

HB 2196 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network

Mr. Chairman and Members of the Committee,

I rise today to respond to this proposal of loan forgiveness and bailouts with one question:

What do the taxpayers get out of this deal?

I've attached 50+ pages of material that I have been involved in producing over the last 10 years of the existence of the Western Area Water Supply. I won't read it, and I really expect you to either, but I want to highlight just a few of the twists and turns that have occurred in this time.

The legislature created a socialist state-owned and operate frack-water company to compete with private industry.

Along the way, attempts were made to create Economic Exclusion Zones where only the WAWS depots could sell and private water sales would be illegal. Attempts were made to create new Water Extraction Taxes on private water to subsidize the WAWS program.

Now, they want the legislature to forgive their loans and bailout a program that never had a business model that made sense.

So I ask once again: **What do the taxpayers get out of this deal?**

If you go down this road, please, I urge you to get something out of it for taxpayers.

And end the unfair competition that WAWS operates against private sector businesses that can provide frack water for oil companies without government backing.

Leave the domestic water supply in place, and perhaps create a model where the industrial side is bid out and operated by a private company that maximizes profits for the state rather than being the state.

2017 Series on the Western Area Water Supply

The following is a 4-part journalistic series on the history of the Western Area Water Supply leading up to the 2017 Legislative Session.

North Dakota's Newest Big Bad Wolf

The following was written and reported by Jason Spiess of [The Crude Life Network](#). Spiess is the host of Building the Bakken and the Mondak Oil Report which air on many radio stations in North Dakota. This article is disseminated with the expressed permission of author.

Throughout history the practice of eminent domain has been abused in the United States. Abused to the point where the parties taking the land were colloquially referred as the “big bad wolf”. The first big bad wolf was the railroad.

The process was quite simple, the railroad is considered a project for the public good and if you do not accept what the railroad deems fair compensation, then they will take it by force.

Back then, what many still considered the Wild West, there was no court system to speak of, so the railroad was given the power by the United States of judge, jury and executioner in seizing private property. It literally was the wild west because many of the states and cities were not really developed or civilized.

Then the highways came along. So did schools and parks. By then states, counties and towns were very much established giving more civility to the eminent domain process. And like with the railroad, some landowners were just informed that their properties were condemned and they had to go to court for “just compensation.” No real negotiation, just a land agent informing the landowner of their one choice.

In 1954, the U.S. Supreme Court changed the requirement of “public use” to “public purpose.” That decision changed the interpretation allowing land to end up in the hands of private parties under the auspice of condemnation. These condemnations were commonly used for dilapidated buildings, run down homes and slummy neighborhoods.

Then in 2005, the U.S. Supreme Court ruled that the city of New London, Conn. (Kelo vs. New London), could use eminent domain to seize homes and properties from landowners that were not in poor condition. This was all allowed under the notion that economic development was for public good.

After that court case, North Dakota responded by clarifying their state constitution. According to North Dakota Constitution, “private property shall not be taken or damaged for public use

without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law.”

Also, the state constitution clarifies that “a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.”

First, eminent domain was used to bulldoze slums, then it was blighted parts of town, then not very blighted areas, and now perfectly fine areas, and not just in Connecticut. This practice is happening all over the United States, including North Dakota.

“It appears to me that eminent domain is being used not the way it was intended but because you have private businesses using it,” attorney Derrick Braaten said. “The legal test for eminent domain is that it has to be for a public purpose in other words have a public benefit and public use.”

Braaten, a partner at Baumstark Braaten Law Partners in Bismarck, ND, has represented landowners who have been impacted by eminent domain. Braaten’s concerns with eminent domain have increased substantially over the past decade as he has witnessed what he deems an abuse of the government-backed power.

Braaten also has issue with the Western Area Water Supply Authority’s behaviors with eminent domain, which he believes operates in a gray area and are blurring the lines with a public entity.

“We have represented landowners who have been impacted by WAWSA (Western Area Water Supply Authority) and by pipeline development and that sort of development in general in respect to negotiating easements and eminent domain actions,” Braaten said.

Braaten continued saying WAWSA is a tricky situation that has created more questions and concerns because it has become a hybrid of public good and private enterprise

“WAWSA is deemed a government institution or government instrumentality, but it is not being run that way and it is being heavily subsidized,” Braaten said.

In 2011, United States Congressman Kevin Cramer, then Public Service Commissioner, publically stated that WAWSA should be reconsidered and their model should be examined closer.

Back then he said, “Proponents of the plan say it cannot go forward without a guarantee. They also say it is a rare opportunity to get a water project paid for by private industry. If the oil industry is certain to pay the project off, why does it require a guarantee from taxpayers?”

Cramer continued with his questioning of WAWSA’s model.

“Private pipeline companies are already building projects to deliver water from Lake Sakakawea to the oil patch for hydraulic fracturing. The price they are offering is less than the WAWSA needs in order to pay off the state debt. That means either the government project will not be price competitive and taxpayers will be on the hook for a failed business, or the government will

undercut the private sector, sending the entrepreneurs packing until the state has a monopoly on water sales in the oil patch. After which the government can charge whatever it wants or needs to cover the debt.”

One of the reasons WAWSA becomes confusing to many is because of the unusual way the state legislature set up the funding and power to sell water to the oil industry for fracking. WAWSA has insisted over and over that all of its behaviors and potential growth should be treated as if the water project is 100% for domestic water needs. This is not the case.

WAWSA is broken into two separate divisions – domestic and industrial. Yet WAWSA’s approach and justification is always unified under “the good of the public”.

“You can still make an argument it is for the greater good, but that doesn’t mean you should be using what I consider a pretty serious exercise of the state’s power of using eminent domain to actually take land from people for the greater good,” Braaten said. “That’s a step beyond saying something is for the greater good when you are actually going to use the state’s power to take property rights from people.”

This is where things get misunderstood, contested and linguistically manipulated. According to WAWSA, the entire project is for the public good, even the industrial sales that compete with private businesses. Braaten understands that getting potable water to citizens is a legitimate purpose, however, his concerns fall with the parsing of words and bullish behaviors under the blanket of eminent domain.

“With WAWSA I think it is a little bit different because the idea is more related to there being a public utility, so it is more along the lines of we allow the use of eminent domain to run power lines and things like that,” Braaten said. “I think some of the concerns that I have heard from landowners comes from the fact that at this point a lot of this water is being run to well sites for oil and gas production and not to get folks living in the country rural water anymore.”

In the 2016 edition of The Buzz, a newsletter published by WAWSA, it’s main headline read “Easement urgently needed for WAWSA Pipeline Construction.” The headline clearly conveys a sense of urgency for their project. Couple this with the consistent phrase “public good”, and you have an excuse for eminent domain.

This becomes a slippery slope for government for a variety of reasons. Historically eminent domain has been abused due to financial gains, political weaponry and corporate welfare.

There are communities across the nation where council member, legislators and developers have exploited eminent domain for their own private gain. Often times elected officials, redevelopment boards and contractors either own property that would increase in value due to eminent domain or were the actual contractor in the running for the mega-lucrative projects.

At the end of the day, the use of eminent domain can be used for public good, but also can be used to increase the bottom lines of private and personal interests.

And then there is the added power of “quick take” eminent domain, which gives the state even more power to take property from landowners.

“I take particular objection to the use of what they call ‘quick take’ eminent domain,” Braaten said. “I don’t think quick take eminent domain should exist, period, unless there is an absolute emergency like a flood or something like that. I think that is being overused and abused.”

Braaten said he is seeing more use of the quick take eminent domain in North Dakota, especially in regards to WAWSA.

“It is such an easy, cheap process for WAWSA and others that creates this perverse incentive because it is easier than talking with the landowner,” Braaten said.

Braaten continues saying his issue with the process is that the landowner may not even know their land has been seized.

“We have one landowner whose first notice that his land had been taken via eminent domain is when they showed up with the heavy equipment on his property,” Braaten said.

This landowner didn’t even have a chance to negotiate before eminent domain occurred. These actions can take their toll as it creates an environment that forces a landowner to live in fear of having his property taken away. Braaten believes there are a myriad of choices before eminent domain is implemented.

“I think they do have options. I think the options are to work with the land owners and negotiate,” Braaten said. “Every once and awhile there are a couple landowners who are just done and are not going to allow it. What that usually means is a fairly minor reroute of a pipeline.”

And then there is the issue of compensation for the land. Private businesses pay a fair market price to access private property, whereas eminent domain allows WAWSA to pay a much lower price.

“I’ve had companies, for example, offering \$40,000 for an easement, but then they go into eminent domain and their damage model is only \$2,000,” Braaten said. “The amounts being paid for a private easement are many times more than what people are actually getting in eminent domain proceedings. I see that as a serious issue. I think that if it wasn’t so easy and cheap for companies to use eminent domain it wouldn’t look so appealing to them.”

The ND legislative body recently denied SB 2047, which was designed to reign in the authority of water resource boards to exercise the power of “quick take” eminent domain. Braaten believes this bill is a good start in curtailing abuse with the power of eminent domain, but wishes the ND legislative body would have adopted an amendment to make it apply to WAWSA..

“It (SB 2047) was literally the exact law in Wyoming, which they’ve had on the books for ten years,” Braaten said. “It provides some additional methodology beyond the traditional appraiser methodology for evaluating damages.”

According to Braaten, Wyoming’s legislature clarified the property owner’s rights and put some different checks and balances on eminent domain abuse.

“Wyoming is light years ahead of us and I think it is primarily a cultural thing. The landowners in Wyoming got a lot angrier a lot faster about eminent domain abuse,” Braaten said. “I think that if the state legislature doesn’t step in it’s going to get worse. And now we are going to have to wait another two years to see how much worse it gets.”

Subscribed

The Rough Waters of Western North Dakota

The following was written and reported by Jason Spiess of [The Crude Life Network](#). Spiess is the host of Building the Bakken and the Mondak Oil Report which air on many radio stations in North Dakota. This article is disseminated with the expressed permission of author.

The state of North Dakota is now experiencing a serious crossroads situation regarding the Western Area Water Supply Authority (WAWSA) and its future path. Uncertainty is nothing new to WAWSA and its project as controversy, a questionable business plan and forceful government politics have followed this project since its very beginning.

“There has been controversy from day one,” said Jared Wirtz, executive director, WAWSA. “It started right away that there was a fight against not wanting the public sector competing with private.”

According to WAWSA website, the domestic water project utilizes Missouri River water that is treated partially at the Williston plant to meet municipal, rural and industrial water needs for Burke, Divide, McKenzie, Mountrail and Williams counties. Residential water services include the cities of Williston, Watford City, Ray, Tioga, Stanley, Wildrose, Crosby, Fortuna, Noonan, Columbus and Ross. The idea was to provide affordable water to the residents of western North Dakota. In order to offset costs to the residents, WAWSA would sell water to the oil industry.

The WAWSA website also states that currently the project is providing water to over 70,000 people and are estimating 160,000 people will received water by 2038.

So how did WAWSA go from a water infrastructure concept everyone seemed to support to questioning and changing its business plan?

Let’s start from the beginning and find out how WAWSA’s original projection of \$150 million in 2011 became a current reality of \$292 million and a new completion projection of \$400 million, according to public records. According to Wirtz, the decision to move ahead with WAWSA wasn’t fleshed out completely due to the speed of the Bakken in 2011.

“Keep in mind this was 2011 when its really busy up in the Stanley, Ray, Tioga, Williston and Watford City was just starting to get a lot of activity,” Wirtz said. “Things had to happen quick and we didn’t have a lot of time if we wanted to sustain the population growth.”

Duane Sand, president of North Star Water and vice chairman of the Independent Water Providers, believes the project’s original concept was good, but the business plan was not viable or thought out properly.

“The intent was good at first,” Sand said. “The stated goal was to bring water to rural North Dakotans. That’s a great and noble goal, but there’s still a lot of farmers and ranchers, even today, that do not have a reliable source of non well water from a central location.”

