

WATER TOPICS OVERVIEW COMMITTEE

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

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

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

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

- Work collaboratively with the SWC;
- Report on the committee's project prioritization process;
- Provide updates on allocated program expenditures; and
- Report on the fund balances of projects, grants, and contracts.

In addition to its statutory responsibilities, the committee was assigned two studies:

- Section 13 of House Bill No. 1020 (2021) directed a study, with input from SWC and from stakeholders of the Red River Valley Water Supply Project (RRVWSP), of the management and operation of the RRVWSP. The study required consideration of the appropriate entity to own, manage, and operate the project.
- Section 14 of House Bill No. 1020 directed a study, with input from SWC, of the Northwest Area Water Supply (NAWS) Project. The study required consideration of an entity, other than the state, to own, manage, and operate the project.

The committee was assigned the responsibility to receive the following five reports:

- Quarterly reports from SWC regarding the projects designated as carryover projects that have had a cost-share agreement in place for at least 4 years, the amount of funds still committed for each carryover project included in the report, the total amount of funds reallocated or made available from carryover projects included in a previous report to other projects since the commission's preceding report, and the status of each carryover project for which the committee has made a recommendation to terminate since the commission's preceding report, pursuant to Section 6 of House Bill No. 1020. The committee may make a recommendation to SWC that a carryover project included in a report be terminated under Section 61-02-14.3 and any funds remaining for the carryover project be reallocated and made available for projects with the same general purpose as the carryover project.
- A report, no later than August 1, 2022, from SWC on the results of the basinwide water plan pilot project, pursuant to Section 9 of House Bill No. 1020.
- A report from the NAWS Advisory Committee regarding recommendations for the transition of the long-term operation and management of the NAWS Project, pursuant to Section 10 of House Bill No. 1063 (2021).
- A report from the NAWS Advisory Committee regarding the status of the advisory committee's responsibilities under Section 61-24.6-03, pursuant to Section 11 of House Bill No. 1063.
- A written report, before November 1, 2022, from the Onsite Wastewater Recycling Technical Committee (OWRTC) regarding the status of the statewide technical guide and the committee's recommendations, pursuant to Section 3 of House Bill No. 1183 (2021).

Committee members were Representatives Jim Schmidt (Chairman), Tracy Boe, Chuck Damschen, Jay Fisher, Michael Howe, Bob Martinson, Jon O. Nelson, Marvin E. Nelson, Todd Porter, Matthew Ruby, and Denton Zubke and Senators Michael Dwyer, Joan Heckaman, Jason G. Heitkamp, David Hogue, Jordan Kannianen, Jim P. Roers, Ronald Sorvaag, and Mark F. Weber.

LEGISLATIVE OVERVIEW OF WATER TOPICS AND RELATED MATTERS

Missouri River Water Usage Update

The committee received testimony from representatives of the Missouri River Joint Water Board, the Missouri River Recovery Implementation Committee, and the nonprofit organization Friends of Lake Sakakawea. Representatives from these entities urged the state to use more water from the Missouri River. North Dakota contributes roughly 10 percent of the water in the Missouri River and uses 1 percent of the water that flows through the state. The western United States is in a severe drought. The testimony stressed the importance of the state to use more water from the Missouri River before other states begin to deplete the river.

The committee also received testimony from the Garrison Diversion Conservancy District and the North Dakota Irrigation Association. Testimony indicated whether irrigation is allowed in a certain area depends on whether adequate water supply exists. Irrigation supply is derived from underground aquifers or surface waters. Approximately 300,000 acres of irrigation in the state is used in the production of crops and livestock forage. The state has the potential to increase irrigation substantially with approximately 300,000 acres in the Missouri River corridor and an additional 200,000 acres in other parts of the state. Proponents of increased irrigation are seeking to use Missouri River water as a potential irrigation water source. Limiting factors in using the Missouri River for irrigation are the cost of power and the cost of building infrastructure to carry power for irrigation.

North Dakota Rural Water Systems Association Projects

The committee received testimony from representatives of the North Dakota Rural Water Systems Association regarding ongoing and planned projects in the state. Of the 355 incorporated cities in the state, 267 cities are supplied by rural or regional water, while 88 cities have their own source of water. A regionalized water supply system is beneficial to smaller communities from a cost perspective. The proposal to decrease the state's share of the cost of water supply projects from 75 to 65 percent would increase the price of water for rural water users. The association is opposed to changing to the cost-share provision in Section 61-02-01.04.

Water Development on North Dakota Trust Lands

The committee received testimony from representatives of the Department of Trust Lands regarding water development on state trust lands. Testimony indicated development under the Livestock Water Development Program is considered a permanent improvement to the land and becomes the property of the state. The cost of completing a permanent improvement is the responsibility of the lessee, but a cost-share option is available if the project is approved. Lessees must apply for and receive permits for permanent improvements. Permits are reviewed and approved by the Commissioner of Trust Lands. Nonpermanent improvements are the property of the lessee and are not eligible for a cost-share from the state. Nonpermanent improvements include submersible pumps, windmills, solar panels, water tanks, and anything that can be removed from the land. Permanent improvements are eligible for a 100 percent cost-share from the state. Each improvement made to the land is subject to a state spending cap. Additional funds were set aside to help fund permanent water supplies on trust lands due to the 2021 drought. A permanent water supply is a well, rural water pasture connection, tap, or water pipeline that originates from a water source on trust land.

