



City of Grand Forks
Staff Report

APPROVED & ACCEPTED
by City Council

07/07/2025

Maureen Storstad
Maureen Storstad
City Auditor

Committee of the Whole – June 23, 2025
City Council – July 7, 2025

Agenda Item: Red River Valley Water Supply Project – Legal and Technical Support

Submitted by: Todd Feland, City Administrator
Dan Gaustad, City Attorney

Staff Recommended Action – (1) Receive the Red River Water Supply Project (RRVWSP) legal and technical update. (2) Approve expert consultant and scope of work as part of the review of the RRVWSP Project Participation Agreement (PPA) and Associated Exhibits in the amount of \$139,435.22 and approve associated budget amendment from the Water Works Enterprise Fund, subject to final review and approval of the Finance Department and City Attorney’s Office.

June 23, 2025 – Committee Recommended Action: Motion by Weigel, second by Osowski to move agenda item to City Council with a recommendation to approve. Motion carried unanimously.

July 7, 2025 – Council Action: Motion by Berg, second by Lunski to approve on consent agenda. Motion carried unanimously.

BACKGROUND:

RRVWSP is an estimated \$1.2 billion plus strategic long-term emergency water supply and economic development initiative project for the State of North Dakota and will serve nearly 50 percent of North Dakota’s population in Central and Eastern North Dakota. The City of Grand Forks (City) is a major stakeholder and partner of the RRVWSP and makes up almost 17 percent (including East Grand Forks’ share) of the proposed project allocation. Currently the RRVWSP is a partnership between the State of North Dakota, Garrison Diversion Conservancy District (GDCCD), and Lake Agassiz Water Authority (LAWA). The State of North Dakota has committed to a 75% (State) and 25% (local) cost share agreement and has legislative intent of \$953 million from the State of North Dakota over the next several biennia. The local cost is currently being financed with a Bank of North Dakota (BND) 40 year/2% interest loan. The RRVWSP is currently underway with \$240 million approved 2023-2025 ND Biennium funding under a 75% (State) and 25% (Local) capital cost share agreement. The RRVWSP recently received approval of \$205 million in ND legislative funding for the for the 2025-2027 ND Biennium under a 75% (State) and 25% (Local) capital cost share agreement with a local cost share financing via BND as a 40 year/2% interest loan. Like previous legislative sessions and related local funding, the City is anticipating a request to review and approve an interim financing agreement (Series F) for the local cost share for the 2025-2027 ND Biennium. The goal for construction completion of the RRVWSP is 2032.

Based on projected year 2075 demand estimates, the current City’s domestic and industrial nomination, which includes East Grand Forks, is 28.10 cfs or 18.1 MGD. This nomination was based on a recommendation received in 2016. The nomination breakdown for Grand Forks is as follows: domestic 12.2 cfs (7.9 mgd), industrial 13.8 cfs (8.9 mgd), and total 26.0 (16.8 mgd). The nomination breakdown for East Grand Forks is as follows: domestic 1.6 cfs (1.0 mgd), industrial 0.5 (0.3 mgd), and total 2.1 cfs (1.3 mgd). The City is currently collaborating with other regional northeast area water systems to include East Grand Forks, and rural water districts near the City of Grand Forks to further ensure the region makes the best and most optimum decisions from long term water supply perspectives. For the Grand Forks/East

Grand Forks, the total project annual core system cost of participation (year 2034 in 2024\$) is estimated as \$2,275,700.00 and the associated and projected end user bill impact (year 2034 in 2024\$) is \$3.64/month. Starting in the FY 2025 City Budget, the City created and approved a separate subdepartment of the Water Works Enterprise Fund and utility rate for the RRVWSP.

The RRVWSP Project Participation Agreement (PPA) is intended to be the ultimate project agreement and is a complex legal, technical, and financial agreement. The current PPA has nine (9) attached exhibits summarized as follows.

- A. Project Elements and Costs.
- B. User Nominations.
- C. Prior Expenses.
- D. Capital Cost Responsibility.
- E. Operations, Maintenance, Administration, and Reserve Responsibility.
- F. StateMOD Documentation.
- G. Operational Framework.
- H. Debt Repayment Obligation Schedules.
- I. Project Layout Maps.

