Fund		3.85			
Weather Modification				1.20	1.39
OASIS		3.28		14.24	
Count Airport				1.50	
Senior Citizens		1.23		1.00	
Comprehensive Health Care Insurance		6.81		3.83	
Total County Mill Levies		93.34	39.23	71.13	85.68

Testimony 1 4-14-4:00pm

Prepared by the North Dakota Legislative Council staff

April 8, 2011

2011-13 BUDGET STATUS SUMMARY
AS OF APRIL 7, 2011

Beginning Balance and Revenues	
Legislative budget estimate of unobligated general fund cash balance - July 1, 2011	$65,000,000 [1]
Add 2011-13 estimated revenues	
Proposed executive budget general fund revenues	$3,271,678,675
Legislative revenue changes	
Major increases	
February 2011 revenue forecast revision	$4,222,000
HB 1012 - Deposits all motor vehicle excise taxes in general fund rather than 75 percent	45,767,667
HB 1047 - Transfers from the permanent oil tax trust fund and the property tax relief sustainability fund	341,790,000
HB 1451 - Changes allocation of oil and gas tax revenue	129,000,000
SB 2178 - Defeated Governor's individual income tax reduction	50,000,000
Major decreases	
Revision to February revenue forecast for corporate tax	(46,000,000)
HB 1289 - Reduces individual income tax rates by 20 percent and corporate tax rates by 10 percent	(111,398,000)
HB 1424 - Creates sales tax exemption for agrichemical cleaners and expands retailer compensation	(1,844,600)
SB 2015 - Removes transfer from Bank of North Dakota	(60,000,000)
SB 2042 - Reduces gaming and excise taxes paid by charitable gaming organizations	(5,800,000)
SB 2171 - Provides sales and use tax exemption for telecommunications equipment	(3,551,000)
SB 2210 - Creates tax credits for contributions to a housing incentive fund	(4,000,000)
SB 2218 - Increases ceiling on tax credits allowed for investments in renaissance fund organizations	(1,000,000)
SB 2320 - Reduces tax rate for financial institutions	(2,125,000)
Other increases (decreases)	(1,740,954)
Total legislative changes affecting revenues	$333,320,113
Total estimated general fund revenues and beginning balance - 2011-13	$3,669,998,788
Appropriations	
Executive budget general fund appropriations - 2011-13	$3,295,569,541
Legislative appropriations changes	
Major increases	
HB 1012 - Transfer to highway fund for roadway projects in areas affected by oil and gas development	$370,600,000
HB 1047 - Property tax relief	341,790,000
HB 1012 - Transportation funding distributions to counties, cities, and townships	25,000,000
HB 1021 - Department of Human Services eligiblity system replacement project	9,200,000
HB 1044 - Emergency medical services grants	2,000,000
HB 1152 - Supplemental Medicaid payments to critical access hospitals	1,527,802
SB 2015 - Office of Management and Budget	1,500,000
HB 1015 - Transfer to State Penitentiary land fund	1,100,000
HB 1373 - Head Start program grants	1,000,000
Major decreases	
SB 2012 - Department of Human Services	(19,298,784)
HB 1003 - North Dakota University System	(3,623,472)
HB 1015 - Department of Corrections and Rehabilitation	(1,958,354)
HB 1011 - Highway Patrol	(1,394,535)
Other increases (decreases) net	(1,113,593)
Total legislative changes affecting appropriations	$726,329,064
Total 2011-13 general fund appropriations	$4,021,898,605
Estimated Ending Balance	
Estimated budget status general fund balance - June 30, 2013	**($351,899,817)**

Comparison of 2011-13 General Fund Appropriations to 2009-11 Appropriations

Current status of 2011-13 general fund appropriations	$4,021,898,605
20[redacted]1 legislative general fund appropriations	3,259,365,481 [2]
In[redacted] (decrease)	$762,533,1[redacted]
Percentage increase (decrease)	23.4[redacted]

Footnotes

[1] Beginning balance - Executive budget unobligated general fund cash balance - July 1, 2011	$84,247,948 [a]
Legislative action affecting the July 1, 2011, balance	
February 2011 revenue forecast revision	$42,561,000
HB 1012 - Provides supplemental appropriation to State Treasurer for transportation funding distributions	(35,000,000)
HB 1015 - Removes exemption of Department of Corrections and Rehabilitation funding from North Dakota Century Code Section 54-44.1-11	1,600,000
HB 1337 - Authorizes sale of land in Walsh County	7,705
HB 1343 - Industrial Commission supplemental appropriation	(150,000)
HB 1424 - Sales tax exemption for agrichemical cleaners and markers	(25,300)
SB 2006 - Provides exemption for Tax Department from Section 54-44.1-11	(50,000)
SB 2012 - Removes exemption for Department of Human Services from Section 54-44.1-11	12,800,000
SB 2013 - Reduced contingent supplemental transportation aid payments for the 2009-11 biennium	2,500,000
Total legislative changes affecting the beginning balance	$24,243,405
Estimated general fund cash balance prior to budget stabilization fund transfer	$108,491,353
Budget stabilization fund transfer adjustment	(43,491,353) [b]
Estimated unobligated general fund cash balance - July 1, 2011	$65,000,000

[a] The beginning balance is based on the 2009-11 general fund beginning balance of $361,843,514, the 2009-11 December 2010 general fund revenue forecast of $2,978,638,819, and appropriation authority of $3,256,234,385 (general fund appropriations of $3,259,365,481 plus proposed deficiency appropriations of $1,868,904 and less estimated general fund turnback of $5 million).

[redacted]hapter 54-27.2 provides that any amount in the general fund at the end of a biennium in excess of $65 million must be transferred to the budget stabilization fund except that the balance in the budget stabilization fund may not exceed 10 perc of the general fund budget approved by the most recently adjourned Legislative Assembly. The amount shown is based the current estimate of a June 30, 2011, general fund balance of $108,491,353 which allows for a transfer of $43,491,353, bringing the balance in the fund to $368,427,901. The current estimated 2011-13 biennium general fund appropriations total $4,021,898,605; therefore, the maximum balance in the fund is limited to $402,202,205.

[2] Includes a $5 million contingent general fund transfer to the centers of excellence fund and a $5 million contingent general fund appropriation for supplemental transportation aid payments to school districts.

Permanent Oil Tax Trust Fund - 2011-13 Biennium

Beginning balance		$615,112,998 [1]
Estimated revenues		
Oil and gas production tax and oil extraction tax collections - Executive forecast	$699,271,039	
Adjustments		
Changes allocation to oil and gas impact grant fund (HB 1013)	(92,000,000)	
Changes allocation of oil and gas tax revenues to general fund and property tax relief sustainability fund	(514,000,000)	
Changes allocation of oil and gas production taxes for counties within the Fort Berthold Reservation (HB 1268)	(2,880,000)	
Total estimated revenues		90,391,039
Total available		$705,504,037
Less estimated expenditures		
Transfer to the general fund (SB 2015)	232,000,000	
Western area water supply authority loan (HB 1206)	75,000,000	
Department of Human Services - Medicaid management information system replacement project estimated carryover authority	1,474,362	
Tribal college assistance grants (HB 1003)	1,000,000	
Higher education building projects (HB 1003)	2,320,000	
Dickinson Research Center operations (HB 1020)	800,000	
Department of Mineral Resources - Contingent FTE positions (HB 1014)	743,972	
Transfer to oil and gas research fund (HB 1014)	4,000,000	
Transfer to the property tax relief sustainability fund (HB 1047)	341,790,000	
Transfer to the general fund for property tax relief (HB 1047)	46,790,000	
Total estimated expenditures		705,918,334
Ending balance		($414,297)

[1] Reflects actual revenues through February 2011, a transfer of $4,233,000 from the permanent oil tax trust fund to the property tax relief sustainability fund for additional property tax relief in the 2009-11 biennium (SB 2023), and a transfer of $22 million from the permanent oil tax trust fund to the state disaster relief fund for the 2009-11 biennium (SB 2369).

Budget Stabilization Fund - 2011-13 Biennium

Beginning balance		$368,427,901
Estimated revenues		
None	$0	
Total estimated revenues		368,427,901
Less estimated expenditures		
None	$0	
Total estimated expenditures		0
Ending balance		$368,427,901

Estimated June 30, 2013, Fund Balance Summary

	Executive Recommendation	Current Budget Status	Increase (Decrease)
General fund	$55,736,676	($351,899,817)	($407,636,493)
Permanent oil tax trust fund	231,398,293	(414,297)	(231,812,590)
Budget stabilization fund	329,556,954	368,427,901	38,870,947
Total	$616,691,923	$16,113,787	($600,578,136)

This summary and additional detail are available online at http://www.legis.nd.gov/fiscal/biennium-reports/62-2011/budget-status/index.html.

SOURCES AND USES OF FUNDS

Western Area Water Supply Authority
Issuance through CFP

Sources:	
Bond Proceeds:	
Par Amount	143,590,000.00
Premium	10,608,617.00
	154,198,617.00
Uses:	
Project Fund Deposits:	
Project Fund	125,000,000.00
Other Fund Deposits:	
Capitalized Interest	26,324,833.33
Delivery Date Expenses:	
Cost of Issuance	575,000.00
Underwriter's Discount	861,540.00
BND LOC	1,435,900.00
	2,872,440.00
Other Uses of Funds:	
Additional Proceeds	1,343.67
	154,198,617.00

page 2

SOURCES AND USES OF FUNDS

Western Area Water Supply Authority
Issuance through CFP
20-Year

Dated Date	08/01/2011
Delivery Date	08/01/2011

Sources:	
Bond Proceeds:	
Par Amount	92,040,000.00
Net Premium	2,869,484.80
	94,909,484.80

Uses:	
Project Fund Deposits:	
Project Fund	75,000,000.00
Other Fund Deposits:	
Capitalized Interest	18,085,283.33
Delivery Date Expenses:	
Cost of Issuance	350,000.00
Underwriter's Discount	552,240.00
BND LOC	920,400.00
	1,822,640.00
Other Uses of Funds:	
Additional Proceeds	1,561.47
	94,909,484.80

Debt Comparison - Accrued Interest / Capitalized Interest

Testimony 1 4-15-11 A.M.

HB 1206
Western Area Water Supply Project
4/15/2011

State Proposed Plan - HB 1206
State Funded - Phased Projects with Accruing Interest through Construction
Phases I & II - $25 million grant / Phase III - $5 million grant

Construction Phases	Phases I & II	Phase III	TOTAL Phases I, II & III
Loan Amount	$ 75,000,000	$ 58,030,295	$ 133,030,295
Cost of Issuance	$ -	$ -	$ -
Accrued Interest through Construction	$ 5,619,863	$ 7,249,812	$ 12,869,675
Deposit into Project Construction Fund	$ 74,083,992	$ 58,030,295	$ 132,114,287
Total Principal and Interest	$ 129,382,250	$ 104,772,500	**$ 234,154,750**
Total Construction Costs Indexed	$ 99,083,992	$ 63,030,295	$ 162,114,287

State Proposed Plan - HB 1206
State Funded - Phased Projects with Accruing Interest through Construction
Phases I & II - $25 million grant / Phase III (Delayed) - $5 million grant

Construction Phases	Phases I & II	Phase III	TOTAL Phases I, II & III
Loan Amount	$ 75,000,000	$ 63,540,568	$ 138,540,568
Cost of Issuance	$ -	$ -	$ -
Accrued Interest through Construction	$ 5,619,863	$ 4,778,599	$ 10,398,462
Deposit into Project Construction Fund	$ 74,083,992	$ 63,540,568	$ 137,624,560
Total Principal and Interest	$ 129,382,250	$ 109,643,500	**$ 239,025,750**
Total Construction Costs Indexed	$ 99,083,992	$ 68,540,568	$ 167,624,560

State Proposed Plan - HB 1206
State Funded - Phased Projects with Capitalized Interest through Construction
Phases I & II - $25 million grant / Phase III (Delayed) - $5 million grant

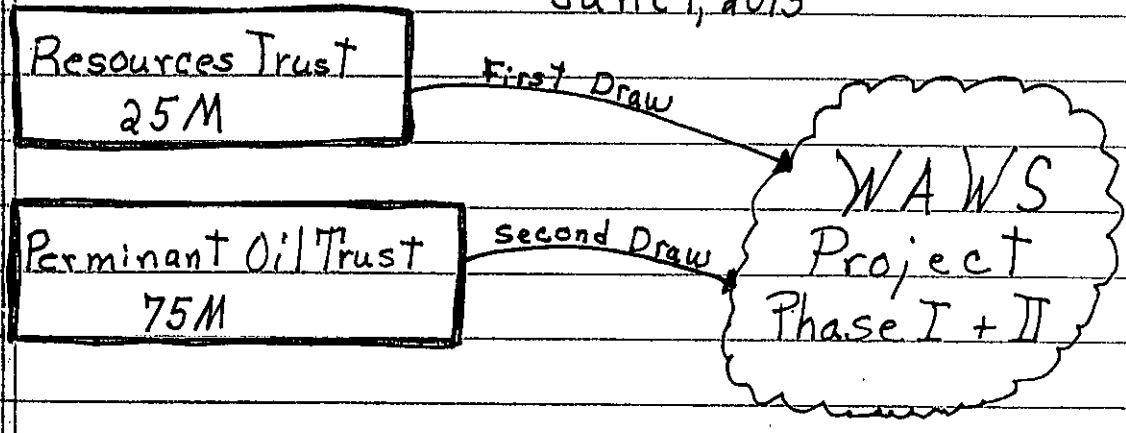
Construction Phases	Phases I & II	Phase III	TOTAL Phases I, II & III
Loan Amount	$ 75,000,000	$ 75,305,000	$ 150,305,000
Cost of Issuance	$ -	$ -	$ -
Capitalized Interest through Construction	$ 5,619,863	$ 7,530,500	$ 13,150,363
Deposit into Project Construction Fund	$ 69,557,188	$ 68,228,754	$ 137,785,942
Total Principal and Interest	$ 120,365,250	$ 120,853,250	**$ 241,218,500**
Total Construction Costs Indexed	$ 94,557,188	$ 73,228,754	$ 167,785,942

State Proposed Plan - HB 1206
State Funded - Phased Projects with Capitalized Interest through Construction
Original Project Plan - $30 million grant

Construction Phases	Total Project
Loan Amount	$ 156,350,000
Cost of Issuance	$ -
Capitalized Interest through Construction	$ 28,366,826
Deposit into Project Construction Fund	$ 127,979,251
Total Principal and Interest	$ 245,704,583
Total Construction Costs Indexed	$ 158,848,653

Project: WAWS

Construction Start: June 1, 2011 Phase I
June 1, 2012 Construction
June 1, 2013 Phase II



1. No interest on 25M grant from Resources Trust.
2. Interest will start to accrue from the first draw of the Perminant Oil Trust 75M.
3. Payment schedule would not start until June 30, 201.
4. All interest earned before WAWS draws the dollars stay in the respective funds.

5. Assumption

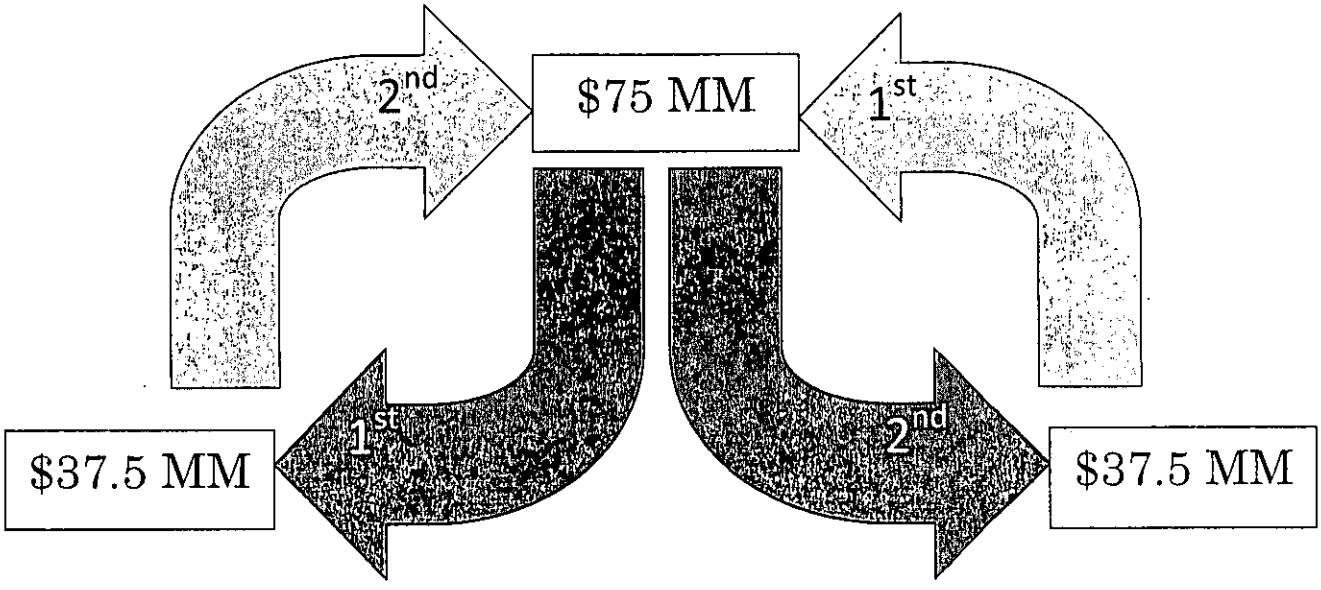
The entire 100M will be drawn out and spent by WAWS. by June 1, 2013.

6. Repayment

		Terms
Project Fund	75.0M	- 20 year Pay Back.
Capitalized Interest	20.0M	- 6.0M Annual Payme
Total	95.0M	
Grant Fund	25.0M	
Total Repayment	120.0M	

Testimony 3

WAWSA (Western Area Water Supply Authority)



Bank of North Dakota (BND)

Funding/Financing

- LIBOR plus spread
  - Est. at 3%
- Est. interest cost $1 MM/year

Repayment

- BND repayment portion is first
  - LIFO
  - This provides protection to BND

Permanent Oil Trust Fund

Funding/Financing

- 0% during construction
- 5% fixed for permanent financing

Repayment

- POTF repayment portion follows BND

Testimony 4

Scanned/emailed

CITY OF Fargo

Mayor Dennis R. Walaker
200 3rd Street North
Fargo, North Dakota 58102
Phone (701) 241-1310
Fax (701) 476-4136

March 3, 2011

The Honorable Ray Holmberg, Chair
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

Dear Senator Holmberg,

The City of Fargo has been informed of the need for water in the western part of North Dakota for municipal and industrial uses, especially in this period of rapid oil exploration and drilling. This need coincides with the Red River Valley need for flood protection. In discussing State funding to address both delivery of water to western communities and flood protection in the east with legislators, it is apparent both interests can be met during this legislative session. Moreover, we don't see the legislative effort to fund both needs as a conflict.

With this mind, I would respectfully encourage you to consider the Western Area Water Supply Project funding request. The plan appears to be a good approach to delivering water to the communities and businesses in the northwest part of North Dakota.

Thank you for all your work during this legislative session.

Sincerely,

Dennis R. Walaker
Mayor

DRW:se
ww11senapprmar3

Printed on Recycled paper.

OFFICE OF MAYOR
MICHAEL R. BROWN

City of Grand Forks

(701) 746-2607
FAX # (701) 787-8773

255 North Fourth Street · P.O. Box 5200 · Grand Forks, ND 58206-5200

March 24, 2011

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
600 East Boulevard
Bismarck, ND 58505

The Honorable Ray Holmberg, Chair
The North Dakota Senate
Senate Appropriations Committee
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project

Dear Senator Klein and Senator Holmberg:

I'm writing in support of HB 1206. The Western Area Water Supply Project (WAWSP) provides a critical water source to northwestern North Dakota to support the rapid population growth in the area. By utilizing local debt financing for the WAWSP with State backing, the project strives to minimize the financial impact on the State Water Commission's (SWC) Resources Trust Fund, whereby, indirectly providing support for other vital water projects statewide including the City of Grand Forks' new Regional Water Treatment Plant (WTP).

Given the state of the Federal budget, water users throughout North Dakota have the good fortune of the Resources Trust Fund which is funded by 20 percent of the oil extraction tax. The SWC estimates $235 million will be available in the Resources Trust Fund during the 2011-2013 biennium. But even at this level, the water needs of the State outweigh the Resources Trust Fund available funds. As a result, the ND Water Coalition, with the City of Grand Forks as a member, seeks to increase the level of water system funding for this biennium by an additional $100 million. Natural disasters, such as the Devils Lake Emergency Outlet and Fargo Flood Protection, are slated to receive the majority of water system funding, which is appropriate.

Funding for quality drinking water treatment and delivery to the citizens of North Dakota needs to also be supported. The City of Grand Forks has ranked a new regional WTP as the top infrastructure priority at a cost of approximately $125 million. Though the City firmly commits local resources to 50 percent of the project costs, we're in need of State and Federal resources for the balance to offset significant local water rate impacts. Please find attached a copy of our funding strategy for the WTP project for your reference.

