



North Dakota Legislative Council

Prepared for the Water Topics Overview Committee
LC# 23.9083.01000
July 2021

RED RIVER VALLEY WATER SUPPLY PROJECT STUDY - BACKGROUND MEMORANDUM

Section 13 of House Bill No. 1020 (2021) ([Appendix A](#)) provides for a study of the management and operation of the Red River Valley Water Supply Project (RRVWSP). The study must include input from the State Water Commission and stakeholders of the project and consideration of the appropriate entity to own, manage, and operate the project.

BACKGROUND

Project Authorization and Planning

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 ([Appendix B](#)) 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 the State Water Commission.

Legislative Oversight and Funding

The interim Water Topics Overview Committee has received testimony and regular updates, including updates on anticipated costs and funding needs, regarding the RRVWSP since 2009. During the 2013-14 and 2015-16 interims, the committee reviewed options for routes and various project components after it was determined the project would proceed without the federal government's participation. Testimony provided to the committee noted certain options reduced the chance of Canada or downstream states filing a lawsuit over the project. However, in 2020 Missouri initiated litigation against the Bureau of Reclamation, the Garrison Diversion Conservancy District, and other parties over the Bureau of Reclamation's EIS regarding use of the McClusky Canal for the project, and North Dakota intervened in the lawsuit. During the 2015-16 interim, testimony also noted construction on the project needed to start as soon as possible to ensure the project could rely on the current requirements for one of its permits and to ensure the project would be grandfathered under the then-existing federal "waters of the United States" regulations. Over the past several years, the committee frequently noted the water supplied by the project must be affordable for the communities in the service area and requested information about the rates users would pay. The committee also requested and received testimony regarding the integrity of pipeline for the project which has lain dormant in the ground for several years.

The Legislative Assembly has appropriated funds to the State Water Commission for the RRVWSP subject to local cost-shares and other conditions. House Bill No. 1020 (2009) provided one-time funding in the amount of \$3 million to the State Water Commission for the project. Under House Bill No. 1020 (2013), an additional \$11 million was appropriated to the State Water Commission for the project. In Senate Bill No. 2020 (2015), the Legislative Assembly expressed its intent to fund the RRVWSP with \$150 million per biennium for 4 bienniums starting in July 2017. The bill also appropriated \$12.3 million for the project in the 2015-17 biennium. Of the \$12.3 million, \$7.3 million was carried over from the preceding biennium.

House Bill No. 1020 (2017) appropriated up to \$30 million for the RRVWSP. The bill specified \$17 million of the \$30 million could be spent on planning and permitting and the remainder was intended to be spent on construction of Phase 1 of the project. The bill included other conditions on the use of the state funds and required the Garrison Diversion Conservancy District to submit quarterly progress reports to the Water Topics Overview Committee. Construction did not begin during the 2017-19 biennium, and \$13 million of the appropriated funds were not expended.

Senate Bill No. 2020 (2019) appropriated up to \$30 million to the State Water Commission for the RRVWSP with a requirement the local cost-share equal 25 percent. The bill also included carryover authority for the unspent \$13 million approved for the project in the 2017-19 biennium. The bill also required the project's sponsors to meet certain conditions, obtain a certification from the State Water Commission when the conditions were met, and obtain approval from the Budget Section before the \$13 million of state funds would be released for construction of Phase 1 of the project. The Budget Section approved the release of funds in September 2020. The four required conditions for that approval were:

1. Any funding received for the completion of the planning and permitting process of the RRVWSP must result in the following accomplishments:
 - a. The completed RRVWSP plan document must include alternative selection, water supply needs, projected project costs, easement acquisitions, environmental regulation compliance to include issuance of a final national pollutant discharge elimination system permit, and acquisition of all other state and federal permits required for the construction of any project features intended to be constructed with funding provided during the 2017-19 biennium and the 2019-21 biennium;
 - b. A signed Bureau of Reclamation water service contract agreeing to a minimum of 165 cubic feet per second over a minimum of 40 years or equivalent to ensure an adequate water source for the project's needs;
 - c. Prioritized project features for Phase 1 construction; and
 - d. A recommendation of funding options for all phases of the RRVWSP.
2. The State Water Commission reviewed any associated appeals or litigation before releasing any funds for the project.
3. The Budget Section received and approved certification from the State Water Commission and the State Engineer that all items listed in the first condition had been accomplished before any funding received to

initiate construction of the Phase 1 prioritized project features was spent and construction of Phase 1 began.

4. The Garrison Diversion Conservancy District provided quarterly progress reports on the RRVWSP to the Water Topics Overview Committee during the 2019-20 interim.

House Bill No. 1020 (2021) appropriated \$50 million to the State Water Commission 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.

SUGGESTED STUDY APPROACH

The assigned study will require the committee to consider which entity should maintain or assume ownership, management, and operational responsibility for the RRVWSP. The committee may wish to:

- Identify the project's revenue sources and quantify potential revenue;
- Identify the project's remaining planning needs and costs;
- Identify the project's operational requirements and quantify potential operational costs;
- Identify the benefits and disadvantages of state ownership and management of the project; and
- Identify entities with the capability to own, manage, and operate the project.

The committee is required to receive input from the State Water Commission and other project stakeholders. Although House Bill No. 1020 does not identify the stakeholders, they likely include representatives of the communities in the RRVWSP service area, the Garrison Diversion Conservancy District, and the Lake Agassiz Water Authority. The committee also may wish to receive testimony from operators of other water supply systems in the state for comparison purposes.

ATTACH:2