Sand added there had been precedent for this type of project in the state.

“It’s the same that has been created in eastern North Dakota for years and in southwestern North Dakota out of Dickison which has been supplying water to the southwest water district for 20 years,” Sand said. “The difference is that in 2011 the legislature gave WAWSA the authority to sell water to the oil industry.”

Another early critic of WAWSA business plan was Robert Harms, an attorney who represents the interests of several private water companies. Harms said the business plan and costs should have been questioned more from the start as well as being questioned today.

“The business model they proposed was that the infrastructure would be paid for largely by selling industrial water to the oil industry,” Harms said. “Then the water industry was mature, well developed. Six years ago 80% of the water that was provided to the oil industry was private with the other 20% was provided by communities like Watford City, Williston, Tioga, Stanley, Crosby, they all sold the balance to the oil industry.”

While oil prices were favorable in 2014, WAWSA generated over \$35 million in sales. According to Wirtz, WAWSA prepaid the principal on the loan through March 2016. However, in 2015, industrial water sales dropped significantly due to the downturn in the Bakken. In 2015 WAWSA sold about \$24 million in water and \$12 million in 2016. This decreased sales trend has no sign of turning around either since a large amount of WAWSA’s revenue is tied to the oil industry.

“The study that was done in 2010 reached the conclusion that we needed a new water supply system that would cost about \$150 million,” Harms said. “They could have done that standing on our heads if they stayed true to the mission of providing water to the people as opposed to chasing this dream of being a water supplier to the oil industry and having this cash cow everyone was hoping for.”

Since then, however, WAWSA has not been able to keep up with its payments and is now looking for options on how to deal with their enormous debt. Currently, WAWSA owes \$164 million to the state of North Dakota and \$26 million to Williston, McKenzie County and R&T Supply. R&T Supply is short for Ray and Tioga Supply, which also provides water for Stanley.

WAWSA currently has nine water depots operating and the potential to build 22 depots.

“At this time we don’t have any plans for additional ones (past the nine),” Wirtz said.

Another peculiar aspect of the WAWSA model is the North Dakota Water Commission does not have any WAWSA oversight despite the fact they receive money from the the Water Commission. Furthermore, according to the State Water Commission, their position was removed to WAWSA's board of directors.

Sand believes the changes made to WAWSA business plan to adapt to the oil industry's efficiency is creating an entity that is growing without a plan to break even anytime soon.

"What happens with every government program happened to this program, it's grown and grown," Sand said. "Particularly in 2015 WAWSA board of directors tried to literally make it illegal for private citizens to sell water to the oil companies within ten miles of these truck depots. Two years after WAWSA was created."

Sand added that when that act of government trying to garner more control the Bakken's industrial water market was defeated in the legislature they changed their tactic and made it so WAWSA could sell industrial water from any piece of pipe they put in the ground.

"This type of government growth has a term – mission creep," Sand said. "So the Western Area Water Supply trying to empower themselves and make more money because they were spending more money than they were taking in."

Wirtz disagrees with Sand's claim that WAWSA has been increasing their size and encroachment into the private sector.

"We operate like a cooperative, it's a public entity," Wirtz said. "We are trying to get the water out here and with the money we make it goes to either growing the project or paying off debt."

Although WAWSA has overspent its projections and has fallen short with its revenue, Wirtz isn't concerned as he believes the state will keep the project going regardless of what WAWSA critics think.

"Yes there may be a handful of hundred or so businesses that may be effected by us competing with them, but I think everyone can do the math on that, and go, when you put it like that it isn't such a back thing when public has to compete," Wirtz said.

Wirtz conceded that there will always be an issue as long as they continue to sell water to the private sector.

According to public documents, in 2016 WAWSA had to generate \$800,000 in monthly water sales to break even. And in 2017, that monthly figure doubles to a whopping \$1.6 million in industrial water sales.

"There's good and bad with public competing with private, but when there is such a good benefit for us to do this, it kinda outweighs that," Wirtz said. "We will continue to make this project work."

To say that WAWSA is at a crossroads is an understatement considering the only way this business model is proving to be viable is with government force, taxpayer dollars and changing their strategy without regard to the cost. In the private sector, this type of business would have

gone under by now, but the state of North Dakota, engineering lobbyists and policy makers without real life business experience are trying making sure that doesn't happen. No matter what the cost is to the people and businesses of North Dakota.

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North Dakota's Republican Government Picks Winners And Losers

The following was written and reported by Jason Spiess of [The Crude Life Network](#). Spiess is the host of Building the Bakken and the Mondak Oil Report which air on many radio stations in North Dakota. This article is disseminated with the expressed permission of author.

Every legislative session and campaign season, some politicians will utter the phrase “we can't be picking winners and losers”. This statement is often meant to squelch any conversations regarding subsidies for businesses and industries. A statement used primarily by republicans as a talking point and syntactical strategy to divert the conversation away from the people and businesses they have chosen to receive money from the government.

In reality, winners and losers are picked by government everyday. Public officials will often give corporations like WalMart years of tax deferments when they come to a town, farmers will follow the subsidy money in order to win the corn or soybean sweepstakes and young “connected” entrepreneurs receive substantial amounts of tax dollars to keep their unproven ideas funded.

Arguably North Dakota's public officials, from local to county to state, select winners and losers more than any other state in the union.

North Dakota is the only state in the union with a state-owned bank and state-owned mill and elevator. Plus their continuous amendments to bills end up directing tax dollars to private businesses, nonprofits and political groups. Now, North Dakota has a state-owned water company competing for business in the Bakken oil fields. For a republican run state, it is easy to understand why more and more people are questioning North Dakota's reality of being a red state.

“The story of the Western Area Water Supply is probably the biggest story of government intrusion into private business since the state of North Dakota created the Bank of North Dakota, the only state-owned bank in America, and the state-owned mill and elevator, the only state mill in the country,” Duane Sand, president, North Star Water said.

In 2011, The North Dakota legislature created a water company and political subdivision under the same name – The Western Area Water Supply Authority (WAWSA). According to WAWSA's executive director Jaret Wirtz, there wasn't a good system for reliable drinking water in western

North Dakota and the Bakken was bringing in an influx of people, causing strain on the current water infrastructure.

“We have this huge Missouri River, this huge source running right next to us and through us. It was looked at by McKenzie County and Williams County as how to get more water into their areas,” Wirtz said. “Communities like Watford City had a very aged water plant and were looking at building their own reverse osmosis plant at the time.”

The thought of bringing potable water to the residents of western North Dakota was welcomed by everyone, including the private water companies. However when the state began tinkering with the business model and entered the industrial water market, problems quickly arose and many questions surfaced.

According to North Dakota Representative Denton Zubke, WAWSA’s entrance into the private water market was because there wasn’t enough private businesses to handle the oil field in 2011. The demand and frenzied pace created an environment for the state to approve a water project in the height of the Bakken boom that would funnel water revenues from the private water market to pay for their costly water project.

“The private industry had not been there, and that will be a point of contention because the private industry will say ‘hey we had this all taken care of’, but they really didn’t,” Zubke said. “Those (Bakken) cities had been selling water already for a number of years trying to help with that need.”

Robert Harms, an attorney who represents companies from the water industry, said Zubke’s statements about the private water industry are off mark.

“I would disagree with him (Zubke) because the private sector was made up of a few small companies, but also made up several dozen or more private individuals up in that part of the state that were private water suppliers,” Harms said. “They had developed a private water supply, they had a water permit, and they were going to evolve in response to the market just like WAWSA was attempting to capture.”

Harms even went a step further in attempting to understand, if not justify, Representative Zubke’s claim that there were not any viable private water companies in the Bakken.

“I think what Representative Zubke is talking about is that there wasn’t a lot of large \$25 million dollar investments that were made or had been made by the private sector yet,” Harms said. “We’ve got a half a dozen companies that have made tens of millions of dollars in investments, I think he is saying that wasn’t present. And I agree with that, but the private sector was evolving.”

Steve Mortenson, president of the North Dakota Independent Water Providers, also disagrees with Zubke’s claim about the lack of private water companies in the Bakken oil fields.

“We could have supported this whole industry, but we were never given the chance,” Williston native and resident Mortenson said. “The state felt they needed to come in and garner some of that revenue.”

Wirtz believes WAWSA entrance into the private sector was something everyone was on board with and the common bond moved this water project forward.

“We all think it is a great idea in North Dakota, I think, to take advantage of that resource we have in our back yard and lay claim to it that and get as much water as we can to benefit our state,” Wirtz said. “The decision was made to team up as a group instead of people trying to get funding on their own, we might as well go with one common voice. So that’s when the plan sort of started.”

Wirtz’s inclusionary language and statements like “everybody can agree” and “we all” drew questions and disagreements from many familiar with the issue. According to public statements and articles, everyone didn’t think it was a great idea nor was there a common voice.

Back in 2011, WAWSA had many contrarians for the industrial portion of the project – the established water industry, then-Public Service Commissioner Kevin Cramer, landowners and even some elected state officials. By no means did everybody agree with the project or the harmonious talking points supporters stated in the media or at the state capital.

In fact, many felt it was closer to a slight of hand by North Dakota’s elected leaders.

“The thing was just hush hush when it first came on board,” Mortenson said. “In fact, it was myself and another local supplier, Mike Ames, and we went to the city commission in Williston and questioned what they were doing about this.”

Mortenson said the original plans were for \$150 million dollars to create a residential system of potable water and have the ability to sell water to the industrial market, aka oil and gas companies.

“We (IWP) never opposed the potable water to the residents, we felt it was needed,” Mortenson said. “Like any other water project in the state, we felt it should be paid through grants and revenues from selling residential and domestic water.”

Zubke said in the beginning there was a group lobbying the state for the creation of the Western Area Water Supply Authority, but their needs and wants were falling on deaf ears.

“No one was willing to give us any money,” Zubke said. “I don’t know if the state just did not have the money or they did not want to replicate a couple water projects that were already in the state of North Dakota. I remember a legislator saying ‘we don’t want to do another SouthWest Pipeline.’”

Zubke said the SouthWest Pipeline is owned by the state of North Dakota and it has been funded by federal and state funds.

“Their repayment on those funds is simply whenever you can pay us back as you go along,” Zubke said.

According to Zubke, RT Water Supply (Tioga, Ray and Stanley), Watford City, McKenzie County Resource District and Williston were all selling industrial water to the oil industry. Since

several of the towns were already selling water to the oil industry, allowing WAWSA to take over those sales was decided as a way to generate revenue in order to fund the project.

“It all kinda morphed together to where through the state of North Dakota and some negotiations, the whole idea hatched having those entities (R&T Supply) turn over their industrial sales to Western Area Water Supply Authority and that becoming the repayment capacity for those loans,” Zubke said.

Zubke said the industrial water sales became one of the few options for generating revenue for repaying a loan for the water projects.

“These oil companies were just begging for water,” Zubke said.

Harms said while that is technically true, there is more to the story than just those talking points. He continued saying that the private industry was servicing 70-80% of the water market in 2011, while the balance was being provided by communities like Tioga, Williston, Crosby and Watford City.

With questions still unanswered and requests to slow the conversation down still present, the state decided to move ahead on the project. Move ahead as long as competing in the private water market was part of the plan to fund the project.

“Everybody was doing everything they could to bring this development on and obviously there was some money to be made too because the oil companies were just screaming for water so they could frack oil wells,” Zubke said.

Mortenson, Sand and others have publically stated multiple times that the IWP never opposed municipal water sales when each city was selling it on their own. However, when WAWSA began their huge expansion project in the industrial realm, a new level of aggressive and ruthless business practices emerged from WAWSA and the state of North Dakota.

“During the 2013 legislature, several bills were introduced by legislators who were supportive of WAWSA, to literally by state code, make it illegal for independent water providers to provide water within a 10-mile radius of any WAWSA’s truck depots,” Sand said. “That is clearly not right.”

