

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### GARRISON DIVERSION OVERVIEW COMMITTEE

Monday, June 21, 1999  
Harvest Room, State Capitol  
Bismarck, North Dakota

Representative John Dorso, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives John Dorso, Merle Boucher, Mick Grosz, David Monson, Eugene Nicholas, Francis J. Wald; Senators Layton Freborg, Joel C. Heitkamp, Aaron Krauter, Gary J. Nelson, Rod St. Aubyn, John T. Traynor

**Members absent:** Representative Pam Gulleon; Senator Terry M. Wanzek

**Others present:** See Appendix A

Chairman Dorso announced that he had appointed Senator Gary J. Nelson to serve as vice chairman of the committee.

At the request of Chairman Dorso, Mr. John D. Olsrud, Director, Legislative Council, reviewed the Legislative Council rules of operation and procedure.

At the request of Chairman Dorso, committee counsel presented a background memorandum entitled *Garrison Diversion Issues - Background Memorandum*. The memorandum discussed the statutory duties of the Garrison Diversion Overview Committee, history of the Garrison Diversion Unit Project, Garrison appropriations, and the Dakota Water Resources Act of 1999.

Chairman Dorso said in the past the Garrison Diversion Overview Committee has received reports concerning the Garrison Diversion Unit Project and other water issues in North Dakota. However, he said, with the introduction of the Dakota Water Resources Act at the federal level and the continuing flood emergency in the Devils Lake Basin, the committee will take a more active role in water matters in North Dakota and meet more frequently this interim.

Chairman Dorso recognized Senator Nelson. Senator Nelson said all the water issues prioritized by the Legislative Council have been consolidated under the Garrison Diversion Overview Committee. Thus, he said, the committee's jurisdiction is much broader than the Garrison Diversion Unit Project and includes all water issues in North Dakota, including issues relating to the Missouri River.

#### FISCAL YEAR 2000 GARRISON APPROPRIATIONS

Chairman Dorso called on Mr. Warren L. Jamison, Manager, Garrison Diversion Conservancy District,

Carrington. Mr. Jamison said the administration's budget for Garrison for fiscal year 2000 contained \$23.5 million for the Garrison Diversion Unit Project. He said the Senate has increased this amount to \$25.5 million. Of this amount, he said, approximately \$4 million has been allocated for existing maintenance on the project. He said existing maintenance must be done on the McClusky and New Rockford Canals and for operation of the Snake Creek Pumping Plant. He said approximately \$450,000 has been allocated for the Oakes Test Area, \$3 million for operation and maintenance of Indian irrigation facilities, \$10 million for the state municipal, rural, and industrial water supply program, and \$2 million for Indian municipal, rural, and industrial water supply projects. He said the \$2 million write-in for Indian municipal, rural, and industrial water supply projects accounts for the difference between the administration's version and the Senate's version of the appropriation. He said the \$2 million for Indian municipal, rural, and industrial water supply projects raises the Indian municipal, rural, and industrial water supply project ceiling, which was reached several years ago, to approximately \$25 million. Finally, he said, approximately \$2.2 million has been allocated for wildlife programs. He said this will allow work to continue on the Arrowwood and Audubon National Wildlife Refuges.

#### DAKOTA WATER RESOURCES ACT OF 1999

Mr. Jamison noted that subsequent to the introduction of the Dakota Water Resources Act of 1999 and before the hearing on the bill before the Senate Subcommittee on Water and Power held on May 27, 1999, agreements were reached which permitted the administration to testify in support of the Act. Among the agreements, he said, is that additional funding to address the state's municipal, rural, and industrial water supply needs is reduced by \$100 million, from \$300 million to \$200 million. He said the focus of the municipal, rural, and industrial water supply program will be on water supply problems rather than water quality problems. He said funding and authorization for the replacement of the Four Bears Bridge across an arm of Lake Sakakawea on the Fort Berthold Indian Reservation will be removed from the Dakota

Water Resources Act. He said the cost of the bridge is approximately \$40 million and one of the reasons that the bridge is removed is that the Bureau of Reclamation is not in the bridge building business. He said the administration has assured the state that provision for the bridge will be included in other legislation. He said the agreements define the principal supply works, which the Secretary of the Interior is directed to maintain and complete, as the Snake Creek Pumping Plant, McClusky Canal, and the New Rockford Canal. He said language was restored to the Act providing that prior to construction of any water system to deliver Missouri River water into the Hudson Bay Basin the Secretary of the Interior, in consultation with the Secretary of State and the administrator of the Environmental Protection Agency, is required to determine that adequate treatment can be provided to meet the requirements of the Boundary Waters Treaty of 1909 between Canada and the United States. He said this language was unintentionally omitted when the Dakota Water Resources Act was redrafted prior to its introduction. He said agreement was reached on additional concerns relating to the determination of the appropriate share of costs for operation and maintenance of existing facilities, if used. He said mutual understanding was also reached on concerns relating to the operation of an optional loan program within the municipal, rural, and industrial water supply projects grant program and the removal of language that made full funding of the natural resources trust fund conditional upon completion of a Red River Valley water supply project.