ANALYSIS AND FINDINGS OF FACT:

- As part of the final review and drafting of the PPA and its technical exhibits, the City Council approved on September 3, 2024 legal support and advice from Nazarenus Stack & Wombacher (NSW) and specifically Brian Nazarenus and approved on May 20, 2024 technical support services Precision Water Resources Engineering (PWRE) and specifically Shane Coors and Patrick Noe.
- NSW and Brian Nazarenus are working as lead counsel and have augmented the City's administrative and technical PPA and Associated Exhibits review team. NSW and Brian Nazarenus are Colorado based and have a wealth of applicable Western United States water rights agreement negotiations experience on regional water supply projects with multiple project stakeholders.
- PWRE and Shane Coors and Patrick Noe are Colorado based and specialize in complex water resource system modeling and water rights evaluations.
- The PWRE Project Tasks are as follows and in the amount of \$146,658.00 and from the Water Works Enterprise Fund. The project tasks will be completed over the next year.
 - Project Management.
 - StateMOD Model Review – e.g. demand data, hydrology, return flows, water accounting, and water rights.
 - Review, Request, and Analyze Model Runs.
 - PPA Technical Aspects/Exhibits Review and Evaluation – e.g. operational plans.
 - Presentation Preparation.
- The City administrative and consultant team have worked in collaboration and alignment with the City of Fargo, LAWA, and the North Dakota Department of Water Resources (NDDWR).
- NSW and Brian Nazarenus have highlighted the following issues regarding the RRVWSP PPA.
 - **Issue One LAWA Control** – LAWA and its members should have control over the administration of the Project after the agreed upon “break point” (i.e. Sheyenne River discharge facility). LAWA should contract on behalf of its members with GDCD for a water supply contract to deliver Project Water to the break point. LAWA and its Project Participant members should have a separate agreement between themselves for the distribution and administration of the Project Water after the break point and in the Sheyenne and Red River Basins, including Lake Ashtabula operations.
 - **Issue Two Lake Ashtabula Water Supply Contracts** – Pursuant to the Federal Water Supply Act of 1958, a water supply contract should be obtained from the U.S. Army Corps of Engineers (USACE) for the storage and release of water from Lake Ashtabula. Thompson-Acker account holders would be parties to the contract with their native basin water rights; LAWA would be a party to the contract with regards to Project Water. The contract should be obtained before the agreement between LAWA and the Project Participants is finalized.

- **Issue Three Specific Operational Plan** – A specific Operational Plan acceptable to LAWA members should be developed before the agreement between LAWA and the Project Participants is finalized.
- **Issue Four Improved Dispute Resolution** – Both the LAWA-GDCD Agreement and the LAWA-Project Participants agreement need to contain a robust, equitable, and clear dispute resolution process.
- **Issue Five LAWA Cost Sharing** – Provisions are needed to include LAWA's expenses as part of the RRVWSP expenses for the cost sharing by the State.
- **Issue Six NDDWR, City of Fargo, LAWA, and Thompson Acker Account Holders Engagement** – There should be full engagement with the NDDWR, the City of Fargo, LAWA, and Thompson Acker account holders regarding Lake Ashtabula administration and operations, including water rights for Thompson Acker accounts, and the administration and shepherding of releases of water, whether Thompson Acker or Project Water, from Lake Ashtabula to lawful users. This issue relates to Issue Two and Three above.
- PWRE and Shane Coors and Patrick Noe have highlighted the following issues regarding the RRVWSP PPA.
 - Critical regulatory prerequisites to an operating plan are not in place to include.
 - Define Lake Ashtabula Thompson Acker accounts fill/refill protocol with NDDWR.
 - Develop water shepherding plan below Lake Ashtabula with NDDWR.
 - Complete Lake Ashtabula Water Control Manual update with USACE.
 - Complete Red Lake River Water Control Manual update with USACE.
 - Lack of specificity and engagement in the operational plan.
 - Lack of specifics of how operational decisions will be made.
 - The development process should be more collaborative among the stakeholders.
 - Administrative Concerns
 - Lake Ashtabula
 - Lack of certainty as to when or if release requests from Lake Ashtabula will be fulfilled.
 - There is no release priority for accounts on Lake Ashtabula.
 - Lack of clarity on how sedimentation will impact storage accounts on Lake Ashtabula.
 - NDDWR's administration of accounts on Lake Ashtabula.
 - Pipeline Operations
 - The operational plan does not provide clear indication of how the pipeline will be operated.
 - StateMod analysis of pipeline operations is limited in scope.
 - Return Flows
 - Return flow requirements have not been agreed upon.
 - Operational plan provides no indication for how return flows will be monitored or administered.
 - Bypass Requirements
 - Bypass requirements have not been agreed upon.
 - Operational plan provides no indication for how bypass requirements will be quantified and administered.
 - Transit Losses
 - Operational plan provides no indication of how transit losses will be quantified.
 - Operational plan provides no indication of how transit losses will be administered.
 - Technical Tool Concerns and need for robust and effective tools to include.
 - Water Accounting Model.
 - Limited in technical scope.
 - Implemented in Microsoft Excel.

