

## INDEPENDENT WATER PROVIDERS

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### Water Related Topics Overview Committee

Chairman Hofstad and Members of the Committee:

Thank you for this opportunity to discuss the independent water providing community in Northwestern North Dakota and the oil industry. I want to touch on three issues this morning:

1. Brief review of IWP and its history
2. Our relationship with WAWS and concerns that all of us should share and
3. Finally, some potential policy considerations you may want to begin considering for the 2013 Session.

### HISTORY

The IWP was formed in 2010 to help "promote the use of water for the agriculture and energy industries to the most beneficial use for the state of North Dakota thru the private sector" which is our mission statement. The IWP members were the first providers of water to the oil industry to help it achieve the success the oil industry is having today. IWP is an organization of farmers, ranchers and private business owners that have invested hundreds of thousands, and in some cases millions of dollars, of their own resources to develop private water depots and pipelines to serve the industrial water needs of northwestern North Dakota. We have grown from one privately owned, industrial water depot to approximately seventy-three (73) depots and a network of pipeline infrastructure throughout much of the "heart of the Bakken". We project that by the end of this year approximately 100 private water depots will be in place. The competition within the private sector providing water to the oil industry is vigorous. IWP estimates that 70-80% of the oil industries' water needs were provided by the private sector in 2011 and a similar number will be provided in 2012. Prior to the 2011 Legislative session it was brought to our attention that a regional water project that was being designed to bring much needed water to the northwest area of North Dakota to supply the rural and municipal water needs. IWP has always supported this concept because of the population growth that was being experienced in this area. We will always be in support of rural water.

The project was formulated as House Bill 1206 during the 2011 Legislative session. The project was introduced through the legislative process, rather than through a priority setting process hosted by the State Water Commission (SWC). This is the first state water project that has ever been built this way, all other water projects have gone through the SWC with their oversight, blessing and engineering and how it will impact the state's water resources. This system has helped protect the citizens of the state and promote accountability and responsibility. The initial concept was to bond for a \$150 million project and have the state guarantee bonds and paid for, through water sales to the oil industry—with no commitment from the local entities (different from any other water project in ND). If the project did not succeed the

taxpayers of North Dakota would be responsible for the bond repayments. IWP and others in the statewide water community --lobbied long and hard during 2011 to change the structure of the project. We were successful in limiting the scope to \$110 million, and placing a SWC member on the board, requiring approval of the project by SWC involvement, and mandating that impacts to private water sellers must be minimized. (I've included the exact of the bill below)

#### LEGISLATION--HB 1206:

##### HB 1206 language:

“(WAWSA) shall consider in the process of locating industrial water supply depots the location of private water sellers so as to minimize the impact on private water sellers”

The authority shall report to and consult with the state water commission regarding the 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 approval.

It was through these lobbying efforts that we achieved some language in H.B. 1206 to "minimize the impact to private water suppliers". While we have been in negotiations with WAWS, our discussion have not yielded any type of agreement. We have been very active in attending the meetings and trying to protect our interests as well as the State's interests

#### CONCERNS:

Many of these concerns are a result of several factors that should be corrected where possible:

1. The Legislation is schizophrenic- it requires sale of water to cash flow, but must minimize impacts to private sector (not too much, but just enough). Financing should be re-evaluated.
2. The governance model diffuses authority (and responsibility) among a board appointed by different entities of local government (with no elected official).
  - a. The board is left to rely in large part upon contractors—engineers and lawyers (who are paid more, for more service and bigger projects).
3. We are competing for contractors, and resources in the middle of an oil boom, in a self-imposed, accelerated time frame in an effort to “capture water sales” from the oil industry. (We should be mindful of forthcoming slowdown, once oil and gas leases are secured, and the time frame within which that will occur).
4. WAWS is spending public funds, with the hope of recouping those funds from the oil industry that influences spending decisions, creates a false and inflated sense of urgency (“we have to build more and faster”)
5. Imperfect knowledge—HB 1206 was crafted in an effort to construct a water project, using our best estimates at population growth, and drilling rig/fracing deployment.
  - a. Underestimated “rural demand” (high cost/low revenue side of project)
  - b. Overestimated by 2: wells to frac; wells captured by WAWS (i.e., less revenue).
  - c. 1.2 billion gallons in 2010—estimated 4.6 billion in 2011, actual was 1.9 billion gal.
  - d. Underestimated other competition/limits (water pipelines, COE permits being issued)