In response to a question from Representative Boucher, Mr. Jamison said state officials hope that Missouri River water will only need to be treated once before it is introduced into the Sheyenne River to supply water to the Red River Valley.

In response to Mr. Jamison's comments, Senator Traynor noted that the Devils Lake Chamber of Commerce and City Commission have endorsed the Dakota Water Resources Act and as a result of the United States Army Corps of Engineers' decision not to construct an outlet from Devils Lake to the Sheyenne River until the lake rises six more feet, an outlet to Devils Lake should be included in the Dakota Water Resources Act.

In response to Mr. Jamison's comments, Representative Dorso noted that in return for the state's agreeing to reduce the municipal, rural, and industrial water supply program by \$100 million, the state municipal, rural, and industrial water supply funds will be indexed for inflation. He said the Garrison Diversion Unit Reformulation Act of 1986 did not index municipal, rural, and industrial water supply funds for inflation and as a result the state received much less buying power from the authorization than it would have had the funds been indexed for inflation. He said indexing is so important to the state that the state was willing to give up municipal, rural, and industrial

water supply funds. He said the inclusion of indexing was nonnegotiable.

At the request of Chairman Dorso, Mr. William Bicknell, President, North Dakota Chapter of the Wildlife Society, addressed the committee. He said the North Dakota Chapter of the Wildlife Society supports the Dakota Water Resources Act and particularly the natural resources provisions of the bill. He said the agreements between the administration and the state have only caused the society to strengthen support of the bill. However, he said, this support is not true of all members of the conservation community.

### **GARRISON MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM, NORTHWEST AREA WATER SUPPLY PROJECT, SOUTHWEST PIPELINE PROJECT, AND PEMBINA RIVER DAMS STUDY**

Chairman Dorso called on Mr. David Sprynczynatyk, State Engineer and Secretary, State Water Commission, who addressed the committee. Mr. Sprynczynatyk said the state has received approximately \$154 million of the \$200 million authorized for the municipal, rural, and industrial water supply program with approximately \$10 million scheduled to be received in fiscal year 2000. He said the State Water Commission is completing several municipal, rural, and industrial water supply programs, including the Missouri West Project, the Langdon rural water system expansion, and the All Seasons Rural Water Project at North Valley, as well as the Ramsey County and Langdon area feasibility studies. He said remaining funds are allocated for the Northwest Area Water Supply Project, Ransom-Sargent Water Project, and the Benson County Rural Water Project.

Concerning the Northwest Area Water Supply Project, Mr. Sprynczynatyk said the State Water Commission has completed the final design for construction of the first phase of the project. He said the next step is for the state to reach agreement with Canada on the transfer of water from the Missouri River into the Hudson Bay drainage system. He said the water will be pretreated at the Missouri River. He said it is important to note that the Boundary Waters Treaty of 1909 does not require that Canada approve water transfers made into Canadian waters, but that the United States can determine unilaterally whether water transfers meet the requirements of the treaty. He said state officials believe that the state can meet these requirements.

Concerning the Southwest Pipeline Project, Mr. Sprynczynatyk said construction is continuing. He said the next phase of construction will be the Mott-Elgin rural area. He said the pipeline has over 1,500 rural water users and hookups with more being added.

Concerning the Grafton Flood Control Project, he said legislation has passed both the United States Senate and House of Representatives and the bills are in a conference committee.

Concerning the study of dams in the Pembina River watershed, he said the State Water Commission is providing technical assistance to the Pembina River advisory committee.

In response to a question from Representative Monson, Mr. Sprynczynatyk said a permit is required under Section 404 of the Clean Water Act to place dredged or fill material in any waters of the United States. Concerning the dike at Neche, he said, a Section 404 permit may still be required because even though a dike is being constructed and nothing is being placed in the water, oftentimes material is placed in the water incidentally to constructing a facility on or near water. Thus, he said, it would require more study to determine whether a Section 404 permit is in fact required.

