

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Teleconference Meeting  
Wednesday, December 19, 2012  
Prairie Room, State Capitol  
Bismarck, North Dakota

Representative Dan Ruby, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Dan Ruby, Dick Anderson, Keith Kempenich, Gary Kreidt, Andrew Maragos, Corey Mock, Bob Skarphol; Senators Joan Heckaman, Jerry Klein, Judy Lee, Terry M. Wanzek

**Members absent:** Representatives Tracy Boe, Patrick Hatlestad, David Monson, Chet Pollert

**Others present:** See [Appendix A](#)

**It was moved by Representative Maragos, seconded by Representative Kreidt, and carried on a voice vote that the minutes of the October 17, 2012, meeting be approved as distributed.**

Chairman Ruby called on Mr. Bob Shaver, Director, Water Appropriations Division, State Water Commission, to present information ([Appendix B](#)) regarding the State Auditor's office request for additional funding to expand the performance audit of the State Water Commission's regulation of industrial water use in the state to include the water permitting process. Mr. Shaver said the water permitting process is a complex, science-based process. He said many of the state's groundwater aquifers are at advanced stages of development. He said the decision on pending water permit applications from these aquifers can take 10 to 15 years of monitoring aquifer water-level response to pumping, water use monitoring, and climate data monitoring. He said improvements could be made to the communication protocol between water permit applicants and the State Water Commission. He said the State Water Commission is requesting two new full-time equivalent positions in its 2013-15 budget request--a water resource engineer and a water resource manager--to ensure the Water Appropriations Division has adequate resources in place to efficiently process water permit applications.

In response to a question from Representative Ruby, Mr. Shaver said the State Water Commission does not support the State Auditor's office request to expand the audit.

Chairman Ruby called on Mr. Gordy Smith, Audit Manager, State Auditor's office, to present information regarding the State Auditor's office request to expand the performance audit of the State Water Commission's regulation of industrial water use in the state to include the water permitting process and to

authorize an additional \$50,000 to be spent for hiring a consultant to assist with the audit.

Mr. Smith said the committee, at its June 2012 meeting, approved a notion asking the State Auditor's office to conduct this performance audit and authorized the State Auditor's office to hire a consultant to assist with the audit at a cost not to exceed \$100,000. He said the State Auditor's office contracted with the accounting firm of KPMG, LLP, to conduct the audit at a cost of \$99,700.

Mr. Smith said the scope of the original audit included the following six elements:

1. A review of laws, rules, regulations, policies, procedures, and processes relating to the regulation of industrial water use in the state.
2. Requirement to test compliance with laws, rules, regulations, policies, procedures and processes pertaining to monitoring the state's water use limitations and aquifer levels. The successful vendor was to determine the sufficiency of the State Water Commission's monitoring efforts.
3. Requirement to test compliance with policies, procedures, and processes relating to temporary authorization for holders of existing irrigation water permits to use water for industrial purposes. The successful vendor was also to determine the sufficiency of the State Water Commission's procedures to ensure compliance.
4. Requirement to test compliance with policies, procedures, and processes relating to temporary surface water permits for industrial use. The successful vendor was also to test for sufficiency of the State Water Commission's monitoring processes for temporary water users.
5. Requirement to test compliance with policies, procedures, and processes relating to the establishment, imposition, and collection of penalties (including any established in law or administrative rules).
6. Evaluation of the State Water Commission's policies, procedures, and processes to determine if they provide reasonable assurance that its metering and reporting policies, procedures, and processes are being adhered to by permitholders.

Mr. Smith said the audit report for the initial audit work is expected to be submitted by January 21, 2013.

Mr. Smith said in the process of conducting the original audit, the consultants identified potential concerns regarding the State Water Commission's water permitting process, including processing time, communications, and available resources. He said the consultants suggested conducting additional work in this area. He said the State Auditor's office agrees and is asking the committee to expand the performance audit to include the water permitting process and to authorize additional costs of \$50,000 to contract with the consultant. He anticipates the final report for this audit could be presented to the committee by March 1, 2013.

### **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Senator Lee expressed concern regarding the proposed deadline of March 1, 2013, for submittal of the audit report. She said the additional audit could take a significant amount of the agency's staff time away from their normal duties.

Representative Skarphol said he supports the request for additional funding to expand the audit work because the State Water Commission has no guidelines in place regarding the water permitting process.

**It was moved by Representative Skarphol, seconded by Representative Kempenich, and**

**carried on a roll call vote that the Legislative Audit and Fiscal Review Committee approve the State Auditor's office request, under North Dakota Century Code Section 54-10-01, to expand the performance audit of the State Water Commission's regulation of industrial water use to include a review of the water permitting process of the State Water Commission and to authorize costs of up to an additional \$50,000 for hiring a certified public accounting firm to assist with the performance audit. The scope and timeline for completion of the additional audit work is to be determined by the State Auditor's office.** Representatives Ruby, Anderson, Kempenich, Kreidt, Maragos, and Skarphol and Senators Heckaman, Klein, Lee, and Wanzek voted "aye." No negative votes were cast.

No further business appearing, Chairman Ruby adjourned the meeting at 10:00 a.m.

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Becky Keller  
Senior Fiscal Analyst

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:2