

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

GARRISON DIVERSION OVERVIEW COMMITTEE

Thursday, October 23, 1997
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Pam Gulleon, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Pam Gulleon, Merle Boucher, John Dorso, Tom D. Freier, Mike Timm; Senators Aaron Krauter, Tim Mathern, John T. Traynor, Terry M. Wanzek

Members absent: Representatives Eugene Nicholas, Alice Olson; Senators Gary J. Nelson, David E. Nething

Others present: See Appendix A

Chairman Gulleon announced that she had appointed Senator Aaron Krauter vice chairman of the committee.

At the request of Chairman Gulleon, committee counsel presented a background memorandum entitled *Garrison Diversion Issues*. The memorandum discussed the statutory duties of the Garrison Diversion Overview Committee and reviewed the Garrison Diversion Unit Project.

In response to a question from Senator Traynor, committee counsel said under North Dakota Century Code Section 54-35-02.7, which provides that the committee is responsible for legislative overview of the Garrison Diversion Unit Project and related matters and for any necessary discussions with adjacent states on water-related projects, the committee could conduct discussions with the state of Missouri, a Missouri River Basin state, concerning the Garrison Diversion Unit Project and upstream diversions of water from the Missouri River to supply water projects in North Dakota.

At the request of Chairman Gulleon, Mr. Warren Jamison, Manager, Garrison Diversion Conservancy District, Carrington, addressed the committee concerning the status of the Garrison Diversion Unit Project. He said although the appropriation for 1998 is \$28.9 million, it should be noted that this figure includes operations and maintenance funds for Indian municipal, rural, and industrial water supply projects located on the state's Indian reservations. He said the Garrison project is actually slated to receive approximately \$25.4 million for fiscal year 1998.

Concerning the Garrison Diversion Unit Reformulation Act of 1986, Mr. Jamison said the state negotiating team has developed a set of proposed amendments to the Act. He said the state negotiating team had determined to propose amendments to the 1986 Reformulation Act rather than develop an entirely new piece of legislation. He said the amendments will be the subject of discussions on Monday, October 27, in Washington, D.C.

In response to a comment from Representative Dorso, Mr. Jamison agreed that amending the 1986 Reformulation Act would be more appropriate than drafting an entirely new act. He said many of the provisions of the 1986 Act are working and there is no need to repeal or amend them. He said the time is right for amending the 1986 Act because the state's Republican leadership is well-connected to a Republican Congress and the state's Democratic Congressional Delegation is well-connected to the White House. In addition, he said, there is a reclamation bill being developed that will probably be presented during this Congress. He said California is proposing amendments to a reclamation project in that state, amendments are being proposed for the Central Utah Project, and legislation may be added relating to the Animas-La Plata Project in Colorado and the Lewis and Clark Project in South Dakota. Finally, he said, changes are needed in the small reclamation loan package legislation which would also be included in this reclamation legislation.

Mr. Jamison said the conservancy district and the state should look at the lessons learned in Utah from development of the Central Utah Project and participation by the state of Utah and the local water district in that state. He said the legislation affecting the Central Utah Project was not enacted in its first attempt and that by introducing amendments for the 1986 Reformulation Act in the present Congress, the conservancy district would have an opportunity to educate Congress on what the amendments contain and more importantly what the amendments do not

contain and establish a framework for a hearing next spring.

Concerning the proposed amendments, Mr. Jamison said they call for an increased state role in Bureau of Reclamation studies and authorize an additional \$300 million for the municipal, rural, and industrial water supply program. Concerning the municipal, rural, and industrial water supply program, he said the proposed amendments also contain language that would allow the state to make municipal, rural, and industrial water development loans as well as grants. He said this language would be beneficial for North Dakota because it would extend the municipal, rural, and industrial water supply program and the state would not have to spend funds merely because they had become available but would be better enabled to manage available funds.

In response to Mr. Jamison's comments, Representative Dorso said the state and conservancy district should emphasize that North Dakota has gone above and beyond what was required under the 1986 Act by requiring 35 percent local matching rather than 25 percent as required under the Act. Thus, he said, the state has voluntarily increased its matching requirement in order to extend the program.

