

August 1, 2022

Legislative Management  
Water Topics Overview Committee  
600 East Boulevard Avenue  
Bismarck, ND 58505-0630

RE: HB 1063 Report

To Whom It May Concern:

Attached with this letter is the report completed by the Northwest Area Water Supply Advisory Committee regarding recommendations for transition of the long-term operation and management of the Northwest Area Water Supply project as required by Section 10 of 2021 House Bill 1063.

This report can be presented to the Water Topics Overview Committee at the September 2022 meeting if so desired.

Sincerely,

  
Bob Schempp

Chairman  
Northwest Area Water Supply Advisory Committee

enclosure

**Northwest Area Water Supply Advisory Committee  
Legislative Management Report - Relative To House Bill 1063**

**Presented To The Interim Water Topics Overview Committee**

**June 1, 2022**

House Bill (HB) 1063 was passed by the 67<sup>th</sup> Legislative Assembly and was signed into law by Governor Doug Burgum in March 2021. The bill modified the Northwest Area Water Supply (NAWS) Advisory Committee and refined the project area. The NAWS Advisory Committee was also tasked by HB 1063 to: 1) report to legislative management regarding recommendations for transition of the long-term operation and management of NAWS; and 2) to report to an interim committee designated by legislative management regarding the status of the NAWS Advisory Committee's responsibilities under Section 2. The purpose of this report is to meet the aforementioned requirements of HB 1063.

**Additional HB 1063 Background**

House Bill 1063 modified the NAWS project area to only include areas to be served by the project as it is currently envisioned. The initial project area included a ten-county area which could potentially have been served by the then proposed NAWS project. The areas eliminated from the original scope have been served by other systems in the intervening time since the authorizing legislation was passed.

House Bill 1063 also modified the constituency of the NAWS Advisory Committee. Representatives from the City of Williston and the Three Affiliated Tribes were removed as neither entity will receive water from the project. The representatives for the rural water districts, county water resource districts, and municipalities in the service area outside of Minot were also modified to remove Williams, Divide, and Mountrail Counties. The bill also added a nonvoting member from the Turtle Mountain Band of Chippewa.

## **Project History**

To provide context for the NAWS project as it exists today, it is important to provide historical background regarding the project's evolution over the last several decades into the project it has become today. This includes the original and ongoing need for the project, how it relates to the Garrison Diversion Project, and the background of NAWS itself.

### *Need For The Project*

Many areas and localities in northwestern North Dakota do not enjoy safe drinking water. The water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. Other areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply.

Supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, were determined to be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable, and adequate supply of water.

### *The Garrison Diversion Project*

The Garrison Diversion Project included 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 Sindre Aquifer to the Minot Water Treatment Plant was approved January 26, 1972. The agreement was part of the Garrison Diversion Project and it promised that water would be available "as soon as needed" from the Velva Canal – which never materialized. The Sindre line, recently rebuilt by Minot, is still being used today.

### *Northwest Area Water Supply Project*

Planning studies for NAWS were initiated by the State Water Commission in November 1987 upon abandonment of the Garrison Diversion Project coming from the 1986 Garrison Diversion Reformulation Act. The final NAWS study report was completed on November 30, 1988. During

Project planning, environmental issues associated with the construction, operation and maintenance of the Project were evaluated through an Environmental Assessment. The scope of this study included the nine-county area (increased to ten counties in 1993) of northwestern and northcentral North Dakota. The 1991 North Dakota Legislative Assembly created a NAWS Advisory Committee and gave its full support to development of the NAWS project. In February 1993, Houston Engineering, in association with American Engineering and Montgomery Watson, were retained as the engineering team for the NAWS prefinal design.

A Secretarial Determination that the project complies with the Boundary Waters Treaty Act of 1909 was signed by the Secretary of the Interior in 2001. An Environmental Assessment was prepared by the Bureau of Reclamation and a Finding of No Significant Impact (FONSI) was issued in September 2001. In response, construction began on the 45-mile raw water pipeline between Lake Sakakawea and Minot in April 2002. By October 2002, the Canadian Province of Manitoba filed a lawsuit against the Department of the Interior in U.S. District Court challenging the FONSI issued for the Project and requesting federal funds and construction activities on the Project be halted.