1. During testimony it was stated by WAWS that the aquifers or available surface water were not capable of supplying the oil industry needs. A report was given by the State Water Commission in December of 2011 that stated the glacier aquifers alone are more than adequate to help supply the water demand for the oil industries needs in northwest North Dakota, these aquifers with the Missouri River will be able to supply all the water to serve the oil industry.

2. Testimony given by the oil and gas division stated that the water demand was to be so great we would not be able to supply the demand unless this project was built, the IWP has supplied the overwhelming majority of the demand for the years of 2010 and 2011, and there has not been one frac job that has been on hold due to the lack of water. Water is abundant. Labor and infrastructure of the area is restricting the ability to frac more wells as is the current price of oil (including a reduction of about 15 dollars per barrel in North Dakota), and more and more companies are being able to hold their leases by production. Additionally, the estimated numbers of amount of water needed (around 20 million acre feet) was overestimated by about 14 million. Additionally, operators are getting more efficient at and reducing the amount of water they use per well. Hess has actually decreased now from around 80,000 barrels per well to around 50,000 barrels to complete each well.

3. It was stated at the 2011 Legislation at this time we would be at the 300 to 350 rigs per day drilling in the oil basin at this time, fact is we are at 200 to 210 rigs per day.

4. The COE during the 2011 Legislative session had placed a moratorium on permits to Lake Sakakawea. That moratorium has been lifted and permits are being processed to allow access to the lake. This will further supply a substantial amount of water that will directly compete with the WAWS project.

5. Armstrong International, a company that heats water for the oil industry is prohibited from heating water within a thirty mile radius of a WAWS depot, a non-compete provision that WAWS required.

Similarly, we question the wisdom of some of the project design. For example, WAWS now plans a six stall truck depot off R & T, to Highway #2. The depot will accommodate 30 waiting trucks behind the six filling stations, and fill 300 trucks per day and up to 600 trucks at peak. One premise of the WAWS legislation was to disperse truck traffic, not concentrate it.

6. The WAWS project has ignored permit issues with counties, digging and installing water pipe right thru the county roads.

7. They have condemned private property for obtaining right-ways for industrial water sales. Some believe this is industrial commerce and contrary to recent constitutional amendment approved by the North Dakota voters. It is clear through the actions of WAWS/AE2S that this is an industrial project first and foremost.

8. The project is currently over budget by \$20 million dollars and tentative plans are to ask for an additional \$40 million grant to help the municipal and rural water needs that were originally in the first \$110 million. Additionally, there are concerns that the system is being so overbuilt that it may cause long term problems/extreme expenses to the rural water uses of North Dakota. It has been proposed that an independent North Dakota engineering firm review the body of work and scope of the project that AE2S

is doing to see if there can be cost effective implementations/recommendations that will benefit the rural water users and every single taxpayer in the entire state of North Dakota. The independents, for the good of the state, would be inclined to pay for this study to be completed.

9. WAWS/AE2S has hired their own law firm and WAWS recently hired a government affairs lawyer (a/k/a lobbyist) to lobby for them in the 2013 Legislative session. WAWS is a public project hiring a lobbyist to overcome the issues they are creating and to secure additional funding.

10. McKenzie County Water Association's application to the Corp of Engineers stated there would only be one water depot, one storage reservoir, and a water line running to Watford City to serve the municipal and rural water users, not fully describing the impact of the facility on the greater project (WAWS).