Major Flood Events

The committee received testimony from representatives of Valley City regarding major flood events in Spring 2022. Testimony indicated the amount of clay needed for temporary flood protection in Valley City decreased from 220,000 cubic yards in 2011 to 28,000 cubic yards in 2022 as a result of the state's commitment to permanent flood protection. Flood protection cleanup costs decreased from \$170,000 in 2011 to \$7,000 in 2022 due to less clay needing to be removed. Additional funds may be required to complete permanent flood protection measures in Valley City.

The committee received testimony from representatives of Walsh County regarding major flood events in Spring 2022. Testimony indicated lack of drainage in the affected areas resulted in overland flooding and several dams being subjected to severe stress. The United States Department of Agriculture and Natural Resources Conservation Service have constructed 10 dams in Walsh County. Dams undergoing dam rehabilitation, including Matajeck Dam, are classified as medium-hazard dams, but are being upgraded to high-hazard dams due to elevated risk. Federal criteria for a high-hazard dam classification is the potential for any loss of life downstream of the structure. The Matajeck Dam has not undergone any major renovations or refurbishments, other than routine operation and maintenance, since its construction in 1966. Additional drainage is needed in the Forest River area to prevent future flooding.

Water Resource District Audits

The committee received testimony from a representative of the State Auditor's office regarding audits of water resource districts. Testimony indicated the State Auditor's office is attempting to foster improved communication with water boards that have failed to submit required audit paperwork. A citizen complaint does not generally trigger a new financial audit. A citizen complaint is considered on subsequent audits completed on an entity that has received a

complaint. The State Auditor's office asserted statutory authority exists to allow the office to audit water districts in addition to water resource districts. Most complaints filed with the State Auditor's office relate to water drainage issues.

Department of Environmental Quality - State Drinking Water Program

The committee received testimony from a representative of the Department of Environmental Quality (DEQ) regarding the state drinking water program. Testimony indicated DEQ is responsible for the protection of public and environmental health through the implementation of environmental protection programs in the state. Many of the protection programs reflect federally mandated programs implemented at the state level through primacy agreements with the United States Environmental Protection Agency (EPA). The programs include the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and the Safe Drinking Water Act (SDWA). The mission of the drinking water program is to ensure regulated drinking water systems provide safe and clean drinking water to all citizens of the state. The Safe Drinking Water Act is codified in Chapter 61-28.1. The provisions of the SDWA are enforced by the DEQ Division of Municipal Facilities. The division has 30 full-time employees comprised of environmental scientists, engineers, and administrative support. The division regulates 500 public water supply systems. Of the 500 public water supply systems, 309 are community water supply systems, 69 are noncommunity water supply systems, and 122 are regulated by the state.

The committee received testimony from a representative of DEQ regarding the replacement of lead water supply service lines. Federal law requires all water systems in the state have a complete inventory of lead service lines and a plan for line replacement in place by October 16, 2024. Replacement is required for all water supply lines containing 10 parts per billion or more of lead.

Public Finance Authority - Revolving Loan Funds

The committee received testimony from a representative of the Public Finance Authority. Testimony indicated state revolving fund (SRF) programs primarily are loan programs. Loans can be amortized over 30 years at 2 percent interest. State revolving fund programs receive capitalization grants from the EPA. State revolving fund programs are administered jointly by DEQ and the Public Finance Authority. No state funds are used in SRF programs. Bonds are issued to provide the required state match and leverage the program. State revolving fund programs are required to provide some of the capitalization grants as additional subsidies. State SRF programs develop priority ranking systems for the provision of additional subsidies which must be approved by the EPA. The clean water SRF is one of the only state funding sources for sanitary and storm sewer projects. The fund offers grants in the form of loan forgiveness. The drinking water SRF provides the local cost-share for many projects funded by the Department of Water Resources' (DWR's) cost-share program. Bonding likely will be a less attractive option in the next legislative session due to rising interest rates.

Department of Commerce - Community Development Block Grant

The committee received testimony from a representative of the Department of Commerce regarding the Community Development Block Grant (CDBG). Testimony indicated the CDBG is the most frequently used resource for water and sewer projects by communities that meet the federal thresholds to qualify for the grant. The Department of Commerce Community Services Division administers the CDBG program, which is funded through the United States Department of Housing and Urban Development. The Community Development Block Grant program provides financial assistance to eligible units of local governments through grants and loans for public facilities, housing rehabilitation, and economic development projects. The primary beneficiaries of the projects must be low- and moderate-income individuals. The Department of Commerce has distributed more than \$28 million to 35 communities in the state over the past 5 years.

COLLABORATION WITH THE STATE WATER COMMISSION, PROGRAM EXPENDITURES, AND REPORTS ON THE FUND BALANCES OF PROJECTS, GRANTS, AND CONTRACTS

Background

The State Water Commission was created in response to the drought of the 1930s and was charged with developing irrigation in the state. From 1937 to 1981, the Legislative Assembly funded the commission on a biennium-to-biennium basis with approximately \$500,000 to \$2,000,000 appropriated per biennium. The duties of the commission changed with creation of the resources trust fund in 1981. When the resources trust fund was created, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project (SWPP), which was the first state water project. Since then, the number and scope of water projects overseen and regulated by SWC increased dramatically. The commission now serves many functions, including allocating the state's waters, overseeing dam safety, managing sovereign lands, and approving and funding water projects throughout the state.