Sand continued citing examples of how his business is constantly having to fight battles created by the state legislature in the name of funding WAWSA. Battles that are financially draining and in direct competition to the already established private water industry.

“Then in 2015 the push kept coming and coming,” Sand said. “They changed their tactic completely and decided WAWSA could sell water to oil companies by piping it directly to their well pads from any piece of pipe they put in the ground. And they have put hundreds of miles of pipe in the ground.”

When asked about some of the methods the state and WAWSA have demonstrated in the past, Zubke was quick to dismiss some while putting the onus on the private water companies to pay closer attention.

“The issue over the miles with the depots was I think six years ago, again like I said, that is a ship that has sailed,” Zubke said. “I can see where some of the independent providers certainly need to pay attention to what the legislature is doing.”

This creates a ripple into private companies impacted by WAWSA, igniting a variety of economic and social issues. Reduced revenues create layoffs and downsizing actions. It also creates psychological issues which produce an environment of uncertainty and powerlessness.

Expansion plans put on hold, annual raises to employees eliminated and fighting battles in the legislature become physically and emotionally draining. Not to mention threatening letters from lawyers being funded by tax dollars divert professional energies.

“In this past 2017 session, the state legislature HB 1020, they were asking if they could reduce their (WAWSA) rates so they can compete more with us,” Mortenson said. “They did this last year too. This is a direct effect of competition from the state.”

Mortenson pointed out that WAWSA’s business plan was done at \$0.84 a gallon and now they are looking to change that once again. He added that supporters of the project said during the second session in 2011 there would be plenty of water for everyone to sell.

“Well when the market dropped out there wasn’t enough water for everyone to sell,” Mortenson said. “And now they want to come in and compete with us at a lower rate.”

Lowering the rates would be a peculiar move because it would allow WAWSA to change their model and increase their encroachment into the private water sales once again. Mortenson also verbally wondered if residential rates in local municipalities like Ray, Stanley and Tioga would be affected to make up the lower price difference.

“Basically they are giving the oil companies a break,” Mortenson said.

The Western Area Water Project Authority’s projections looked good on paper for those who supported it, but in reality, the oil industry isn’t as predictable as the leaders of the state would have you believe.

Since 2011, oil and gas revenue projections have been revised multiple times. So have the population projections. This volatility is nothing new to oil and gas either. Yet the state officials have orchestrated WAWSA to a point where some are asking if the project actually has an end in sight.

“This project was built without any oversight and it was really frustrating to see the state continue to throw money at it,” Mortenson said. “And it was disappointing to see the state go ahead and support the competition with private industry.”

This decision for the state to create an entity to compete in the water industry is perplexing for a variety of reasons.

One reason, according to Mortenson is the stab of selective subsidizing. From his perspective, as well as others in the water industry, the private water companies are taking on the lion’s share of subsidizing WAWSA.

“Every dollar WAWSA has sold in industrial sales has come from an independent,” Mortenson said.

Private water companies have a hard time competing against this type of state-sponsored competition. The government can adjust and create laws impacting the private sector and their ability to effectively perform simple day-to-day business operations. Every piece of pending legislation, price change and new water pipe placed in the ground from WAWSA drains more resources from the private sector.

In addition to the amount of money WAWSA spends on lobbying, the legal fees and engineering costs truly do tell the story of risk management, or rather, the lack of. Yet WAWSA’s risk management budget and Bank of North Dakota line of credit approval appear endless – thanks to the backing of the tax payers.

“WAWSA is a tax payer funded project that has grown beyond what they intended and now they want to continue to fund it no matter what the cost and risk is to the taxpayers and private industry,” Sand said.

The state legislature mandated WAWSA to “minimize impacts” upon private sector as it located water depots in the Bakken, however, the ambiguous language is open to interpretation.

“In the business plan it does sell water to the oil field and at that time there wasn’t a lot of supply out there and the public was taking care of about 20% of that market,” Wirtz said. “We needed to maintain 20% of that market share and the private could still have that 80%.”

When words like “minimize” and “try to” are introduced into policies and protocols, issues are bound to surface. According to a 2013 presentation from the North Dakota State Water Commission, WAWSA captured 41% of the industrial water market in McKenzie and Williams County. Furthermore, the presentation revealed WAWSA had a contract signed with Continental Resources for up to 35 million-gallons-a-month, which accounted for about 25% of the water in Williams County.

“The state had to look at it and say yeah we are going to compete with private industry, but we think there is over a \$100 million market out there and WAWSA just needs a share of that to keep the project going and benefit the public,” Wirtz said.

Sand believes Wirtz’s comments are more evidence that North Dakota is picking winners and losers in the marketplace. He believes this not only goes against the ideology of North Dakota being a red state, but also questions the motivations of elected officials who call themselves republicans.

“More people need to know the WAWSA story, especially anyone who votes for republicans in Bismarck, and I’m a republican,” Sand said. “The Republican Party is supposed to stand for less taxes and smaller government, but the republicans in power have shown their true colors with their spending behaviors.”

It appears the state of North Dakota is continuing to forge ahead with the Western Area Water Supply Authority, while there is literally is no end in sight. This past January the House

Appropriations Committee presented a new total of \$465 million for the WAWSA project. The new estimated cost for the project is now over three times the original projection of \$150 million.

These new projections do not bode well for the private water industry who have already seen millions of dollars of market share siphoned away.

“This project (WAWSA) has has greatly affected my business,” Mortenson said. “If they would have built in the areas where the independents were not in or where not providing service, we maybe could have gotten along.”

Subscribed

Follow The Money On WAWS

The following was written and reported by Jason Spiess of [The Crude Life Network](#). Spiess is the host of Building the Bakken and the Mondak Oil Report which air on many radio stations in North Dakota. This article is disseminated with the expressed permission of author.

There’s an old saying in journalism – “follow the money”. That phrase inserted itself into America’s lexicon and popular culture during the movie “All the President’s Men”, a film portraying the events of Watergate. Since then, that phrase has been taught or talked about in most basic media classes.

Following the money is a basic exercise that uncovers a sizable amount of information, creating questions aplenty and infuriating lots of people. Those are a couple of reasons journalists and reporters alike don’t utilize this tactic.

Furthermore, many media companies have large advertising contracts with many of those who are affected during a basic “follow the money” exercise. That can make owners, management and editors steering clear of jeopardizing those lucrative contracts.

Today, in North Dakota, following the money on the Western Area Water Supply Authority (WAWSA) tells quite a story, even while leaving many questions unanswered.

Here are the two basic numbers most taxpayers will retain and focus on – \$150M and \$469M. These numbers are the original projected price of WAWSA, \$150M, and the current estimated cost, \$469M. That’s right, the WAWSA project is now well beyond three times the original quoted price to the North Dakota taxpayer without a conclusive final cost in sight.

The next thing most people do, as part of this exercise, is find out who WAWSA is. According to WAWSA’s website, they are state sponsored water company and political subdivision that provides water services to rural residents, communities and industries. WAWSA services Williston, Watford City, Ray, Tioga, Stanley, Wildrose, Crosby, Fortuna, Noonan, Columbus and

Ross. They also list Burke, Divide, McKenzie, Mountrail and Williams Counties as their service area.

One of the reasons following the money works wonders for journalists and reporters is because it involves numbers. Numbers don't lie and are void of emotion, whereas people are passionate. And passion can often induce behaviors of determination, tunnel vision and groupthink mentality.

So what are a few of the numbers that jump out? In previous editions of this five-part feature, we referenced "legal fees" and "threatening letters". Judging by the amount paid to Vogel Law Firm, they have performed quite a bit of legal work for WAWSA.

According to WAWSA financial records, since 2011, Vogel Law Firm has received almost \$1.5 million from WAWSA in legal fees, including \$250,000 for each of the last two years.

The next number that jumped out, and keep in mind these are in no particular order, is WAWSA executive director Jaret Wirtz's salary. Wirtz received a total of \$162,167 in 2016. That's a salary of \$148,077 and bonus of \$14,090.

The reason this number jumped off the page was because it ranks higher than many prominent officials' salaries.

Comparing WAWSA's executive salary to several other prominent state positions

WAWSA executive Director Jaret Wirtz \$162,167

North Dakota State Engineer Garland Erbele \$154,500

Attorney General of North Dakota Wayne Stenehjem \$143,685

North Dakota Governor Doug Burgum \$116,999 (2013 data)

North Dakota Secretary of State Al Jaeger \$96,794

North Dakota Treasurer Kelly Schmidt \$96,972

Northwest Water Authority Director Tim Frieje \$93,492

Additionally, there is \$50,000 for lobbying. The WAWSA board is using public money to lobby to the state.

According to the Secretary of State's website, John Olson, Olson Effertz Lobbying and Consulting, is registered as the lobbying firm for WAWSA.

And then there was the number that jumped off the page the highest. According to Wirtz, WAWSA has paid approximately \$48 million to engineering firm AE2S, often referred to as Advanced Engineering and Environmental Services.

Another number affiliated with WAWAS and AE2S that stood out as well was the number one. That is how many engineering firms bid on the multimillion dollar project. One firm and one bid. That's incredible for multiple reasons, but probably the most amazing is the fact the state accepted the bid with only one company bidding.

“AE2S wrote the study, they wrote the RFP (request for proposal), they were the only organization to bid on the contract and they are still the beneficiaries of that contract,” Harms said. “When that project (WAWSA) was approved in 2011 and the Western Area Water Supply board made, I think, a tactical mistake to award a contract with only one bid.”

According to Steve Mortensen, president of the Independent Water Providers, as well as many others, AE2S’s involvement with the project is a bit more than the state or WAWSA’s board would have you believe. In fact, Mortenson believes AE2S is the one driving the WAWSA ship in North Dakota.

“There was a group out of Watford City, I believe that is where it all started, and I believe it was driven by an engineering firm AE2S,” Mortenson said. “They wanted to build a water system out here and pay for it with selling water to the oil industry.”

Mortenson continued saying the WAWSA group got together and went to the state legislature, requested \$150M to create a potable water system in the Bakken, but a lack of vision and oversight grew the project to an astounding \$469M.

“This thing just ran amuck,” Mortenson said. “Every January AE2S would come in and ask for another increase. There was never a set increase at the beginning of this project. It was just a charge-as-you-go-project.”

The Crude Life Media Network sent an e-mail to AE2S indicating there were questions about AE2S’s lobbyists, the WAWSA project and requested to interview president Charlie Vein. Not only is Vein AE2S president and co-founder, he is also a registered lobbyist with the state of North Dakota. AE2S declined to comment or participate in the five-part series on WAWSA, citing they are only the “Engineer of Record” and “a technical advisor”.

Furthermore, an e-mail reply from AE2S’s Heather Syverson, marketing specialist, attempted to remove or absolve themselves from responsibility and redirect the conversation away from AE2S. Syverson’s email also omitted if Vein was available or whether he was the proper person to interview and delegate the interview internally within AE2S.

Syverson’s e-mail reads – “John Olson of the Olson Effertz Lobbying and Consulting firm is the registered lobbyist for WAWSA and he would be able to speak to your subject matter. Although, you may want to reach out to Jaret Wirtz, WAWSA Executive Director, as all media inquiries about WAWSA should start with him. AE2S is the Engineer of Record and a technical advisor to WAWSA, so we will defer to Jaret (Wirtz) on matters related to the project.”

A return email was sent informing AE2S that Wirtz had been interviewed (and was our first interview for this story) and asked once again to speak with Charlie Vein regarding WAWSA and AE2S’s lobbyists. Specifically, the email informed Syverson that in addition to Wirtz, conversations were had with WAWSA board members, the State Water Commission, the city of Tioga, several state legislators and some independent water providers. With the exception of Wirtz, AE2S’s name was uttered many times, often as the key influencer on the project. In some cases, as the real captain of the WAWSA ship.

AE2S has not given The Crude Life Media Network any communication or comment on the project since their one single return email on Tuesday May 4, 2017.

With the project over triple the original projection, Wirtz's salary and bonuses are not the only dollars being questioned under the leadership umbrella. AE2S's involvement is being called out by many familiar with WAWSA and its project.

