



SB 2326
Testimony of Kurt Lysne
House Energy and Natural Resources Committee

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Kurt Lysne. I serve on the North Dakota Water Users board and am an engineer, working on a regular basis with water resource districts in the Red River valley. I rise today in support of SB 2326.

The North Dakota Water Users Association voted to include the following resolution in their 2023 policy document:

We oppose the incorporation of benefit-cost principles in determining the feasibility and justification of state funding for water conveyance and flood control projects under \$1 million total project cost as stipulated by N.D.C.C. 61-03-21.4.

Over the years, there have been many conversations about the use of economic analyses by the State Water Commission (SWC) to determine cost-share on projects. The legislature, since 2017, has required, via statute, all flood control and water conveyance projects over \$1 million undergo an economic analysis. The SWC, citing concerns that project sponsors would split, or fracture, projects into smaller chunks to avoid the economic analysis, lowered that threshold to \$200,000 at their meeting in December 2019.

As Senator Dwyer stated, project fracturing did not occur prior to the lowering of the threshold and does not occur today.

To demonstrate this, I'd like to provide a brief overview of the history of the economic analysis requirement. The SWC developed their economic analysis (EA) tool during the 2017-2019 biennium. Projects over \$1 million were required to submit a completed EA beginning in the 2019-2021 biennium. The first SWC meeting that considered projects subject to the EA was held in August 2019. At that meeting, there were two rural drainage projects for consideration: Tri-county Drain 6 (total project cost \$1,641,879) and Sargent County Drain 12 (total project cost \$358,000). Clearly, Drain 12 was not an example of project fracturing as it fell well under the \$1 million threshold. The EA for Drain 6 was 0.406, later corrected to 1.534, but the low initial ratio resulted in questioning the benefits of drains. The SWC tabled Drain 12, a project not even close to the \$1M threshold, and required an EA.

At the October 2019 meeting, the Drain 6 project was considered again. An error was found in the initial EA. After the error was corrected, the new EA score was 1.534. Full funding for the Drain 6 project was approved in October. No other water resource district projects were considered in October.

The next SWC meeting was in December 2019. At the December meeting it was noted that the commission had requested staff as early as September, a mere two months after the EA requirement came into effect, to draft changes to the EA requirement to lower the threshold. The commission considered lowering the threshold to \$75,000 in November at their subcommittee

meeting. At the full commission meeting in December, the commission voted to establish a \$200,000 threshold for the economic analysis, effective immediately and prior to the commission considering any projects on the agenda for the December meeting. The one water resource district project on the agenda in December was tabled to allow for additional local discussions. It was ultimately approved in February 2020. Drain 12, the project tabled at the August meeting, was also approved in February 2020 after the policy change.

Given this history of projects that came before the SWC between the first meeting where the statutory EA was required (August) and the meeting where the SWC lowered the threshold to \$200,000 (December), I am perplexed by the argument that the threshold needed to be lowered because water resource districts were attempting to circumvent the \$1 million threshold. To reiterate: there were only two projects presented to the SWC prior to their decision to lower the threshold. One was over \$1 million and went through the EA. One was \$360,000—nowhere near the threshold.

To be clear, the SWC considered those two projects and at their next meeting as a subcommittee, one month later, began discussing lowering the threshold.

Based on this review of the history, available to anyone via the minutes published by the SWC, I would resist any argument that the EA threshold *needed* to be lowered to prevent 'cheating' by water resource districts.

I want to be clear, the SWC's economic analysis can be a useful tool, to help inform good decision making. However, conducting the EA costs both local sponsors and the state time and resources. It has been my experience that large and small projects fare similarly when going through the economic analysis. It is important to note, that the costs to complete an economic analysis do not directly correlate to the overall cost of the project, resulting in an increased cost burden on smaller projects that have shown to have similar cost-effectiveness as larger projects. In our view, the discretionary requirement to conduct economic analyses on projects less than \$1 million places an additional financial and administrative burden on small projects that have a track record of providing a return on investment.

Ultimately, we believe that removing the requirement that projects under \$1 million have to go through the economic analysis for cost share would allow state staff and local sponsors to focus their time on analysis of larger projects with greater need for study, while also expediting the completion of important smaller projects.

For these reasons, we ask for a do pass recommendation on SB 2326.

Thank you. I'd be happy to stand for any questions you may have.