The Department of Water Resources was created by House Bill No. 1353 (2021). The department was previously called the State Water Commission, which itself was created by legislative action in 1937 for the specific purpose of fostering and promoting water resources development throughout the state. House Bill No. 1353 restructured the agency, appointed a director, and made the director of the department a member of the Governor's cabinet.

The Department of Water Resources has the authority to investigate, plan, construct, and develop water-related projects, and serves as a mechanism to financially support those efforts throughout the state. The department is comprised of seven divisions: Administration, Atmospheric Resources, Planning and Education, Regulatory, State Engineer, Water Appropriation, and Water Development.

The Department of Water Resources' mission is to responsibly manage the state's water needs and risks for the people's benefit. The department sustainably manages and develops the state's water resources for the health, safety, and prosperity of the state's people, businesses, agriculture, energy, industry, recreation, and natural resources.

Testimony and Committee Considerations

At each committee meeting, a member of SWC provided an update on SWC operations and activities, and a representative from DWR provided an update on the SWC budget and the status of projects funded by SWC. The total amount of funds appropriated to DWR in the 2021-2023 biennium was \$551 million. The amount carried over from the 2019-2021 biennium was \$285 million. Thus, the total funds available to DWR for projects were just over \$837 million. Of those funds, DWR appropriated \$518 million for projects. The projected carryover balance through June 30, 2023 is \$259 million, which is consistent with previous years. The department was awarded \$75 million under Senate Bill No. 2345 (2021). Roughly \$19 million of the \$75 million has been spent.

The committee received information regarding the resources trust fund and the water projects stabilization fund. Representatives from DWR also provided testimony on the usefulness of the life cycle cost analyses and economic analyses to help evaluate which projects should be funded and the amount of funding each project requires.

The committee discussed the use of released carryover funds from the 2019-21 biennium. The committee was informed although carryover funds do not have to be used for the same project for which the funds originally were allocated, the carryover funds must be used for projects in the same appropriation categories for which the funds were appropriated originally.

Representatives from DWR provided updates regarding proposed cost-share modifications. The department continues to discuss appropriate cost-share figures for rural and municipal water supply projects with stakeholders. Commissioners from SWC expressed support for the state's maximum commitment for rural water supply projects remaining at 75 percent. Representatives of DWR discussed the NAWS, Western Area Water Supply Authority (WAWSA), RRVWSP, and SWPP. Once completed, these four regional water supply projects directly benefit and provide water to 80 percent of North Dakota residents.

Representatives from DWR discussed dam safety and risk-hazard classification. The department plans to amend existing administrative rules governing risk-hazard classification. Under the new proposal, a dam would be labeled high-risk if a dam failure would result in any downstream probable loss of human life. To determine whether loss of human life is probable, an analysis of whether the downstream area has the potential presence of people and the lethality or severity of flooding is required.

Representatives of DWR discussed irrigation permitting procedures and efforts to make the process more efficient. Irrigation permits only may be issued if a sufficient water supply is available. The process to obtain a permit includes an application, affidavit of notice, affidavit of publication, and a required 30-day comment period. After the application period, a hydrological analysis is conducted by a hydrologist from DWR. The department makes a recommended decision once the analysis is complete. The department conducts further analyses to determine whether a permanent irrigation permit will be issued.

The committee expressed frustration with the permitting process and extended delays before a permit is issued. The Department of Water Resources discussed the need for additional hydrologists to increase the turnaround time for permits. The committee also expressed frustration regarding permits being placed in abeyance. Representatives of DWR indicated placing an irrigation permit in abeyance allows DWR to restart the permit when sufficient water is available without requiring the applicant to reapply. An applicant that must reapply would lose the applicant's priority for water rights. Placing the permit in abeyance preserves the applicant's priority. A deferred permit is one on which DWR has not acted and is preferable to a denied permit. The department is responsible for developing a model for real-time monitoring of aquifer levels to help determine when permits must be deferred or put in abeyance.

Representatives of DWR discussed the use of hydrologic unit codes (HUC). The HUC system is a hierarchical land area classification system created by the United States Geological Survey which is based on surface hydrologic features in a standard, uniform geographical framework. The department uses HUCs when analyzing projects according to watershed and natural drainage boundaries, rather than natural political boundaries.

The committee received information regarding water management from a basinwide perspective. The pilot project sought to have water resource boards in a common basin work together, reducing the number of requests submitted to DWR, and having funding provided on a basinwide basis rather than for each project. The State Water Commission approved a pilot project in August 2021 for the Upper Sheyenne River Joint Water Resource Board. The joint board received \$1.1 million from SWC for the pilot project. The joint board worked with several partners to gain additional support. The pilot project began with five sites, which were included in the pilot project funding request, and now has expanded to additional sites in Eddy, Nelson, Wells, and Benson Counties. The joint board expressed gratitude to the DWR and SWC for implementing the basinwide pilot project. Because the pilot project is not complete, DWR and SWC will continue to receive updates as the project progresses.