On February 3, 2005, the court ordered Reclamation to revisit the FONSI upon completion of further environmental analysis. The order stated that additional analyses should consider potential impacts associated with not fully treating the Missouri River water at its source, and potential impacts that could occur due to pipeline leaks and possible failure of water treatment facilities. A second ruling from the court on April 15, 2005, denied the request for an injunction on construction work. With approval from the Court, construction of the 45 miles of main water transmission pipeline between Lake Sakakawea and Minot continued.

Motions were granted by the court in March 2006 (following Reclamation's announcement that they would complete an Environmental Impact Statement (EIS) for the Project) and in March 2008 (following the release of the NAWS Draft EIS) to continue construction on Project features north of the Hudson Bay and Missouri River drainages divide that did not affect treatment decisions.

The Draft EIS was released for public review in December 2007. The EIS evaluated four water treatment alternatives that would further reduce the risk of transferring invasive species from the Missouri River drainage to the Hudson Bay drainage through the construction and operation of the Project. Construction continued in 2006 through 2008 on a pipeline from Minot's water treatment plant to Berthold, two storage reservoirs, and a high service pump station. The Final EIS was published in 2008 and a Record of Decision was signed in 2009. Shortly thereafter, the Province of Manitoba filed a supplemental complaint contending the Final EIS was insufficient. The state of Missouri also filed a complaint against the U.S. Department of the Interior and the U.S. Army Corps of Engineers in the same District Court. The state of Missouri alleged Reclamation's Final EIS was insufficient and that the U.S. Army Corps of Engineers failed to complete a separate National Environmental Policy Act (NEPA) assessment of the Project. These two complaints were joined by the District Court.

In March 2010, the court remanded the case to Reclamation and ordered that the injunction imposed in 2005 remain in effect. Reclamation subsequently initiated a Supplemental Environmental Impact Statement (SEIS). A Draft SEIS was published in June 2014 and a Final SEIS was published in April 2015, followed by a Record of Decision in August 2015. The court ruled in favor of the Department of the Interior and the State of North Dakota and vacated the injunction in August 2017. Manitoba's motion for summary judgement was dismissed and Missouri's complaint was dismissed for a lack of standing in the case. Both plaintiffs appealed the decision to the District of Columbia Circuit Court of Appeals. Manitoba later reached a settlement agreement with Reclamation after which they withdrew their appeal. Missouri continued their appeal, and the Circuit Court upheld the District Court's ruling in May 2019 – clearing the way for NAWWS to proceed after almost seventeen years of litigation.

Construction on the project progressed during the litigation through multiple modifications to the injunction granted by the court. Water service through an interim water supply contract with Minot began in 2008 and has continued since then. Customers served include Minot, the Minot

Air Force Base, Berthold, Burlington, Kenmare, Sherwood, Mohall, Upper Souris Water District, All Seasons Water Users District, and North Prairie Regional Water District. Over eleven trillion gallons of water have been distributed through the system in that time.

## **Committee Actions And Recommendations**

The NAWS Advisory Committee met throughout 2021 to make recommendations for the long-term operations and management as required by HB 1063. In doing so, the Advisory Committee developed thirteen motions they thought were requisite to the NAWS project's success.

- *Motion 1 - NAWS must be recognized as a State owned project.*

Throughout the development of the NAWS project, the State Water Commission has played a key role, in conjunction with the Advisory Committee, not only in the planning, development, construction, and operation of the Project, but also throughout the NEPA process and litigation and as a contracting agency. Changing the ownership of the project could jeopardize the NEPA success and subject the project to additional litigation. The Advisory Committee feels this role must be maintained for the long-term success of the project.