Mr. Jamison said the proposed amendments also contain \$200 million for Indian municipal, rural, and industrial water supply programs, a \$5 million recreation component, \$40 million for replacement of the Four Bears Bridge, and \$25 million in additional funds for the Wetlands Trust. He said the proposed amendments contain a ceiling of \$770 million in additional funds for the Garrison Diversion Unit Project. Another important aspect, he said, is that the proposed amendments contain provisions making certain existing expenditures nonreimbursable. He said examples would include features constructed to service a 250,000-acre project when the project will not be nearly this large. He said features built to service excess capacity should not be reimbursable.

In response to a question from Representative Timm, Mr. Jamison said the McClusky Canal is currently used to freshen Lake Audubon, wildlife areas, and wildlife management areas and to deliver water to one experimental irrigation system in the Turtle Lake area.

In response to a question from Senator Wanzek, Mr. Jamison said the mission of the Garrison Diversion Unit Project has evolved from one of irrigation to one of supplying municipal, rural, and industrial water. He said the Flood

Control Act of 1944 authorized 1.275 million acres of irrigation for North Dakota. This authorized irrigation was downsized to 250,000 acres in the 1965 authorization legislation and downsized further to 130,000 acres in the 1986 Reformulation Act. He said the proposed 1998 amendments would reduce the irrigation component to 70,000 acres. However, he said, canalside irrigation is retained, the function of irrigation is retained, and two additional functions are added. He said these are a wildlife and recreation component and a ground water recharge and maintenance of minimum instream flow component. However, he said, this latter component would only become operative if the state adopted legislation mandating minimum instream flows.

In response to a question from Senator Traynor, Mr. Jamison said the state and the conservancy district have agreed not to address the issue of Devils Lake stabilization in the proposed amendments because they believe this issue is addressed in the 1986 Reformulation Act.

Senator Traynor said North Dakota should not overlook the possibilities of irrigation and the opportunities in North Dakota for irrigation of high-value crops and development of value-added agricultural products.

In response to a question from Senator Mathern, Mr. Jamison said although the board of directors of the Garrison Diversion Conservancy District has not taken a vote on the issue, he believed that the board would support the proposed amendments to the 1986 Reformulation Act as drafted by the state negotiating team.

In response to a question from Senator Traynor, Mr. Jamison said the state of Missouri opposes any transfer of Missouri River water out of the Missouri River Basin. He also read excerpts from an editorial written by Mr. David A. Shorr, Director, Missouri Department of Natural Resources, relating to Missouri River transfers and Mr. Jamison's response. A copy of Mr. Shorr's comments and Mr. Jamison's response is attached as Appendix B.

GARRISON MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM

At the request of Chairman Gulleon, Mr. Todd Sando, Director, Water Management Division, State Water Commission, addressed the committee. He discussed the Garrison municipal, rural, and industrial water supply program and presented a summary of its costs and federal expenditures, a summary of municipal, rural, and industrial water supply program costs, a schedule of public water systems served by the Southwest

Pipeline as of December 1997, and information relating to the Northwest Area Water Supply Project. A copy of his presentation is attached as Appendix C.

BUREAU OF RECLAMATION

At the request of Chairman Gulleeson, Mr. Rick Nelson, Chief of Resource Management, Dakota's Area Office, Bureau of Reclamation, addressed the committee. He said the Bureau of Reclamation had recently completed its Arrowwood Refuge environmental impact statement. He said the environmental impact statement was sent out October 6 and the 45-day comment period has commenced. He said the bureau anticipates a record of decision within one month after the comment period closes. He said construction is slated to begin in 1998. Concerning the Jamestown Dam, Mr. Nelson said the bureau has been involved in installing a gravel filter blanket at the dam.

Concerning municipal, rural, and industrial water supply programs, Mr. Nelson said the bureau has been undertaking a number of studies. He said the studies are divided between Indian and non-Indian municipal, rural, and industrial water supply studies and the bureau has commenced Phase 2 of the Indian municipal, rural, and industrial water development studies. He said the 1986 Reformulation Act authorized \$20.5 million for municipal, rural, and industrial water supply projects on the Standing Rock, Fort Berthold, and Fort Totten Reservations. He said the bureau is working with tribal officials to identify future funding needs. He said the estimated cost of completing Indian municipal, rural, and industrial water development projects on the three reservations is \$223 million.