Fargo Flood Control and FM Area Diversion Project

Background

In 2009 and 2011, the Legislative Assembly provided \$45 million and \$30 million respectively for Fargo flood control. In 2013, the Legislative Assembly provided \$100 million for the Fargo flood control project to provide a total of \$175 million. In addition, the 2013 Legislative Assembly expressed legislative intent the state provide up to \$450 million for the project, with the remaining \$275 million to be provided over the next 4 bienniums. The 2013 Legislative Assembly limited the use of the funding designated for the Fargo flood control levee and dike protection until the Fargo flood control project received federal authorization, a project partnership agreement was executed, a federal appropriation was provided for project construction, and the budget for the Fargo flood control project was approved by SWC. The 2015 Legislative Assembly provided an additional \$69 million for the Fargo flood control project and \$60 million for Fargo interior flood control projects, of which \$30 million was from the state disaster relief fund, to provide a total of \$304 million for flood protection in Fargo. The Legislative Assembly also included legislative intent to provide up to \$570 million for Fargo flood control projects, an increase of \$120 million. The \$120 million was to be used for Fargo interior flood control projects and required 50 percent matching funds from the FM Area Diversion Authority. These funds were to be expended only for Fargo interior flood control projects, including levees and dikes, until a federal appropriation was provided for construction of the Fargo flood control project, at which time it may be used for a federally authorized Fargo flood control project. The Legislative Assembly also included legislative intent that funding for the Fargo flood control project would end June 30, 2021, if a federal appropriation had not been provided by that time. The 2015 Legislative Assembly provided legislative intent that the remaining funding be made available in equal installments over the next 4 bienniums. Money from the Cass County sales tax was used for levy work in small communities and for retention.

In 2017, the Minnesota Department of Natural Resources indicated it would not approve a necessary permit for the Fargo flood control projects. In September 2017, a federal judge issued a preliminary injunction halting most work on the project, including land acquisition, design, procurement, cultural mitigation studies, and construction. The Governors of North Dakota and Minnesota created a task force to develop a mutually acceptable plan, known as Plan B, for the project. A technical advisory group and policy group also were formed to work on the development of the plan. In March 2018, the FM Area Diversion Authority submitted Plan B to the Minnesota Department of Natural Resources for a permit.

In 2019, the Legislative Assembly appropriated \$65.5 million for the Fargo area flood control projects and expressed the legislative intent to provide no more than \$750 million for the project in total. Of the \$750 million, \$371 million had been made available for the project in previous bienniums. Of the remaining \$379 million, the Legislative Assembly expressed the intent that \$66.5 million should be provided in each of the bienniums through the 2027-29 biennium, and \$47 million should be provided in the 2029-31 biennium.

Testimony

The committee received testimony from a representative of the FM Area Diversion Project. Testimony indicated the Red River Valley Alliance, an international group, was the winning bidder for the public-private partnership (P3) project, which is a portion of the overall diversion project. After the P3 project is complete, the operation and management costs will be funded by sales tax revenue. Using the P3 project model arguably reduced the overall diversion project timeline by 10 years. Progress is continuing on the inlet control structure and the Wild Rice River control structure. The large quantity of materials needed for the diversion project will impact the market for those materials in the state. Project sponsors want to ensure local companies do not face material shortages as a result of the project. Project sponsors acquired approximately 700 parcels for the project, at least 90 of which were acquired through eminent domain. Minnesota appropriated \$4 million to \$5 million, out of an anticipated total of \$17 million, for the project during the last legislative session. The Minnesota Legislature will be able to appropriate the remaining amounts for Minnesota's project components before the scheduled construction period of 2026-27. North Dakota's and Minnesota's federal delegations secured \$437 million for the project under the federal Infrastructure Investment and Jobs Act.

Souris River Basin Flood Control

The committee toured the flood control structures in and around Minot. The committee received testimony from representatives of the City of Minot and the Souris River Joint Board. Testimony indicated throughout the 2021-23 biennium, the project received \$84.5 million. House Bill No. 1431 (2021) was a bonding bill that appropriated

\$74.5 million to the project. House Bill No. 1020 (2021) appropriated \$10 million to SWC for the project. Of the total funds appropriated, \$71.35 million was allocated to the Souris River Joint Board for the construction and engineering throughout the Souris River Basin. The remaining \$13.15 million was allocated to the City of Minot for acquisition activities within Minot city limits. The first milestone of the project is nearing completion. Once completed, the infrastructure will result in 60 percent of Minot residents being removed from the Federal Emergency Management Agency regulatory flood plain.

Western Area Water Supply Authority

The committee received testimony from a representative of WAWSA. From 2011 to 2020, total connections increased by 193 percent. The total number of connections is roughly 5,000 customers. This increase is consistent with the population growth in northwest North Dakota. Some WAWSA debt was restructured, which has given the authority more flexibility from an accounting standpoint. Legislation to move WAWSA from the Industrial Commission to DWR will be introduced in the 2023 legislative session. The authority reports to both DWR and the Industrial Commission.