HB 1206 outlines a prudent financial approach to provide for a long-term domestic water supply under local control, while allowing the opportunity for the Resources Trust Fund to be used by other critical water projects in the State. I highly recommend the passage of HB 1206.

Sincerely,

Michael R Brown

Dr. Michael R. Brown
Mayor

Cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Connie Triplett
Representative Curt Kreun

City Hall
254 2nd Ave NE
PO Box 390
Valley City, ND 58072-0390

Phone: 701-845-1700
Fax: 701-845-4588
www.valleycity.govoffice.com

March 25, 2011

The Honorable Ray Holmberg, Chair
The North Dakota Senate
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project (WAWSP)

Dear Senator Holmberg and Senator Klein:

I'm writing to urge your support for the creation of the Western Area Water Supply Authority as outlined in HB 1206. There have been many important water-related projects throughout the State in recent years. Many of these projects have been disaster-related and which have been supported by the State Water Commission's Resources Trust Fund. Recognizing that this Fund has recently been a beneficiary of significant oil tax revenues, the timeliness couldn't be better.

The City of Valley City has been supported greatly by this Fund as we've dealt with the downstream impacts of the Devils Lake Emergency Outlet which have impacted our City's water quality. The Outlet quickly caused the need for $19.6 million in upgrades to our water treatment plant to address excessive increases in sulfate levels which posed health concerns to our residents. Without assistance through the Resources Trust Fund, which funded 72 percent of these costs, we would not have been able to address these issues in the rapid manner in which they are being addressed. We recognize the value in large water projects utilizing creative financing solutions to stretch the Resources Trust Fund proceeds across the State.

The Western Area Water Supply Authority proposes to completely finance the $150 million WAWSP which therefore, eliminates a long-term ongoing financial commitment from the SWC while at the same time continuing to support contributions to the Resources Trust Fund through oil production. Should the WAWSP be executed in this manner, other important water projects across the State will be able to continue to maximize benefit from the Resources Trust Fund. Please support HB 1206.

Regards,

Robert J. Werkhoven, Mayor
City of Valley City

Cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Larry Robinson

Dan Stenvold, Mayor

Tom Larson, Business Manager
Ann Berg, Deputy Auditor

City of Park River

PO Box C
Park River, ND 58270-0702
Phone: 701-284-6150
Fax: 701-284-6380
prcity@polarcomm.com

March 25, 2011

The Honorable Ray Holmberg, Chair
The North Dakota Senate
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project (WAWSP)

Dear Senator Holmberg and Senator Klein:

I'm writing to urge your support for HB 1206. The Western Area Water Supply Authority proposes to completely finance the $150 million WAWSP which therefore, eliminates a long-term ongoing financial commitment from the State Water Commission. The SWC has proposed a $235 million budget for the 2011-2013 biennium and the ND Water Coalition is seeking an additional $100 million due to the many, large scale water projects throughout the State. Within that budget there is a $15 million appropriation to the Municipal, Rural, and Industrial (MR&I) Program.

The City of Park River has great need for financial assistance through the MR&I Program. We currently have a $2.3 million water project on our horizon. Without financial assistance through either the State or Federal government, the City estimates rates will have to be increased from the monthly average rate of approximately $56/month to $77/month – a 38 percent increase. This increase would also represent an "unaffordable" average user rate that is 3.03 percent of the City's median household income. The American Water Works Association suggests an "affordable" rate is less than 2 percent of the median household income.

Though the City's water project received preliminary federal support in the 2011 budget process, it has not received a federal funding commitment. The elimination of earmarks in the 2012 federal budget process will likely drive local projects such as this to the State Water Commission's (SWC) Municipal, Rural, and Industrial Program for funding. Given the SWC 2011-2013 proposed budget includes only $15 million in MR&I funding, it is vital that water projects across the state be creative with their financing just as HB 1206 would do in northwestern North Dakota.

PR

Regards,

Mayor Dan Stenvold

Cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Joe Miller

CITY OF CROSBY

PO Box 67 ~ Crosby, North Dakota 58730

March 24, 2011

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project

Dear Senator Klein:

I am writing to urge the Legislative support for HB 1206 as it relates to the Western Area Water Supply Project. The City of Crosby has analyzed an expansion of its water treatment plant however; it was determined to be cost-prohibitive. In July 2010, the residents of the City of Crosby voted by a **97 percent** margin to source water through the R&T Water Supply Association. The R&T WSA is one of the project sponsors to the WAWSP and is in great need of this additional water supply source to meet mounting water demands in the northwestern corner of North Dakota.

The WAWSP treats the State's most-plentiful water supply, the Missouri River, and distributes it throughout this corner of the State. The WAWSP has created an opportunity to create a regional organization to address a large, regional issue that cannot be addressed by the area water systems independently. Given the magnitude and swiftness of oil exploration and recovery in the Bakken Formation, it is imperative to have this core drinking water infrastructure in place as quickly as possible.

Thank you for your attention to this matter and I would appreciate your support of HB 1206.

Sincerely,

/s/ Les Bakken

Les Bakken
Mayor

Cc: Senate Appropriations Committee
Senator John Andrist

March 25, 2011

The Honorable Ray Holmberg, Chair
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

The Honorable Jerry Klein, Chair
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 - Western Area Water Supply Authority

Dear Senators:

I would like to show my support of HB 1206 – the Western Area Water Supply Project (WAWSP). As a community in the midst of oil boom activities, Killdeer is keenly aware of the importance of water infrastructure. Killdeer has seen tremendous activity in the past year and is anticipating $2-3 million in water infrastructure needs. Currently, the City is on a state project priority list that includes over 150 other important drinking water projects in North Dakota. The need of this area and, in fact, the entire State is great.

The growth in our region is unprecedented and shows no sign of stopping soon. Communities and industry need water to meet this demand. All projects that address these critical needs in west North Dakota, without competing for much needed state grants and loans, is a boon for the entire state. The proposed project does this through a thoughtful approach of phased implementation balanced by fiscal responsibility to the region and the State. HB 1206 includes a financial plan in which the Western Area Water Supply Authority will finance the project utilizing, in part, the good fortune of the area. The proposed financing structure reduces competition from large state sponsored projects for the funding the pool available and allows assistance for other critical water projects.

The urgency of a quality drinking water system with a financing plan in northwest North Dakota is clear. As a community in the middle of this activity, I pledge my support to this project, and urge you to do the same.

Sincerely,

Dan J Dolechek

Dan Dolechek
City Commission President

cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Larry Robinson

Dear North Dakota Senators,

I am writing you this e-mail asking for your support of HB 1206.

This is the bill that would create the Western Area Water Authority to supply the domestic, municipal, and industrial water needs of Northwest North Dakota. Poor ground water quality, along with limited access to groundwater aquifers, and the demand for water for oil industry needs have created a real challenge for this area.

This project would utilize the Missouri River and the Williston Regional Water Plant, which has a large allotment of water permitted from the Missouri.

This Western Area Water Supply Project has involved a united effort between the city of Williston, Williams Rural Water District, McKenzie Water Resource District, and R & T Water Supply Association (including the communities of Ray, Tioga, and Stanley).

The project is designed to cost approximately $150 million, with $30 million of that being a grant up front, and the remaining $120 million to be bonded with the moral obligation of the State of North Dakota to back the bonds. They would also be required to pay back the grant, after the bonds are paid off. A majority of the bond repayment would be paid off with revenue generated from sales to the oil industry, which by all indications will have a presence in the area for years to come.

As a manager of a water district on the east side of the state in the north end of the valley, I applaud the initiative taken in the planning and proposed financing of this project.

The way the project is structured, this project will not be competing with current water needs of the state in future bienniums, especially the MR & I funding.

The needs of the area are real and immediate, and will not be going away for some time.

Yes, it does require some faith and obligation on the state's part, but it appears to be a "win-win" proposal not only for northwestern North Dakota, but for the whole state in expediting critical water infrastructure need.

I urge you to support HB 1206!

Gordon L. Johnson, Manager
North Valley Water District
13532 Hwy 5
Cavalier, ND 58220

Grand Forks Traill Water District

BOX 287
1401 7th AVENUE N.E.
THOMPSON, NORTH DAKOTA 58278
"Rural Water for a Better Rural Life"

Office: 1 Mile West of Thompson
Phone: 701-599-2963
Fax: 701-599-2056
e-mail: gftwu@invisimax.com

March 25, 2011

The Honorable Ray Holmberg, Chair
The North Dakota Senate
Senate Appropriations Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

The Honorable Jerry Klein, Chair
The North Dakota Senate
Senate Industry, Business, and Labor Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: HB 1206 – Western Area Water Supply Project (WAWSP)

Dear Senators:

I am writing to urge you to support HB 1206, the Western Area Water Supply Project. This crucial project will provide key water infrastructure that supports the development of the communities it will serve in the northwestern portion of the State. The growth in the western area of the State serves to benefit the rest of North Dakota, as well.

One of the most favorable aspects of WAWSP is the fact that it will fund a significant portion of the project through water sales, lessening the burden on the Water Trust Fund. This leaves funds available for other critical water infrastructure projects throughout the State. Currently, Grand Forks-Traill Water Users District is listed on the Project Priority with a $5.6 million water system expansion project, so we truly understand the need for funding to support water infrastructure development to serve our communities and rural citizens while maintaining financial sensibility.

The oil industry relies upon a significant quantity of water hauled in by truckload to frac wells. At this point in time, it takes roughly three and a half hours of waiting in line before each truck can be filled with water. This project will help reduce the waiting time for filling trucks to mere minutes, due to the increase of water depots available. The increase in productivity would financially benefit not only the growing oil industries in the area, but the economy of the entire state.

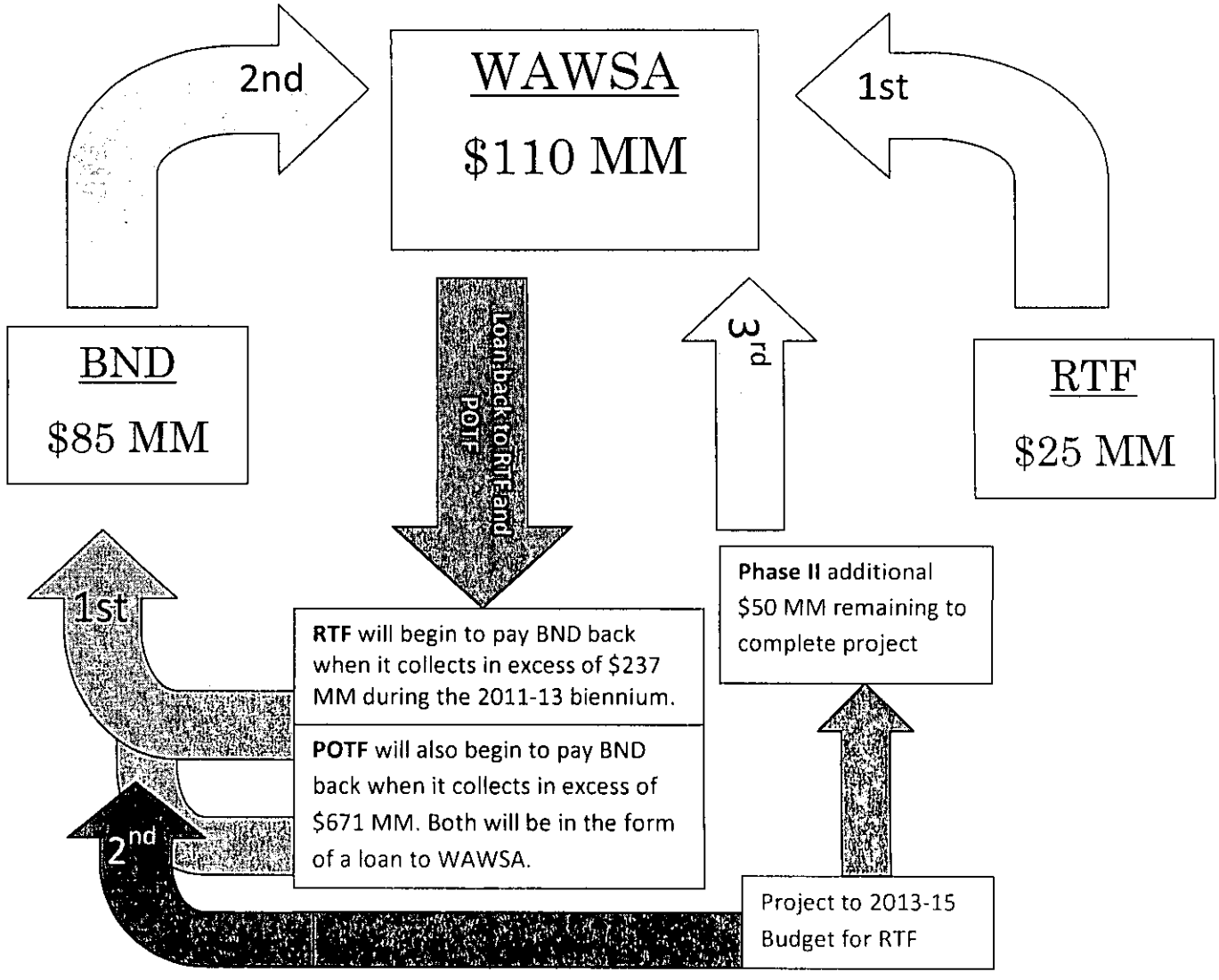
I have personally attended each State Water Commission meeting for the last six months. After hearing all the facts, I believe HB 1206 supports the demand and development of the area, provides a secure financial plan, and is in the best interest of the State of North Dakota.

Sincerely,

Neil Breidenbach, Manager
Grand Forks-Traill Water Users District

Cc: ND Senate Industry, Business, and Labor Committee Members
ND Senate Appropriations Committee Members
Senator Dwight Cook

Western Area Water Supply Authority (WAWSA)



BND

Funding/Financing

- $85 MM
- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $2.5 MM

Repayment

- BND repayment comes from project revenues
- Excess production and extraction taxes in RTF and POTF

Resource Trust Fund (RTF)

Funding/Financing

- $25 MM
- 5% fixed for permanent financing

Permanent Oil Trust Fund (POTF)

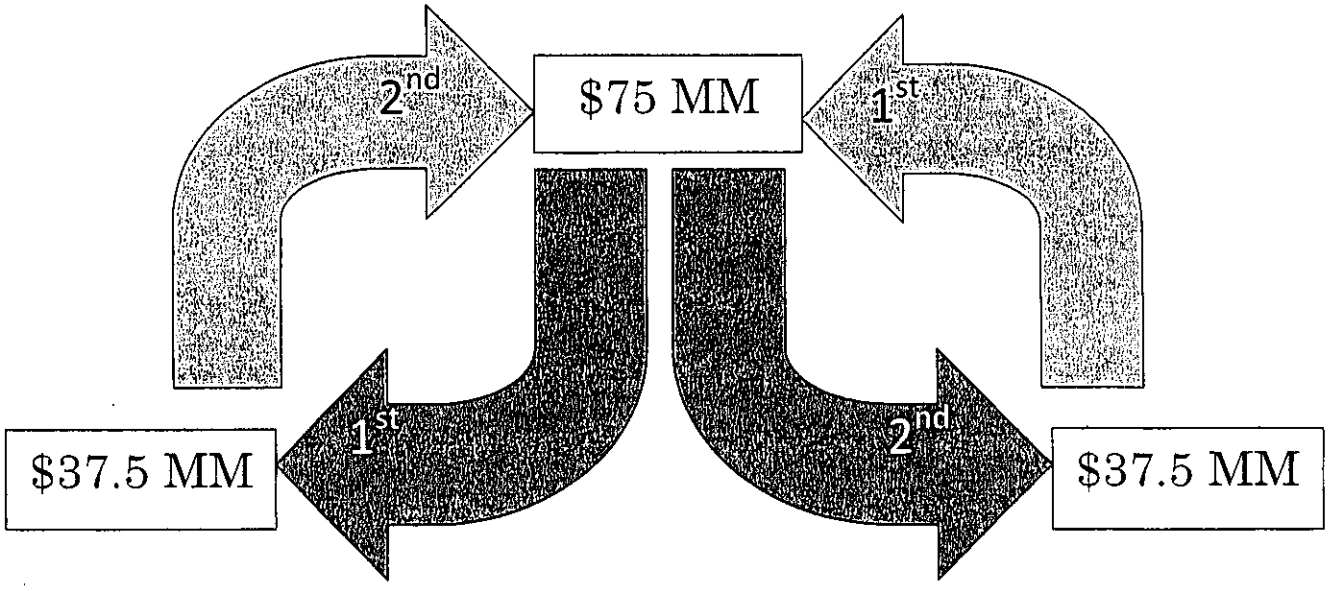
Funding/Financing

- 5% fixed for permanent financing

Kelsch

OPTION 1

WAWSA (Western Area Water Supply Authority)



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Repayment

- BND repayment portion is first
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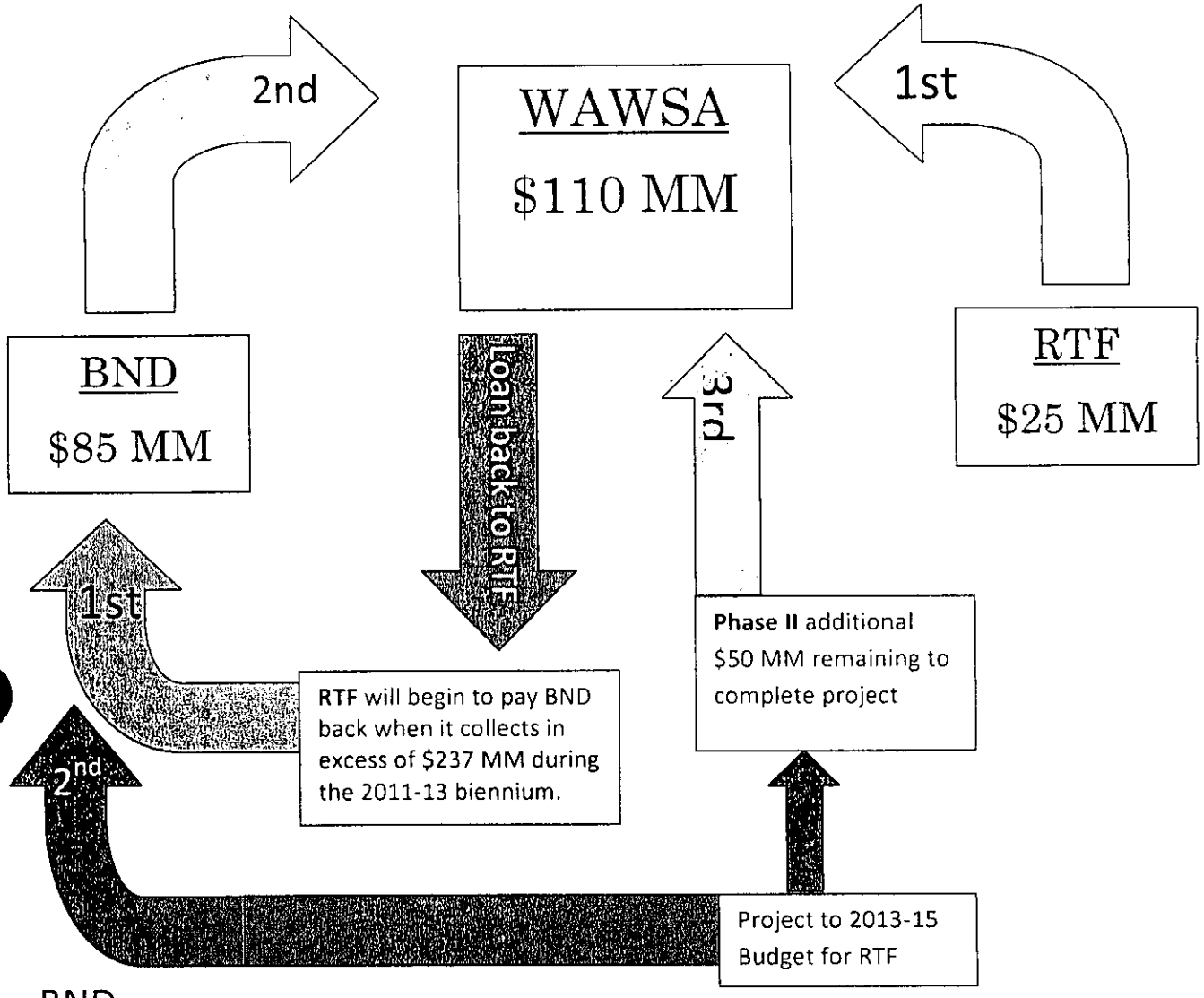