- Does not indicate how it will account for water released from Lake Ashtabula as it travels to users.
 - Proposed “Volume Owed to the River” portion of the Water Accounting Model lacks clarity.
 - Ambiguous on the appropriation method to accounts on Lake Ashtabula.
 - Only looks backwards in time and accounts for what has occurred.
 - Drought Management Dashboard (DMD).
 - Information produced by the DMD already exists online and from reputable sources.
 - Not clear how the DMD answers what the outlook of user water supplies.
 - Predictive Model.
 - Prototype Predictive Model has not been developed that has yielded reliable results.
 - Authors seem to have a misunderstanding of the meaning of the terms percentile and exceedance.
 - Streamflow forecasting products are readily available from reputable governmental sources.
 - Provides no objective operational criteria by which the operations of the pipeline could be determined and thus predicted.
- Assessing Grand Forks’ Need and reasonable build out demand for the RRVWSP.
 - Modeling future water supply demands during extreme droughts with current water supply permits and rights to include Red River, Red Lake River, and Thompson Acker account.
 - Build out demand includes.
 - Validating 0.9% population growth assumption.
 - Validating per capita water use for residential, commercial, institutional, GFAFB, industrial, system losses, and water supply services.
 - Reviewing current available water supply sources and permits.
 - Red River of the North 33,600 Acre Feet (AF) (ND Permit Number 835).
 - Lake Ashtabula 20,023 (AF) (ND Permit 835A).
 - Red Lake River 10,500 AF (MN Permit Number 63-449).
 - Reviewing potential other water supply sources.
 - Reviewing transit losses and return flow analyses.
- The City administration has requested that PWRE develop a scope of services to continue expert consultant review of the RRVWSP PPA) and Associated Exhibits and includes the following scope of work tasks in the amount of \$139,435.22 and will generally cover the next six months and to the end of the year. This work is critical to the City’s ability to analyze and finalize a recommended RRVWSP PPA to the City Council over the next several months.
 - Project Management and Meetings.
 - Red Lake River Yield Analysis.
 - Red River Permit Yield Analysis Under Varying Return Flow Assumptions.
 - Grand Forks Water Supply Reliability Report.
 - Technical Support for Thompson Acker Water Rights Administration Agreement.
 - Miscellaneous and As Needed.
 - Travel and Presentation Preparation.
- Brian Nazarenus of NSW and Shane Coors and Patrick Noe of PWRE will be at the Committee of the Whole meeting on June 23 to provide briefing overview.
- The following City team members would support and lead the RRVWSP on behalf of Grand Forks.
 - Mayor Bochenski – LAWA Board Member.
 - City Council Member Vein – GDCD Board Member.
 - City Administrator Feland.
 - City Attorney Gaustad.
 - City Engineer Grasser.
 - City Finance Director Storstad.
 - City Water Works Director Parvey.

SUPPORT MATERIALS:

- PWRE Scope of Work: Technical Support For Grand Forks' Raw Water Planning dated June 23, 2025.
- NSW Letter to the USACE dated June 5, 2025.
- PWRE Letter to the USACE dated June 6, 2025.
- NSW and PWRE Presentation to LAWA dated April 16, 2025.
- City of Grand Forks Staff Report on RRVWSP and PWRE dated May 20, 2024.
- City of Grand Forks Staff Report on RRVWSP and NSW dated September 3, 2024.