Southwest Pipeline Project

The committee received information regarding the status of the SWPP, which is owned by the state and operated and maintained by the Southwest Water Authority (SWA). Testimony indicated SWA sets aside funds for Replacement and Extraordinary Maintenance (REM). For nonrural water customers, nearly 12.3 percent of the water rate is set aside for REM. For rural water customers, nearly 12.5 percent of the water rate is set aside for REM. As of March 31, 2022, the ending REM balance was \$23 million. No specific formula is followed to determine the requisite amount of funds SWA sets aside for REM within the system. To access REM funds, the expenditure must exceed \$20,000 and not be considered operation and maintenance. Several distribution lines are being replaced due to aging. Water suppliers are being forced to pass this expense on to consumers due to rising costs and scarcity of food-grade carbon dioxide. The anticipated funding request for the SWPP is \$104 million. If the actual appropriation is less than \$104 million, strategic improvements within SWA likely would be delayed until the 2025-27 biennium. The capacity of the Dickinson water treatment plant is 12 million gallons. The plant will have a capacity of 18 million gallons when the new Dickinson water treatment plant is completed. In 2022, during peak consumption, customers consumed 11 million gallons of water per day.

RED RIVER VALLEY WATER SUPPLY PROJECT STUDY

Section 13 of House Bill No. 1020 (2021) directed a study of the management and operation of the RRVWSP. The study required input from SWC and stakeholders of the project and consideration of the appropriate entity to own, manage, and operate the project.

Background

Communities in the Red River Valley have experienced unreliable supplies of water due to the fluctuations in the Red River water levels and increased population growth in the valley. Although the river is known to flood, it also has experienced drought conditions that jeopardize residents' access to drinking water and industrial water. To ensure residents in the Red River Valley have access to a reliable water supply, the federal Dakota Water Resources Act of 2000 authorized the RRVWSP. The Dakota Water Resources Act required North Dakota and the United States Bureau of Reclamation within the United States Department of the Interior to prepare an Environmental Impact Statement (EIS) assessing alternative methods to accomplish the goals of the RRVWSP. The Garrison Diversion Conservancy District was tasked with representing North Dakota in this effort and entered a memorandum of understanding with the Bureau of Reclamation. A draft EIS identifying eight alternatives for the project was released in 2005 and supplemented in 2007 after the comments on the draft statement were considered. The final EIS was released later in 2007 and identified a preferred alternative called the Garrison Diversion Unit for the project. The Garrison Diversion Unit was intended to transport water through the McClusky Canal and utilize a buried pipeline from a biota treatment facility to the Sheyenne River north of Lake Ashtabula. The lake would act as a regulating reservoir, and water would flow from the lake into the Red River. The final EIS also included responses to public comments received on the prior iterations of the document, a final biological assessment prepared in compliance with the federal Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River main stem reservoir system, and a review of climate change literature.

Although Congress was briefed on the Garrison Diversion Unit, the federal government has not authorized construction of the project. As a result, in 2013 the RRVWSP's local stakeholders began work to identify ways to implement the project without federal participation. The stakeholders conducted additional studies and determined the best option for the project would be to bring water from the Missouri River to the Sheyenne River via a buried pipeline running close to Highway 200. The new plan included an intake facility located on the Missouri River close to Washburn and kept Lake Ashtabula as a reservoir. Under the new plan, water will be treated before it crosses the Continental Divide. Due to state legislation passed in 2015, the project was expanded to serve users along the pipeline route in central North Dakota. The Garrison Diversion Conservancy District continues to serve as the state representative on the

project, and the Lake Agassiz Water Authority serves as the representative of the local water users to be served by the project.

The concept for the state and local project was completed in 2016, and the preliminary design report was completed in 2018. As the project has progressed, changes have been made to the design. For example, the original plan was intended to avoid a nexus with federal agencies and utilize horizontal collector wells above the ordinary high water mark of the Missouri River, but in 2020, the Garrison Diversion Conservancy District asked the Bureau of Reclamation to provide 145 cubic feet per second of water from the McClusky Canal, in addition to 20 cubic feet per second already authorized, as an alternate water supply for the RRVWSP. The Garrison Diversion Conservancy District indicated the alternate water supply will result in savings for the state and local water users. The Bureau of Reclamation conducted the required EIS regarding the allocation of water, and a record of decision effectively authorizing the alternate water supply was signed in January 2021. Construction on the project's pipeline and the discharge structure six miles south of Cooperstown is ongoing. According to project sponsors, construction on the intake screen structure and tunnel is contingent on the receipt of funding from SWC.

House Bill No. 1020 appropriated \$50 million to SWC for the RRVWSP. The project sponsors stated a local cost-share of \$16.7 million will be provided. Additionally, House Bill No. 1425 (2021) created a legacy infrastructure loan fund through the Bank of North Dakota which provides low-interest loans for qualifying infrastructure programs. The Garrison Diversion Conservancy District and Lake Agassiz Water Authority requested a loan from the fund. House Bill No. 1431 (2021) added \$50 million to an existing infrastructure revolving loan fund and created a new water revolving loan fund that may result in additional resources becoming available for the RRVWSP.