### **DEVILS LAKE FLOODING**

Chairman Dorso recognized Governor Edward T. Schafer. Governor Schafer characterized Devils Lake flooding as the state's most urgent and complicated challenge at this time. He said administration officials have spent a great deal of time in the Devils Lake Basin this past year as well as in the last six years working on Devils Lake issues. He said while damages continue to grow, houses, farms, and businesses continue to be lost. In addition, he said transportation infrastructure is threatened and entire communities such as Minnewaukan and Churchs Ferry face destruction. After the expenditure of \$300 million to deal with the flood, the United States Army Corps of Engineers is still debating whether Devils Lake flooding constitutes an emergency. He said the United States Army Corps of Engineers has determined not to construct an outlet until the level of Devils Lake rises another six feet. He said the consequences of this decision by the United States Army Corps of Engineers will be staggering for the Devils Lake Basin. He said the cities of Minnewaukan and Churchs Ferry will be inundated. He said Highway 2, which connects two important defense facilities, will be compromised. He said Highways 20, 57, 281, and 19 will be compromised. He said the Burlington Northern-Santa Fe Railroad, an important link between Minneapolis-St. Paul and Seattle, will be compromised. He said the State of North Dakota cannot afford to wait any longer and must "turn up the heat" on Washington. He said the Clinton administration and the state's Congressional Delegation must do everything within their power to get the Corps of Engineers to act. He said the economic impact study conducted by the Corps of Engineers is flawed in that it does not include the cost of damage to transportation infrastructure, the cost of moving cities, the cost of lost agricultural productivity in the basin, the cost of

flood insurance, Federal Emergency Management Agency assistance, and the economic impact on the region in general. He said the state is going to commission a separate, independent economic analysis to show the real economic costs of the Devils Lake flood and use this analysis to argue the merits of an outlet to Devils Lake.

In response to a question from Senator Nelson, Mr. Sprynczynatyk said the Section 404 permit for moving water from Devils Lake to the Stump Lake system has expired. He said if the corps were to grant the state's request for an expedited permit procedure, it would take 60 to 90 days to grant the permit. He said everything is in place to construct an outlet to Stump Lake once the permit is issued.

In response to a question from Representative Boucher, Governor Schafer said the state has taken a number of steps to address flooding in the Devils Lake Basin. He said these include storing water in Stump Lake, pursuing an emergency Twin Lakes outlet, and continuing infrastructure protective work.

In response to a question from Senator St. Aubyn, Governor Schafer said the state has the legal authority to remove approximately 6 to 12 inches of silted-in material in the cut between Devils Lake and West Stump Lake. However, he said it would be more beneficial for the Devils Lake Basin for the state to seek and secure a Section 404 permit to cut a channel from Devils Lake to West Stump Lake and lower the level of Devils Lake.

In response to a question from Representative Dorso, Governor Schafer said the United States Army Corps of Engineers has not acted for three reasons. He said these include the corps' fear of litigation, the corps' fear of downstream opposition from the states of Missouri and Minnesota and the province of Manitoba, and the experiences of the corps in the Great Salt Lake Basin.

Chairman Dorso called on Mr. Marshall Moore, Director, Department of Transportation, who said once Devils Lake water begins to move into Stump Lake, Highway 1 will need to be relocated around the east end of Stump Lake. He said the Department of Transportation is also raising Highway 20, which, in addition to providing transportation, protects St. Michael and provides access to that portion of the Spirit Lake Nation. He said roads are not eligible for federal emergency funding unless they are underwater or in imminent danger of going underwater and thus the grade raises on Highways 20 and 57 will have to be done with regular federal funds. He said Highways 19 and 281 are in good shape but that a bridge on Highway 2 at Churchs Ferry is in danger.

In response to a question from Senator Nelson, Mr. Moore said that as of June 30 the Department of Transportation has committed all of its federal funds for 1999 and thus no funds are available for infrastructure improvements in the Devils Lake Basin. Because emergency federal funds are not available

until a road is inundated or in imminent danger of inundation, he said the department will have to shift funds from other projects to the Devils Lake Basin.

In response to a question from Representative Wald, Mr. Moore said shifting funds from other projects in the state to the Devils Lake Basin will impact projects. However, he said, once a project is bid it will not be dropped in favor of moving the money for that project to a project in the Devils Lake Basin.

Senator Traynor requested that Mr. Moore provide the committee with information on the total cost of infrastructure improvements made in the Devils Lake Basin due to flooding.