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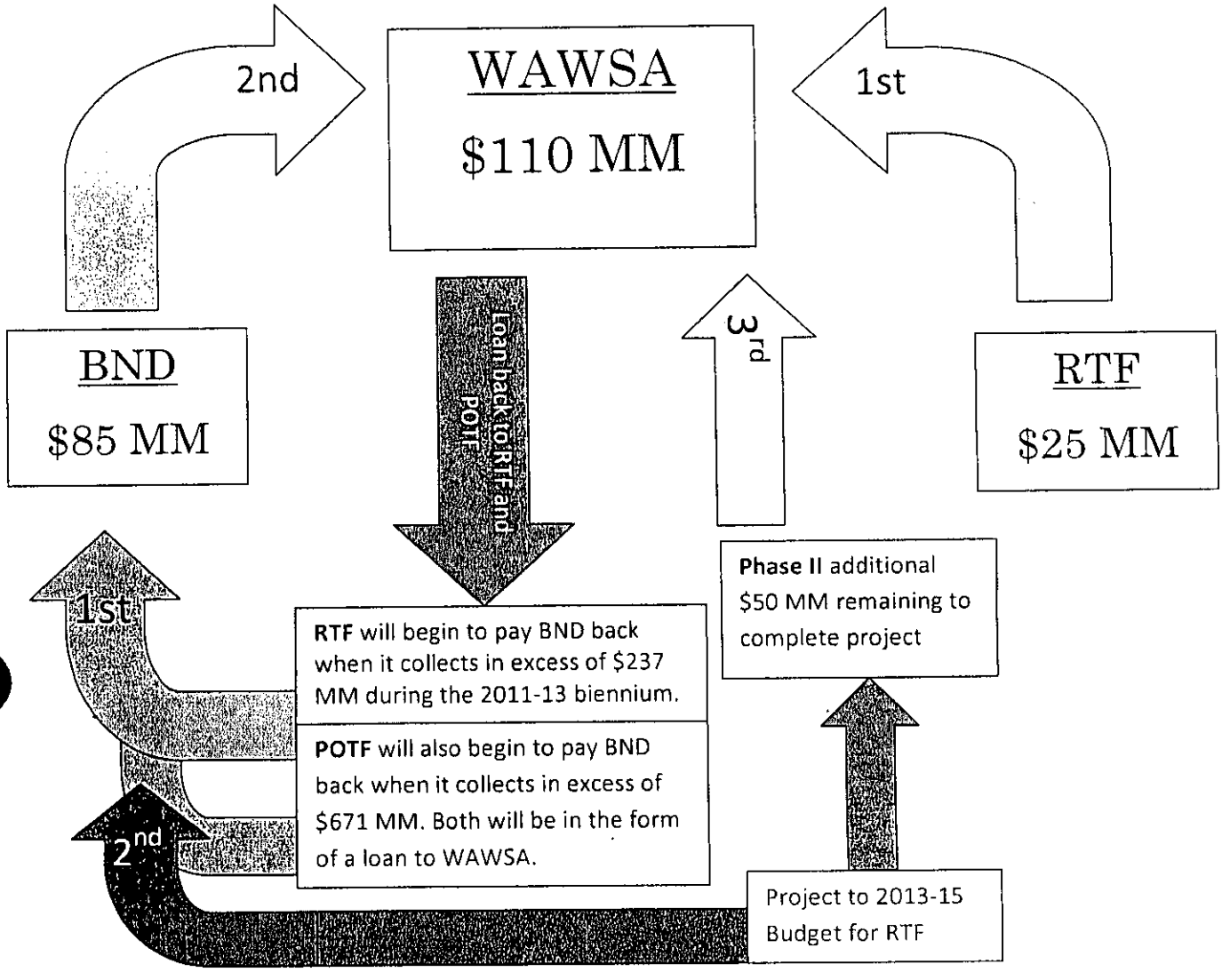

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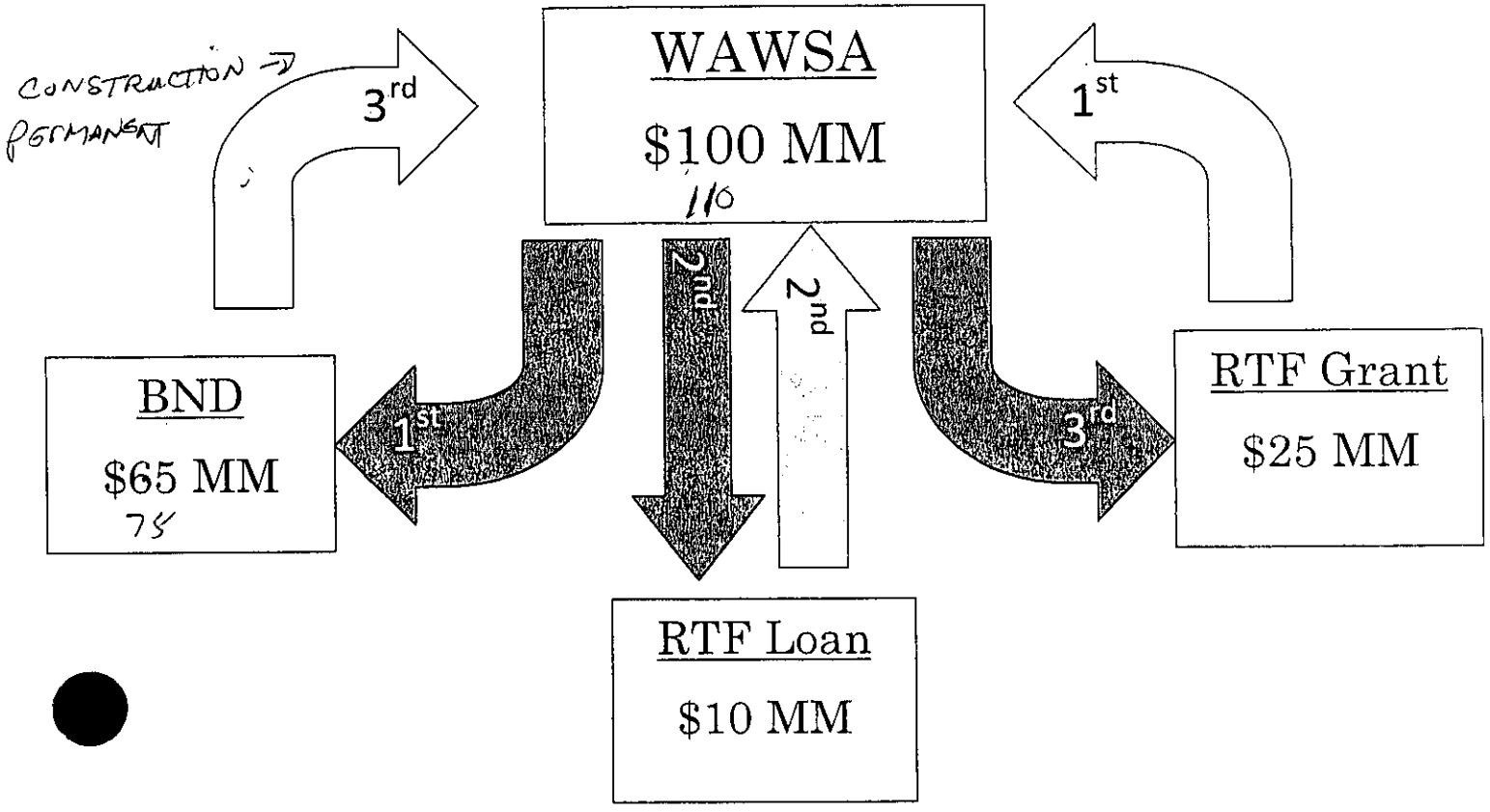
OPTION 4

Western Area Water Supply Authority (WAWSA)



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Repayment

- ? 5% delayed.

Resource Trust Fund (RFT)

Funding/Financing

- $10 MM Loan @ 5%

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- Scheduled P&I when BND's repayment is done

50 MILLION – MAKE REQUEST FROM NEXT BIENNIUM

OPTION 5

PLAN FOR FUNDING

1. 30 million Resources Trust Fund
2. 40 million Permanent Oil Trust Fund
3. 40 million SWC Bond Issue

110 million — when necessary ie last 40 million

* SWC work out terms of repayment with WWS ie to POTF, Bonds, RTF
* SWC Bond Limit increased for this Project

4. 40 million Resources Trust Fund 2013-15: legislative intent

* Water Depots - Minimize / Unmet Needs
* SWC plans / specs / etc approval
* Revenues to RTF: Worked out through agreement with locals

WATER FUNDING

I. Water Coalition Priorities		II. Governors Budget
Devils Lake		
Flood Control/Outlet	$100 million	$75 million
Water Treatment	$20 million	$15 million
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Western Area Water Supply	$25 million	$25 million
Total	**$341 million**	**$235 million**

III. Future Bienniums Water Infrastructure: State Funding (800 + million)

Fargo Flood Control	$300 - $75 = $225 million (25%)
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NAWS Water Treatment/Completion	$80-$160 million (Sales tax)
Rural Water	$160 million
SWPP Completion	$52 million (Repayment to RTF)
Municipal	$25 million (2011-2013)
Devils Lake/WAWS/Irrigation/General	?

Amendments to Senate Engrossed HB 1206

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact an new chapter of the North Dakota Century Code, relating to a western area water supply project and authority; to provide an appropriation and to declare an emergency.

Section 1. Legislative intent. The legislative assembly declares that areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply. The legislative assembly therefore authorizes construction of a western area water supply project to treat, store, supply, and distribute water to the people of western North Dakota for domestic, rural, municipal, livestock, industrial, oil and gas development, and other uses, to provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota.

In order to implement this project, the legislative assembly will support:

1. In the 2011-2013 biennium: Funding from the resources trust fund of $25 million, and from the permanent oil trust fund $50 million for construction. The State Water Commission shall have the authority to issue bonds, not to exceed $30 million, under Chapter 61-02, for additional construction of the project.

2. In the 2013-2015 biennium: If available and included in the Governor's budget, funding from the resources trust fund in the amount of $75 million for construction, or additional bonding upon approval of the legislative assembly.

Section 2. Construction and possession, operation and management. Construction of the western area water supply infrastructure as authorized herein shall be done by the State Water Commission under Chapter 61-02. Possession of any facilities constructed by the State Water Commission under this Act shall be transferred to local entities for management, operation and control pursuant to agreement. The commission may employ personnel to implement this chapter.

Section 3. Industrial Water - Water Depots. The commission may construct water depots and shall minimize impact to private water sellers

Section 4. Western area water supply authority. The legislative assembly herby authorizes the creation of a western area water supply authority. The western area water supply authority consists of participating entities located within McKenzie, Williams, Burke, Divide, and Mountrail Counties, including the city of Williston, the McKenzie County Water Resource District, the Williams County Water District, and the R & T Water Supply Association.

1. The initial board of directors of the western area water supply authority consists of one representative from each participating entity.

2. Board of directors - Officers - Meetings. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, and financial participation structure for membership in the authority. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which

Moral obligation

The commission may approve a resolution for the issuance of bonds as provided in this section which states in substance that this subsection is applicable to any required debt service reserve for bonds issued under that resolution in an aggregate amount not to exceed _____ dollars plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter. The amount of any refinancing, however, may not be counted toward the ___ dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced. No more than thirty percent of the total project costs for any single transmission facility project may be financed by bonds issued under this section which are supported by the debt service reserve fund approved by the commission under this subsection. To ensure the maintenance of the required debt service reserve fund approved by the commission under this subsection, the legislative assembly shall appropriate and pay to the authority for deposit in the reserve fund any sum, certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve fund approved by the commission.

Option A

To ensure the repayment of the debt service on the Bank of North Dakota construction loan authorized pursuant to provisions of this section, the sixty-third legislative assembly shall appropriate and authorize the State Water Commission to pay from the resources trust fund an amount equal to the outstanding principal amount of the loan plus accrued interest. [if entire construction loan to be repaid]

OR

To ensure the repayment of the debt service on the Bank of North Dakota construction loan authorized pursuant to provisions of this section, the sixty-third legislative assembly shall appropriate and authorize the State Water Commission to pay from the resources trust fund an amount equal to the principal and interest due during the 2013-2015 biennium.
[if only paying debt service for the 2013-2015 biennium.]

Option B

The water commission shall request funding from the sixty-third legislative assembly to repay any outstanding principal amount plus accrued interest on the loan obtained from the Bank of North Dakota pursuant to provisions of this section. [if entire construction loan to be repaid]

OR

The water commission shall request funding from the sixty-third legislative assembly to repay the principal and interest due during the 2013 -2015 biennium on the loan obtained from the Bank of North Dakota pursuant to provisions of this section. [if only paying debt service for the 2013-2015 biennium.]

Testimony 1 4-15-11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

Page 8, line 16, remove "as is necessary to prevent default"

Page 8, line 18, after "county" insert "or provide an equivalent amount through other source of revenue"

SOURCES AND USES OF FUNDS

Western Area Water Supply Authority
Issuance through CFP

Sources:	
Bond Proceeds:	
Par Amount	143,590,000.00
Premium	10,608,617.00
	154,198,617.00
Uses:	
Project Fund Deposits:	
Project Fund	125,000,000.00
Other Fund Deposits:	
Capitalized Interest	26,324,833.33
Delivery Date Expenses:	
Cost of Issuance	575,000.00
Underwriter's Discount	861,540.00
BND LOC	1,435,900.00
	2,872,440.00
Other Uses of Funds:	
Additional Proceeds	1,343.67
	154,198,617.00

Projected language for new 61-40-10. Taxing Authority.

(HB 1206, page 8, line 13)

If projected or actual revenues are insufficient to prevent default, each board of county commissioners of Burke County, Divide County, McKenzie County, Mountrail County, and Williams County shall levy property tax in equal mills within a maximum of five mills for each county or provide an equivalent amount through other sources of revenue.

Testimony 1 4-18-4:00pm

Senate and House Conferees
HB 1206
April 18, 2011

In discussing the status of this bill with some of the interested parties, we believe the following changes and structure would largely resolve key issues relating to this bill, and urge you to consider them and visit with stakeholders regarding these terms:

1. Funding. $75 million state loan coupled with $25 million from Resources Trust Fund (SWC appropriation bill). (ie., $100 million will be sufficient at this time).

2. Next biennium. Legislative intent would be added ie For the next biennium, if available and included in the Governor's budget, funding from the resources trust fund, or bonding by the State Water Commission, upon approval of the legislative assembly, for the final phase of the western area water supply project.

3. Revenues: Once debt service, O & M and reserve obligations are met", remaining funds should be returned to the Resources Trust Fund. Example:

   Revenues to resources trust fund. After any bonds or refunding bonds have been paid in full by the western area water supply project, and after the provision of adequate revenues for operation and maintenance and revenues for replacement and extraordinary maintenance, revenues from the western area water supply project shall be deposited in the resources trust fund, established pursuant to Section 57-51.1-07.

4. Authorize construction of water depots to meet industrial water supply needs--- this is an expression more of intent, as described to me by WAWS proponents:

   -p 2. line 2 after "the western area water supply authority" insert "may construct water depots to provide unmet needs for industrial water to the oil and gas industry".

5. As written the bill appears to MANDATE local entity participation; make clear, that the locals can decide to not become members of WAWS:

   -P 2. line 18, insert after "repaid". "No political subdivision, city or water system is obligated to become a member of the western area water authority".

   -P 2. line 30, insert "Notwithstanding membership on the initial board of directors, any political subdivision, city or water system may elect to not become a member of the authority by vote of its governing body"

6. Oversight by the SWC :

   - P 8, line 8 and 9, restore "initial construction of the system and" .....and "and contract plans and specifications"

   - P 8 line 10 change "concurrence" to "approval"

For the purposes of this chapter, a default shall be failure to make a loan payment or grant repayment as required by the state water commission.

If the authority is ~~in default in the~~ unable to make a loan payment of the principal of or interest on the loan authorized in Section 2 to the state water commission or is unable to repay the state water commission grant as required in Section 3 ~~any of the obligations of the authority under this chapter~~, and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority.

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Test 1-4-19-11

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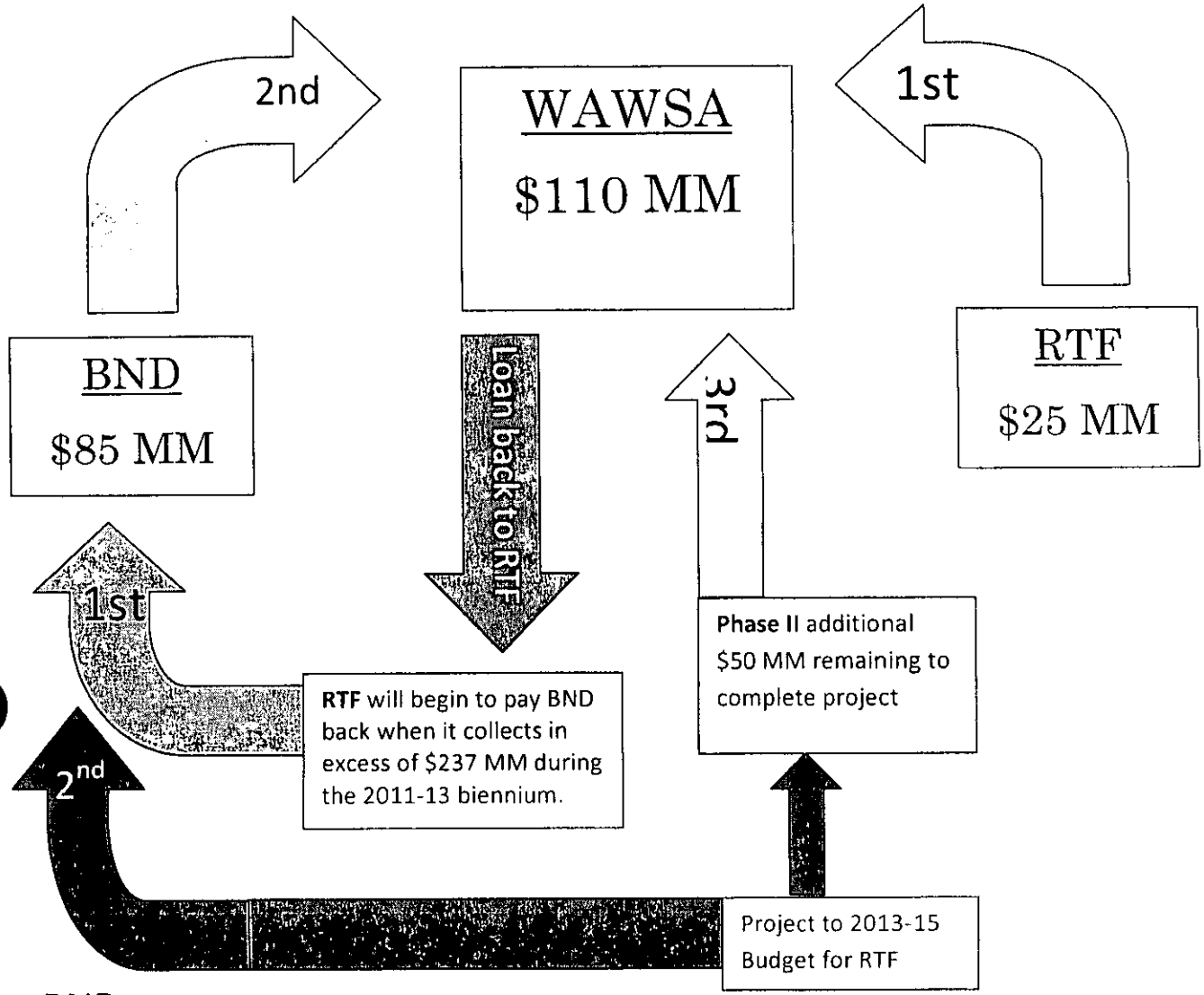


BND

Funding/Financing

- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $2.5 MM

Repayment

- BND repayment comes from project revenues
- Excess production and extraction taxes in RTF

Resource Trust Fund (RTF)