Testimony

The committee received testimony at each of its meetings regarding the status of the operation and ownership of the RRVWSP. Representatives from the Garrison Diversion Conservancy District provided testimony related to the continued effort to increase irrigation from Lake Sakakawea. Potential issues hindering expanded irrigation are project costs and approval from the Bureau of Reclamation. State law allows either the Garrison Diversion Conservancy District or the Lake Agassiz Water Authority to own the RRVWSP. The Lake Agassiz Water Authority and Garrison Diversion Conservancy District both agree the Garrison Diversion Conservancy District should own the RRVWSP.

Representatives of the Garrison Diversion Conservancy District proposed an accelerated timeline for construction of the project. Testimony indicated project costs will decrease by \$20 million to \$30 million for each biennium by which project timelines are reduced. An alternate plan regarding the intake location for the RRVWSP was proposed. Under the alternate plan, the RRVWSP would receive water out of the McClusky Canal, rather than directly from the Missouri River in Washburn. This plan is called the eastern North Dakota water alternate supply (ENDAWS) project. If the entire 165 cubic feet per second of water is taken from the McClusky Canal for the project, the Washburn intake structure may serve as a backup source of water for the project, but there would be costs to connect the structure to the project components. Using ENDAWS instead of the Washburn intake structure may save up to \$200 million in overall construction costs. A decision to move forward on portions of the project dependent on ENDAWS will have to be made within the next 2 years. The total cost of the project includes a 25 percent local match. Project costs are being re-evaluated due to inflation.

The Garrison Diversion Conservancy District, Fargo, and Grand Forks would be the signatories on the project loan from the water infrastructure revolving loan fund. The project sponsors will request a 75 percent cost-share from the state. The state has not set a maximum appropriation amount for the project. The anticipated life cycle of the RRVWSP is 100 years. Construction is progressing four miles south of Washburn on an intake wet well, cofferdam, and the screens and piping connecting the wet well to the Missouri River. Negotiation with landowners for the installation of 72-inch steel transmission pipe is underway in Griggs, Foster, and Wells Counties and installation has commenced in Foster County. A funding request of \$255 million is anticipated for the 2023-25 biennium. As of June 2022, the state has allocated \$86 million to the RRVWSP and political subdivisions have provided \$26 million. Only 8.2 percent of the \$1.36 billion in necessary project funds have been secured.

The committee received testimony from landowners affected by the RRVWSP and their legal counsel. Testimony indicated the proposed pipeline is a 72-inch steel pipeline that will be buried seven feet underground. The Garrison Diversion Conservancy District's fair market offer is \$1,350 per acre. The Garrison Diversion Conservancy District has served a summons and complaint upon the parties, thus formally commencing eminent domain proceedings. Other pipeline easements in the area must be considered when determining just compensation. Typically, just compensation for other pipeline easements is higher than the fair market value for agricultural use. The landowners have not been provided any plans for abandonment of the pipeline at the end of the project's life cycle. Landowners expressed a preference for easement negotiations as opposed to eminent domain proceedings. Landowners expressed concerns related to project ownership, the uncertain completion date, federal and international cooperation, and abandonment procedures at the end of the project's life cycle.

Committee Considerations

Based on the testimony provided, the committee determined the Garrison Diversion Conservancy District should continue to own, manage, and operate the RRVWSP.

Conclusion

The committee makes no recommendation regarding its study of the management and operation of the RRVWSP.

NORTHWEST AREA WATER SUPPLY PROJECT STUDY AND REQUIRED REPORTS

Section 14 of House Bill No. 1020 directed a study, with input from SWC, of the NAWS Project. The study required consideration of an entity, other than the state, to own, manage, and operate the project.

The committee was assigned the responsibility to receive a report from the NAWS Advisory Committee regarding recommendations for the transition of the long-term operation and management of the NAWS Project and the status of the advisory committee's responsibilities under Section 61-24.6-03, pursuant to Sections 10 and 11 of House Bill No. 1063 (2021).

Background

The NAWS Project is a joint state and federal project to provide water to northwestern North Dakota from the Missouri River Basin. Approximately 81,000 residents live in the NAWS service area, which includes parts of Burke, Ward, Renville, Bottineau, and McHenry Counties. Before NAWS, there were significant concerns about the quality and quantity of the residents' water supply. In some communities, the water failed to meet drinking water standards. As a temporary solution, Minot began providing drinking water to several communities in the service area, but the Minot aquifer is insufficient to supply the communities on a permanent basis. The NAWS Project is intended to provide a long-term solution by treating and supplying water from the Missouri River Basin to Minot and the affected communities.

The federal Garrison Diversion Reformulation Act of 1986 provided the initial authorization for NAWS. In 1991, the Legislative Assembly passed a bill creating the NAWS Advisory Committee and granted SWC authority to construct, operate, and manage the project. In 2000, the federal Dakota Water Resources Act reauthorized the project with funding from the United States Bureau of Reclamation's Municipal, Rural, and Industrial Grant Program. The Bureau of Reclamation is part of the United States Department of the Interior.

