

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Monday and Tuesday, August 13-14, 2018
Grand Hotel, 1505 North Broadway
Minot, North Dakota

Representative Jim Schmidt, Chairman, called the meeting to order at 8:00 a.m.

Members present: Representatives Jim Schmidt, Dick Anderson, Michael Howe, Bob Martinson, Alisa Mitskog, Jon O. Nelson, Mark Sanford, Roscoe Streyle, and Denton Zubke; and Senators Curt Kreun, Gary A. Lee, Larry J. Robinson, Donald Schaible, and Ronald Sorvaag

Members absent: Representatives Tracy Boe and Chuck Damschen; Senator Jonathan Casper

Others present: Senator Ray Holmberg, member of the Legislative Management
Chris Kadrmas, Legislative Council
See [Appendix A](#) for additional persons present.

It was moved by Senator Robinson, seconded by Senator Kreun, and carried on a voice vote that the minutes of the June 13, 2018, meeting be approved as distributed.

WATER PROJECT FUNDING

Chairman Schmidt called on the Legislative Council staff for presentation of a memorandum entitled [Department of Commerce Flood Impact Grants](#) regarding the Department of Commerce's flood impact grants and other funding for water projects, and the Resources Trust Fund.

In response to a question from Chairman Schmidt, Mr. Chris Kadrmas, Fiscal Analyst, Legislative Council, said he will followup with information regarding flood impact grant recipients other than the City of Minot.

In response to questions regarding the State Water Commission's authority to approve projects based on additional funds available in the Resources Trust Fund, the Legislative Council staff said the State Water Commission can apply to the Budget Section under section 3 of 2017 House Bill No. 1020 for that spending authority.

RURAL SOURIS RIVER BASIN FLOOD CONTROL

Chairman Schmidt called on Mr. David Ashley, President, Souris River Joint Board, for a presentation ([Appendix B](#)) regarding funding and expenditures of the Souris River Joint Board.

In response to questions from Representative Anderson, Mr. Ashley said the rural structure acquisition, relocation, or ring dike (StARR) program was started because a previous Souris River flood control program left rural residents short. He said distribution of the rural StARR program funds was originally done on a first come, first served basis. He said the Army Corps of Engineers made rough draft appraisals of some properties in the flood plain. He said there were several public meetings about potential acquisitions, and mailings were sent to qualifying owners in the flood plain. He said if an owner chose to participate, an independent appraiser reviewed and appraised the owner's properties. He said he hopes there will be money left for owners who want to participate now. He said \$12 million was authorized for the program and about half of that amount was used. He said the Souris River Joint Board will use the remaining funds if the State Water Commission authorizes it.

In response to a question from Senator Lee, Mr. Ashley said the local sales tax listed on his slides is a specific 0.5 percent sales tax through the City of Minot. He said there is no countywide tax for the project. He said the county commission funds listed on his slides come from general county mill levies.

In response to a question from Chairman Schmidt, Mr. Ashley said water boards can levy an additional 2 mills for joint boards of which the boards are members. He said the 2 mills are on top of the 4 mills each board can levy on its own. He said if two boards combine to create a joint board, the water board members, not residents, would vote on whether to assess the additional 2 mills.

In response to a question from Senator Kreun, Mr. Ashley said the International Souris River Board study was important and includes an evaluation of dam safety and other issues. He said Canada stepped forward with funding before the United States did.

Chairman Schmidt called on Mr. John Rognlien, Member, Mouse River Landowners Coalition, for a presentation ([Appendix C](#)) regarding local concerns about the Souris River flood control project.

In response to a question from Representative Anderson, Mr. Rognlien said because the land in his area is fairly flat, it takes a lot of land to drain floodwater.

Chairman Schmidt said Mr. Rognlien should work with Mr. Jason Zimmerman, the State Water Commissioner for the Souris River Basin, on the issues he raised in his testimony.

BOTTINEAU COUNTY

Chairman Schmidt called on Mr. Duane Pool, Administrator, Bottineau County Water Resource Board, for a presentation ([Appendix D](#)) regarding tiling and irrigation efforts in Bottineau County.

In response to a question from Representative Anderson, Mr. Pool said he is familiar with a system of tiling and subirrigating for water reuse that has been implemented by a landowner in Bottineau County. He said the landowner is expecting a good crop this year. He said the North Dakota State University Extension Service is interested in using that type of system.

STATE WATER COMMISSION

Chairman Schmidt called on Mr. Jason Zimmerman, Commissioner, State Water Commission, for a presentation ([Appendix E](#)) regarding an update on State Water Commission activities and Souris River Basin projects.

In response to a question from Representative Streytle, Mr. Zimmerman said the commission has not had formal discussions about allocating extra money in the resources trust fund yet but will try to do so and move forward with additional projects soon. He said the commission wants to look at the value projects will bring and whether the projects make sense for the project basins.

Chairman Schmidt said the Legislative Assembly includes an emergency clause on the State Water Commission's appropriations bill to allow for quick allocation of funds as soon as the session is over. He said it is important for projects not to lose a construction season over the slow allocation of funds.

ASSINIBOINE RIVER BASIN INITIATIVE

Chairman Schmidt called on Ms. Wanda McFadyen, Executive Director, Assiniboine River Basin Initiative, for a presentation ([Appendix F](#)) regarding the Assiniboine River Basin Initiative's current activities.

In response to a question from Representative Anderson, Ms. McFadyen said the Assiniboine River basin runs through a prime vegetable growing area in Canada, and the Assiniboine River Basin Initiative is working with Manitoba Agriculture to encourage tiling rather than irrigation in that area.