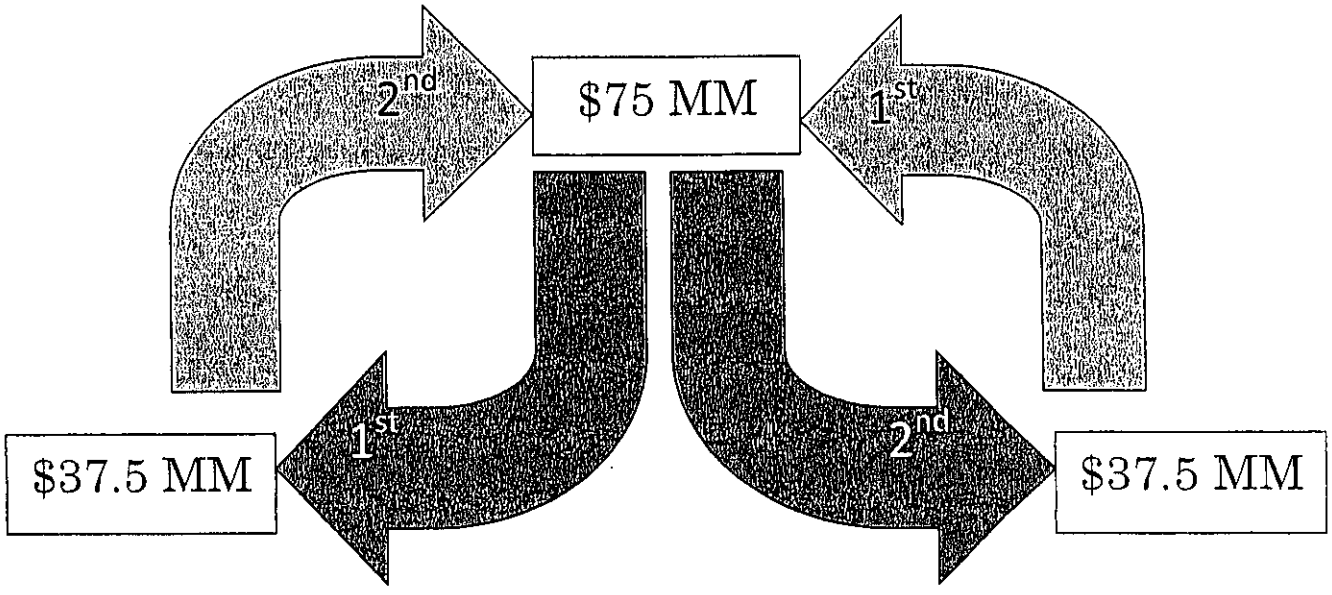
Funding/Financing

- 5% fixed for permanent financing

OPTION 1

Trains

WAWSA (Western Area Water Supply Authority)



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Repayment

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OPTION 2

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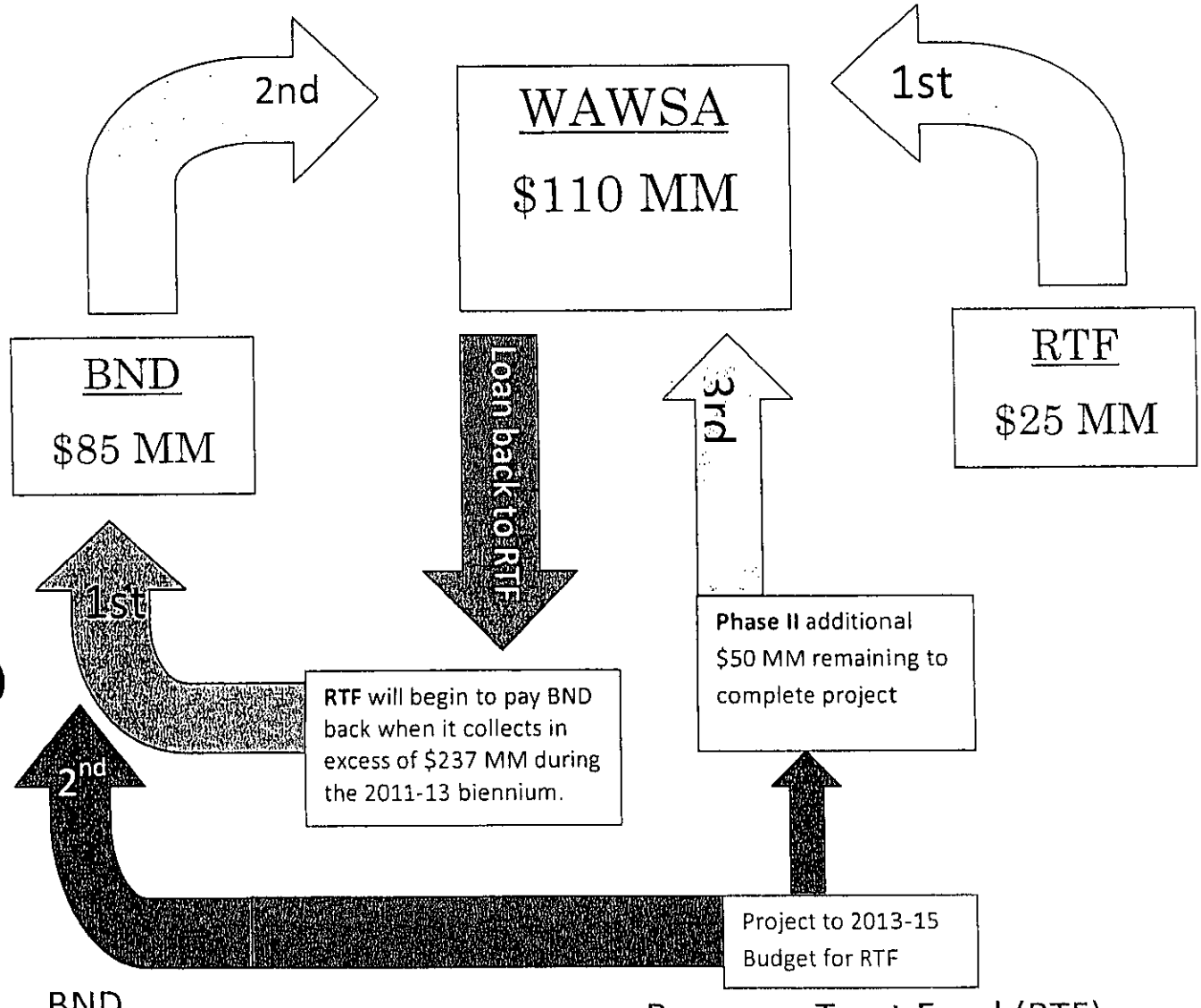

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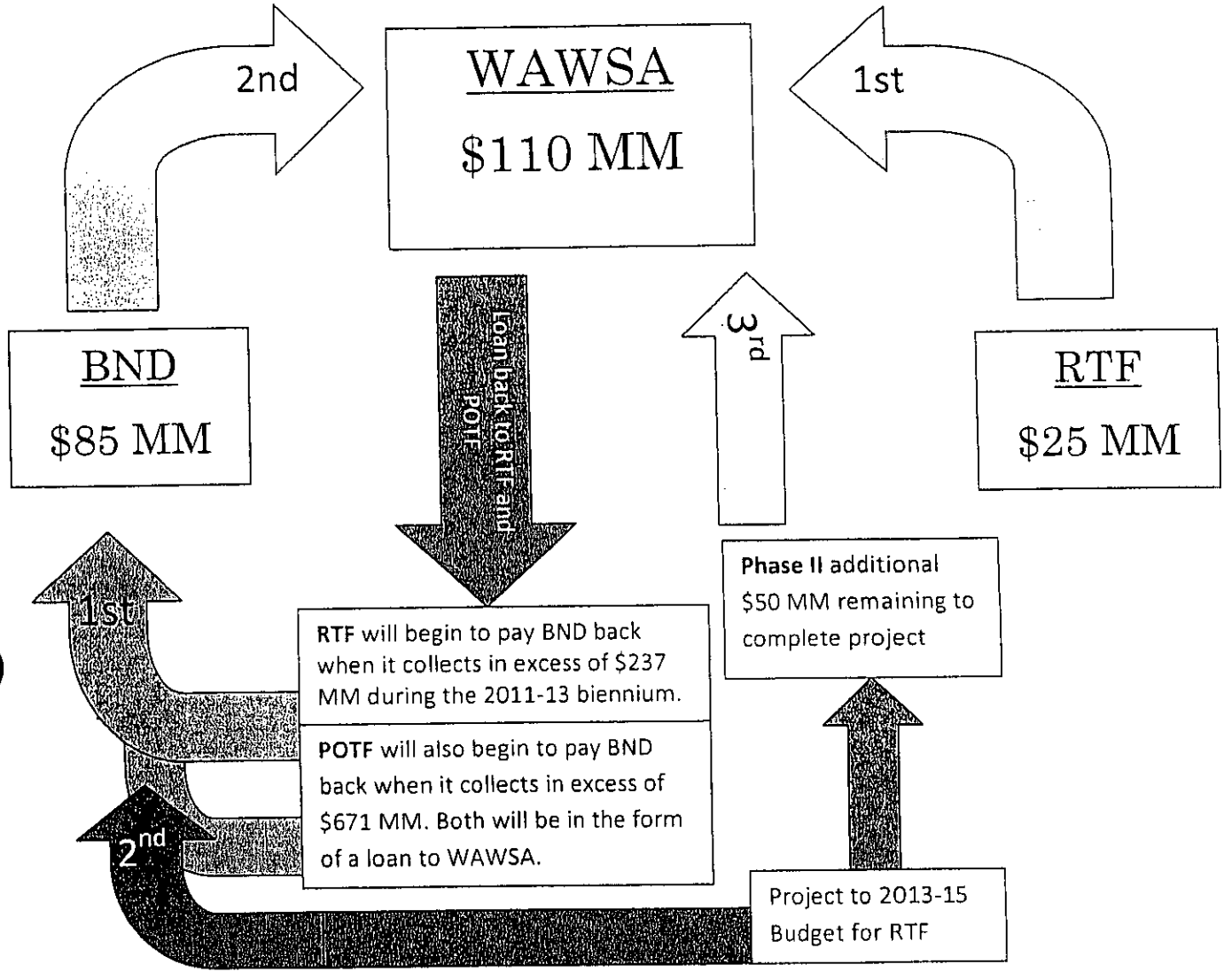

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OPTION 4

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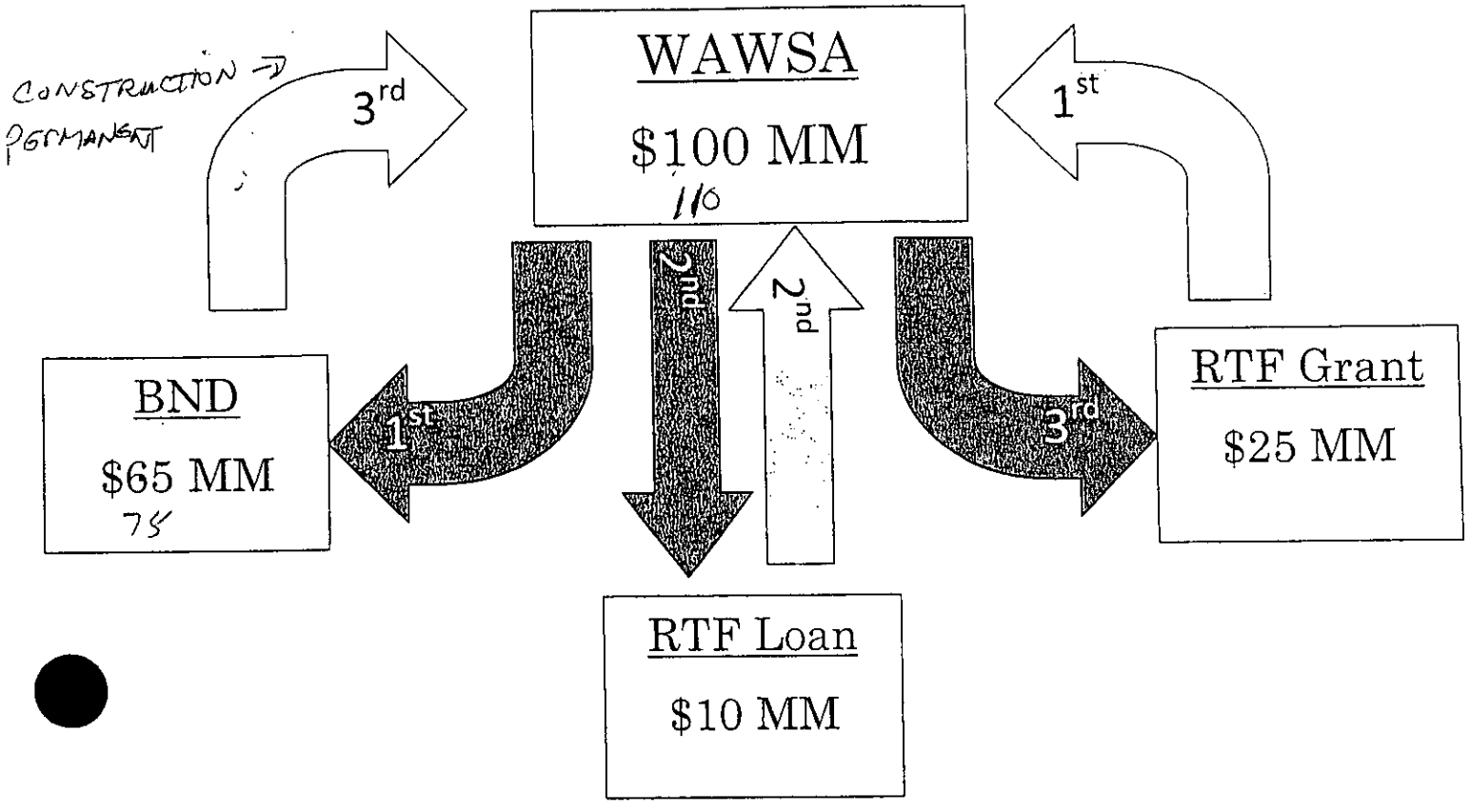

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50 MILLION - MAKE REQUEST FOR NEXT BIENNIUM

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Plan

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100 million

* SWC work out terms of repayment w/ WWDS ie Bonds POTF RTF
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4. 50 million RTF
   2013-15: Legislat Intent

* Water Depot - Minimize/Count Weeks
* SWC Plans/Specs Approved
* Revenues to RTF: Worked out through agreement w/ locals

25

5—30

< 40 Per

< 40 Board

110

40

>

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offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.

3. The initial board bylaws must direct board voting protocol, and must be approved by member entity boards.

Section 5. Water rates, water service contracts, easements, and judicial proceedings:

1. Water Rates. Water Rates shall be determined by local entities. Water rates for industrial users may be at different levels than municipal and domestic rates.

2. Existing Facilities. Existing facilities, and facilities constructed under this chapter, shall be operated and maintained by local entities.

3. Easement granted for pipelines and appurtenant facilities. In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation and the state engineer must approve plans with respect to the use of right of way of roads before the grant becomes effective.

4. Proceedings to judicially confirm contracts and acts. The commission, or any local entity, before making any contract, issuing bonds, or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

Section 6. Revenues to resources trust fund. After any bonds or refunding bonds have been paid in full by the western area water supply project, and after the provision of adequate revenues for operation and maintenance and revenues for replacement and extraordinary maintenance, revenues from the western area water supply project shall be deposited in the resources trust fund, established pursuant to Section 57-51.1-07, to be allocated for municipal and rural water projects in the state.

Section 7. Appropriation. There is appropriated out of any moneys in the permanent oil trust fund in the state treasury, not otherwise appropriated, the sum of $50,000,000, or so much of the sum as may be necessary, for the construction of features of the western area water supply project during the biennium beginning July 1, 2011, and ending June 30, 2013.

Section 8. Emergency. This Act is declared to be an emergency measure.

Moral obligation

The commission may approve a resolution for the issuance of bonds as provided in this section which states in substance that this subsection is applicable to any required debt service reserve for bonds issued under that resolution in an aggregate amount not to exceed _____ dollars plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter. The amount of any refinancing, however, may not be counted toward the ___ dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced. No more than thirty percent of the total project costs for any single transmission facility project may be financed by bonds issued under this section which are supported by the debt service reserve fund approved by the commission under this subsection. To ensure the maintenance of the required debt service reserve fund approved by the commission under this subsection, the legislative assembly shall appropriate and pay to the authority for deposit in the reserve fund any sum, certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve fund approved by the commission.

Option A

To ensure the repayment of the debt service on the Bank of North Dakota construction loan authorized pursuant to provisions of this section, the sixty-third legislative assembly shall appropriate and authorize the State Water Commission to pay from the resources trust fund an amount equal to the outstanding principal amount of the loan plus accrued interest. [if entire construction loan to be repaid]

OR

To ensure the repayment of the debt service on the Bank of North Dakota construction loan authorized pursuant to provisions of this section, the sixty-third legislative assembly shall appropriate and authorize the State Water Commission to pay from the resources trust fund an amount equal to the principal and interest due during the 2013-2015 biennium.
[if only paying debt service for the 2013-2015 biennium.]

Option B

The water commission shall request funding from the sixty-third legislative assembly to repay any outstanding principal amount plus accrued interest on the loan obtained from the Bank of North Dakota pursuant to provisions of this section. [if entire construction loan to be repaid]

OR

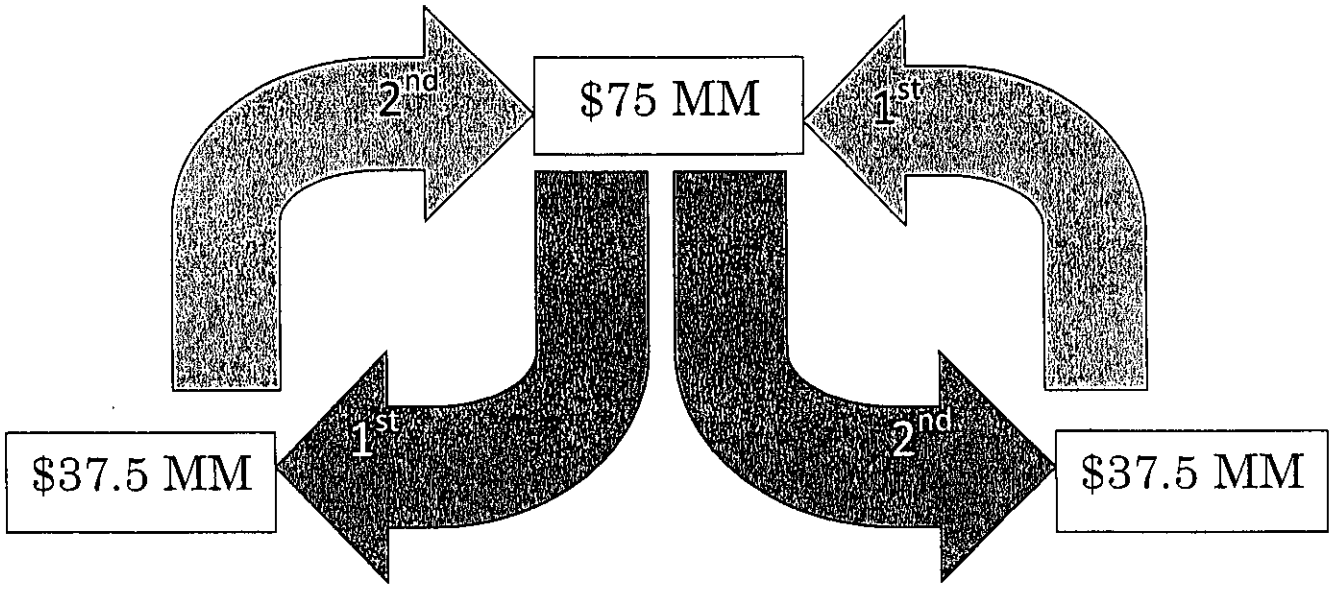
The water commission shall request funding from the sixty-third legislative assembly to repay the principal and interest due during the 2013 -2015 biennium on the loan obtained from the Bank of North Dakota pursuant to provisions of this section. [if only paying debt service for the 2013-2015 biennium.]