Mortenson, a lifelong Williston resident, said he met with Steve Burian, CEO and CFO, AE2S, about the project, and said Burian couldn't understand why the Independent Water Providers were upset with WAWSA.

"I said Steve – you are the Western Area Water Supply," Mortenson said. "You guys are the ones running the show here. You present everything to the board and it's just yes yes yes yes. It was the engineering firm who totally drove the bus on this thing."

A former WAWSA Board Chairman and a key promoter on the project, North Dakota House Representative Denton Zubke sees it differently when it comes to AE2S.

"When you talk engineering costs in a water project, they will run, and you can look at industry standards, anywhere from 11-to-16-percent," Zubke stated. "When you are talking design and all that process, they are a bit higher when you are talking about just awarding the contract and monitoring that contract for a little bit lower."

Zubke continued his defense of the amount WAWSA has paid AE2S for a the water project – despite the fact it has tripled in cost.

"If we have put \$300-and-some-million in projects in the ground, you are going to have \$40-some-million in engineering costs," Zubke said. "There's just no way around it."

According to the USDA's Rural Development guidelines for engineering fees in regards to rural water projects, a \$100,000 project would suggest a 13% fee. The chart is a sliding scale decreasing the percentage as the project amount increases.

The USDA recommends a 5.6% engineering fee for projects over \$13,470,000, where the WAWSA project would fall into.

For more complex projects, the USDA guidelines can add additional percentage fees for site specific construction (2-to-3%), renovation of existing facilities (2%) and expansion of existing facilities (2-to-3%).

Increasing engineering costs and percentages aside, Mortenson believes the State Water Commission should have consulted with an independent engineering firm during the WAWSA project.

"Talking with Mike Dwyer, who is on the Water Coalition, they should have had an independent engineering group study everything that was presented to the State Water Commission," Mortenson said.

Dwyer is a water law expert with over 37 years specializing in water issues and water projects in North Dakota. Dwyer also has represented the North Dakota Water Users Association, North

Dakota Water Resource Districts Association, the North Dakota Irrigation Association, the Upper Missouri Water Association, the Southwest Water Authority, the Souris River Joint Water Resource Board, and the North Dakota Water Education Foundation.

In addition to questioning why AE2S continues to have engineering carte blanche, Mortenson believes there is another conflict of interest too.

“AE2S being the main engineers of this project, also provide industrial water services to the oil companies, they have another spin off group that is in charge building pipelines for the oil companies,” Mortenson said. “You talk about a conflict of interest.”

AE2S designs and help manage the water system, which is funded in large part by public dollars, they access to help other clients in the oil industry. In essence, they are paid on both ends.

According to AE2S’s website, AE2S also owns affiliated companies AE2S Nexus, AE2S Construction, and AE2S Operations.

Mortenson was quick to point out the number of lobbyists AE2S has on the payroll. According to the Secretary of State’s website, AE2S has eight lobbyists registered with the state of North Dakota, including CEO Steve Burian and president Charlie Vein. Prompting questions and insinuations that there is more tax dollars being used to lobby the state for more tax dollars.

Duane Sand, president, North Star Water, Bismarck, believes using taxpayer money for business and lobbyists to influence lawmakers is a slippery slope that cuts off an official’s access from citizens and focuses their attention on a select number of businesses.

“The guys fly into Bismarck in the AE2S million-dollar Pilatus Airplane, and using taxpayers’ dollars they lobby legislators for more taxpayers dollars or for their clients that compete with taxpayers,” Sand said.

Whether the anecdotal evidence of the who the real captain behind the WAWSA ship is, or Representative Zubke is right that everything is normal, one can question why the WAWSA board would approve such a massive project with only one bidder. Furthermore, questions linger why the WAWSA board of directors would continuing using the current leadership and an engineering firm that could be off by nearly triple the original projection.

And, in a story that has as many questions as answers, the State Legislature, the Water Commission and the Industrial Commission have all neglected to place adequate restrictions on a project that has documented issues paying its bills, with no final WAWSA costs in site.

Archive of the Western Area Water Supply

The following is a timeline drawn from previous email blasts regarding the Western Area Water Supply between 2014 and 2016. Some links may no longer work due to age.



[Dustin Gawrylow](#)

May 1, 2016

Subscribed

Hidden Provision In HB 1020 Allows WAWS To Sell Bonds To The Public To Pay Back Debt To Bank of North Dakota

April 6th, 2016

[Buried in the new Senate version of HB 1020 is a provision that the state of North Dakota is granting the Western Area Water Service \(WAWS\) the ability to sell revenue bonds to the public to pay back its loan obligations to the bank of North Dakota.](#)

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

21. Issue revenue bonds to repay its loan obligations to the Bank of North Dakota and the state water commission.

Who in their right mind would buy bonds from a government entity, knowing that the state of North Dakota wants to get this debt off its own books?

These bonds would bring new literal meaning to the term "under-water" debt.

To make things even more ironic, in Section 8 of the bill, the legislature is allowing the Bank of North Dakota to consolidate the debt of WAWS in order to reduce the payments needed, and also giving a one-year grace period on part of these loan payments.

The State of North Dakota is going out of its way to make things easier for WAWS, and then giving them a new credit card in the form of a new bonding power?

This policy makes no sense. Why let WAWS keep digging deeper in debt to pay back existing debt?

North Dakota has a very good credit rating, what happens if WAWS sells these bonds to pay their loans and can neither pay the loans or the bonds down the road?

It's time to cut off WAWS credit line, force them to end any expansion of industrial sales capacity, study ways to privatize the existing industrial sales capacity, and fund only the part of WAWS that provides domestic water to local residents in their territory.

Stop giving WAWS management more rope, they have not earned it.

Senate Fixes House's Water Tax Mistake

April 5th, 2017

There is some good news regarding the status of the Water Commission Budget (HB 1020) as relates to the House-approved Water (Royalty Tax) .

Reports out of the Senate Appropriations Committee are that the Water (Royalty) Tax on private industrial frack water intended to bail out the Western Area Water Supply (WAWS) will be removed. Also, it sounds like the study to look at privatizing or leasing WAWS infrastructure to private industry will go forward. These are both positive developments.

[According to the amendments passed by the committee](#), there will be \$150,000 spent to study how to privatize the operations of the industrial sales from WAWS so that the domestic functions of WAWS can continue without being a continuous fight with the private sector. The Industrial Commission will be empowered to act on this study prior to the next legislative session in 2019.

This is a positive step forward in re-balancing the market issues surrounding the WAWS project.

Who Will Prevent Future Out Of Control Government Programs?

Earlier this session, [we told you about HB 1162](#), which would have created a study commission in the next two years. The [State Senate did not like that idea giving it only 5 total votes](#), after the House gave it 83 votes of support.

So how do we managing to convince Republicans that government should not be competing with private enterprise so much when such a concept can garner such strong support in the House and hit a brick wall in the Senate?

Who will be advocates of smaller government if having a 38 to 9 Republican super-majority in the Senate is not enough?

There are many culprits in the House that have protected WAWS from Day-One.

But which lawmakers will actually stand up for the things they say they are for during election season?

Subscribed

HB 1020 Amendments Include A Planned Bailout of WAWS

[Redacted]

February 20th, 2017

[Redacted]

In October of 2014, [we declared the Western Area Water Supply \(WAWS\) to be "too big to fail"](#).

Last week, the House Appropriations Committee decided to make it official policy that WAWS is too big to fail.

[In a set of amendments to House Bill 1020](#) (the Water Commission bill), a provision was created that will require the State Water Commission to pay loans on behalf of WAWS if WAWS does not have the money to do so themselves.

SECTION 12. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE SHORTFALL - BUDGET SECTION APPROVAL. If the western area water supply authority defaults in its payment of the principal or interest on the consolidation loan provided for in section 11 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.

Amendment to HB 1020 in the 2017 Legislature

The amendment specifically states that if WAWS cannot pay its loan payments to the Bank of North Dakota, the Water Commission will cover those payments.

In an era of tight budgets, this sort of provision could end up preventing other water projects around the state from being funded

As those who have followed this issue know, [we have long been critical of this project due to the fact it represents a socialistic attack on private business](#) in the way it was supposed to be funded by industrial water sales.

This bailout provision is proof that the state needs to find a way out of the industrial water business.

House Appropriations Committee Approves A New Tax On Water

In 2013, there was an effort in the House to create a Water Extraction Tax targeting private industrial water producers.

There was [considerable push-back on that issue](#).

From the Bismarck Tribune Editorial Board in 2013:

Water is an essential resource in semi-arid North Dakota. An extraction tax on water from aquifers for industrial use needs to be reviewed within the context of the state overall water policies. It also must be seen within the context of the state's energy and economic development policies. Further, it must be weighed in view of a desire to reduce taxes in general.

We need not tax water just because we can.

Now, that idea has reared its head again and is included in amendment approved by the [House Appropriations Committee for HB 1020](#):

Page 2, after line 2, insert:

"SECTION 5. OIL AND GAS INDUSTRY FRESH WATER ROYALTY INCOME - APPROPRIATION - REPORT. In addition to the amounts appropriated in section 1 of this Act, there is appropriated from oil and gas industry fresh water royalty income deposited in the resources trust fund, the sum of \$8,300,000, or so much of the sum as may be necessary, to the state water commission for the purpose of repaying state-guaranteed loans, which were made to entities that sell fresh water to oil and gas industry users, for the biennium beginning July 1, 2017, and ending June 30, 2019. The state water commission shall notify the legislative management's water topics overview committee of any funding made available and payments made pursuant to this section."

In 2013, the plan was to tax water at the same 11.5% rate oil was taxed at.

That was defeated by a vote of 36 Yeas and 57 Nays.

However, that was of course when the state had plenty of money and WAWS was doing fine.

Now, the state is out of money and WAWS is in serious financial trouble.

How Bad Is WAWS Financially?

For the House Appropriations Committee to bring back the idea of a Water Tax (calling it a royalty now) and to write into state law a way for there to be a permanent bailout provision with the Water Commission, the finances of WAWS have to be pretty lousy, and they are.

2015-2017 Biennium						
WAWSA Net Income						
	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15
Revenues	\$1,657,339.28	\$1,522,343.20	\$950,015.20	\$1,207,719.37	\$852,578.66	\$841,109.07
Expenses	\$1,274,408.02	\$1,565,294.34	\$1,214,058.41	\$1,160,249.44	\$796,382.65	\$1,189,996.35
Capital Improvements	\$129,627.32	\$0.00	\$1,200.00	\$0.00	\$0.00	\$0.00
Net Income	\$253,303.94	-\$42,951.14	-\$265,243.21	\$47,469.93	\$56,196.01	-\$348,887.28
Principal Payment #1	\$581,546.07	\$598,004.24	\$592,261.14	\$599,830.30	\$589,553.73	\$0.00
Principal Payment #2	\$0.00	\$250,159.84	\$227,529.88	\$235,458.66	\$222,589.54	\$217,344.52
	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16
Revenues	\$841,541.03	\$806,727.10	\$896,008.43	\$808,541.06	\$765,894.75	\$805,326.87
Expenses	\$1,052,572.34	\$1,014,467.89	-\$132,251.56	\$624,908.50	\$623,821.28	\$626,212.07
Capital Improvements	\$32,400.00	\$41,150.00	\$0.00	\$0.00	\$0.00	-\$17,214.89
Net Income	-\$243,431.31	-\$248,890.79	\$1,028,259.99	\$183,632.56	\$142,073.47	\$196,329.69
Principal Payment #1	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Principal Payment #2	\$225,046.92	\$229,392.82	\$225,588.09	\$231,145.08	\$229,517.02	\$235,922.57
Deferred Expense Asset			\$1,199,946.27	\$399,982.09	\$399,982.09	\$399,982.09
	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16
Revenues	\$1,123,095.21	\$1,478,245.27	\$953,661.00	\$1,004,610.70	\$684,026.06	\$1,259,815.82
Expenses	\$761,055.86	\$907,238.38	\$723,815.56	\$730,272.87	\$675,470.00	\$753,842.15
Capital Improvements	\$7,114.75	\$699.75	\$3,996.50	\$0.00	\$6,186.50	\$0.00
Net Income	\$354,924.60	\$570,307.14	\$225,848.94	\$274,337.83	\$2,369.56	\$505,973.67
Principal Payment #1	\$0.00	\$0.00	\$77,901.00	\$274,923.00	\$5,123.00	\$0.00
Principal Payment #2	\$233,867.20	\$226,110.66	\$232,498.02	\$226,072.54	\$236,427.75	\$244,917.21
Deferred Expense Asset	\$399,982.09	\$399,982.09	\$399,982.09	\$399,982.09	\$399,982.09	\$399,982.09
	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17
Revenues						
Expenses						
Capital Improvements						
Net Income						
Principal Payment #1						
Principal Payment #2						
Deferred Expense Asset						

WAWS has two separate loans with the bank of North Dakota. When the oil was booming, they managed to get ahead of their loans for quite some time, but as the oil markets have cratered and leveled off, the business plan of WAWS has proven to be faulty.