Additionally, there are competing interests existent in the operations of a large, regional water supply. Operational parameters or structures of management which benefit one group of customers would very likely come at the expense of another group of customers, potentially leading to division amongst the stakeholders and failure of the Project.

- *Motion 2 - Existing contracts must be honored.*

Numerous contracts have been in place for several decades, not only as water service contracts, but also regarding the financing and interim water supply. Water user entities have entered into water supply agreements with the State Water Commission, the terms and conditions of which are set - and have been for decades. All Water User Entity

Contracts and amendments need to be reviewed by the Advisory Committee or a Sub-Committee.

- *Motion 3 - The NAWS Biota Plant is a federal responsibility, both for capital and operation.*

As outlined in the SEIS, ROD, and the Dakota Water Resources Act of 2000, the federal government is responsible for the capital, and operation and maintenance expenses for any facilities whose sole purpose is Boundary Waters Treaty Act compliance. The purpose of the NAWS Biota Water Treatment Plant (WTP), as laid out in the SEIS, is to mitigate the possibility of transfer of invasive species. Therefore, the capital and operational expenses associated with the facility are a federal responsibility.

- *Motion 4 - The NAWS WTP and Sundre aquifer wellfield must be under control of the Minot WTP.*

The operations and maintenance of the Biota WTP is a federal responsibility. However, the Biota WTP, Sundre aquifer well field, and Minot WTP must operate at a single system. The unique scenario of having two treatment plants operating in series on a public water system results in a situation where both facilities being operated by a single entity greatly simplifies compliance with primary drinking water regulations. Significant capital improvements would likely be necessary and operational difficulties would likely be encountered if the two plants were not operated under one management structure.

- *Motion 5 - Minot WTP ownership must remain with Minot.*

Use of the Minot WTP by the NAWS project was established and agreed upon early in the development of the Project, similar to how the Dickinson WTP is utilized by the Southwest Pipeline Project. While several improvements were made, and yet more remain to be made to the plant under NAWS contracts, the ownership of the Minot WTP will remain with the City of Minot.

- *Motion 6 - Expansion of NAWS shall only be accomplished by mutual consent of all water user entities.*

Any additional users connected to the system would have the potential to compromise the ability of the project to deliver contracted quantities to existing customers. Policy already exists that existing customers must approve any additional customers and should continue as such. Care must also be taken that any future construction complies with all NEPA documents, applicable federal law, case law, and state law.

- *Motion 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 rates should be clearly defined.

- *Motion 8 - Payment to the State for operation and maintenance (O&M) and replacement and extraordinary maintenance (REM) will continue as defined by law and current water user entity contracts.*

The NAWS project should be self-supporting, with payments for O&M and REM continuing as defined in the water user contracts. O&M 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 O&M and REM must be appropriated by the state legislature, with the funding source being water rate revenues.

- *Motion 9 - Minot's share of local costs will end when the project described by the 1999 agreement between Minot and the Water Commission is completed.*

The agreements between the State 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 monthly since construction first began, with funds obtained through sales taxes collected by the City of Minot.



The initial interim financing agreement committed the City of Minot to partially underwrite the Commission's cost initially for the project works from the intake on Lake Sakakawea or Lake Audubon to the City's water treatment plant. Later amendment extended the City's responsibility to include 35% of the Commission's cost to build further segments of the Project.

- *Motion 10 - Water user entities agreements should be extended, and they should establish a long-term O&M plan that incorporates legislative, Water Commission, and NAWS Advisory Committee recommendations.*

Standardized language should be utilized in water service contracts highlighting responsibilities and obligations of the parties to the contracts.

- *Motion 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 NAWS customer.

## **Conclusion**

From the beginning of the NAWS project until now, water user entities have depended on government entities to follow the terms of the previously outlined agreements. The NAWS Advisory Committee's recommendations are based upon the fundamental concept of continued government ownership and control of NAWS.

The Advisory Committee appreciates the opportunity to provide methods for addressing the long-term needs of NAWS, and we look forward to working with the Legislature to ensure the continued success of NAWS for years to come.