



# INTERNATIONAL AGREEMENT *Sets Stage For NAWS Completion*

After 16 years of legal action, an agreement has been reached between the United States Bureau of Reclamation (Reclamation) and the Province of Manitoba (Manitoba), removing a key obstacle that has been preventing the completion of a project that will bring clean and plentiful drinking water to the people of northern North Dakota.

The Northwest Area Water Supply Project (NAWS) has been pursued by the State of North Dakota for decades to provide a reliable supply of high-quality drinking water to the northern region of the state. The NAWS concept was long ago promised to the state in exchange for the land lost by the construction of the Missouri River mainstem dams. NAWS was authorized by the Garrison Diversion Reformulation Act of 1986 and the Dakota Water Resources Act of 2000, under the Municipal, Rural, and Industrial (MR&I) Grant Program.

In many parts of North Dakota, surface water supplies are not adequate for the entire year, and while ground water may be available, it is often of poor quality or insufficient quantity. NAWS, like the Southwest Pipeline Project, Western Area Water Supply, and the proposed Red River Water Supply Project, is designed to take water from the Missouri River, which contains about

96% of North Dakota's available surface water, to those parts of the state with less reliable and poor-quality water supplies.

Manitoba's primary reason for opposing NAWS was an expressed concern of the potential for aquatic nuisance species (ANS) to be transferred via NAWS from the Missouri River across the continental divide. ANS are non-native aquatic organisms which can cause some form of impact on people or the environment, such as zebra mussels, which are known to cause problems for water intakes and fish populations. Although the risk of ANS transfer through a treated water supply is miniscule, and there are multitudes of other, well-documented, and already existing routes for ANS to move from the Missouri River basin to the Mouse River basin, such as the Saint Mary River Diversion in Montana, North Dakota and Reclamation have spent many years evaluating whether NAWS would increase the risk of ANS transfer. These environmental studies have concluded it would not.

Construction on the long-needed project began in April 2002. In October of the same year, Manitoba initiated a legal challenge in the DC District Court to stop the project, claiming inadequate compliance with



the National Environmental Policy Act (NEPA). The District Court found in favor of Manitoba in 2005, remanding the case back to Reclamation for further environmental review, and placed a limited injunction on the project. An Environmental Impact Statement was prepared and finalized in 2009, which was again found inadequate by the Court, and the case was once again remanded back to Reclamation for further environmental review in 2010. At that time, the State of Missouri also filed a complaint which resulted in the two cases being consolidated. A Supplemental Environmental Impact Statement was developed between 2010 and 2015. The injunction placed on NAWS by the Court was modified half a dozen times to allow construction of project components not affected by the outcome of the litigation - allowing much needed relief to portions of the NAWS service area.

In 2013, the Court ruled that no further construction on NAWS could continue until the completion and judicial acceptance of a NEPA review, which effectively halted the project. In August 2017, the Court ruled in favor of North Dakota and Reclamation, denying Manitoba's motion for summary judgement, dismissing Missouri's complaint for a lack of standing, and vacating the injunction on the project, allowing NAWS construction to move forward.

Missouri and Manitoba filed appeals to the ruling in October 2017. Reclamation and Manitoba negotiated a settlement of Manitoba's appeal in June 2018. The settlement is memorialized in a Memorandum of Understanding (MOU), which provided for Manitoba's participation on the development of the Adaptive Management Plan (AMP) for the operation, maintenance, and replacement of the NAWS Biota Water Treatment Plant. Reclamation committed to establishing an Adaptive Management Team (AMT) to assist in the development of the AMP for the project in the Supplemental Environmental Impact Statement and Record of Decision.

In a filing in response to a minute order from the District Court in April 2017, Reclamation and the State of North Dakota did not object to including appropriate representatives from Manitoba on the AMT. In the MOU settling Manitoba's appeal, Reclamation reiterated its intent to establish the AMT, provided Manitoba with a seat on the AMT, and defined the role the team will have in the process. The AMT will also include other stakeholders, including local, state, and federal entities with relevant experience.

The State of Missouri is continuing to appeal the August 2017 District Court's decision. Its appeal brief filed in the DC Circuit Court of Appeals is entirely based on the issue of their standing in the case.

Design and construction of the NAWS project features are currently proceeding. Construction of upgrades to the Minot water treatment plant and design work for the biota water treatment plant are underway. Design and construction of additional project features will proceed as funding becomes available.

NAWS is designed to provide service to a project area serving 81,000 people (63,000 in urban areas). While population projections for the service area were based upon long-term historical trends in the region, namely outmigration and rural-to-urban migration, the oil and energy development that the state is currently experiencing means projections used in the original project scoping for water demand may be too low.

For example, population projections in the Environmental Impact Statement were to the year 2060, when water use is estimated to be 32% higher than today. However, in a 2012 study conducted by North Dakota State University, the seven counties in the area where NAWS will ultimately provide service are projected to increase in population by 35% by 2025. These challenges highlight the need to get NAWS completed as quickly as possible. The All Seasons Water Users District and the City of Bottineau currently have water shortages. Both of these systems will ultimately be supplied by NAWS and eagerly await its completion.

From the promise of being able to bring good quality water throughout North Dakota, NAWS is set to join a long line of North Dakota projects serving to develop the state's water resources for the benefit of its people.