On Loan # 1, there have been 11 out of the last 18 months where WAWS simply paid nothing on the principal of the loan; and 2 more months where less than the "full payment" was made.

On Loan #2, all but 1 month were paid.

But through the wonders of fuzzy government accounting, WAWS booked those missed payments not as "defaulted debt" but as something called a "deferred expense asset".

This would be like if you stop paying your credit cards, let them default, and then call the cash you saved by not paying your bills an "asset".

This is house government financing works.

It would be hilarious if it wasn't the public's money.

Balance Sheet	
Accrual Basis	As of December 31, 2016
	Dec 31, 16
ASSETS	
Current Assets	
Checking/Savings	
BND Industrial Account	275,875.69
Total Checking/Savings	275,875.69
Accounts Receivable	
Accounts Receivable	2,263,357.95
Total Accounts Receivable	2,263,357.95
Other Current Assets	
Allowance for Bad Debts	-112,425.00
Deferred Expense	4,799,780.00
Total Other Current Assets	4,687,355.00
Total Current Assets	7,226,588.64
TOTAL ASSETS	7,226,588.64
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	5,441,278.91
Total Accounts Payable	5,441,278.91
Total Current Liabilities	5,441,278.91
Total Liabilities	5,441,278.91
Equity	
Loan Transfer	-25,685,290.63
Net Position	24,478,865.01
Net Income	2,991,735.35
Total Equity	1,785,309.73
TOTAL LIABILITIES & EQUITY	7,226,588.64

Also on the subject of fuzzy accounting, according to the balance sheet of WAWS, they broke even because they list "deferred expenses" as an asset.

Again, when you charge up your credit card, you too are deferring expenses.

You call that "debt", WAWS calls that an "asset".

It is little wonder that WAWS needs a bailout at this point.

What Should Happen?

2016 WAWSA Revenues									
	January	February	March	April	May	June	July	August	September
Williston - 2nd Street Fill Station Cold Water	\$162,758.74	\$159,032.00	\$179,054.92	\$170,410.72	\$130,544.76	\$132,528.48	\$128,097.78	\$140,145.66	\$100,361.12
Williston - 2nd Street Fill Station Hot Water	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Direct Connection	\$84,840.00	\$94,920.00	\$102,480.00	\$96,600.00	\$102,480.00	\$96,600.00	\$95,760.00	\$225,160.65	\$37,551.65
N Williston Fill Station Cold	\$43,604.80	\$37,123.36	\$51,254.68	\$44,277.12	\$47,178.50	\$50,384.50	\$49,129.60	\$40,611.66	\$37,277.12
N Williston Fill Station Hot	\$25,296.60	\$91,380.24	\$62,312.88	\$39,552.24	\$18,638.68	\$3,450.72	\$4,118.52	\$840.00	\$60,000.00
Total City of Williston	\$316,500.14	\$382,455.60	\$395,102.48	\$350,840.08	\$299,041.94	\$282,963.70	\$277,105.90	\$406,757.97	\$175,800.00
McKenzie County WRD - Alexander	\$81,075.46	\$60,060.64	\$80,293.44	\$55,285.00	\$55,925.02	\$67,069.12	\$80,497.88	\$97,687.10	\$72,741.12
McKenzie County WRD - Direct Connections	\$55,449.16	\$25,883.20	\$26,657.80	\$43,619.32	\$35,466.26	\$36,140.86	\$177,365.11	\$586,441.28	\$265,181.12
McKenzie County WRD - Indian Hills	\$66,902.42	\$59,670.16	\$74,006.42	\$73,698.84	\$76,566.92	\$69,599.28	\$62,359.32	\$59,136.20	\$51,477.12
McKenzie County WRD - Keene	\$65,961.60	\$46,976.00	\$57,966.40	\$63,751.20	\$60,419.20	\$39,609.12	\$72,120.48	\$67,695.64	\$55,961.12
McKenzie County Watford City Cold	\$113,424.80	\$131,051.12	\$146,091.92	\$114,576.72	\$123,547.84	\$156,428.32	\$116,712.96	\$133,962.40	\$93,611.12
McKenzie County Watford City Hot	\$58,563.80	\$16,235.72	\$11,953.20	\$2,750.64	\$4,708.32	\$1,284.56	\$10.72	\$0.00	\$0.00
Total McKenzie County WRD Sales	\$441,377.24	\$339,876.84	\$396,969.18	\$353,681.72	\$356,633.56	\$370,131.76	\$509,066.47	\$944,922.62	\$538,977.12
R&T Water Supply Commerce - Stanley	\$6,284.70	\$10,047.76	\$9,658.36	\$11,554.72	\$11,337.92	\$14,152.66	\$8,484.74	\$10,129.98	\$6,931.12
Direct Connection	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total R&T Water Commerce Sales	\$6,284.70	\$10,047.76	\$9,658.36	\$11,554.72	\$11,337.92	\$14,152.66	\$8,484.74	\$10,129.98	\$6,931.12
Williams Rural Water District - 13 Mile	\$51,720.64	\$39,976.80	\$48,665.10	\$49,411.96	\$48,180.58	\$56,312.02	\$53,320.20	\$59,550.78	\$52,601.12
Direct Connection	\$23,060.00	\$33,220.00	\$42,200.00	\$40,900.00	\$41,460.00	\$80,580.00	\$273,820.00	\$55,780.00	\$176,131.12
Total Williams Rural Water District Sales	\$74,780.64	\$73,196.80	\$90,865.10	\$90,311.96	\$89,640.58	\$136,892.02	\$327,140.20	\$115,330.78	\$228,732.24
Total Industrial Water Sales	\$838,942.72	\$805,577.00	\$892,595.12	\$806,388.48	\$756,654.00	\$804,139.64	\$1,121,797.31	\$1,477,141.35	\$950,450.00
Other Income	\$2,598.31	\$1,150.10	\$3,413.31	\$2,152.58	\$9,240.75	\$1,187.23	\$1,297.90	\$1,103.92	\$3,201.12
Total	\$841,541.03	\$806,727.10	\$896,008.43	\$808,541.06	\$765,894.75	\$805,326.87	\$1,123,095.21	\$1,478,245.27	\$953,651.12

The legislature needs to find a way to phase WAWS out of the industrial water business. What was to be a cash-cow is now a loss-leader for the state.

An analysis of the revenues by location for industrial water sales shows that when the oil business is having trouble, WAWS as a business cannot manage the market.

An effort needs to be made to find a way to privatize the management of these facilities to the private sector.

How that would work is yet to be determined.

House Passes Tax On Private Frack Water Suppliers

February 22nd, 2017

Page 2, after line 2, insert:

"SECTION 5. OIL AND GAS INDUSTRY FRESH WATER ROYALTY INCOME - APPROPRIATION - REPORT. In addition to the amounts appropriated in section 1 of this Act, there is appropriated from oil and gas industry fresh water royalty income deposited in the resources trust fund, the sum of \$8,300,000, or so much of the sum as may be necessary, to the state water commission for the purpose of repaying state-guaranteed loans, which were made to entities that sell fresh water to oil and gas industry users, for the biennium beginning July 1, 2017, and ending June 30, 2019. The state water commission shall notify the legislative management's water topics overview committee of any funding made available and payments made pursuant to this section."

In a move that defies all campaign promises, House Republicans voted to impose a newly invented tax on private businesses that provide water for the oil industry to frack oil.

Why? Because the [Republican's own socialist frack water supplier](#) is hurting due to a poorly designed business model that did not factor in economic changes and challenges.

Dissenting Votes

Republicans



Democrats



How did Republicans find themselves voting for a tax increase?

The Republican controlled House Appropriations Committee [hid this tax increase in the Water Commission Budget](#) (which is a must pass bill).

By putting this tax into the Water Commission Budget, Republicans leadership put their own members in a very bad position by saying "if you do not vote for this new tax, you are voting against the Fargo diversion and against all other water projects in the state."

This is not a great way to treat your own people when it comes to politics.

It was as set-up.



Voting Record

HB 1020 had 13 votes in opposition to the creation of the tax.

Even the leader of the House Democratic Party, Corey Mock spoke on the need to remove the tax policy from the water commission budget bill.

SECTION 12. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE SHORTFALL - BUDGET SECTION APPROVAL. If the western area water supply authority defaults in its payment of the principal or interest on the consolidation loan provided for in section 11 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.

Punishing Private Enterprise For Government Mistakes

By creating this new water tax, and the attached bailout for the Western Area Water Supply, Republicans are punishing the private businesses who have been forced to compete with the government-backed Western Area Water Supply and forcing those specific private businesses to bailout their own competition.

How would you like to run a business, have your government decide to start competing with your business, then when their business starts to fail, demand that you pay to bail them out?

Tax Breaks For Oil, and Tax Increases For Frack Water Companies

Another great irony of this development is that over the last two bienniums, the legislature has gone out of its way to cut oil taxes.

Now, to fill a budget gap caused by putting government in competition with the private sector, they will now be levying a special targeted tax on the businesses providing water for the oil industry.

If the Senate passes this bill the way it is, even though it is called a "royalty" it very well could be the first Value Added Tax in North Dakota.

As a tax on an input cost (frack water) rather than a tax on the final product (produced oil).

This would not be a good direction for state fiscal policy, or for the oil industry itself.

Effort to Separate Tax and Bailout Blocked

There was an effort by a group of conservative legislators (those who did vote against the bill) to remove the water tax and the WAWS bailout from the bill by "dividing the bill".

House leadership put a stop to that effort.

Those who voted for the bill are not responsible for their leadership setting them up this way. But make no mistake, Republican House Leadership did set their own members up to be forced to vote for a tax increase.

This leadership issue is one that that House Republicans must deal with on their own. No one else can save them when leadership sets them up.

Subscribed

HB 1020 Amendments Include A Planned Bailout of WAWS

February 20th, 2017

In October of 2014, [we declared the Western Area Water Supply \(WAWS\) to be "too big to fail"](#).

Last week, the House Appropriations Committee decided to make it official policy that WAWS is too big to fail.

[In a set of amendments to House Bill 1020](#) (the Water Commission bill), a provision was created that will require the State Water Commission to pay loans on behalf of WAWS if WAWS does not have the money to do so themselves.

SECTION 12. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE SHORTFALL - BUDGET SECTION APPROVAL. If the western area water supply authority defaults in its payment of the principal or interest on the consolidation loan provided for in section 11 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.

Amendment to HB 1020 in the 2017 Legislature

The amendment specifically states that if WAWS cannot pay its loan payments to the Bank of North Dakota, the Water Commission will cover those payments.

In an era of tight budgets, this sort of provision could end up preventing other water projects around the state from being funded

As those who have followed this issue know, [we have long been critical of this project due to the fact it represents a socialistic attack on private business](#) in the way it was supposed to be funded by industrial water sales.