Concerning the Oakes Test Area, Mr. Nelson said the test area was designed to examine irrigated agriculture and its potential impacts as well as to address certain Canadian concerns. He said it is the position of the Bureau of Reclamation that the studies have been completed and the bureau is funding the operation of the Oakes Test Area pending transfer of title to the state. He said the bureau is currently in negotiations with the state concerning the transfer of title to the Oakes Test Area and is operating the Oakes Test Area for irrigation in the meantime. He said operations will be funded for fiscal year 1998 for approximately \$450,000.

Mr. Nelson said one other area that the Bureau of Reclamation is active in is conducting the Red River Valley needs assessments. He said this study consists of two phases, the first of which is

almost finished. He said the Red River Valley needs assessment was undertaken pursuant to the collaborative process with the objective of Phase 1 to identify the water needs of the Red River Valley for the next 50 years. He said the bureau anticipates that in-house review and editing of Phase 1 of the study will be completed and the report finalized by May 1, 1998. He said the report contained references to instream flows, but these references have been removed at the recommendation of the Congressional Delegation and a separate study is being conducted on instream flow needs. He said Phase 2 of the Red River Valley needs assessment is a study of water management and water delivery alternatives that try to match the needs identified in Phase 1 of the needs assessment.

Concerning the fiscal year Garrison appropriation, Mr. Nelson said the President's budget requested \$20.4 million for the Garrison Diversion Unit Project. He said Congress requested \$25.9 million for the project. He said the final appropriation is \$24,350,000 in federal funds, which includes a five or six percent underfinancing factor. He said the fiscal year 1998 budget contains \$2.2 million for wildlife programs, which is to be used for mitigation activities at the Audubon National Wildlife Refuge, and money is to be transferred to the United States Fish and Wildlife Service and the State Game and Fish Department to manage wildlife management areas.

In response to a question from Representative Dorso, Mr. Nelson said the 1998 Garrison appropriation includes between \$9 and \$11 million for the municipal, rural, and industrial water supply program, and he agreed that, using the 35 percent matching formula, this program would require approximately \$3.5 million in state funds.

Mr. Jamison said the conservancy district disagrees with the position of the Bureau of Reclamation on whether the Oakes Test Area studies are completed. He said the authorized research was to be on 5,000 acres in the Oakes Test Area to determine the impact of irrigation on the James River, which has not been done.

At the request of Chairman Gulleeson, Mr. Mike Dwyer, Executive Vice President, North Dakota Water Users Association, addressed the committee. He said the water users have held a number of meetings with the key stakeholders on water development in North Dakota, including the city of Fargo and various farm groups, to get a sense of the position of the people of the state on water issues. He said the state negotiating team is attempting to define the features that North Dakota must retain in its negotiations on the

future of the Garrison Diversion Unit Project. He said the proposed amendments to the 1986 Reformulation Act ensure the delivery of Missouri River water to the Red River, deauthorize irrigation in the James River Valley, deauthorize the Lonetree Reservoir, and address the Wetlands Trust. Another key issue, he said, is the language governing the allocation of power in the 1986 Reformulation Act. He said the North Dakota Water Users Association believes that this language is deficient because it allows the Western Area Power Administration to reallocate certain costs.

Representative Dorso said the conservation community viewed the repeal of the no net loss of wetlands legislation as a breach of an agreement by North Dakota and the state negotiating team on the future of the Garrison Diversion Unit Project. However, he said, North Dakota had agreements in 1944, 1965, and 1986 and it was not until the state did not receive what was promised under the 1986 Reformulation Act that the state passed and subsequently repealed the no net loss of wetlands legislation. He said North Dakota never received the benefits of the 1986 Reformulation Act and that it was not the state that broke faith on the agreement.

At the request of Chairman Gulleeson, Mr. Bill Bicknell, Wildlife Biologist, United States Fish and Wildlife Service, addressed the committee concerning the status of mitigation and enhancement on the Garrison Diversion Unit Project. He said the service reached a milestone October 1 when the Bureau of Reclamation transferred the last of 48 wildlife development areas to the Fish and Wildlife Service and the Game and Fish Department. He said approximately half of these tracts are located along the McClusky or New Rockford Canal and were acquired at the time the canals were being developed. He said an additional 18 wetland tracts were acquired throughout the state as mitigation for the Garrison project. He said approximately 22,000 acres have been transferred to the Fish and Wildlife Service and the Game and Fish Department as mitigation for the Garrison project. Concerning concurrency, he said, the federal government is 140 percent of concurrency on wetlands. He said the federal government is ahead of concurrency on wetlands because after the 1986 Reformulation Act, the federal government continued to acquire lands in anticipation of future project development that has not occurred.