OPTION 1

mine

Attachment 1
1206

WAWSA (Western Area Water Supply Authority)



Bank of North Dakota (BND)

Funding/Financing

- LIBOR plus spread
  - Est. at 3%
- Est. interest cost $1 MM/year

Repayment

- BND repayment portion is first
  - LIFO
  - This provides protection to BND

Permanent Oil Trust Fund

Funding/Financing

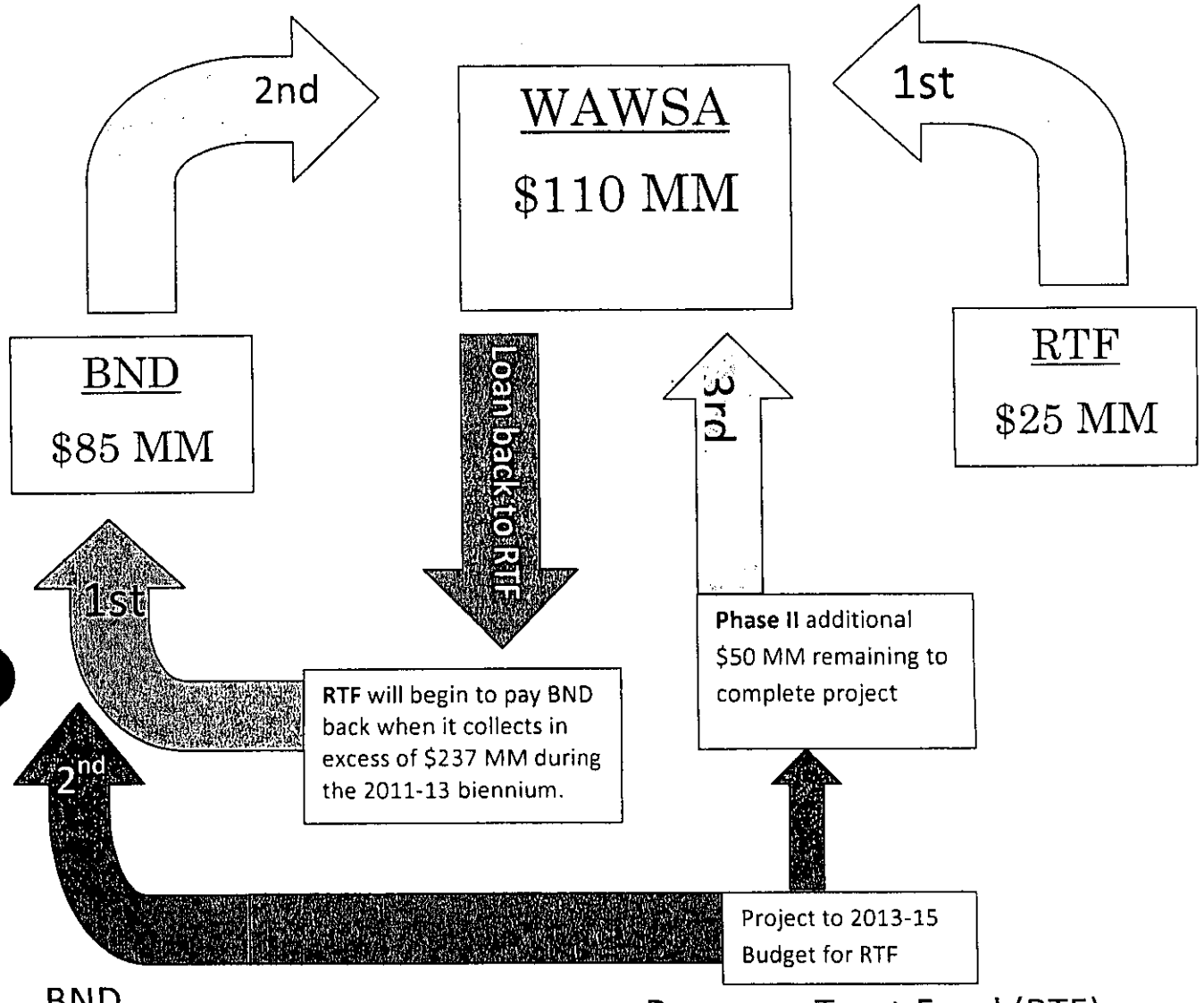
- 0% during construction
- 5% fixed for permanent financing → Resources Trust Fu. 'Paid - ONLY UNTIL BND IS PAID off.

Repayment

- POTF repayment portion follows BND

OPTION 2

Western Area Water Supply Authority (WAWSA)



BND

Funding/Financing

- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $2.5 MM

Repayment

- BND repayment comes from project revenues
- Excess production and extraction taxes in RTF

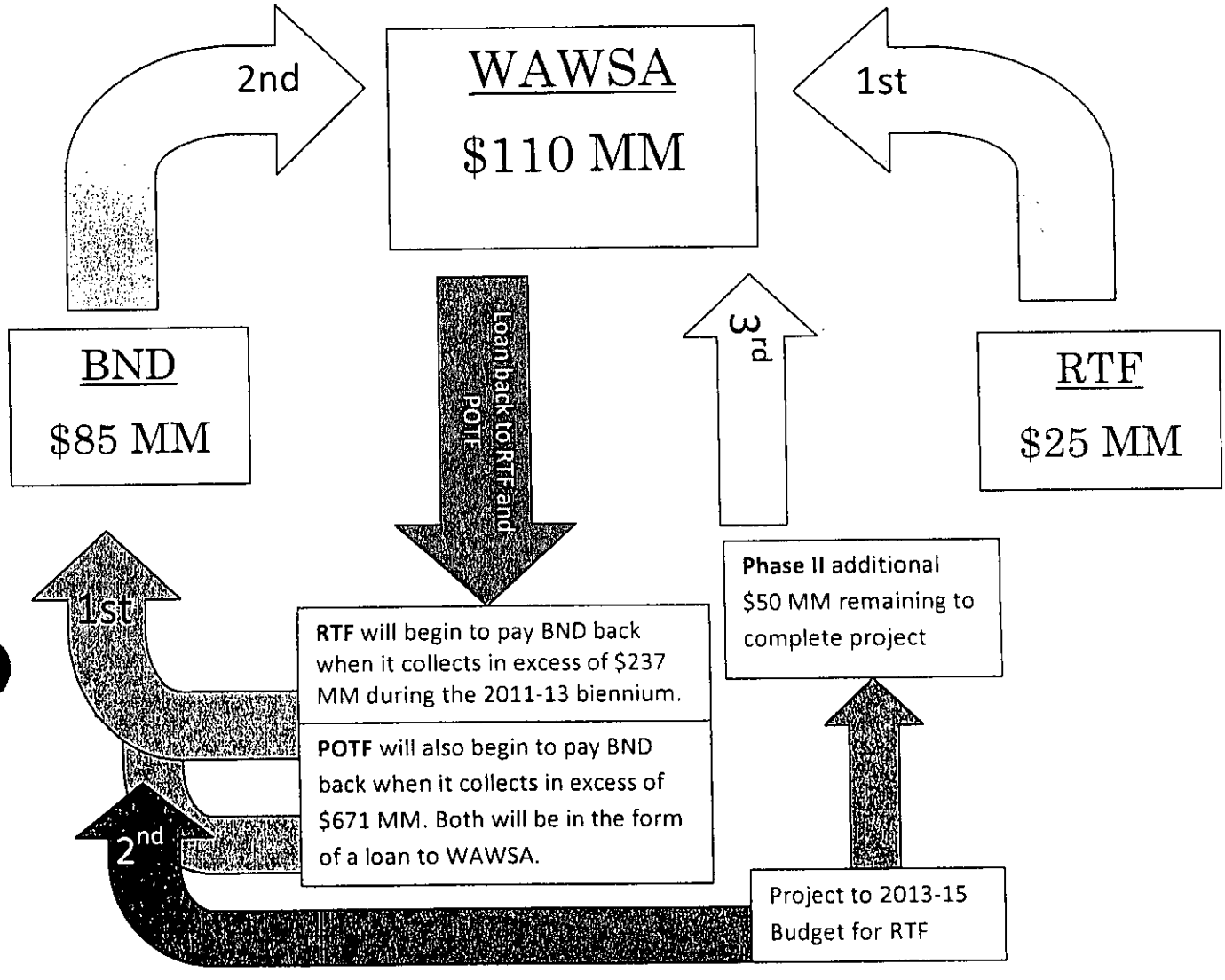
Resource Trust Fund (RTF)

Funding/Financing

- 5% fixed for permanent financing

OPTION 3

Western Area Water Supply Authority (WAWSA)



BND

Funding/Financing

- $85 MM
- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $2.5 MM

Repayment

- BND repayment comes from project revenues
- Excess production and extraction taxes in RTF and POTF

Resource Trust Fund (RTF)

Funding/Financing

- $25 MM
- 5% fixed for permanent financing

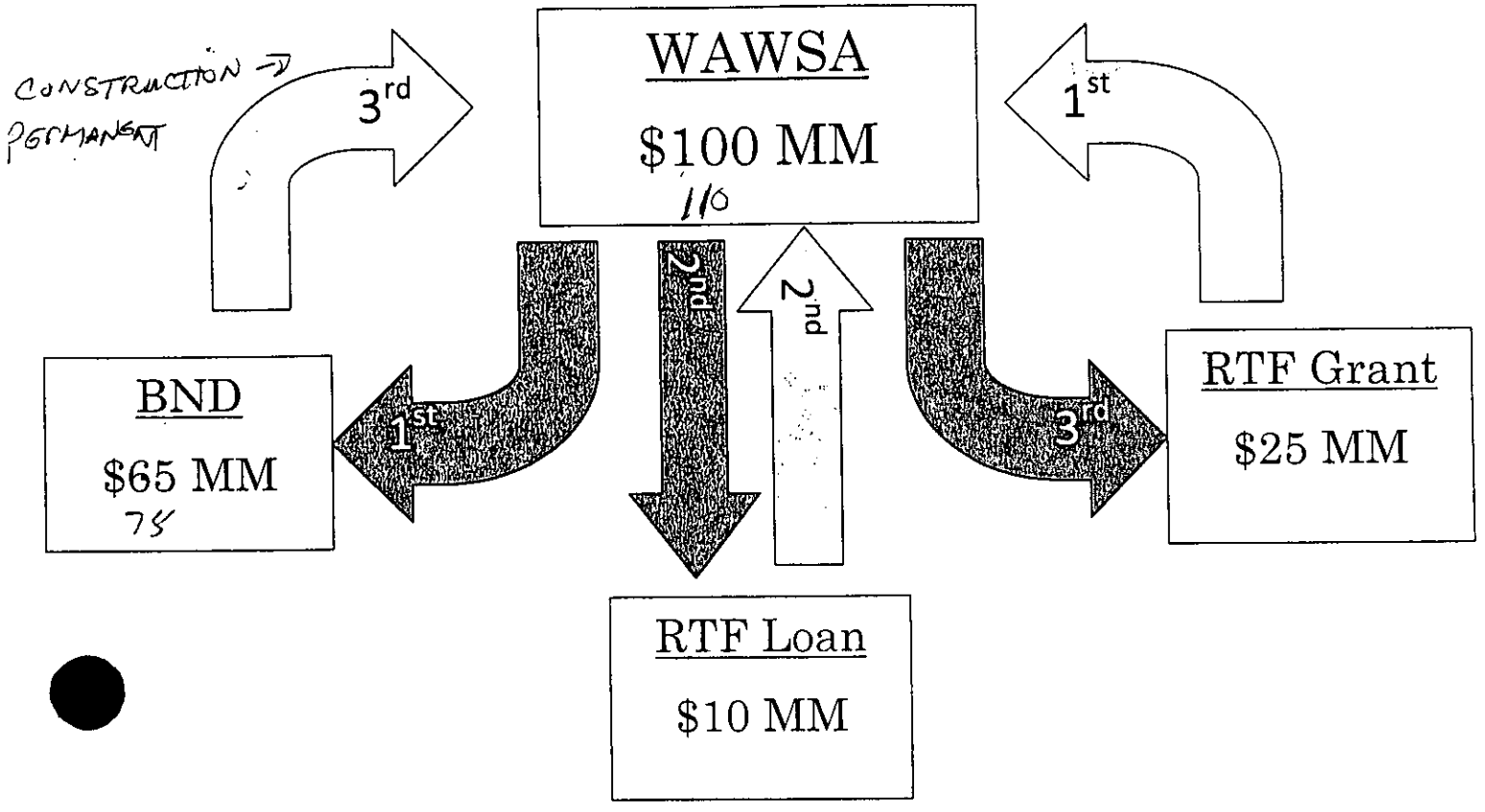
Permanent Oil Trust Fund (POTF)

Funding/Financing

- 5% fixed for permanent financing

OPTION 4

Western Area Water Supply Authority (WAWSA)



BND

Funding/Financing

- $65 MM
- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $1.9 MM

Repayment

- Cash Flow from project
- Excess revenue sweep
- Moral Obligation, State of ND

Resource Trust Fund (RTF)

Funding/Financing

- $25 MM Grant

Repayment

- ? 5% delayed.

Resource Trust Fund (RFT)

Funding/Financing

- $10 MM Loan @ 5%

Repayment

- Interest only when BND is in repayment
- Scheduled P&I when BND's repayment is done

50 MILLION - MAKE REQUEST FROM NEXT BIENNIUM

OPTION 5

PLAN FOR FUNDING

1. 30 million Resources Trust Fund
2. 40 million Permanent Oil Trust Fund
3. 40 million SWC Bond Issue when necessary ie Last 40 million

---

110 million

* SWC work out terms of repayment with WRWS ie to POTF, Bonds, RTF
* SWC Bond Limit Increased for this Project

4. 40 million Resources Trust Fund 2013-15: legislative intent

* Water Depots - Minimize / Unmet Needs
* SWC plans / specs / etc approval
* Revenues to RTF: Worked out through agreement with locals

Plan

1. 30 million Resources Trust Fund
2. 30 million Permanent Oil Trust Fund
3. 40 million SWC Bond Issue when necessary ie least 40 million

100 million

* SWC work out terms of repayment w/ WRWS ie Bonds PDTF RTF
* SWC Bond Limit Increased

4. 50 million RTF
   2013-15: Legislat Intent

* Water Depot - Minimize/Count Weeks
* SWC Plans/Specs Approved
* Revenues to RTF: Worked out through agreement w/ locals

Amendments to Senate Engrossed HB 1206

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact an new chapter of the North Dakota Century Code, relating to a western area water supply project and authority; to provide an appropriation and to declare an emergency.

Section 1. Legislative intent. The legislative assembly declares that areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply. The legislative assembly therefore authorizes construction of a western area water supply project to treat, store, supply, and distribute water to the people of western North Dakota for domestic, rural, municipal, livestock, industrial, oil and gas development, and other uses, to provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota.

In order to implement this project, the legislative assembly will support:

1. In the 2011-2013 biennium: Funding from the resources trust fund of $25 million, and from the permanent oil trust fund $50 million for construction. The State Water Commission shall have the authority to issue bonds, not to exceed $30 million, under Chapter 61-02, for additional construction of the project.

2. In the 2013-2015 biennium: If available and included in the Governor's budget, funding from the resources trust fund in the amount of $75 million for construction, or additional bonding upon approval of the legislative assembly.

Section 2. Construction and possession, operation and management. Construction of the western area water supply infrastructure as authorized herein shall be done by the State Water Commission under Chapter 61-02. Possession of any facilities constructed by the State Water Commission under this Act shall be transferred to local entities for management, operation and control pursuant to agreement. The commission may employ personnel to implement this chapter.

Section 3. Industrial Water - Water Depots. The commission may construct water depots and shall minimize impact to private water sellers

Section 4. Western area water supply authority. The legislative assembly herby authorizes the creation of a western area water supply authority. The western area water supply authority consists of participating entities located within McKenzie, Williams, Burke, Divide, and Mountrail Counties, including the city of Williston, the McKenzie County Water Resource District, the Williams County Water District, and the R & T Water Supply Association.

1. The initial board of directors of the western area water supply authority consists of one representative from each participating entity.

2. Board of directors - Officers - Meetings. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, and financial participation structure for membership in the authority. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which

offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.

3. The initial board bylaws must direct board voting protocol, and must be approved by member entity boards.

Section 5. Water rates, water service contracts, easements, and judicial proceedings:

1. Water Rates. Water Rates shall be determined by local entities. Water rates for industrial users may be at different levels than municipal and domestic rates.

2. Existing Facilities. Existing facilities, and facilities constructed under this chapter, shall be operated and maintained by local entities.

3. Easement granted for pipelines and appurtenant facilities. In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation and the state engineer must approve plans with respect to the use of right of way of roads before the grant becomes effective.

4. Proceedings to judicially confirm contracts and acts. The commission, or any local entity, before making any contract, issuing bonds, or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

Section 6. Revenues to resources trust fund. After any bonds or refunding bonds have been paid in full by the western area water supply project, and after the provision of adequate revenues for operation and maintenance and revenues for replacement and extraordinary maintenance, revenues from the western area water supply project shall be deposited in the resources trust fund, established pursuant to Section 57-51.1-07, to be allocated for municipal and rural water projects in the state.

Section 7. Appropriation. There is appropriated out of any moneys in the permanent oil trust fund in the state treasury, not otherwise appropriated, the sum of $50,000,000, or so much of the sum as may be necessary, for the construction of features of the western area water supply project during the biennium beginning July 1, 2011, and ending June 30, 2013.

Section 8. Emergency. This Act is declared to be an emergency measure.

WATER FUNDING

I. Water Coalition Priorities		II. Governors Budget
Devils Lake		
Flood Control/Outlet	$100 million	$75 million
Water Treatment	$20 million	$15 million
Flood Control - Fargo	$45*/ $30 million	$30 million
General Water Management	$30 million	$26 million
Irrigation	$6 million	$5 million
MR&I, Municipal	$25 million	
Rural	$46 million	
	$71 million	$15 million
Missouri River	$1 million	$1 million
RRVWSP	$20 million	$5 million
SWPP/NAWS	$37 million	$37 million
Weather Modification	$1 million	$1 million
Western Area Water Supply	$25 million	$25 million
Total	**$341 million**	**$235 million**

III. Future Bienniums Water Infrastructure: State Funding (800 + million)

Fargo Flood Control	$300 - $75 = $225 million (25%)
RRVWSP	$220 million (33%)
NAWS Water Treatment/Completion	$80-$160 million (Sales tax)
Rural Water	$160 million
SWPP Completion	$52 million (Repayment to RTF)
Municipal	$25 million (2011-2013)
Devils Lake/WAWS/Irrigation/General	?

Moral obligation

The commission may approve a resolution for the issuance of bonds as provided in this section which states in substance that this subsection is applicable to any required debt service reserve for bonds issued under that resolution in an aggregate amount not to exceed _____ dollars plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter. The amount of any refinancing, however, may not be counted toward the ___ dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced. No more than thirty percent of the total project costs for any single transmission facility project may be financed by bonds issued under this section which are supported by the debt service reserve fund approved by the commission under this subsection. To ensure the maintenance of the required debt service reserve fund approved by the commission under this subsection, the legislative assembly shall appropriate and pay to the authority for deposit in the reserve fund any sum, certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve fund approved by the commission.

Option A

To ensure the repayment of the debt service on the Bank of North Dakota construction loan authorized pursuant to provisions of this section, the sixty-third legislative assembly shall appropriate and authorize the State Water Commission to pay from the resources trust fund an amount equal to the outstanding principal amount of the loan plus accrued interest. [if entire construction loan to be repaid]

OR

To ensure the repayment of the debt service on the Bank of North Dakota construction loan authorized pursuant to provisions of this section, the sixty-third legislative assembly shall appropriate and authorize the State Water Commission to pay from the resources trust fund an amount equal to the principal and interest due during the 2013-2015 biennium.
[if only paying debt service for the 2013-2015 biennium.]