This bailout provision is proof that the state needs to find a way out of the industrial water business.

House Appropriations Committee Approves A New Tax On Water

In 2013, there was an effort in the House to create a Water Extraction Tax targeting private industrial water producers.

There was [considerable push-back on that issue](#).

From the Bismarck Tribune Editorial Board in 2013:

Water is an essential resource in semi-arid North Dakota. An extraction tax on water from aquifers for industrial use needs to be reviewed within the context of the state overall water policies. It also must be seen within the context of the state's energy and economic development policies. Further, it must be weighed in view of a desire to reduce taxes in general.

We need not tax water just because we can.

Now, that idea has reared its head again and is included in amendment approved by the [House Appropriations Committee for HB 1020](#):

Page 2, after line 2, insert:

"SECTION 5. OIL AND GAS INDUSTRY FRESH WATER ROYALTY INCOME - APPROPRIATION - REPORT. In addition to the amounts appropriated in section 1 of this Act, there is appropriated from oil and gas industry fresh water royalty income deposited in the resources trust fund, the sum of \$8,300,000, or so much of the sum as may be necessary, to the state water commission for the purpose of repaying state-guaranteed loans, which were made to entities that sell fresh water to oil and gas industry users, for the biennium beginning July 1, 2017, and ending June 30, 2019. The state water commission shall notify the legislative management's water topics overview committee of any funding made available and payments made pursuant to this section."

In 2013, the plan was to tax water at the same 11.5% rate oil was taxed at.

That was defeated by a vote of 36 Yeas and 57 Nays.

However, that was of course when the state had plenty of money and WAWS was doing fine.

Now, the state is out of money and WAWS is in serious financial trouble.

How Bad Is WAWS Financially?

For the House Appropriations Committee to bring back the idea of a Water Tax (calling it a royalty now) and to write into state law a way for there to be a permanent bailout provision with the Water Commission, the finances of WAWS have to be pretty lousy, and they are.

2015-2017 Biennium						
WAWSA Net Income						
	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15
Revenues	\$1,657,339.28	\$1,522,343.20	\$950,015.20	\$1,207,719.37	\$852,578.66	\$841,109.07
Expenses	\$1,274,408.02	\$1,565,294.34	\$1,214,058.41	\$1,160,249.44	\$796,382.65	\$1,189,996.35
Capital Improvements	\$129,627.32	\$0.00	\$1,200.00	\$0.00	\$0.00	\$0.00
Net Income	\$253,303.94	-\$42,951.14	-\$265,243.21	\$47,469.93	\$56,196.01	-\$348,887.28
Principal Payment #1	\$581,546.07	\$598,004.24	\$592,261.14	\$599,830.30	\$589,553.73	\$0.00
Principal Payment #2	\$0.00	\$250,159.84	\$227,529.88	\$235,458.66	\$222,589.54	\$217,344.52
	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16
Revenues	\$841,541.03	\$806,727.10	\$896,008.43	\$808,541.06	\$765,894.75	\$805,326.87
Expenses	\$1,052,572.34	\$1,014,467.89	-\$132,251.56	\$624,908.50	\$623,821.28	\$626,212.07
Capital Improvements	\$32,400.00	\$41,150.00	\$0.00	\$0.00	\$0.00	-\$17,214.89
Net Income	-\$243,431.31	-\$248,890.79	\$1,028,259.99	\$183,632.56	\$142,073.47	\$196,329.69
Principal Payment #1	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Principal Payment #2	\$225,046.92	\$229,392.82	\$225,588.09	\$231,145.08	\$229,517.02	\$235,922.57
Deferred Expense Asset			\$1,199,946.27	\$399,982.09	\$399,982.09	\$399,982.09
	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16
Revenues	\$1,123,095.21	\$1,478,245.27	\$953,661.00	\$1,004,610.70	\$684,026.06	\$1,259,815.82
Expenses	\$761,055.86	\$907,238.38	\$723,815.56	\$730,272.87	\$675,470.00	\$753,842.15
Capital Improvements	\$7,114.75	\$699.75	\$3,996.50	\$0.00	\$6,186.50	\$0.00
Net Income	\$354,924.60	\$570,307.14	\$225,848.94	\$274,337.83	\$2,369.56	\$505,973.67
Principal Payment #1	\$0.00	\$0.00	\$77,901.00	\$274,923.00	\$5,123.00	\$0.00
Principal Payment #2	\$233,867.20	\$226,110.66	\$232,498.02	\$226,072.54	\$236,427.75	\$244,917.21
Deferred Expense Asset	\$399,982.09	\$399,982.09	\$399,982.09	\$399,982.09	\$399,982.09	\$399,982.09
	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17
Revenues						
Expenses						
Capital Improvements						
Net Income						
Principal Payment #1						
Principal Payment #2						
Deferred Expense Asset						

WAWS has two separate loans with the bank of North Dakota. When the oil was booming, they managed to get ahead of their loans for quite some time, but as the oil markets have cratered and leveled off, the business plan of WAWS has proven to be faulty.

On Loan # 1, there have been 11 out of the last 18 months where WAWS simply paid nothing on the principal of the loan; and 2 more months where less than the "full payment" was made.

On Loan #2, all but 1 month were paid.

But through the wonders of fuzzy government accounting, WAWS booked those missed payments not as "defaulted debt" but as something called a "deferred expense asset".

This would be like if you stop paying your credit cards, let them default, and then call the cash you saved by not paying your bills an "asset".

This is house government financing works.

It would be hilarious if it wasn't the public's money.

Balance Sheet	
Accrual Basis	As of December 31, 2016
	Dec 31, 16
ASSETS	
Current Assets	
Checking/Savings	
BND Industrial Account	275,875.69
Total Checking/Savings	275,875.69
Accounts Receivable	
Accounts Receivable	2,263,357.95
Total Accounts Receivable	2,263,357.95
Other Current Assets	
Allowance for Bad Debts	-112,425.00
Deferred Expense	4,799,780.00
Total Other Current Assets	4,687,355.00
Total Current Assets	7,226,588.64
TOTAL ASSETS	7,226,588.64
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	5,441,278.91
Total Accounts Payable	5,441,278.91
Total Current Liabilities	5,441,278.91
Total Liabilities	5,441,278.91
Equity	
Loan Transfer	-25,685,290.63
Net Position	24,478,865.01
Net Income	2,991,735.35
Total Equity	1,785,309.73
TOTAL LIABILITIES & EQUITY	7,226,588.64

Also on the subject of fuzzy accounting, according to the balance sheet of WAWS, they broke even because they list "deferred expenses" as an asset.

Again, when you charge up your credit card, you too are deferring expenses.

You call that "debt", WAWS calls that an "asset".

It is little wonder that WAWS needs a bailout at this point.

What Should Happen?

2016 WAWSA Revenues									
	January	February	March	April	May	June	July	August	September
Williston - 2nd Street Fill Station Cold Water	\$162,758.74	\$159,032.00	\$179,054.92	\$170,410.72	\$130,544.76	\$132,528.48	\$128,097.78	\$140,145.66	\$100,361.12
Williston - 2nd Street Fill Station Hot Water	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Direct Connection	\$84,840.00	\$94,920.00	\$102,480.00	\$96,600.00	\$102,480.00	\$96,600.00	\$95,760.00	\$225,160.65	\$37,551.12
N Williston Fill Station Cold	\$43,604.80	\$37,123.36	\$51,254.68	\$44,277.12	\$47,178.50	\$50,384.50	\$49,129.60	\$40,611.66	\$37,271.12
N Williston Fill Station Hot	\$25,296.60	\$91,380.24	\$62,312.88	\$39,552.24	\$18,638.68	\$3,450.72	\$4,118.52	\$840.00	\$60,000.00
Total City of Williston	\$316,500.14	\$382,455.60	\$395,102.48	\$350,840.08	\$299,041.94	\$282,963.70	\$277,105.90	\$406,757.97	\$175,800.00
McKenzie County WRD - Alexander	\$81,075.46	\$60,060.64	\$80,293.44	\$55,285.00	\$55,925.02	\$67,069.12	\$80,497.88	\$97,687.10	\$72,741.12
McKenzie County WRD - Direct Connections	\$55,449.16	\$25,883.20	\$26,657.80	\$43,619.32	\$35,466.26	\$36,140.86	\$177,365.11	\$586,441.28	\$265,181.12
McKenzie County WRD - Indian Hills	\$66,902.42	\$59,670.16	\$74,006.42	\$73,698.84	\$76,566.92	\$69,599.28	\$62,359.32	\$59,136.20	\$51,471.12
McKenzie County WRD - Keene	\$65,961.60	\$46,976.00	\$57,966.40	\$63,751.20	\$60,419.20	\$39,609.12	\$72,120.48	\$67,695.64	\$55,961.12
McKenzie County Watford City Cold	\$113,424.80	\$131,051.12	\$146,091.92	\$114,576.72	\$123,547.84	\$156,428.32	\$116,712.96	\$133,962.40	\$93,611.12
McKenzie County Watford City Hot	\$58,563.80	\$16,235.72	\$11,953.20	\$2,750.64	\$4,708.32	\$1,284.56	\$10.72	\$0.00	\$0.00
Total McKenzie County WRD Sales	\$441,377.24	\$339,876.84	\$396,969.18	\$353,681.72	\$356,633.56	\$370,131.26	\$509,066.47	\$944,922.62	\$538,971.12
R&T Water Supply Commerce - Stanley	\$6,284.70	\$10,047.76	\$9,658.36	\$11,554.72	\$11,337.92	\$14,152.66	\$8,484.74	\$10,129.98	\$6,931.12
Direct Connection	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total R&T Water Commerce Sales	\$6,284.70	\$10,047.76	\$9,658.36	\$11,554.72	\$11,337.92	\$14,152.66	\$8,484.74	\$10,129.98	\$6,931.12
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Direct Connection	\$23,060.00	\$33,220.00	\$42,200.00	\$40,900.00	\$41,460.00	\$80,580.00	\$273,820.00	\$55,780.00	\$176,131.12
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Other Income	\$2,598.31	\$1,150.10	\$3,413.31	\$2,152.58	\$9,240.75	\$1,187.23	\$1,297.90	\$1,103.92	\$3,201.12
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The legislature needs to find a way to phase WAWS out of the industrial water business. What was to be a cash-cow is now a loss-leader for the state.

An analysis of the revenues by location for industrial water sales shows that when the oil business is having trouble, WAWS as a business cannot manage the market.

An effort needs to be made to find a way to privatize the management of these facilities to the private sector.

How that would work is yet to be determined.

Subscribed

January 13th, 2016

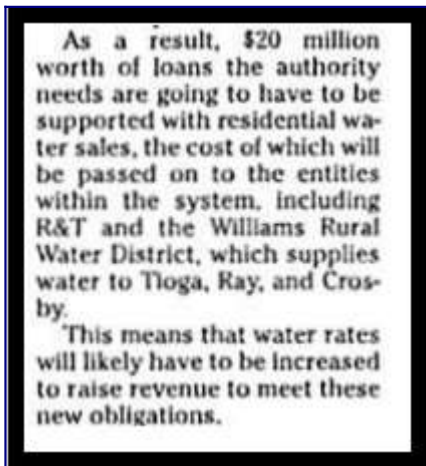
The WAWS Bailout Begins

Residential and domestic water users are already being asked to pay more despite the fact WAWS was intended to focus on them first. Of course, this shortfall is not stopping WAWS from granting its executive director hefty bonuses.



Those who have been [following the saga of WAWS](#) have known for quite some time that the project was based precariously on oil activities [propping up the socialistic state financed project](#).

Now comes word that, despite pre-paying several months of its loans to the Bank of North Dakota during the good times, [WAWS will need more money from local communities and local residents to cover the costs of the loans](#).



At the last Tioga commission meeting, Mayor Drake McClelland said the Western Area Water Supply Authority is taking away the city's revenue from industrial water sales.