Construction of NAWS began in 2002, but soon became delayed by lawsuits initiated by Manitoba and Missouri. Manitoba objected to the project moving water across the Continental Divide and into Canada because of the risk that harmful biota would be introduced into Canadian waters. Manitoba filed a lawsuit in United States federal court seeking to stop construction of the project and alleging the environmental assessment conducted for the project under the National Environmental Policy Act (NEPA) was inadequate. In 2005, the court ordered the Bureau of Reclamation to conduct additional environmental analyses but allowed portions of the project to continue development.

Pursuant to the court order, the Bureau of Reclamation issued a final EIS at the end of 2008. However, Manitoba filed a supplemental complaint in early 2009 alleging the final EIS was inadequate under NEPA. Missouri also filed a lawsuit in the same federal court against the Department of the Interior and the United States Army Corps of Engineers (Corps) over NAWS. Like Manitoba, Missouri alleged the final EIS was inadequate. Missouri also argued the Corps should have completed a separate environmental analysis under NEPA. Unlike Manitoba, Missouri was concerned NAWS would deplete the Missouri River and negatively impact Missouri's ability to use water from the river.

In 2010, the court ordered the Bureau of Reclamation to analyze the environmental impact of NAWS further. In 2013, the court stopped construction of the project until the analysis was completed. A final supplemental EIS was issued in 2015. As part of the supplemental analysis, the Department of the Interior determined full treatment of the water before it crosses the Continental Divide was the preferred method for addressing environmental concerns. In 2017, the federal court issued a ruling for the Department of the Interior and North Dakota which allowed construction on NAWS to recommence. Although Manitoba and Missouri appealed the ruling, the appellate court reaffirmed the ruling in 2019. Construction of the project is ongoing.

Throughout the litigation, the Water Topics Overview Committee received updates on the lawsuits and the construction of NAWS. The 2019-20 interim Water Topics Overview Committee discussed concerns about the condition of some of the project's physical assets that lay dormant through the litigation. The committee was informed the statutorily created NAWS Advisory Committee had not been holding meetings, and the committee expressed concern regarding the lack of meetings. The committee also received regular status reports of the funding for the project, which comes from the Bureau of Reclamation's municipal, rural, and industrial grants; state appropriations; and a cost-share provided by Minot through collection of a 1 percent city sales tax. The total cost of the project was not known because contracts for some phases of the project had not been bid. According to figures provided by SWC, the estimated cost of the contracts

awarded through July 2021 was roughly \$171 million. Future contracts will be necessary to construct booster pump stations and water treatment plants for the project. Approximately \$91 million of the \$171 million for existing contracts will come from federal funds, and approximately \$22 million will come from Minot. State funds are expected to cover the remaining \$58 million. Due to the delayed receipt of federal grant funds, the state also appropriated a \$75 million line of credit from the Bank of North Dakota to be reimbursed by federal grants. As of July 2021, the line of credit had not been accessed.

Testimony

The committee received testimony from representatives of the NAWS Advisory Committee. The NAWS Advisory Committee met throughout 2021 to make recommendations for the long-term operations and management of NAWS, as required by House Bill No. 1063. The advisory committee developed 11 recommendations to ensure the project's success:

1. NAWS must continue to operate as a state-owned project. Transferring ownership of the project to a private entity could subject the project to future litigation and could create division among project stakeholders.
2. All existing contracts must be honored. Numerous water service, finance, and interim water supply contracts have been in place for several decades. All current and future contracts must be reviewed by the NAWS Advisory Committee or a subcommittee of the advisory committee.
3. The NAWS biota treatment plant ("Biota Plant") is a federal requirement. The federal government is responsible for construction, operation, and maintenance expenses for any facilities in operation to comply with the Boundary Waters Treaty Act. Federal funding is limited to \$200 million for these types of projects. The purpose of the Biota Plant is to mitigate the transfer of invasive species across the Continental Divide. Construction and operational expenses associated with the facility are eligible for federal funding.
4. The Biota Plant and the Minot Sunde Aquifer Wellfield ("Sunde Aquifer") must be under the control of the City of Minot. The Garrison Diversion Project included the delivery of Missouri River water to the Minot area. A 50-year agreement between the City of Minot, the Bureau of Reclamation, and the Garrison Diversion Conservancy District to construct a water supply line from the Sunde Aquifer to the Minot Water Treatment Plant was approved on January 26, 1972. The line from the Sunde Aquifer to Minot still is in use. The Sunde Aquifer can provide a backup supply if the water supply from Lake Sakakawea is interrupted for any reason. The operations and maintenance of the Biota Plant is a federal responsibility. However, the Biota Plant, Sunde Aquifer, and the city of Minot's existing water treatment plant ("Minot Plant") must operate as a single system. The Biota Plant and the Minot Plant should be operated by the City of Minot to simplify compliance with primary drinking water regulations.
5. The ownership of the Minot Plant must remain with the City of Minot. Use of the Minot Plant for the NAWS Project was established early in the project's development. The arrangement is similar to the use of the City of Dickinson's water treatment plant by the SWPP. Additional improvements to the Minot Plant are planned as a result of the NAWS Project.
6. Expansion of NAWS territory must be accomplished by mutual assent of all locally affected water supply entities. Connecting additional users to the system could compromise the ability of the project to deliver contracted quantities of water to existing customers.
7. Maintenance, availability, and eligibility should be identified and understood by all water user entities. The eligibility and availability of any work to be completed using funds collected by the NAWS Project through water bills should be clearly identified to the consumer.
8. Payment to the state for operation and maintenance and REM will continue as defined by law and current water user entity contracts. The NAWS Project should be self-supporting, with payments for operation and maintenance and REM continuing as defined in the water user contracts. Operation and maintenance and REM will be funded by revenues generated by the NAWS water sales, and those revenues will not be used for any other purpose. Since NAWS is a state-owned project, funds for operation and maintenance and REM must be appropriated by the Legislative Assembly from water rate revenues.
9. The City of Minot's local cost-share will end when the project described by the 1999 agreement between the City of Minot and SWC is completed. The agreements between SWC and the City of Minot have evolved over the years, but the underlying principle has not changed. The local share of the capital cost of the project, as well as operational costs related to the construction and management of the project, have been paid in cash on a monthly basis since construction commenced. Payments for the local cost-share were derived from city sales tax collections. The initial interim financing agreement committed the City of Minot to partially underwrite the SWC's cost initially for the project works from the intake on Lake Sakakawea or Lake Audubon to the city's water treatment plant. Subsequent amendments extended the city's responsibility to fund 35 percent of the SWC's costs to build additional segments of the project.