Option B

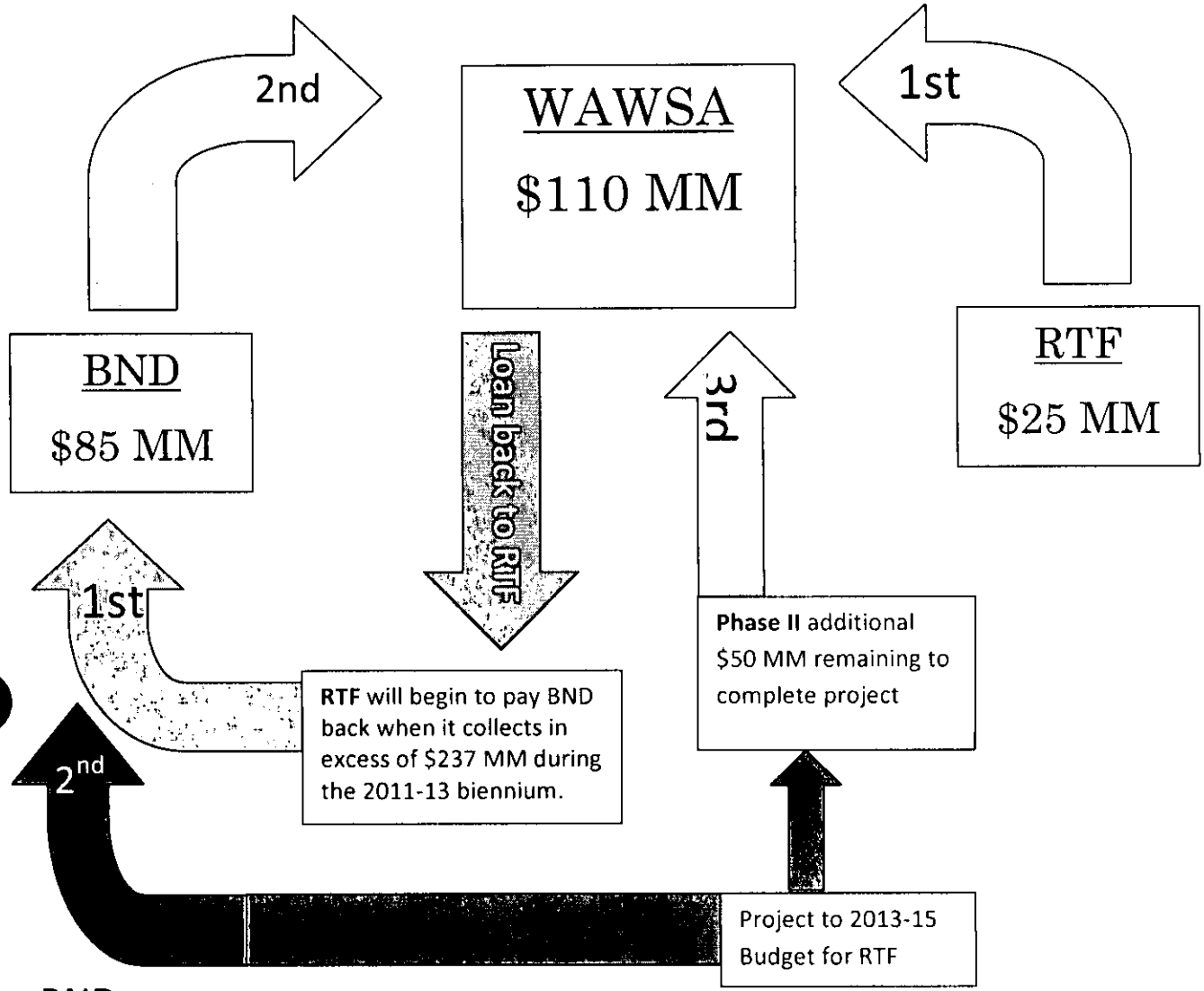
The water commission shall request funding from the sixty-third legislative assembly to repay any outstanding principal amount plus accrued interest on the loan obtained from the Bank of North Dakota pursuant to provisions of this section. [if entire construction loan to be repaid]

OR

The water commission shall request funding from the sixty-third legislative assembly to repay the principal and interest due during the 2013 -2015 biennium on the loan obtained from the Bank of North Dakota pursuant to provisions of this section. [if only paying debt service for the 2013-2015 biennium.]

test 1-4-19-11

Western Area Water Supply Authority (WAWSA)



BND

Funding/Financing

- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $2.5 MM

Repayment

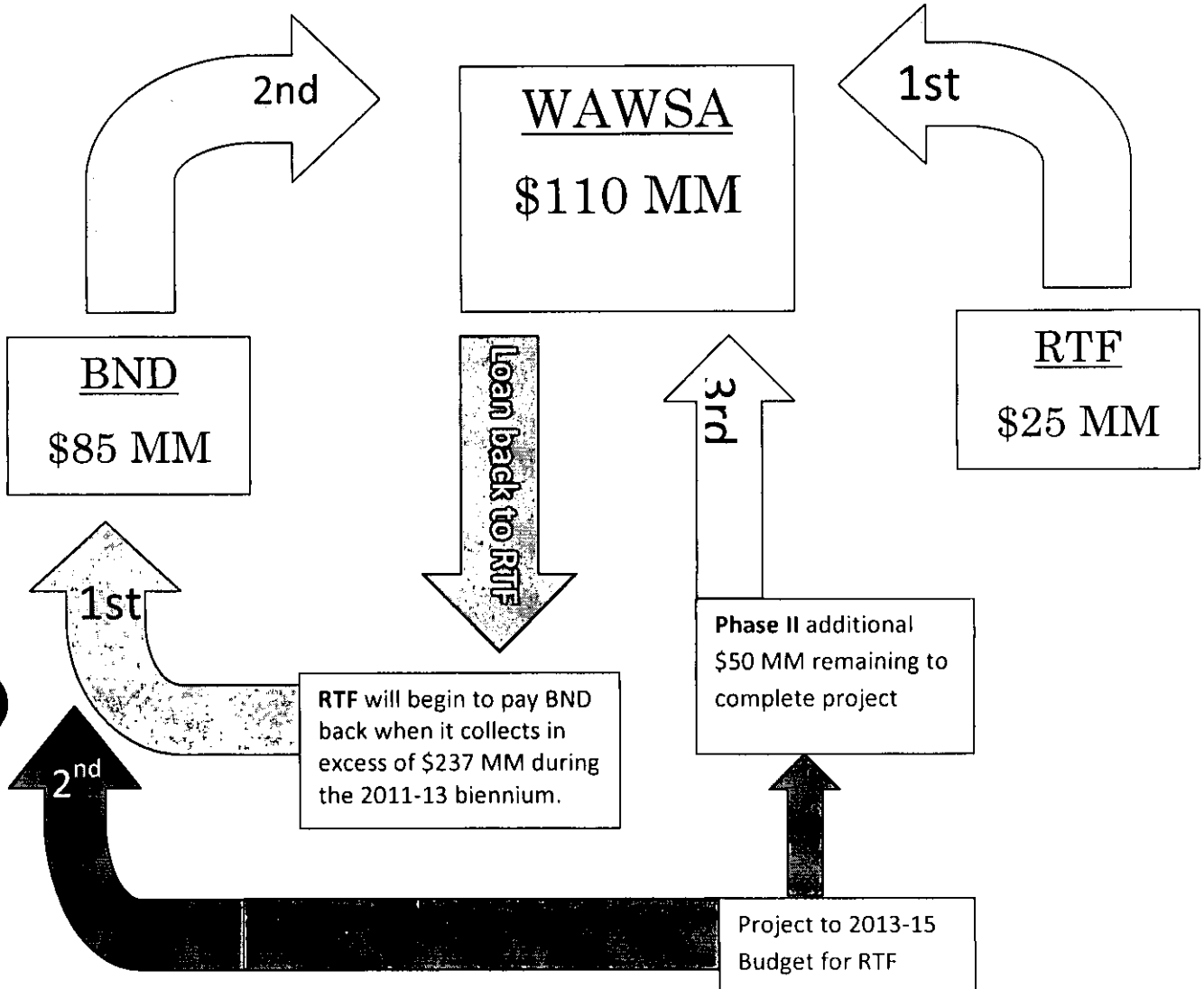
- BND repayment comes from project revenues
- Excess production and extraction taxes in RTF

Resource Trust Fund (RTF)

Funding/Financing

- 5% fixed for permanent financing

Western Area Water Supply Authority (WAWSA)



BND

Funding/Financing

- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $2.5 MM

Repayment

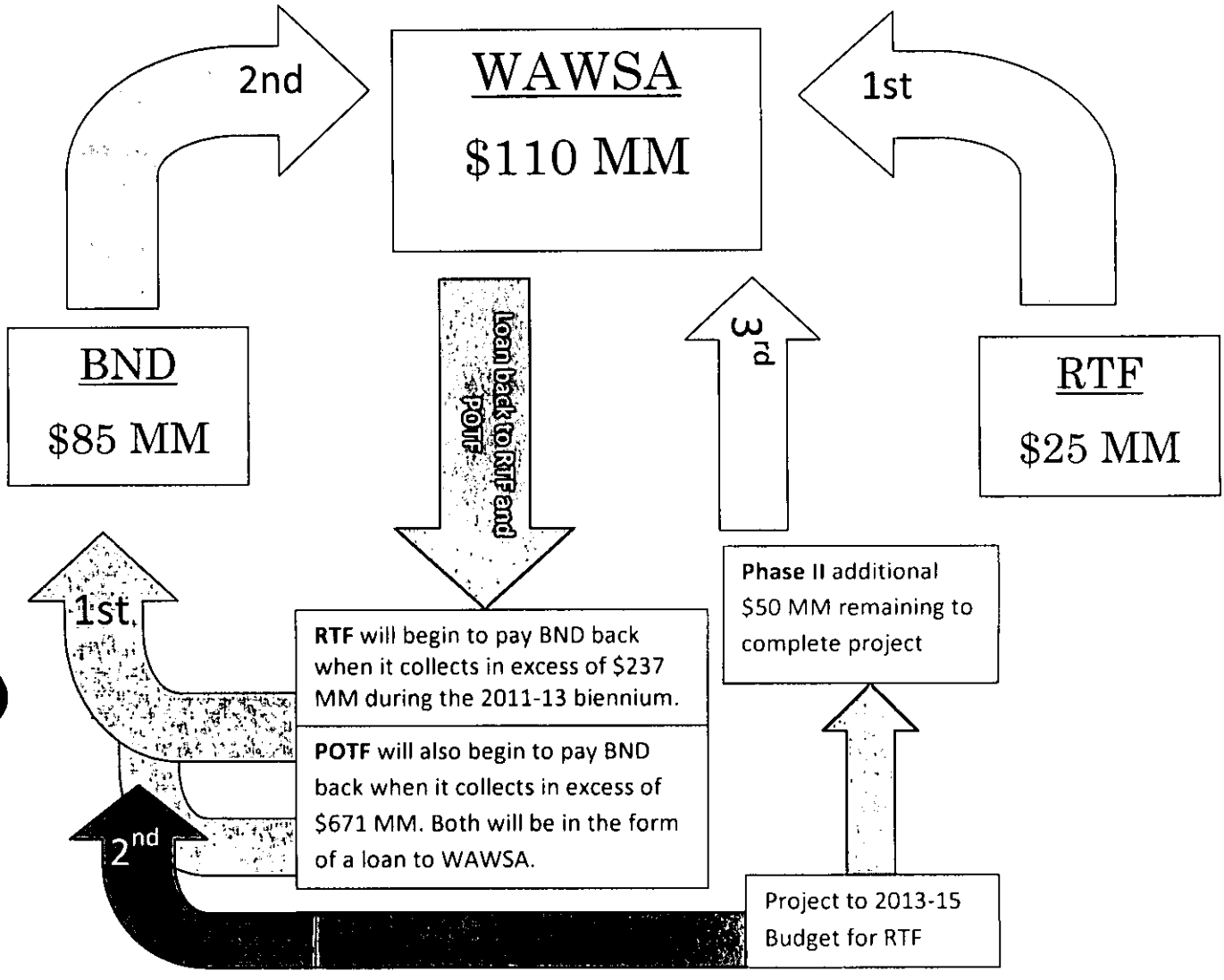
- BND repayment comes from project revenues
- Excess production and extraction taxes in RTF

Resource Trust Fund (RTF)

Funding/Financing

- 5% fixed for permanent financing

Western Area Water Supply Authority (WAWSA)



BND

Funding/Financing

- $85 MM
- Funding the construction
  - LIBOR + spread
- Est. interest cost @ 3%, $2.5 MM

Repayment

- BND repayment comes from project revenues
- Excess production and extraction taxes in RTF and POTF

Resource Trust Fund (RTF)

Funding/Financing

- $25 MM
- 5% fixed for permanent financing

Permanent Oil Trust Fund (POTF)

Funding/Financing

- 5% fixed for permanent financing

95

5—30

≤ 40 Per

< 40 Board

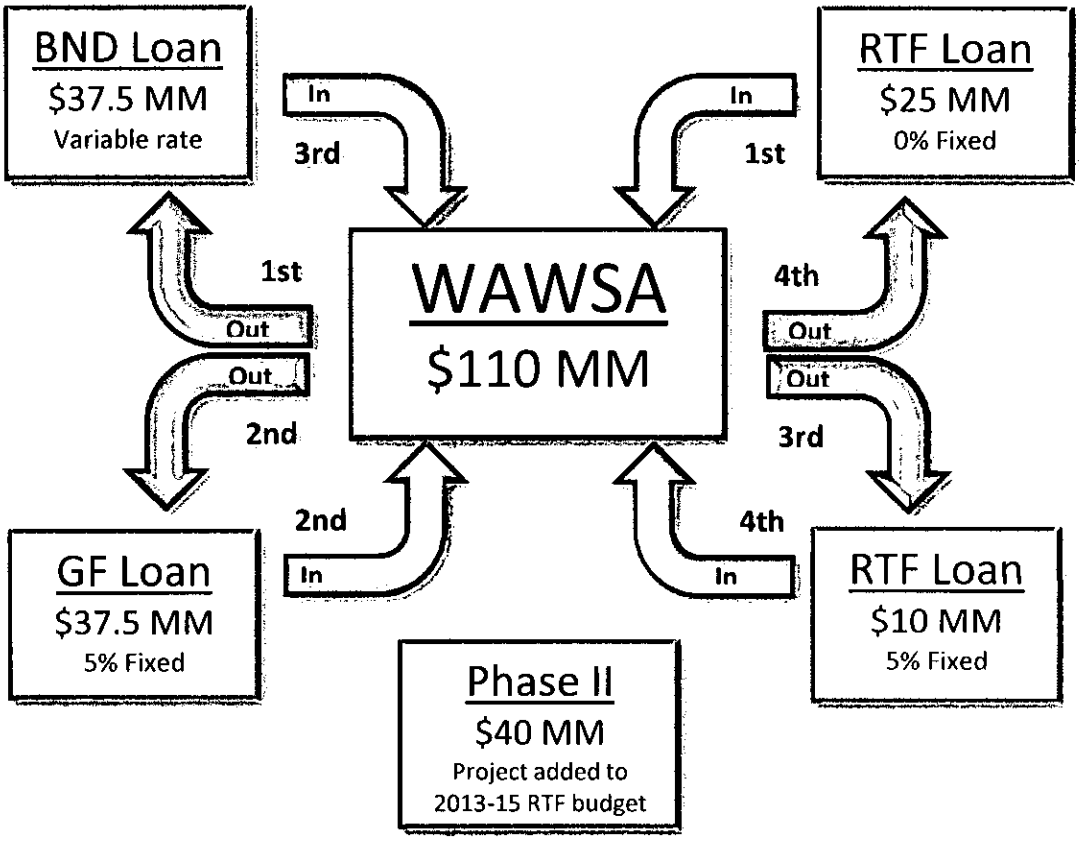
110

40

>

Test 1 21-20-4-30

Western Area Water Supply Authority (WAWSA)



Bank of North Dakota (BND)

Funding/Financing
- *$37.5 MM loan
- *LIBOR + spread

Repayment
- *First in line for repayment
- *Cash flow from project
- *Excess revenue sweep
- *Moral obligation, State of ND
- *Estimated 7 year payback

General Fund (GF)

Funding/Financing
- *$37.5 MM loan @ 5%

Repayment
- *Second in line for repayment
- *Estimated 15 year payback

Resource Trust Fund (RTF)

Funding/Financing
- *$25 MM loan @ 0%

Repayment
- *Fourth in line for repayment

Resource Trust Fund (RTF)

Funding/Financing
- *$10 MM loan @ 5%

Repayment
- *Third in line for repayment
- *Scheduled P&I when BND and GF are repaid

Phase II

Additional $40 MM remaining to complete project.

Test 2 - 4-20-430

Western Area Water Supply Authority Loan & Grant Repayment Schedule										
Bank of North Dakota $37.5 MM loan (3%); General Fund Loan $37,500,000 (5%); Resources Trust Fund $10,000,000 Loan (5%)										
	BND Loan Principal Repayment	BND Loan Interest	General Fund (Principal)	Resources Trust Fund (Interest)*	Resources Trust Fund (Principal)	Resources Trust Fund (Interest)	Total Debt Service	FY Annual Debt Service	Biennial Debt Service	
6/30/2012	$ 0.0	$ 0.0	$ 0.0	$ 0.0			$ 0.0	$ 0.0		
6/30/2013	$ 0.0	$ 0.0	$ 0.0	$ 0.0			$ 0.0	$ 0.0	$ -	2011-203
6/30/2014	$ 3,907,358.0	$ 2,326,408.0	$ 0.0	$ 0.0			$ 6,233,766.0	$ 6,233,766.0		
6/30/2015	$ 5,206,999.0	$ 1,026,766.0	$ 0.0	$ 0.0			$ 6,233,765.0	$ 6,233,765.0	$ 12,467,531.0	2013-2015
6/30/2016	$ 5,363,153.0	$ 870,640.0	$ 0.0	$ 0.0			$ 6,233,793.0	$ 6,233,793.0		
6/30/2017	$ 5,528,895.0	$ 704,870.0	$ 0.0	$ 0.0			$ 6,233,765.0	$ 6,233,765.0	$ 12,467,558.0	2015-2017
6/30/2018	$ 5,697,268.0	$ 536,497.0	$ 0.0	$ 0.0			$ 6,233,765.0	$ 6,233,765.0		
6/30/2019	$ 5,870,768.0	$ 362,997.0	$ 0.0	$ 0.0			$ 6,233,765.0	$ 6,233,765.0	$ 12,467,530.0	2017-2019
6/30/2020	$ 6,049,040.0	$ 184,725.0	$ 0.0	$ 0.0			$ 6,233,765.0	$ 6,233,765.0		
6/30/2021	$ 0.0	$ 0.0	$ 8,610,385.0	$ 4,233,858.0			$ 12,844,243.0	$ 12,844,243.0	$ 19,078,008.0	2019-2021
6/30/2022	$ 0.0	$ 0.0	$ 9,051,817.0	$ 3,792,425.0			$ 12,844,242.0	$ 12,844,242.0		
6/30/2023	$ 0.0	$ 0.0	$ 9,515,882.0	$ 3,328,361.0			$ 12,844,243.0	$ 12,844,243.0	$ 25,688,485.0	2021-2023
6/30/2024	$ 0.0	$ 0.0	$ 9,995,758.0	$ 2,848,485.0			$ 12,844,243.0	$ 12,844,243.0		
6/30/2025	$ 0.0	$ 0.0	$ 10,516,194.0	$ 2,328,048.0			$ 12,844,242.0	$ 12,844,242.0	$ 25,688,485.0	2023-2025
6/30/2026	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 11,055,333.0	$ 1,788,909.0	$ 12,844,242.0	$ 12,844,242.0		
6/30/2027	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 11,622,113.0	$ 1,222,130.0	$ 12,844,243.0	$ 12,844,243.0	$ 25,688,485.0	2025-2027
6/30/2028	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 12,216,190.0	$ 628,053.0	$ 12,844,243.0	$ 12,844,243.0		
Subtotal	$ 37,623,481.0	$ 6,012,903.0	$ 47,690,036.0	$ 16,531,177.0	$ 34,893,636.0	$ 3,639,092.0	$ 146,390,325.0			
				$5,000,000						
				$5,000,000						
				$5,000,000						
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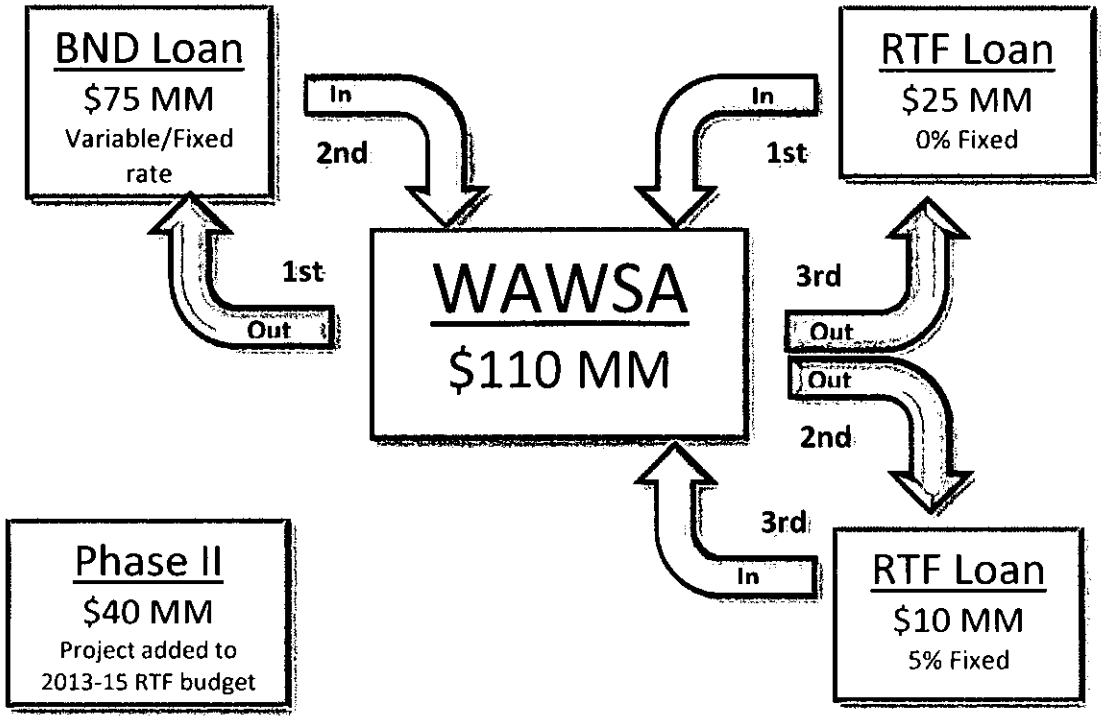
option 4 (1)

Western Area Water Supply Authority (WAWSA)



Bank of North Dakota (BND)

Funding/Financing

- *$37.5 MM variable rate loan
- *LIBOR + spread
- *$37.5 MM Fixed at 6%

Repayment

- *First in line for repayment
- *Cash flow from project
- *Excess revenue sweep
- *Moral obligation, State of ND
- *Estimated 7 year payback

Phase II

Additional $40 MM remaining to complete project.

Resource Trust Fund (RTF)

Funding/Financing

- *$25 MM loan @ 0%

Repayment

- *Last in line for repayment

Resource Trust Fund (RTF)

Funding/Financing

- *$10 MM loan @ 5%

Repayment

- *Second in line for repayment
- *Scheduled P&I when BND is repaid

Loan terms

- *Terms and conditions of the loans will be established within the loan documents.
- *BND will manage the cash flows and service the loans from BND, RTF, and GF.