"The bottom line? WAWSA is having trouble meeting their notes," McClelland told the commission.

The revenues account for about \$80,000 a month, McClelland said.

As a result of the lost revenue, the city is freezing promotions of employees, eliminating a planned cost-of-living raise this year, and restricting overtime to emergencies only.

[...]

Jaret Wirtz, executive director of WAWSA, said the state is reluctant to guarantee as great a portion of the loans as industrial sales plummet.

As a result, \$20 million worth of loans the authority needs are going to have to be supported with residential water sales, the cost of which will be passed on to the entities within the system, including R&T and the Williams Rural Water District, which supplies water to Tioga, Ray, and Crosby.

This means that water rates will likely have to be increased to raise revenue to meet these new obligations.

It is ironic that a project designed to provide domestic and resident by selling water to the oil companies for fracking now has to charge domestic users more due to the lack of industrial sales.

Perhaps the focus should have been on simply building the domestic and residential system first, and take on industrial sales along the way?

Oh wait, that was how it was sold to the legislature!

But that is not what has been happening.

Maybe they were just too busy misleading the State Industrial Commission to focus on getting water to people?

Or perhaps instead of trying to push private enterprise out of the way, they should have focused on providing services.

Employee Compensation

First quarter employee bonus evaluations have taken place. Chairman Owan recommended a 10% 1st quarter bonus for Executive Director Jaret Wirtz. **Rust moved to give Wirtz a 10% 1st quarter bonus based on Chairman Owan's recommendation, Veeder seconded.**

AYES: Liesener, Brandt, Brostuen, Rust (also voting for Anderson), Koeser, Veeder (also voting for Zubke), Owan
NAY: 0
CARRIED: 9-0

Employee Compensation

Second quarter employee bonus evaluations have taken place. Chairman Owan recommended a 10% 2nd quarter bonus for Executive Director Jaret Wirtz. **Veeder moved to give Wirtz a 10% 2nd quarter bonus based on Chairman Owan's recommendation, Zubke seconded.**

Employee Compensation

Third quarter employee bonus evaluations have taken place. Chairman Owan recommended a 10% 3rd quarter bonus for Executive Director Jaret Wirtz. **Zubke moved to give Wirtz a 10% 3rd quarter bonus based on Chairman Owan's recommendation, Haake seconded**

AYES: Brostuen, Veeder, Liesener, Koeser, Rust (also voting for Anderson), Zubke, Haake, Owan
NAY: 0
CARRIED: 9-0

In either case, the public is now being asked to pay more for a project the state already funded.

So what is the response of WAWS to this shortfall?

Salary bonuses!

That's right, instead of cutting back and tightening their budgets like the cities of Tioga, Crosby, and Ray have to do - WAWS's board is giving their executive direct regular quarterly bonuses.

For the [First](#), [Second](#), and [Third](#) Quarters of 2015 the executive director of WAWS received 10% bonuses - all for watching oil prices and [WAWS revenue fall through the floor](#).

Let's not forget, WAWS is a state-financed and state-regulated entity - it is not a business. It certainly isn't managed like a business, and will always have the ability to charge users and communities more. The industrial component of WAWS has failed because the industrial portion of the project was over-built, now the people that were supposed to benefit for it are going to be paying more.

The promises of WAWS are now being shown to be empty.

March 25th, 2015

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House Kills WAWS Reforms; Supports Unrestrained Socialist Program

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Yesterday, the North Dakota House of Representatives overwhelmingly voted AGAINST moderate reforms to reign WAWS in that [even the Senate supported](#).

By a vote of [78 against and 12 in favor](#), the House defeated Senate Bill 2336 that simply would have allowed PRIVATE businesses who compete with the government (WAWS) to know when the government (WAWS) intends to going into a contractual agreement with a private oil company, and give PRIVATE companies a week to file comments with the State Water Commission. The goal of this was to allow PRIVATE companies, which create jobs and pay taxes the courtesy of knowing when and where the government (WAWS) intends to compete with them.

In the end, this was a vote AGAINST TRANSPARENCY. The bill did not do anything except create a process by which the government would communicate with private business, and give private business a chance to reply with how the government's actions might impact them - or give the private business the chance to determine and state whether the private business was better suited than the government (WAWS).

Also, the House killed Senate Bill 2361 ([by a vote of 76 against and 14 in favor](#)) which [would have restricted WAWS from using Eminent Domain to build water pipelines solely for the use of the oil industry](#).

The great irony of the WAWS debate is that it truly is a socialist program by which the government compete with the very businesses that pay taxes to fund the government. It was a mistake for the legislature to create this monster, instead, it should have simply spent the money needed to get good water to people living in the Bakken.

With the decline of the oil industry, [and the number of oil rigs right at 100](#) and expected to decline further, private water businesses are forced to compete with their own government.

It's a scenario that, [if Obama had pushed the idea](#), Republicans would be screaming about. But because it is a type of socialism that Republicans want to take credit for, everything is just hunky dorry.

It's one of the most blatantly obvious cases of governmental hypocrisy that exists in a state run by Republicans that like to claim they are conservative.

The reality is, North Dakota Republicans support socialism when they can take credit for it.

Subscribed

March 17th, 2015

Industrial Commission Opposes WAWS Reform Bills

Since [last month's update on the WAWS Reform effort](#), the Senate overwhelmingly approved both bills that were introduced to start the process of reining in the Western Area Water Supply Authority.

[Senate Bill 2336](#) creates and requires WAWS to use a notification process to simply let private sector industrial water sellers know when and where WAWS intends to compete with the private sector. It gives private water sellers 7-days to review and respond, and requires the state water commission to make a ruling based on the input from private water sellers and WAWS' basis for the project.

[SB 2336 passed by a vote of 35-11.](#)

[Senate Bill 2361](#) was originally designed to restrict WAWS to using eminent domain only to provide water to residents (on farms and in towns) for domestic every-day use such as drinking and cleaning. It would have prevented WAWS from using eminent domain for the purposes of providing fracking water to the oil companies.

[SB 2361 passed by a vote of 40-6.](#)

These reforms are nowhere near what is needed to rein WAWS in – they represent a small step – but even though they are not huge reforms, WAWS and its member organizations are throwing all their lobbying power against them.

Last week, the House Energy and Natural Resources Committee heard testimony on both SB 2336 and SB 2361.

While most of the testimony on both sides was as expected, one development that did raise a few eyebrows was the quick declaration by Karlene Fine in her role as Executive Director of the North Dakota Industrial Commission, that the Commission opposes both SB 2336 and SB 2361. Since the commission is comprised of the Governor, Attorney General, and Agriculture Commissioner it means that at least two of the three members are fine with WAWS operating with little to no protection provided to landowners or private sector competition.

Last November in our WAWS update, we asked the question: "[Is WAWS Pulling A Fast One On The Industrial Commission?](#)"

At that time we pointed out that the management of WAWS was telling the Industrial Commission one thing, and the oil industry trade magazine media another thing when it came to increased need for water storage:

According to [August 26th, 2014 Bismarck Tribune's Bakken Breakout section](#), the storage was sold to the industrial commission as a means of stabilizing the supply for public (non-industrial):

"(Jaret) Wirtz (executive director of WAWS) said providing water for domestic use is the priority of the WAWS system. Excess water is being sold at water depots to the oil and gas industry to pay off the cost of the project."

But that is a slightly different message that is being sent to the oil industry itself.

According to [a September 3rd, 2014 story in The Bakken Magazine](#), the message is that this storage is primarily for the purpose of stabilizing the availability of water for the oil industry.

"This will help us to satisfy our customers' needs and keep our industrial customers happy with the water they're receiving in the volumes they're requesting," said Jaret Wirtz, WAWSA executive director.

[...]

The lack of storage capacity on the south side of WAWSA's system has caused some shortages for industrial users in McKenzie County.

"The limited amount of storage has affected numerous slowdowns in sales," Wirtz explained. "The additional storage will limit the number of slowdowns and shutoffs we could potentially incur."

Apparently, the State Industrial Commission does not really care that WAWS's officials are regularly speaking out of both sides of their mouths. Nor does it seem to care that this difference in messages could be interpreted as deception.

Perhaps the State House [which voted 61-27 on House Bill 1187](#) to significantly reduce the Industrial Commission's rule-making powers will take issue with the Industrial Commission trying to interfere with the legislature's on-going work.

Subscribed

February 17th, 2015

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Senate To Vote On WAWS Reforms

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Over the past few years, I have written about the WAWS Project and how it has, like many government subsidized projects, has become a bully and operates with essentially no oversight.

[\(For a background on WAWS click here.\)](#)

Two reforms will be voted on by the State Senate this week:

[Senate Bill 2336](#) creates and requires WAWS to use a notification process to simply let private sector industrial water sellers know when and where WAWS intends to compete with the private sector. It gives private water sellers 7-days to review and respond, and requires the state water commission to make a ruling based on the input from private water sellers and WAWS' basis for the project.

This is [a very watered down \(pun intended\) version compared to what was originally introduce.](#)

The [Senate Industry Business and Labor Committee amended the bill](#) to be less restrictive on WAWS' ability to meet their debt payment schedule with the Bank of North Dakota.

While it does not really give private water sellers a huge victory, at least now the private sector will know where the government is taking business away from the private sector.

[Senate Bill 2361](#) was originally designed to restrict WAWS to using eminent domain only to provide water to residents (on farms and in towns) for domestic every-day use such as drinking and cleaning. It would have prevented WAWS from using eminent domain for the purposes of providing fracking water to the oil companies.

SB 2361 was also amended way down to the point where WAWS cannot use eminent domain “solely” for industrial purposes. This leaves a gaping hole that allows WAWS to use eminent domain 99% for the benefit of oil companies –as long as a few people get some water.

As amended, SB 2361 would do little to stop WAWS from abusing its eminent domain by threatening landowners. Considering **North Dakota has one of the strictest protections on eminent domain**, allowing WAWS to slap landowners with threats to use the power is just kind of sad.

(Note: these amendments by the committee were made in their attempt to get something that could pass the Senate at large. They were not made with any ill intent against the private sector businesses that brought the legislation forward. The Senate IBL committee tried its best to facilitate something that both sides could live with.)

These reforms are nowhere near what is needed to rein WAWS in – they represent a small step – but even though they are not huge reforms, WAWS and its member organizations are throwing all their lobbying power against them.

See, not only do private sector businesses have to compete with WAWS, and pay tax money into the state general fund via income and sales tax, but they also have to compete with lobbyists from WAWS, the members of WAWS, and the engineering firm that has made upwards of \$25 million from the WAWS project.

WAWS gets to take taxpayer dollars and lobby against taxpayers who don't like that their tax dollars are being used to compete with them and their businesses. All in the name of providing big oil companies with cheap, taxpayer subsidized water.

A pretty sweet deal for WAWS and their contractors!

In the long run, when there are fewer private water sellers in business it won't be such a good deal for the oil companies.

Not so good for the private sector businesses that have to compete with WAWS while paying into the state coffers.

Hopefully, the Senate will see the need for their basic and minimal reforms and not give in to the taxpayer funded lobbyists roaming the halls of the capital fighting against the private sector.

[Click here to urge your legislators to create oversight and transparency with regard to WAWS.](#)

Subscribed

November 6th, 2014

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Is WAWS Pulling A Fast One On The Industrial Commission?



Last week [we alerted you to the Western Area Water Supply's \(WAWS\) plans to increase its scope and budget to levels that are so high](#) the legislature will be stuck funding what amounts to little more than a subsidy to the oil industry into perpetuity.

Much of the oversight of WAWS currently held by the State Industrial Commission (comprised of the Governor, the Attorney General, and the Agriculture Commissioner).

In September, the Industrial Commission approved a \$2 million project to add storage capacity to the water system.

[According to Bismarck Tribune's Bakken Breakout section](#), the storage was sold to the industrial commission as a means of stabilizing the supply for public (non-industrial):

"(Jaret) Wirtz (executive director of WAWS) said providing water for domestic use is the priority of the WAWS system. Excess water is being sold at water depots to the oil and gas industry to pay off the cost of the project."