STATE ENGINEER

Chairman Schmidt called on Mr. Garland Erbele, State Engineer, State Water Commission, for a presentation ([Appendix G](#)) regarding a project status update, a Northwest Area Water Supply project litigation update, allocation of funds released from discontinued projects, and a flood hazard risk management study.

In response to questions from Chairman Schmidt, Mr. Erbele said the alternative Red River Valley flood control project developed through the Governors' task force to obtain a Minnesota Department of Natural Resources permit will increase the cost of the project by about \$300 million to \$400 million. He said because the resources trust fund is about 20 percent above projections, the State Water Commission is looking to move ahead with additional projects as soon as possible.

In response to a question from Representative Streytle, Mr. Erbele said construction on two main pipelines to get water to Westhope will begin in 2019, and then additional pipeline will need to be installed to get the water from Westhope to Bottineau.

Representative Anderson said the Bottineau water treatment plant will last maybe 3 more years so water will need to be supplied to Bottineau before that time.

In response to questions from Representative Nelson, Mr. Erbele said the condition of some portions of the Northwest Area Water Supply pipeline which have been installed but unused for a long time is unknown. He said some portions of the pipeline had water inflow through valves, and the integrity of the pipelines will need to be checked when the pipeline is in use. He also said funds that become available from discontinued projects are returned to the "bucket" from which the funds were drawn.

Chairman Schmidt said the Legislative Council staff had provided the opinion saying the funds should be returned to the original "buckets."

In response to a question from Chairman Schmidt, Mr. Erbele said the river flow on the Little Missouri River was low. He said his office has issued four temporary permits for industrial water from the Little Missouri River, but none of the permittees has drawn water. He said he thinks water from the river is available for fracking.

SOURIS RIVER FLOOD CONTROL PROJECT

Chairman Schmidt called on Mr. Dan Jonasson, Public Works Director, City of Minot, for a presentation ([Appendix H](#)) regarding the Souris River flood control project.

In response to a question from Chairman Schmidt, Mr. Jonasson said the \$20 million in project savings returned to the State Water Commission and reallocated to the project was eventually apportioned to a contingency fund, property acquisitions, and other parts of the project. He said the \$8 million "shortfall" in state funds is needed to match federal funds for property acquisitions. He said the project will need an additional \$45 million for future acquisitions on top of the \$8 million.

In response to a question from Senator Robinson, Mr. Erbele said there will be a total of about 650 home, business, and vacant lot acquisitions for the project.

In response to a question from Representative Zubke, Mr. Erbele said the project will remove from the flood plain about 60 percent of the residents currently in the flood plain.

LAKE DARLING

Chairman Schmidt called on Mr. Frank Durbian, Project Leader, Upper Souris National Wildlife Refuge, United States Fish and Wildlife Service, for a presentation ([Appendix I](#)) regarding regulation of the elevation of Lake Darling.

In response to a question from Representative Anderson, Mr. Durbian said the Fish and Wildlife Service could issue a permit to Outlaw Creek area residents to remove silt if the residents provide a general plan for the removal to the Fish and Wildlife Service to ensure it will not harm the wetland.

FLOODPLAIN MAPPING STUDY

Chairman Schmidt called on Representative Scott Louser for a presentation regarding geographic information system mapping of North Dakota flood plains. Representative Louser said the State Water Commission's study of a potential statewide flood hazard risk management framework and proof of concept demonstration have been delayed by the unresponsiveness of the contacts in North Carolina whose expertise on using geographic information system mapping of flood plains is needed. He said he is encouraged that attorneys from North Dakota and North Carolina soon will be developing a partnership structure to carry out the study.

In response to a question from Chairman Schmidt, Representative Louser said \$30,000 was appropriated for the study, and the State Engineer will not exceed the amount appropriated.

WESTERN AREA WATER SUPPLY LOANS

Chairman Schmidt called on Mr. Kelvin Hullet, Market Manager, Economic Development and Government Program, Bank of North Dakota, for a presentation ([Appendix J](#)) regarding consolidation of Western Area Water Supply loans.

In response to a question from Chairman Schmidt, Mr. Hullet said as of July 2018, the Western Area Water Supply is approximately \$1.4 million ahead in payments. He said he understands the Western Area Water Supply is securing funding to construct more water supply lines.

SOURIS RIVER DAMS

Chairman Schmidt called on Mr. Greg Wiche, Member, International Souris River Board, for a presentation ([Appendix K](#)) regarding Souris River dams and water level management.

In response to a question from Representative Nelson, Mr. Wiche said any reapportionment of water between the parties to the international agreement would have to be renegotiated. He said reapportionment is not on the table for the International Souris River Board's current study.

COMMENTS BY INTERESTED PERSONS

Mr. Ryan Ackerman, Minot, said he knew there had been discussion about some rural residents' discontent with the rural StARR program. He said the program has its flaws, but about one-third of the eligible residents have opted to participate in the program. He said he disagrees with the assertion that Mr. Ashley received an inappropriate buyout and said he would submit the Souris River Joint Board to any type of inquiry about the buyouts that the committee deems appropriate.

Mr. Vern Kongsli, Towner, presented several documents ([Appendix L](#)) regarding the rural StARR program buyouts. He said rural residents have been disappointed in how they were treated in the rural StARR program. He said they did not think the appeals process for appraisals was fair or practicable.

Mr. Leland Goodman, rural Towner, said he had insurmountable damage, especially to trees, on his property from the flood. He said funding needs to be made available to help rural residents clean up land and to prevent future flood damage in rural areas. He said the solutions being proposed will not fix the problem. He said people should not build in flood zones and spending money to keep people living in flood zones should not be allowed. He said rural residents are left to deal with flooded property.

No further business appearing, Chairman Schmidt adjourned the meeting at 12:00 noon.

Claire Ness
Counsel

ATTACH:12