Western Area Water Supply Authority Loans & Repayment Schedules for $110,000,000 Project

Bank of North Dakota $37.5 MM loan (3%); BND Fixed Rate Long Term Loan $37.5 MM (6%); Resources Trust Fund (RTF) $10 MM Loan (5%); RTF $25.0 MM Loan (Grant) (0%)

	BND Loan Principal Repayment	BND Loan Interest	BND Long-Term Fixed Rate Loan (Principal)	BND Long-Term Fixed Rate Loan (Interest)	Resources Trust Fund (Principal)	Resources Trust Fund (Interest)	Total Debt Service	Biennial Debt Service	Biennium
6/30/2012	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0		
6/30/2013	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	2011-203
6/30/2014	$ 5,347,793.0	$ 1,229,318.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0		
6/30/2015	$ 5,508,227.0	$ 1,068,884.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0	$ 13,154,222.0	2013-2015
6/30/2016	$ 5,673,474.0	$ 903,637.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0		
6/30/2017	$ 5,843,678.0	$ 733,433.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0	$ 13,154,222.0	2015-2017
6/30/2018	$ 6,018,988.0	$ 558,123.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0		
6/30/2019	$ 6,199,558.0	$ 377,553.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0	$ 13,154,222.0	2017-2019
6/30/2020	$ 6,385,544.0	$ 191,566.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,110.0		
6/30/2021	$ 0.0	$ 0.0	$ 6,785,250.0	$ 4,029,407.0	$ 0.0	$ 0.0	$ 10,814,657.0	$ 17,391,767.0	2019-2021
6/30/2022	$ 0.0	$ 0.0	$ 7,192,364.0	$ 3,622,293.0	$ 0.0	$ 0.0	$ 10,814,657.0		
6/30/2023	$ 0.0	$ 0.0	$ 7,623,906.0	$ 3,190,751.0	$ 0.0	$ 0.0	$ 10,814,657.0	$ 21,629,314.0	2021-2023
6/30/2024	$ 0.0	$ 0.0	$ 8,081,341.0	$ 2,733,316.0	$ 0.0	$ 0.0	$ 10,814,657.0		
6/30/2025	$ 0.0	$ 0.0	$ 8,566,221.0	$ 2,248,436.0	$ 0.0	$ 0.0	$ 10,814,657.0	$ 21,629,314.0	2023-2025
6/30/2026	$ 0.0	$ 0.0	$ 9,080,195.0	$ 1,734,462.0	$ 0.0	$ 0.0	$ 10,814,657.0		
6/30/2027	$ 0.0	$ 0.0	$ 9,625,006.0	$ 1,189,651.0	$ 0.0	$ 0.0	$ 10,814,657.0	$ 21,629,314.0	2025-2027
6/30/2028	$ 0.0	$ 0.0	$ 10,202,507.0	$ 612,150.0	$ 0.0	$ 0.0	$ 10,814,657.0		
6/30/2029	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 11,739,605.0	$ 1,203,310.0	$ 12,942,915.0	$ 23,757,572.0	2027-2029
6/30/2030	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 12,326,585.0	$ 616,329.0	$ 12,942,914.0		
Subtotal	**$ 40,977,262.0**	**$ 5,062,514.0**	**$ 67,156,790.0**	**$ 19,360,466.0**	**$ 24,066,190.0**	**$ 1,819,639.0**	**$ 158,442,861.0**		
6/30/2031					$10,000,000	$ 0.0	$10,000,000	$ 22,942,914.0	2029-2031
6/30/2032					$10,000,000	$ 0.0	$10,000,000		
6/30/2033					$5,000,000	$ 0.0	$5,000,000	$ 15,000,000.0	2031-2033
					$ 49,066,190.0	$ 0.0	$ 183,442,861.0		

Assumptions: BND LIBOR rate (variable) Have used 3%; 2nd Loan drawn; 3 years of Capitalized Interest which is $3,477,261

Assumptions: Fixed rate of 6%; Fixed Rate Loan drawn **3rd**; 10 years of Capitalized Interest which is $20,474,533. Payments to begin after BND loan repaid

Assumptions: Fixed rate of 5%. 18 years of Capitalized Interest which is $14,066,200. Payments to begin after BND and Fixed Rate Loans are repaid.

Assumptions: Resources Trust Fund fixed rate loan (grant) of 0%; **1st** loan drawn; Repayments begin after all other loans have been repaid.

4/22/2011

option 6

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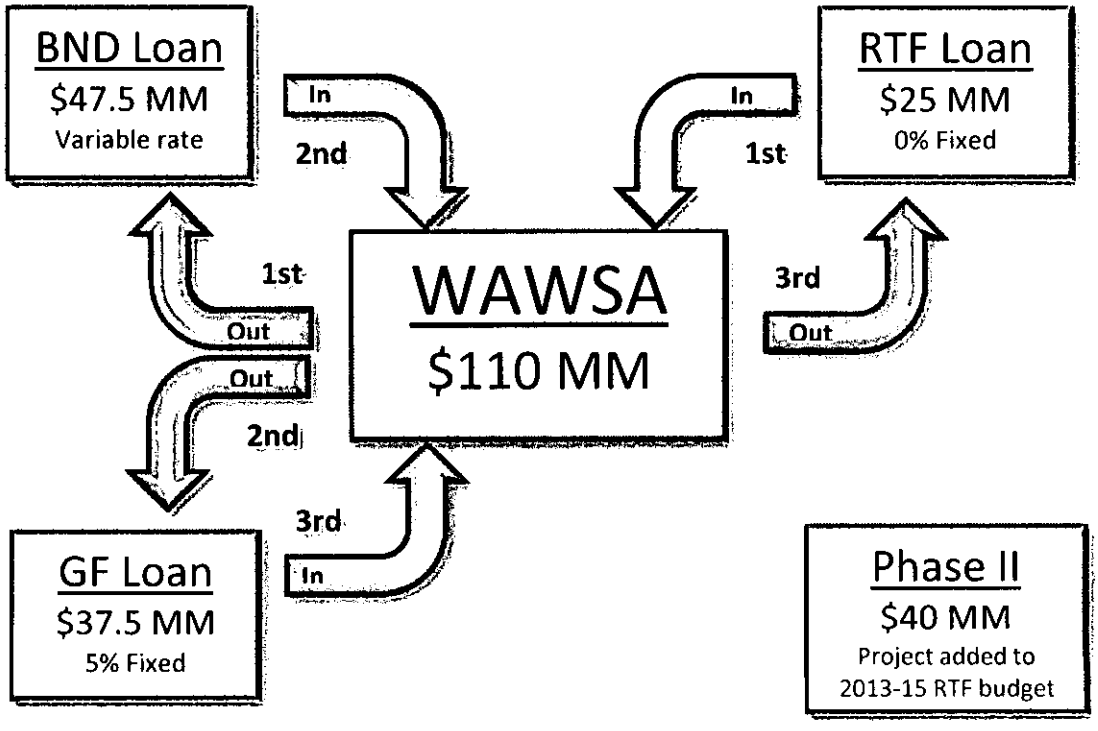
Western Area Water Supply Authority (WAWSA)



Bank of North Dakota (BND)

Funding/Financing
- *$47.5 MM loan
- *LIBOR + spread

Repayment
- *First in line for repayment
- *Cash flow from project
- *Excess revenue sweep
- *Moral obligation, State of ND
- *Estimated 7 year payback

General Fund (GF)

Funding/Financing
- *$37.5 MM loan @ 5%

Repayment
- *Second in line for repayment
- *Estimated 15 year payback

Resource Trust Fund (RTF)

Funding/Financing
- *$25 MM loan @ 0%

Repayment
- *Third in line for repayment

Phase II

Additional $40 MM remaining to complete project.

Loan terms

- *Terms and conditions of the loans will be established within the loan documents.
- *BND will manage the cash flows and service the loans from BND, RTF, and GF.

Western Area Water Supply Authority Loans & Repayment Schedules for $110,000,000 Project									
Bank of North Dakota $47.5 MM loan (3%); General Fund Loan $37.5 MM (5%); RTF $25.0 MM Loan (Grant) (0%)									
	BND Loan Principal Repayment	BND Loan Interest	General Fund (Principal)	Resources Trust Fund (Interest)*	Resources Trust Fund (Principal)	Resources Trust Fund (Interest)	Total Debt Service	Biennial Debt Service	Biennium
6/30/2012	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0		
6/30/2013	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	2011-203
6/30/2014	$ 6,773,871.0	$ 1,557,136.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,331,007.0		
6/30/2015	$ 6,977,087.0	$ 1,353,920.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,331,007.0	$ 16,662,014.0	2013-2015
6/30/2016	$ 7,186,400.0	$ 1,144,607.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,331,007.0		
6/30/2017	$ 7,401,992.0	$ 929,015.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,331,007.0	$ 16,662,014.0	2015-2017
6/30/2018	$ 7,624,051.0	$ 706,956.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,331,007.0		
6/30/2019	$ 7,852,773.0	$ 478,234.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,331,007.0	$ 16,662,014.0	2017-2019
6/30/2020	$ 8,088,356.0	$ 242,651.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,331,007.0		
6/30/2021	$ 0.0	$ 0.0	$ 5,096,780.0	$ 4,354,180.0	$ 0.0	$ 0.0	$ 9,450,960.0	$ 17,781,967.0	2019-2021
6/30/2022	$ 0.0	$ 0.0	$ 4,716,620.0	$ 4,734,340.0	$ 0.0	$ 0.0	$ 9,450,960.0		
6/30/2023	$ 0.0	$ 0.0	$ 4,552,450.0	$ 4,898,510.0	$ 0.0	$ 0.0	$ 9,450,960.0	$ 18,901,920.0	2021-2023
6/30/2024	$ 0.0	$ 0.0	$ 4,405,070.0	$ 5,045,880.0	$ 0.0	$ 0.0	$ 9,450,950.0		
6/30/2025	$ 0.0	$ 0.0	$ 4,775,330.0	$ 4,675,630.0	$ 0.0	$ 0.0	$ 9,450,960.0	$ 18,901,910.0	2023-2025
6/30/2026	$ 0.0	$ 0.0	$ 4,553,750.0	$ 4,897,200.0	$ 0.0	$ 0.0	$ 9,450,950.0		
6/30/2027	$ 0.0	$ 0.0	$ 4,450,000.0	$ 5,000,950.0	$ 0.0	$ 0.0	$ 9,450,950.0	$ 18,901,900.0	2025-2027
6/30/2028	$ 0.0	$ 0.0	$ 4,950,000.0	$ 4,500,950.0	$ 0.0	$ 0.0	$ 9,450,950.0		
Subtotal	**$ 51,904,530.0**	**$ 6,412,519.0**	**$ 37,500,000.0**	**$ 38,107,640.0**	**$ 0.0**	**$ 0.0**	**$ 133,924,689.0**		
6/30/2029					$10,000,000	$ 0.0	$10,000,000	$ 19,450,950.0	2027-2029
6/30/2030					$10,000,000	$ 0.0	$10,000,000		
6/30/2031					$5,000,000	$ 0.0	$5,000,000	$ 15,000,000.0	2029-2031
					$ 25,000,000.0	$ 0.0	$ 158,924,689.0		
	Assumptions: BND LIBOR rate (variable) have used 3%; 2nd Loan Drawn; 3 years of Capitalized Interest which is $4,404,530		Assumptions: Fixed rate of 5%. 3rd Loan Drawn; 10 Years of Capitalized Interest is $23,583,550. Payments to begin after BND loan repaid		Assumptions: Resources Trust Fund fixed rate loan (grant) at 0%. 1st loan drawn. Repayments begin after all other loans have been repaid.				
4/22/2011									

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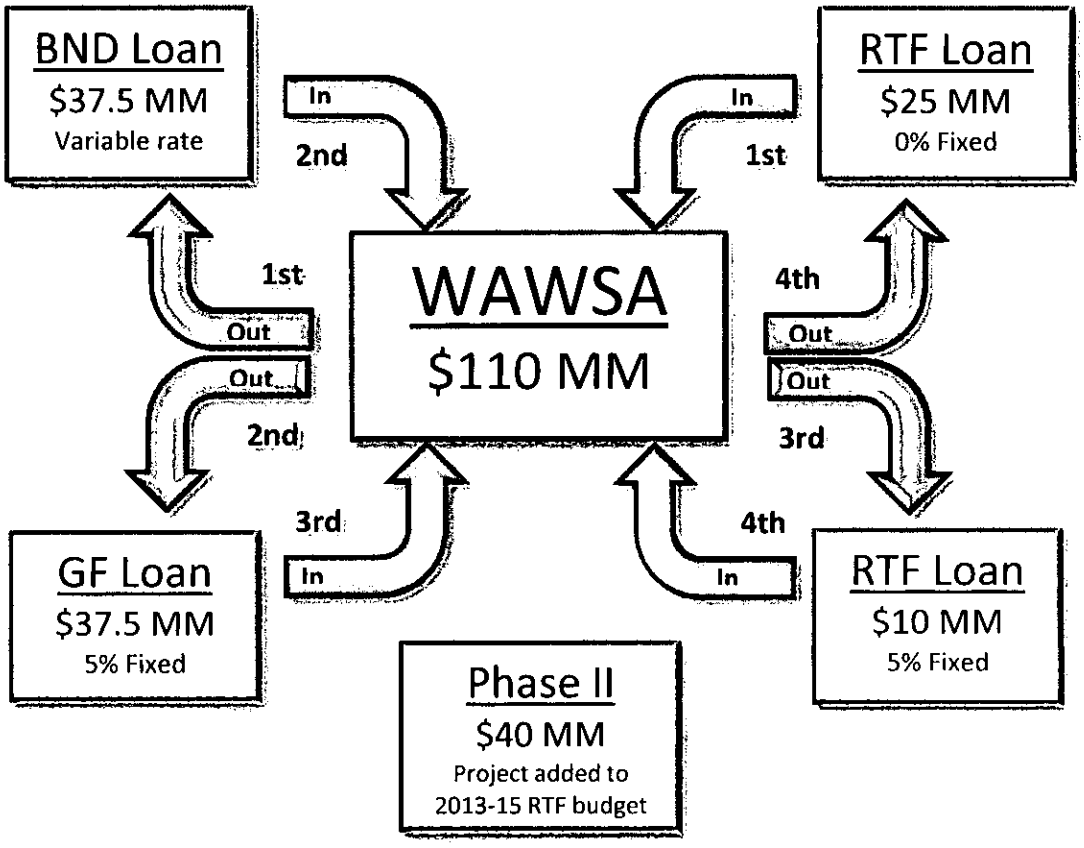
Western Area Water Supply Authority (WAWSA)



Bank of North Dakota (BND)

Funding/Financing
- *$37.5 MM loan
- *LIBOR + spread

Repayment
- *First in line for repayment
- *Cash flow from project
- *Excess revenue sweep
- *Moral obligation, State of ND
- *Estimated 7 year payback

General Fund (GF)

Funding/Financing
- *$37.5 MM loan @ 5%

Repayment
- *Second in line for repayment
- *Estimated 15 year payback

Resource Trust Fund (RTF)

Funding/Financing
- *$25 MM loan @ 0%

Repayment
- *Fourth in line for repayment

Resource Trust Fund (RTF)

Funding/Financing
- *$10 MM loan @ 5%

Repayment
- *Third in line for repayment
- *Scheduled P&I when BND and GF are repaid

Phase II

Additional $40 MM remaining to complete project.

Loan terms

- *Terms and conditions of the loans will be established within the loan documents.
- *BND will manage the cash flows and service the loans from BND, RTF, and GF.

Western Area Water Supply Authority Loans & Repayment Schedules for $110,000,000 Project									
Bank of North Dakota $37.5 MM loan (3%); General Fund Loan $37.5 MM (5%); Resources Trust Fund (RTF) $10 MM Loan (5%); RTF $25.0 MM Loan (Grant) (0%)									
	BND Loan Principal Repayment	BND Loan Interest	General Fund (Principal)	Resources Trust Fund (Interest)*	Resources Trust Fund (Principal)	Resources Trust Fund (Interest)	Total Debt Service	Biennial Debt Service	Biennium
6/30/2012	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0		
6/30/2013	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	2011-203
6/30/2014	$ 5,347,793.0	$ 1,229,318.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0		
6/30/2015	$ 5,508,227.0	$ 1,068,884.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0	$ 13,154,222.0	2013-2015
6/30/2016	$ 5,673,473.0	$ 903,637.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,110.0		
6/30/2017	$ 5,843,678.0	$ 733,433.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0	$ 13,154,221.0	2015-2017
6/30/2018	$ 6,018,988.0	$ 558,123.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0		
6/30/2019	$ 6,199,558.0	$ 377,553.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,111.0	$ 13,154,222.0	2017-2019
6/30/2020	$ 6,385,544.0	$ 191,566.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 6,577,110.0		
6/30/2021	$ 0.0	$ 0.0	$ 5,096,780.0	$ 4,354,180.0	$ 0.0	$ 0.0	$ 9,450,960.0	$ 16,028,070.0	2019-2021
6/30/2022	$ 0.0	$ 0.0	$ 4,716,620.0	$ 4,734,340.0	$ 0.0	$ 0.0	$ 9,450,960.0		
6/30/2023	$ 0.0	$ 0.0	$ 4,552,450.0	$ 4,898,510.0	$ 0.0	$ 0.0	$ 9,450,960.0	$ 18,901,920.0	2021-2023
6/30/2024	$ 0.0	$ 0.0	$ 4,405,070.0	$ 5,045,880.0	$ 0.0	$ 0.0	$ 9,450,950.0		
6/30/2025	$ 0.0	$ 0.0	$ 4,775,330.0	$ 4,675,630.0	$ 0.0	$ 0.0	$ 9,450,960.0	$ 18,901,910.0	2023-2025
6/30/2026	$ 0.0	$ 0.0	$ 4,553,750.0	$ 4,897,200.0	$ 0.0	$ 0.0	$ 9,450,950.0		
6/30/2027	$ 0.0	$ 0.0	$ 4,450,000.0	$ 5,000,950.0	$ 0.0	$ 0.0	$ 9,450,950.0	$ 18,901,900.0	2025-2027
6/30/2028	$ 0.0	$ 0.0	$ 4,950,000.0	$ 4,500,950.0	$ 0.0	$ 0.0	$ 9,450,950.0		
6/30/2029	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 11,739,605.0	$ 1,203,310.0	$ 12,942,915.0	$ 22,393,865.0	2027-2029
6/30/2030	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 12,326,585.0	$ 616,329.0	$ 12,942,914.0		
Subtotal	**$ 40,977,261.0**	**$ 5,062,514.0**	**$ 37,500,000.0**	**$ 38,107,640.0**	**$ 24,066,190.0**	**$ 1,819,639.0**	**$ 147,533,244.0**		
6/30/2031					$10,000,000	$ 0.0	$10,000,000	$ 22,942,914.0	2029-2031
6/30/2032					$10,000,000	$ 0.0	$10,000,000		
6/30/2033					$5,000,000	$ 0.0	$5,000,000	$ 15,000,000.0	2031-2033
					$ 49,066,190.0	$ 0.0	$ 172,533,244.0		
	Assumptions: BND LIBOR rate (variable) have used 3%; Second Loan drawn; 3 years of Capitalized Interest which is $3,477,261		Assumptions: Fixed rate of 5%. **Third** loan drawn; 10 Years of Capitalized Interest which is $23,583,550. Payments to begin after BND loan repaid		Assumptions: Fixed rate of 5%. 18 years of Capitalized Interest which is $14,066,200. Payments to begin after BND and General Fund Loans are repaid.		Assumptions: Resources Trust Fund Loan (Grant) Fixed rate of 0%; **First** Loan Drawn; Payments begin after all other loans have been repaid		
4/22/2011									

Projected language for new 61-40-10. Taxing Authority.

(HB 1206, page 8, line 13)

If projected or actual revenues are insufficient to prevent default, each board of county commissioners of Burke County, Divide County, McKenzie County, Mountrail County, and Williams County shall levy property tax in equal mills within a maximum of five mills for each county or provide an equivalent amount through other sources of revenue.

attachment 5

11.0390.03019
Title.

Prepared by the Legislative Council staff for
Representative Keiser
April 22, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

That the Senate recede from its amendments as printed on pages 1517-1519 of the House Journal and pages 1317-1320 of the Senate Journal and that Engrossed House Bill No. 1206 be amended as follows:

Page 1, line 2, replace "grant repayment by the authority" with "appropriations; to provide for loans and loan repayment; budget priority"

Page 2, line 2, after the underscored period insert "The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Page 2, line 11, replace the first underscored comma with "or"

Page 2, line 11, remove ", or bond revenue"

Page 2, line 13, remove "or bond"

Page 2, line 14, remove "revenue"

Page 2, line 14, remove the underscored comma

Page 2, line 14, remove "any bonds or refunding bonds issued under this chapter remain"

Page 2, line 15, replace "outstanding or a grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 2, line 18, remove "two"

Page 2, line 19, replace "representatives" with "one representative"

Page 2, line 20, after the second underscored comma insert "BDW water system association,"

Page 2, line 21, after "association" insert ", and one county commissioner each from Burke County, Divide County, McKenzie County, Mountrail County, and Williams County"

Page 2, line 21, replace "Each" with "The governing body of each"

Page 2, line 21, replace "two representatives" with "the representative"

Page 2, line 22, replace "that" with "the governing body of the"

Page 2, line 23, after the underscored period insert "Directors have a term of one year and may be reappointed. In addition, the governor shall select one member of the state water commission as a voting member on the authority's board of directors. The commission member serves on the board at the pleasure of the governor."