But that is a slightly different message that is being sent to the oil industry itself.

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"The limited amount of storage has affected numerous slowdowns in sales," Wirtz explained. "The additional storage will limit the number of slowdowns and shutoffs we could potentially incur."

From Day 1, WAWS was sold to the legislature as a way to pay for residential and public water by selling water to the oil industry on the side. Along the way, rather quickly, the "on the side" part became the primary concern.

The Industrial Commission is in charge of approving the Bank of North Dakota loans that the legislature will be on the hook for if the WAWS business model fails to deliver as promised.

How much money will it take [to ensure that WAWS does not fail?](#)

If the system has a storage capacity issue, it means that the domestic and residential demands are higher than estimated, and that more of the money needs to be directed to that purpose - not propping up the industrial supply side of the project.

The Industrial Commission needs to start looking at this project with a critical eye, and legislators must demand that the Industrial Commission hold WAWS to fulfilling its original mission of providing water to the public - and worry about providing the oil industrial with water AFTER the public's needs are met.

If WAWS cannot fulfill the public water needs, it has no business competing with private businesses for fulfilling the oil industries needs.

Lastly, the Industrial Commissioner should question WAWS's representatives on why there seems to be a difference in the message being told the Industrial Commission and the message being made through public relations efforts to the oil industry.

It has the appearance of trying to mislead the Industrial Commission.

Subscribed

October 28th, 2014

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Is WAWS "too big to fail"?

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Over the last few months, we've tried to bring to your attention a state government project that has far exceeded its original scope.

Today, the latest article regarding the Western Area Water Supply Authority (WAWS) raises the question of whether there is any hope to reining in a project designed to provide water for residents, but has instead focused primarily on competing with private industrial water providers.

According to the article in the Bismarck Tribune's Bakken breakout, the project backers are already planning to expand this project to nearly a half billion dollars:

The Western Area Water Supply Authority was originally a \$150 million regional water supply project approved during the 2011 session. A total of \$110 million was provided at that time through a Bank of North Dakota loan. The authority was to come back in 2013 for the remaining \$40 million.

In 2013, lawmakers approved the final \$40 million along with an additional \$79 million to be used for more rural water projects planned as part of the build-out.

Wirtz said, beyond the 2015-17 funding request, additional requests anticipated over the following two biennia put the total project cost at about \$460.5 million.

We know that the vast majority of the water being sold is going to industrial water sales for use as fracking water. These are sales that, in a free-market system, as one would expect North Dakota Republicans to support, that should be supplied by the private sector.

Before legislators accept the track this project is on, they should demand that a study of whether this is impacting the long term sustainability of the private industrial water sales. If the state is going to massively expand a new socialist state-owned and managed industry, then the public deserves to know what the impact on private businesses will be.

The public also deserves to know what WAWS will do to protect itself from competition in the future.

Will they try to tax private water sales, as they attempted in 2013?

That idea was defeated by only 12 votes in a Republican dominated House.

Will they try to create exclusive zones where only state-socialized industry can exist, as they tried in 2013?

The state, via direct funding and loan guarantees, is banking heavily on this project, and the public deserves to know how far the state will go to protect it - before it goes there.

August 1st, 2014

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Is WAWS A Quarter-Billion Dollar Boondoggle?

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Last week I told you about how the Western Area Water Supply Authority, state-funded project, could be costing the residents of Williston more in the form of higher taxes and water rates by not reimbursing the City of Williston enough to offset the strain on the city's infrastructure.

The demand on the City of Williston's water system has been predominately from WAWS's demand for water to sell to the oil industry.

From 2010 to 2013, the demand for water from the city's residents has increased 88% while the demand for industrial water has increased by nearly 900%!

The response that many people had via email replies to that news is summed up like this:

“That would be really silly if the state is funding a project that is ripping off local taxpayers in Williston, but why is the state competing with private North Dakota businesses and selling water to the oil companies in the first place? The oil companies can afford it, aren’t we (the taxpayers) subsidizing a socialist program that helps big oil?”

My answer to these sentiments is, yes, we the taxpayers are subsidizing a socialist project.

The legislature created this project as a means to fast track getting water to small towns and farms (a proper role for government) but since then, this project has ballooned into a quarter-billion dollar state-funded industry – much like the Bank of North Dakota and the State Mill and Elevator.

However, one major difference – when the State Bank and State Mills were created, it was at a time when private out-of-state corporations were ripping off North Dakotans. In the case of WAWS, North Dakota businesses and landowners have been providing water to the industry at market rates – when the industry has been more than willing to pay.

Do you support Obama-style Socialism IF it is North Dakota Republicans promoting it?

Imagine if the federal government decided it wanted to be part of the largest economic sector and that it would compete with private industry even though private industry was servicing the economic sector just fine?

You’d probably be upset and think President Obama was pushing big government and socialism onto the economy, right?

Well, in North Dakota, it is happening today – and it’s not Obama’s doing.

In North Dakota, Republicans dominate the legislature and every state-wide office, and spend a lot of their time railing against the socialist policies of President Obama.

But what if I told you that over the last few years, Republicans have quietly been building a state-financed and publicly-subsidized water industry to serve the oil industry?

– and, oh, by the way, it competes with private industry, [and tried to get a law passed last session to make it illegal for private industry to exist in certain areas of the state!](#)

- Plus, [they even tried to impose a new tax on private water providers](#) to help pay for it!!!

If this government program had been proposed by Democrats, it would never have gotten off the ground. But somehow it has snuck past the public’s radar.

Obviously state policy makers need to make sure that WAWS really is filling a public service need. They also need to make sure that it is not shortchanging its sources for water, and creating a burden on infrastructure itself.

Furthermore, the Republican super-majority needs to examine whether competing with private industry is something it wants to do.

There is nothing free-market or conservative about this project.

Subscribed

July 22nd, 2014

Is WAWS Shortchanging Williston On Water?

In the past [we have told you about the problems being created by a state-funded project called WAWS](#), and how it has gone beyond its original mission and is competing with private businesses.

This story continues to unfold as the project's impact become more apparent.

As most people know, the oil boom is having severe impacts on the infrastructure in western North Dakota. While the debate over how much the state should be paying for continues - one thing is clear - the state's Wester Area Water Supply project is having a disproportionately negative impact on the water security of Williston.

To illustrate the seriousness of water security in Williston, one only needs to look at [the discussion reported in the Williston Herald regarding the possibility of putting a water rationing policy in place at the city level](#):

During the past few years, the city has experienced an inadequate supply of water for its municipal water system, particularly during the summer months and in periods of inadequate rainfall, according to Sec. 22-60 of Williston codes. Emergencies have existed because of the lack of an adequate water supply.

The Missouri River, the reservoir supplying water to the city, at times becomes dangerously low and it occasionally becomes necessary to restrict the use of water or prohibit its use for certain purposes.

Although the city doesn't foresee a water emergency or shortage this year, conserving resources would be a benefit.

David Tuan, director of the Public Works Department, had proposed a revamping of an existing water emergency ordinance to include an even and odd day watering schedule that would be in effect at all times. The amendment would not be enforced but put into city code for residents to follow on a voluntarily basis.

This plan was later set aside and not approved, for now.

But it raises an interesting question about just why Williston has had to increase the capacity of their water treatment plant, and more importantly, whether the forces driving that demand are paying their fair share to make sure the City of Williston does not have to pass the buck to city residents for demand that is not made by the city's residents.

Many will blame water quality in the Missouri River, but an easier explanation exists - a state-funded project is causing a huge demand increase on Williston's water infrastructure.

Because WAWS is a consortium of existing governmental entities, it has found a way to fast-track for itself the ability to acquire water rights by simply purchasing water from those existing governmental entities.

	Municipal (City) Water Use (acre feet/year)	Industrial (Fracking) Sales (acre feet/year)
2010	2173.6	372.3
2011	2656.6	579.1
2012	3372.5	1331.7
2013	4100.3	3600.0

Let's first look at the numbers, as provided by the State Water Commission:

(an acre foot is equal to 325,851 gallons)

In 2013, industrial sales via WAWS equated to more water usage than municipal demanded from 1976 to 2012. Yes, municipal demand has gone up from 2173.6 to 4100.3 from 2010 to 2013, but that would not be a problem if Industrial demand via WAWS had not gone from a trivial 372.3 to 3600!

(By the way, 3600 Acre Feet is over 1.1 billion gallons of water!)

As this data shows, it is pretty much an open and shut case as to what is putting a strain on Williston's water infrastructure.

The question is: does WAWS compensate Williston at an adequate level to justify this increased demand and prevent any increased costs for local residents?

WAWS has an established reimbursement rate structure as well as a retail rate structure. The retail rate that WAWS sells water to the oil industry is \$20.00 per 1,000 gallons (this happens to be approved by the State industrial Commission). The reimbursement rate that WAWS pays its water suppliers varies as the table below shows:

Western Area Water Supply Project		
Industrial Reimbursement Rates		
Entity	Location	2013 Industrial Reimbursement Rate (\$/kgal)
City of Williston	City System and Associated Depots	\$3.65
McKenzie County WRD	System I and IV Pipeline Corridor (up to Watford City)	\$4.20
McKenzie County WRD	Watford City Depot (WAWSA Surface Water) & System I and IV Pipeline Corridor (East of Watford City)	\$4.42
McKenzie County WRD	Watford City Depot (Ground Water)	\$3.32
McKenzie County WRD	System I, II and IV Rural Service Area (beyond Pipeline Corridor & Associated Depots)	\$5.25
McKenzie County WRD	Tribal Water Supply	\$5.25
City of Watford City	City System and Associated Depots	\$6.95
Williams rural Water District	Pipeline Corridor and Associated Depots	\$3.16
Williams Rural Water District	Rural Distribution System	\$8.40
R&T Water Supply Commerce Authority	Between Ray & Tioga and Associated Depots	\$4.35
R&T Water Supply Commerce Authority	Between Tioga and Stanley and Associated Depots	\$4.50
R&T Water Supply Commerce Authority	Between Ray & Wildrose and Associated Depots	\$3.25
R&T Water Supply Commerce Authority	Between Wildrose & Crosby	\$3.16
City of Tioga	City System	\$5.26
City of Tioga	Tioga Depot	TBD
City of Stanley	City System	\$8.30
City of Stanley	Rural Distribution System	TBD
City of Stanley	Stanley Depot	\$3.03
City of Wildrose	City System	\$5.93
Burke-Divide-Williams Rural Water	Crosby Depot	\$4.17
Burke-Divide-Williams Rural Water	Rural Distribution System	TBD
City of Crosby	City System	TBD
City of Columbus	City System	TBD
City of Fortuna	City System	TBD
City of Noonan	City System	TBD
2013 and first six months of 2014 Industrial Water Depot and Lateral Retail Rate of \$20.00/kgal		

WAW buys municipal water that has been treated by the Williston Water Treatment plant for \$3.65 per 1,000 gallons, this comes out to about 16 cents per 40 gallon barrel. WAW then turns around and sells the water to the oil industry for \$20.00 per 1,000 gallons, roughly 86 cent per barrel.

This would not be so bad if Williston had an excess capacity to supply the water, but the opposite is true. In the past several months, [stories have appeared in the Williston Herald about the increasing demand for water](#), the strain it places on the city's infrastructure, and even the potential for rationing.

It will be up to local government officials, and WAW to prove that the citizens of Williston are not being short changed. If they are being shortchanged, it is because the state is subsidizing a project to compete with private industry, while ignoring the costs it is placing on local residents.

The numbers certainly point in that direction.

If this is the case, it means that the state is subsidizing the oil industry by propping up WAW, and that local Williston residents are paying more in special assessments, property taxes, and

utility bills - all so that WAWS can compete with private North Dakota companies and sell water to the oil industry.

That this is a possibility, should be enough for anyone concerned to take a closer look.