Chairman Dorso called on Mr. Francis Schwindt, Chief, Environmental Health Section, State Department of Health, who said the level of total dissolved solids in the west bay of Devils Lake, the area of the proposed Twin Lakes outlet, is approximately 1,100 to 1,200 parts per million. He said the level of total dissolved solids is approximately 5,500 parts per million in the east bay of Devils Lake, 9,700 parts per million in West Stump Lake, and 12,000 parts per million in East Stump Lake. Thus, he said, the lake water quality becomes progressively worse the further east the water is tested. He said the average level of total dissolved solids is 8,000 to 9,000 parts per million in Devils Lake. He said the level of total dissolved solids for the Sheyenne River is 500 parts per million. He said water users such as the cities of Valley City, Fargo, Grand Forks, Grafton, Drayton, and Pembina would be affected by discharges from Devils Lake. He said if the water is taken from the west end of Devils Lake and transported to the Sheyenne River, it would probably be sufficiently diluted to meet water quality standards in the Sheyenne River and comply with the Boundary Waters Treaty of 1909.

However, he said if water is removed from the east end of Devils Lake or the Stump Lake system, it will be more difficult to meet Minnesota water quality standards and objectives that have been adopted at the United States-Canada border. The objectives that have been adopted, he said, are 500 parts per million of total dissolved solids as well as sulfate standards.

Senator Traynor distributed a United States Geological Survey fact sheet entitled *Spatial and Temporal Variability of Dissolved Sulfate in Devils Lake, North Dakota, 1998*. A copy of the fact sheet is attached as Appendix B.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the City of Devils Lake has applied for a permit to construct a spillway from the Stump Lake system to the Tolna Coulee from which water would move to the Sheyenne River. He said this proposed route poses several environmental problems and the State Water Commission is working with the City of Devils Lake to explore the possibility of constructing an outlet from east Devils Lake where the water quality is better.

At the request of Chairman Dorso, committee counsel distributed a letter from Mr. Jim McLaughlin,

Southeast Cass Water Resource District Board, concerning Devils Lake. A copy of the letter is attached as Appendix C.

**It was moved by Senator Nelson, seconded by Representative Monson, and carried on a roll call vote that the Legislative Council staff be requested to prepare a letter for the signature of the chairman to the Governor urging him to explore all options to alleviate flooding in the Devils Lake Basin, including litigation, outlet alternatives, and to commission an independent economic impact analysis of the cost of flooding in the Devils Lake Basin.** Representatives Dorso, Boucher, Grosz, Monson, and Nicholas and Senators Freborg, Heitkamp, Krauter, Nelson, St. Aubyn, and Traynor voted "aye." No negative votes were cast.

Representative Dorso requested that a map he had received of the Devils Lake Basin be placed on file in the Legislative Council office.

Chairman Dorso recognized Senator Vern Thompson. Senator Thompson thanked the members of the committee and state and federal officials for their efforts concerning Devils Lake flooding. He said if the local political subdivisions had been irresponsible and not planned for the Devils Lake flood emergency, an outlet would probably be under construction and the local subdivisions have probably harmed their quest for an outlet by being responsible.

Chairman Dorso recognized Mr. Fred Bott, Mayor, City of Devils Lake. Mayor Bott said the residents of the City of Devils Lake are very frustrated with the United States Army Corps of Engineers and that steps must be taken to protect Devils Lake from the rising level of the lake.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the request for the Section 404 permit to move water from Devils Lake to West Stump Lake should be resolved in four to six weeks and the state's independent economic analysis should be completed by that time.

## MAPLE RIVER DAM PROJECT

Chairman Dorso called on Mr. Sprynczynatyk, who said the Southeast Cass Water Resource District has been trying to construct a dam on the Maple River for a number of years. He said the Southeast Cass Water Resource District has applied for a Section 404 permit and the United States Army Corps of Engineers is reviewing archaeological sites in the area and reviewing the permit application.

In response to a question from Senator Nelson, Mr. Sprynczynatyk said there is a procedure providing that states can assume jurisdiction over the Section 404 program. He said the Legislative Assembly gave this authority to the office of the State Engineer in 1993, but funds were not appropriated to assume the program.

Representative Dorso requested that the State Engineer provide an estimate of the cost of the state

assuming jurisdiction over the Section 404 program to the committee.

No further business appearing, Chairman Dorso adjourned the meeting at 2:45 p.m.

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Jeffrey N. Nelson  
Counsel

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John D. Olsrud  
Director

ATTACH:3