Recently, WAWS asserted to the Corps of Engineers, that it should not provide access to Lake Sakakawea because of rights purportedly held by McKenzie County. (As a matter of state policy, we should never support or countenance restrictions upon the use and access to the state's largest water resource)!

11. WAWS representatives have stated that the Indians Hills depot would be a two port depot, but it is now designed as a six port depot facility.

-WAWS representatives have stated that Cartwright Depot run by the Berry family did not oppose the Indian Hills depot and it would not affect them. The Berry family is very concerned how the Indian Hills depot will affect them.

12. When the IWP were checking with the COE on the application of the river crossing, a WAWS board member threatened IWP stating that he would do everything in his power to locate a WAWS depot next to specific IWP depots of those who voiced complaints or raised concerns.

13. We also question the wisdom of entering into long-term exclusive contracts that allow one industrial user to capture much of the water available to the public at one WAWS facility (which then skews the market and makes for less vibrant market forces that would otherwise benefit everyone). Just this month at a recent ND Petroleum Council meeting, WAWS representatives confirmed that if a single oil company wanted to contract for all available water at a particular depot, it could do so.

#### POLICY SUGGESTIONS:

Specifically, our overriding policy request to WAWS to minimize impacts to private water providers is as follows:

1. That any depot constructed by WAWS be limited to operating only two ports, even though each might be constructed with more than a two port capacity to take advantage of cost efficiencies.
2. That prior to operating more than two ports at any site, an objective assessment be made by the State Water Commission, or an independent third party approved by the water commission to:
  - a. Verify the need for additional capacity and
  - b. Verify that the current need is not being met by the private sector and WAWS capacity under a two port limit.

This policy accommodation by WAWS would largely resolve the remaining differences between the two organizations and set the stage for a cooperative relationship going into the 2013 Legislative Session.

## LEGISLATIVE POLICY SUGGESTIONS:

### Change in governance structure:

- A. Add members of the public from the region, equal to the existing board members, to build in public oversight and insist upon consensus, or
- B. Restore the project to SWC—making WAWS board advisory only.

### Funding mechanism should be reconsidered.

- A. Project may not cash flow for host of reasons (including expansion of project, \$150MM to \$250MM eventually); change in market, US-COE, change in industry, reduced rig count once leases are secured, and new techniques of addressing water—all of which we spoke to, in the 2011 session. Sources of funds:
- B. Water fee: (We've been asked to consider, but are not enthusiastic of the concept).
- C. Resources trust fund—continuing the challenge from 2011 model.
- D. General fund—worth considering.

The IWP has been engaged in good faith negotiations with WAWSP and AE2S since last November to help facilitated and/or to “minimize the impact to the private water suppliers”. IWP has been allowed to selectively give input, usually after the fact and try to rebut decisions that have already been made. The SWC has a representative on the board that provides oversight, but is inadequate to represent the state or the taxpayers. We have asked WAWS to limit their depots to 2 (two) ports to provide a fair opportunity for IWP to sell their water. In the oil industry sometimes price is not an issue but the volume and the time you can get the water to location is very important. This gives WAWS a huge advantage over the private sector to be able to provide more than two ports and having the volume of water to allowing heating. Both these advantages will limit sales to the IWP. WAWS has opposed the 2 port limit, but using their own information, 2 ports will allow them to sell the amount of water to make the payment on the state loans. They should not sell more. The IWP have and will always support the regional water plan, but we do not understand why we should have to sacrifice our business that we have risked our own money with, to compete with a state project. We are continuing in good faith negotiations with WAWS on these issues and hopefully will come to some agreement. We would much rather be supportive of their needs in the next legislative session then to oppose them for more funding. If some sort of agreement is not reached we plan to pursue litigation against WAWS on loss sales and not minimizing our impacts.

Again thank you for the opportunity to provide our side of this issue, we hope to reach a resolution soon.

Thank you,

Independent Water Providers  
Steve Mortenson  
President