10. All water user entity agreements should be extended and should establish a long-term operation and maintenance plan that incorporates recommendations from the Legislative Assembly, DWR, SWC, and NAWS Advisory Committee. The NAWS Advisory Committee is striving to implement standardized language in all water service contracts to outline the responsibilities and obligations of the parties to the contracts.
11. NAWS is a wholesale transmission line and is not a rural distribution system. Existing rural water districts and customers must be recognized. Customers eligible to be direct customers of NAWS must meet the conditions outlined in North Dakota Administrative Code Chapter 89-13. No individual users are eligible to be a direct NAWS customer.

The committee received testimony from representatives of DWR. Approximately \$170 million is needed to complete the NAWS Project, and much of that amount is needed to complete the Biota Plant near Max. Although the federal government is responsible for the costs of the Biota Plant pursuant to the federal Dakota Water Resources Act, the only federal funding available for the project is through the Municipal, Rural, and Industrial Water Supply Program, which is limited to \$200 million in funding. Discussions have occurred regarding increasing the \$200 million funding limitation. The NAWS Advisory Committee does not have the authority to place the Biota Plant in Max; however, the committee finds Max to be a permissible site for the plant. An agreement to place, operate, and maintain the Biota Plant must be executed by the Bureau of Reclamation on behalf of the United States, and SWC on behalf of North Dakota. Additional contracts would need to be executed between the state and the City of Minot for operation of the Biota Plant. A total of \$54 million of state funds have been invested in the project. In February 2022, SWC approved \$750,000 in cost-share for an additional well in the Sundre Aquifer to maintain raw water capacity for the city of Minot and the NAWS Project. The new well will ensure NAWS can meet interim water demands until Lake Sakakawea water can be delivered to Minot. The new well also will lessen impacts from several dry years and ensure an adequate water supply during periods of drought. The intake system will be located at the Snake Creek Pumping Plant. Internal and external work is necessary to ensure the facility can operate at its required capacity. Internal modifications do not require permits from the Corps; however, external modifications will require a section 408 permit from the Corps.

The NAWS system will incorporate rural water systems from the All Seasons Water Users District, Upper Souris Water District, and North Prairie Water District. The project is slated to be completed by 2030, dependent on the receipt of adequate federal, state, and local funding. The Department of Water Resources will be proposing legislation to reconfigure the NAWS Advisory Committee. The proposed legislation will aim to include more affected stakeholders related to the NAWS Project. The estimated funding request for the 2023-25 biennium is \$77 million.

Committee Considerations

Based on the testimony provided, the committee determined the state should continue to own, manage, and operate the NAWS Project until the project's completion.

Conclusion

The committee makes no recommendation regarding its study of the NAWS Project.

REPORT FROM THE ONSITE WASTEWATER RECYCLING TECHNICAL COMMITTEE

The committee received a report, pursuant to Section 3 of House Bill No. 1183 (2021), from the Onsite Wastewater Recycling Technical Committee regarding the status of the statewide technical guide and the committee's recommendations. Testimony indicated the Onsite Wastewater Recycling Technical Committee has met regularly since December 3, 2021, to fulfill the requirements of Section 23-35-02.3. The committee was informed bi-monthly meetings were held to establish a statewide technical guide for onsite wastewater recycling treatment technologies and sewage distribution technologies. The committee discussed standards and procedures for issuing an installer license, continuing education requirements for installer license renewal, and reasonable fees for issuing or renewing an installer license. The Onsite Wastewater Recycling Technical Committee recommended the creation of an onsite wastewater board to regulate wastewater installers in North Dakota. The board would be given authority to enforce the technical guide, issue licenses, collect fees, and recommend continuing education requirements for onsite wastewater installers. The Onsite Wastewater Recycling Technical Committee also recommends the board assume the duties of the North Dakota Plumbing Board in regard to the regulation of private sewage disposal systems under Chapter 43-18 and the Legislative Assembly appropriate \$200,000 to fund the newly created board for the 2023-25 biennium.