In response to a question from Representative Boucher, Mr. Bicknell said the land acquired for the Lonetree Reservoir is not mitigation or enhancement for the Garrison project. He said

this determination was directed by Congress in the 1986 Reformulation Act. He said this land is owned by the federal government and managed by the Game and Fish Department.

In summary, Mr. Bicknell said during the upcoming year the Fish and Wildlife Service will be finishing work in refuge mitigation categories at the Arrowwood and Audubon National Wildlife Refuges. However, he said, no further acquisitions are planned.

In response to a question from Senator Mathern, Mr. Bicknell said that if the Garrison Diversion Unit Project were completed as envisioned in the proposed amendments to the 1986 Reformulation Act, the federal government would have to acquire additional lands for mitigation. Although the federal government is presently at 140 percent of concurrency for wetlands, he said, this "bank" would not be sufficient to finish the project as envisioned.

In response to a question from Representative Timm, Mr. Bicknell said the federal government has the power of eminent domain, but he said he is aware of only one case in which the government has used this power to acquire lands for mitigation of the Garrison project.

SOUTHWEST PIPELINE PROJECT

At the request of Chairman Gulleeson, Ms. Pinkie Evans-Curry, Manager, Southwest Water Authority, Dickinson, addressed the committee. She distributed a water analysis conducted for Mr. Charles Olson of New England. A copy of the analysis is attached as Appendix D. She said the analysis shows that this water is high in sulfates and the residents of the area where the sample was obtained would like to be serviced by the Southwest Water Authority on an expedited basis.

At the request of Chairman Gulleeson, Mr. Charles Olson, New England, addressed the committee. He said he farms in Slope County and he distributed several water samples from his farm. He said he would like to receive water from the Southwest Pipeline Project.

At the request of Chairman Gulleeson, Mr. Melvin Pierce, Scranton, addressed the committee. He said he would also like to receive water from the Southwest Pipeline Project.

At the request of Chairman Gulleeson, Ms. Ann Anderson, New England, addressed the committee. She said she has to haul water from New England for drinking and would like to receive water from the Southwest Pipeline Project.

At the request of Chairman Gulleeson, Mr. Alfred Underdahl, Chairman, Southwest Water

Authority, addressed the committee. He said there are a number of people that the Southwest Water Authority had to pass by when the Southwest Pipeline was planned and the authority would now like to serve them. He said the authority is making every effort to obtain financing in order to serve these people because of the poor quality of water and the serious need for water. He said almost 100 percent of the citizens of this area indicated they would like to receive Southwest Pipeline water.

WATERSHED DISTRICT STUDY

At the request of Chairman Gulleeson, committee counsel presented a background memorandum entitled *Watershed Districts Study*, relating to the establishment of watershed districts to manage water based on watershed boundaries.

At the request of Chairman Gulleeson, Mr. Mike Dwyer, Executive Secretary, North Dakota Water Resource Districts Association, addressed the committee. He said the Water Resource Districts Association was involved in the 1979-80 study of this issue and it was very contentious. He said water resource districts have turned toward joint boards to work out problems that cross political boundaries such as county lines. He said the joint board concept is working and appears to be a good solution to dealing with cross boundary water problems. He said the exception to this general rule is the Devils Lake Basin where the political subdivisions in the basin have been unable to manage water on a basinwide basis.

In response to a question from Senator Mathern, Mr. Dwyer said Nebraska has combined its water resource districts with soil conservation districts to form natural resource districts based upon watershed boundaries. In response to a further question from Senator Mathern, Mr. Dwyer said county commissioners would have to give up their authority to appoint water managers for such a system to work in North Dakota.

At the request of Chairman Gulleeson, Mr. Sando addressed the committee. He said the State Engineer testified in favor of the resolution and is in favor of managing water based upon hydrologic as opposed to political boundaries.