Page 2, line 30, after the underscored comma insert "except for the state water commission member and the county commissioners on the board,"

Page 5, line 24, remove "Issue and sell revenue bonds, including notes, certificates, leases, or other evidences"

Page 5, remove lines 25 through 31

Page 6, remove lines 1 through 16

Page 6, line 17, remove "17."

Page 6, line 19, replace "bonds" with "obligations"

Page 6, line 21, replace "18." with "13."

Page 6, line 24, replace "19." with "14."

Page 6, line 25, remove "other than bonded indebtedness"

Page 6, line 27, replace "20." with "15."

Page 6, remove lines 29 and 30

Page 7, remove lines 1 and 2

Page 7, line 3, replace "22." with "16."

Page 7, line 4, replace "23." with "17."

Page 7, line 9, replace "24." with "18."

Page 7, line 17, replace "25." with "19."

Page 7, line 22, replace "26." with "20."

Page 7, line 27, replace "report to" with "comply with the policy of"

Page 7, line 27, replace "on the" with "as the policy relates to"

Page 7, line 27, after the second underscored comma insert "and"

Page 7, line 28, replace the first underscored comma with "of the project. The authority shall report to and consult with the state water commission regarding the"

Page 7, line 28, remove the second the comma

Page 7, line 29, remove "initial construction of the system and"

Page 7, line 30, remove "and contract plans and specifications"

Page 8, line 1, replace "bonds issued by the authority utilize section 61-40-17 or a grant of up to thirty million dollars" with "the twenty-five million dollar zero interest loan"

Page 8, remove lines 6 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 17

Page 11, line 18, replace "**61-40-15.**" with "**61-40-07.**"

Page 11, line 26, replace "**61-40-16.**" with "**61-40-08.**"

Page 11, line 26, after "**to**" insert "**judicially**"

Page 11, line 26, remove "**judicially**"

Page 11, line 27, remove ", issuing bonds,"

Page 12, remove lines 1 through 26

Page 12, line 27, replace "**60-40-18.**" with "**61-40-09.**"

Page 12, line 29, remove ", if the legislative assembly has appropriated"

Page 12, line 30, remove "moneys to restore the reserve fund for the obligation in default under this chapter,"

Page 13, after line 9, insert:

"**SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER COMMISSION.** The Bank of North Dakota shall provide a loan of $37,500,000 to the western area water supply authority for construction of the project. The terms and conditions of the loan must be negotiated by the western area water supply authority and the Bank of North Dakota. However, the term of the loan is a maximum of seven years after the initial construction. The state water commission shall make available from funding appropriated to the commission for the 2011-13 biennium $25,000,000 as a zero interest loan to the western area water supply authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan is five years from the completion of the $10,000,000 loan from the resources trust fund.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $37,500,000 or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of eight years from the completion of the $37,500,000 loan from the Bank of North Dakota and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of $10,000,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of two years from the completion of the $37,500,000 loan from the general fund and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Page 13, line 10, replace "**STATE WATER COMMISSION GRANT**" with "**LOAN FUNDING AND**"

Page 13, line 10, replace "**OBLIGATION**" with "**PRIORITY**"

Page 13, line 10, remove "After"

Page 13, replace lines 11 through 14 with "Funding from sections 2, 3, and 4 of this Act must be structured so that funding is provided, as needed, first from the $25,000,000 zero interest loan from the state water commission, second from the $37,500,000 loan from the Bank of North Dakota, third from the $37,500,000 loan from the general fund, and last from the $10,000,000 loan from the resources trust fund. Repayment of loans must be structured so that repayment is first of the $37,500,000 loan from the Bank of North Dakota, second of the $37,500,000 loan from the general fund for deposit of the principal in the general fund and interest in the resources trust fund, third from the $10,000,000 loan from the resources trust fund for deposit in the resources trust fund, and last of the $25,000,000 zero interest loan from the state water commission for deposit in the resources trust fund. The western area water supply authority shall repay

the loans for the project from revenues from the project, and the authority may prepay loans within the priority without penalty.

SECTION 6. 2013-15 BIENNIUM BUDGET PRIORITY. The governor shall make available in the 2013-15 biennium executive budget $40,000,000 from the resources trust fund for providing a loan to the western area water supply authority with repayment priority of being directly after the $10,000,000 loan from the resources trust fund and under the same terms as section 4 of this Act, except with the maximum term of seven years after the repayment of the $10,000,000 loan from the resources trust fund."

Renumber accordingly

attachment 5 5 mills failed redraft

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

Page 8, line 16, remove "as is necessary to prevent default"

Page 8, line 18, after "county" insert "or provide an equivalent amount through other source of revenue"

Projected language for new 61-40-10. Taxing Authority.

(HB 1206, page 8, line 13)

If projected or actual revenues are insufficient to prevent default, each board of county commissioners of Burke County, Divide County, McKenzie County, Mountrail County, and Williams County shall levy property tax in equal mills within a maximum of five mills for each county or provide an equivalent amount through other sources of revenue.

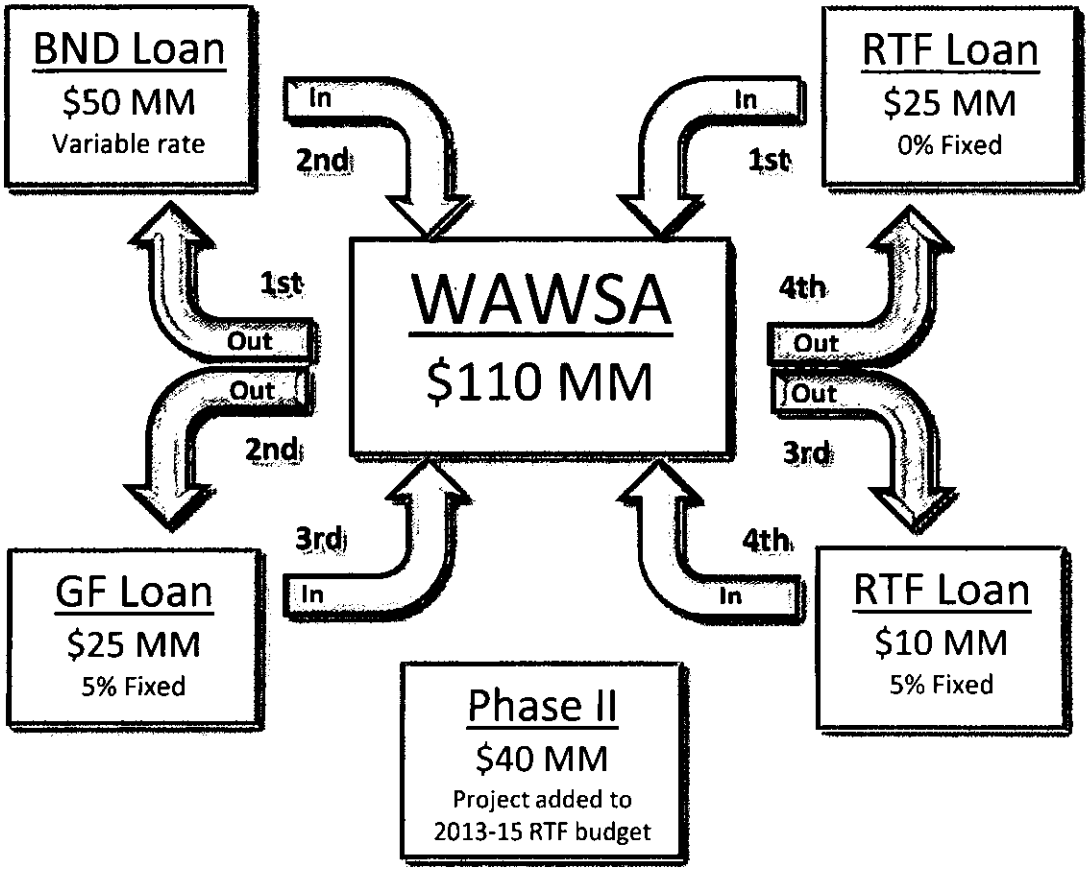
schmidt

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1206

Page 8, line 16, remove "as is necessary to prevent default"

Page 8, line 18, after "county" insert "or provide an equivalent amount through other source of revenue"

Western Area Water Supply Authority (WAWSA)



Bank of North Dakota (BND)

Funding/Financing
- *$50 MM loan
- *LIBOR + spread

Repayment
- *First in line for repayment
- *Cash flow from project
- *Excess revenue sweep
- *Moral obligation, State of ND
- *Estimated 7 year payback

General Fund (GF)

Funding/Financing
- *$25 MM loan @ 5%

Repayment
- *Second in line for repayment
- *Estimated 15 year payback

Resource Trust Fund (RTF)

Funding/Financing
- *$25 MM loan @ 0%

Repayment
- *Fourth in line for repayment

Resource Trust Fund (RTF)

Funding/Financing
- *$10 MM loan @ 5%

Repayment
- *Third in line for repayment
- *Scheduled P&I when BND and GF are repaid

Phase II

Additional $40 MM remaining to complete project.

Loan terms

- *Terms and conditions of the loans will be established within the loan documents.
- *BND will manage the cash flows and service the loans from BND, RTF, and GF.

Western Area Water Supply Authority Loans & Repayment Schedules for $110,000,000 Project

Bank of North Dakota $50.0 MM loan (3%); General Fund Loan $25.0 MM (5%); Resources Trust Fund (RTF) $10 MM Loan (5%); RTF $25.0 MM Loan (Grant) (0%)

	BND Loan Principal Repayment	BND Loan Interest	General Fund (Principal)	Resources Trust Fund (Interest)*	Resources Trust Fund (Principal)	Resources Trust Fund (Interest)	Total Debt Service	Biennial Debt Service	Biennium
6/30/2012	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0		
6/30/2013	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	2011-2013
6/30/2014	$ 7,130,390.0	$ 1,639,091.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,769,481.0		
6/30/2015	$ 7,344,302.0	$ 1,425,179.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,769,481.0	$ 17,538,962.0	2013-2015
6/30/2016	$ 7,564,632.0	$ 1,204,849.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,769,481.0		
6/30/2017	$ 7,791,570.0	$ 977,911.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,769,481.0	$ 17,538,962.0	2015-2017
6/30/2018	$ 8,025,318.0	$ 744,163.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,769,481.0		
6/30/2019	$ 8,266,077.0	$ 503,404.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,769,481.0	$ 17,538,962.0	2017-2019
6/30/2020	$ 8,514,059.0	$ 255,422.0	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 8,769,481.0		
6/30/2021	$ 0.0	$ 0.0	$ 2,264,520.0	$ 4,036,118.0	$ 0.0	$ 0.0	$ 6,300,638.0	$ 15,070,119.0	2019-2021
6/30/2022	$ 0.0	$ 0.0	$ 2,477,747.0	$ 3,822,893.0	$ 0.0	$ 0.0	$ 6,300,640.0		
6/30/2023	$ 0.0	$ 0.0	$ 2,701,634.0	$ 3,599,005.0	$ 0.0	$ 0.0	$ 6,300,639.0	$ 12,601,279.0	2021-2023
6/30/2024	$ 0.0	$ 0.0	$ 2,936,716.0	$ 3,363,923.0	$ 0.0	$ 0.0	$ 6,300,639.0		
6/30/2025	$ 0.0	$ 0.0	$ 3,183,551.0	$ 3,117,088.0	$ 0.0	$ 0.0	$ 6,300,639.0	$ 12,601,278.0	2023-2025
6/30/2026	$ 0.0	$ 0.0	$ 3,442,729.0	$ 2,857,910.0	$ 0.0	$ 0.0	$ 6,300,639.0		
6/30/2027	$ 0.0	$ 0.0	$ 3,714,865.0	$ 2,585,774.0	$ 0.0	$ 0.0	$ 6,300,639.0	$ 12,601,278.0	2025-2027
6/30/2028	$ 0.0	$ 0.0	$ 4,278,238.0	$ 2,022,401.0	$ 0.0	$ 0.0	$ 6,300,639.0		
6/30/2029	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 11,739,605.0	$ 1,203,310.0	$ 12,942,915.0	$ 19,243,554.0	2027-2029
6/30/2030	$ 0.0	$ 0.0	$ 0.0	$ 0.0	$ 12,326,585.0	$ 616,329.0	$ 12,942,914.0		
Subtotal	**$ 54,636,348.0**	**$ 6,750,019.0**	**$ 25,000,000.0**	**$ 25,405,112.0**	**$ 24,066,190.0**	**$ 1,819,639.0**	**$ 137,677,308.0**		
6/30/2031					$10,000,000	$ 0.0	$10,000,000	$ 22,942,914.0	2029-2031
6/30/2032					$10,000,000	$ 0.0	$10,000,000		
6/30/2033					$5,000,000	$ 0.0	$5,000,000	$ 15,000,000.0	2031-2033
					$ 49,066,190.0	$ 0.0	$ 162,677,308.0		

Assumptions: BND LIBOR rate (variable) have used 3%; Second Loan drawn; 3 years of Capitalized Interest which is $4.636.348

Assumptions: Fixed rate of 5%. **Third** loan drawn; 10 Years of Capitalized Interest which is $15,722,366. Payments to begin after BND loan repaid

Assumptions: Fixed rate of 5%. 18 years of Capitalized Interest which is $14,066,200. Payments to begin after BND and General Fund Loans are repaid.

Assumptions: Resources Trust Fund Loan (Grant) Fixed rate of 0%; **First** Loan Drawn; Payments begin after all other loans have been repaid

4/22/2011

4-27-11

Testimony 3

Robert Harms

From: Robert Harms [robert@harmsgroup.net]
Sent: Monday, April 25, 2011 4:35 PM
To: 'gkeiser@nd.gov'; 'chofstad@nd.gov'; 'skelsh@nd.gov'
Cc: 'rwardner@nd.gov'; 'Klein, Jerry J.'; 'macschneider@nd.gov'
Subject: FW: Settlment proposal for HB 1206 (language from this afternoon)

Rep. Keiser, Hofstad and Kelsh:

This afternoon, you voted against a motion by Senator Klein (and supported by Senators Wardner and Schneider) to give additional assurance to Independent Water Providers (IWP) in Section 1. (The email below represented settlment discussions from last week, and included that language).

Recall we had offered a number of formulas to provide assurances to IWP (15 mile radius, 2 truck limits etc) which were not agreeable. But, in speaking with proponents of WAWS, that language was acceptable. It said in Legislative Declarations:

1. *P. 2, line 2: "The western area water supply authority MAY CONSTRUCT WATER DEPOTS TO PROVIDE UNMET NEEDS FOR INDUSTRIAL WATER FOR OIL AND GAS DEVELOPMENT, AND shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.*(Their response to me was, "Robert, that's all we are trying to do is meet, the unmet needs". How do we define "unmet"....by plain and ordinary meaning of the word, which is how the law would define it).

2. Finally....Add p.2, line 4: "The authority is a publicly funded entity with dual responsibilities to develop the project, yet foster the efficient and orderly development of water resources in northwestern North Dakota and shall not interfere with the private development of such resources.

I would ask you to reconsider Senator Klein's motion to insert #1 above, and consider #2 above. If these final provisions are added to the bill, we will be in COMPLETE support of the bill in both Houses. (They cost little and would provide an enormous amount of goodwill for the private sector).

Thank you for your consideration.

Robert W. Harms

From: Robert Harms [mailto:robert@harmsgroup.net]
Sent: Tuesday, April 19, 2011 8:35 AM
To: gkeiser@nd.gov; chofstad@nd.gov; skelsh@nd.gov; jklein@nd.gov; rwardner@nd.gov; macschneider@nd.gov
Subject: Settlment proposal for HB 1206

Gentlemen,

Yesterday I handed you a one page summary that may appear insignificant. It is not.

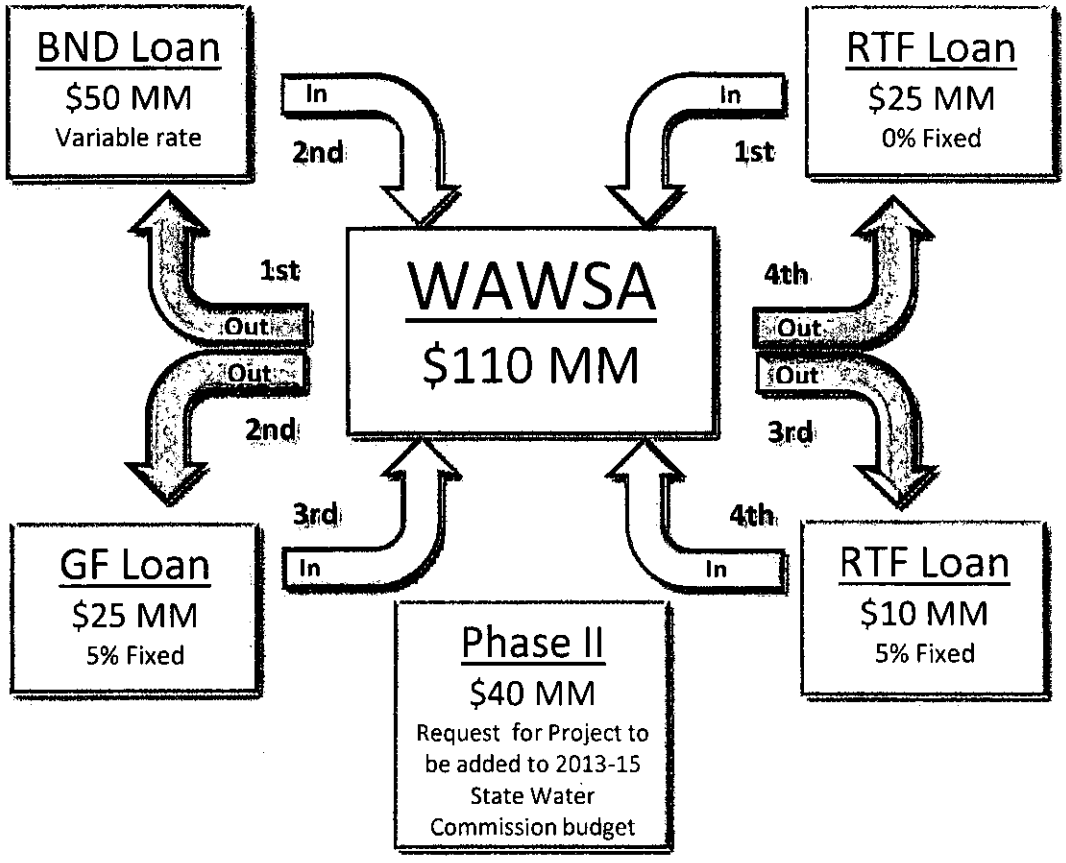
Apart from conference committee discussions, my clients have been urging discussions with other stakeholders, and the water community. Those discussions have taken various forms---some of which you have seen, none of which were acceptable to all sides.

I cannot, and do not purport to speak for anyone other than my clients.

However, after distilling various proposals, concerns and structures.....the one page summary of April 18, 2011 that I

Attachment 1 H-24-11 1020

Western Area Water Supply Authority (WAWSA)



Bank of North Dakota (BND)

Funding/Financing
- *$50 MM loan
- *LIBOR + spread

Repayment
- *First in line for repayment
- *Cash flow from project
- *Excess revenue sweep
- *Moral obligation, State of ND
- *Estimated 7 year payback

General Fund (GF)

Funding/Financing
- *$25 MM loan @ 5%

Repayment
- *Second in line for repayment
- *Estimated 15 year payback

Resource Trust Fund (RTF)

Funding/Financing
- *$25 MM loan @ 0%

Repayment
- *Fourth in line for repayment

Resource Trust Fund (RTF)

Funding/Financing
- *$10 MM loan @ 5%

Repayment
- *Third in line for repayment
- *Scheduled P&I when BND and GF are repaid

Phase II

Request from Authority additional $40MM to be added to 2013-2015 State Water Commission budget.

Loan terms

- *Terms and conditions of the loans will be established within the loan documents.
- *BND will manage the cash flows and service the loans from BND, RTF, and GF.
- *After repayment of 0% RTF loan, Authority to remit 5% of net profits to RTF until 6/30/2040.

2 4-0[illegible]

At the request of the Western Area Water Supply Authority the State Water Commission shall consider a loan of $40 million dollars from the Resources Trust Fund. The State Water Commission along with the Water Coalition and the Water Topic Overview Committee shall work cooperatively for the prioritization of the Western Area Water Supply Project within the Water Commission budget.

No later than July 1, 2013, the State Water Commission shall consider a loan of $40 million from the resources trust fund for the Western Area Water Supply Authority if requested by a vote of the project authority.