Representative Aarsvold addressed the committee. He said he was a cosponsor of Senate Concurrent Resolution No. 4041 (1997), which called for the study of the establishment of watershed districts to manage water based on watershed boundaries. He said this resolution was not drafted and passed as a result of the proposed Devils Lake Basin Water Authority

legislation but was contemplated prior to the introduction of that bill. He said this resolution was drafted as a result of water management problems in the Red River Valley and the Goose and Elm River Basins. He said a countywide system does not address water management problems, and in order to resolve these problems water must be managed on a basin basis. He said Traill County has experienced severe damage to roads and bridges as a result of upstream flooding that was outside the jurisdiction of the Traill County water resource district. He said if water could be managed throughout the Goose River Basin, these problems could be avoided.

At the request of Chairman Gulleeson, Mr. Robert Boone, Traill and Steele County Water Resource Districts, Glyndon, Minnesota, addressed the committee. He said he is familiar with water management problems in Traill County and he believes these problems could be more effectively managed on a watershed as opposed to a county basis.

At the request of Chairman Gulleeson, Mr. Tom Moe, Mayville, addressed the committee. He said he is the attorney for both the Traill and Griggs County water resource boards. He said county water resource boards were designed to establish and maintain natural and artificial drains but are not capable of handling larger water resource problems such as those created by rivers as the Goose and Elm. He said county water resource districts can raise sufficient revenue to establish and maintain drains, but there must be a procedure to raise additional revenue to address larger issues on a watershed basis.

At the request of Chairman Gulleeson, Mr. Arden Haner, Chairman, Ward County Water Resource District, and President, North Dakota Water Resource Districts Association, addressed the committee. He said it may be difficult to establish water management districts based upon watershed boundaries because people serving on the board may not be familiar with water problems in a remote portion of the basin. Under the present system, he said, county managers are usually familiar with the water problems within that county. Also, he said, the establishment of watershed districts may raise difficult taxation questions. In a small county-based district, he said, water managers are familiar with projects and the assessments needed to fund them, whereas water managers from a remote portion of a basin may not be familiar with a project in another part of the watershed. In summary, he said, the committee must examine the entire picture, including boundaries, taxation issues,

and selection of water managers in conducting this study.

At the request of Chairman Gulleson, Mr. Ray Kraling, Traill County Water Resource Board, addressed the committee. He said his land is drained by the Elm River in Traill County and it is very difficult to raise sufficient funds in a small area to fund necessary improvements.

At the request of Chairman Gulleson, Ms. Clarice Liechty, Wetlands Trust, Jamestown, and former member of the board of directors of the Wetlands Trust, addressed the committee. She said the composition of the board should be reviewed. She said representatives of the conservation community are not interested in economic development in North Dakota and two of the three members do not even live in North Dakota.

STAFF DIRECTIVES

Representative Boucher requested that the Legislative Council staff obtain information on the amount of Garrison Diversion Unit Project funds spent on mitigation and wildlife enhancement projects as well as the number of acres acquired as mitigation for the project.

Representative Dorso requested that the Legislative Council staff obtain information on a lawsuit regarding the Missouri River filed by the Attorney General of Missouri, as well as an analysis of the effect of the decision on North Dakota interests. He also requested that the Legislative Council staff obtain information on the Nebraska natural resource district system.

Senator Krauter requested that the Legislative Council staff contact the State Water Commission

staff regarding problems the commission is aware of with upstream drainage causing problems downstream and that the Legislative Council staff provide information to the committee on the authority of water resource district boards to address these problems.

Representative Gulleson requested that the State Water Commission be contacted to provide information on the priority of Southwest Water Authority and Southwest Pipeline projects under the Garrison municipal, rural, and industrial water supply program and to supply maps of the state's hydrologic and watershed boundaries. She also requested that the state negotiating team provide an update on the Garrison Diversion Unit Project negotiations and that the State Engineer be requested to provide an update on Devils Lake flooding.

Senator Wanzek requested that the Legislative Council staff provide information on the preparation and information required for environmental impact statements.

Senator Mathern requested that the Legislative Council staff provide information on expenditures made by the North Dakota Wetlands Trust.

No further business appearing, Chairman Gulleson adjourned the meeting at 2:30 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:4