

**Testimony by Duane DeKrey
General Manager
Garrison Diversion Conservancy District**

**To the
Senate Natural Resources Committee
SB 2251 Hearing**

**Bismarck, North Dakota
January 26, 2023**

Chairman Patten, members of the committee, I appreciate the opportunity to testify in opposition to Senate Bill 2251. -My name is Duane DeKrey, General Manager of Garrison Diversion Conservancy District. ~~—Garrison Diversion has significant experience in communication with landowners as well as the requirements and processes involved in surveying as we continue to move forward on I've been involved in the planning and construction of~~ the Red River Valley Water Supply Project (RRVWSP) ~~and have addressed survey access issues during project planning, which would be impacted by SB 2251.~~ SB 2251 is a well-intended piece of legislation, but I worry it will have unintentional impacts on the cost of implementing public projects, like the RRVWSP and will ultimately do very little to change the processes we have in place.

Currently, if a governmental entity considers private property as a location for a public use, the governmental entity is allowed access in order to identify whether that property is actually suited for the public use being considered. -When multiple project alignments or properties are being considered for a public use, it is necessary to conduct parcel examinations that may quickly eliminate the property from eligibility as a location without much additional time and effort.

Communication with the public is a high priority for Garrison Diversion and, as a
matter of routinely, notifies landowners when surveyors will be on their properties and
advises what types of surveys will be conducted. ~~-While we have certainly experienced~~
~~some~~ project opposition from time to time regarding this initial access, opponents
~~pushing back on allowing this initial access from time to time,~~ we have not had any
complaints or concerns raised by landowners after the survey observation was conducted.
In short, there is little disruption of the land and we do our best to stay in close
communication with the landowner regarding any need to access their property.

SB 2251 seeks to stop governmental entities from being able to conduct limited
preliminary studies without initially going through landowner negotiations and/or
initiating litigation ~~a lawsuit~~ to obtain a court order. If approved, SB 2251 would make
public projects ~~far~~ more time consuming and expensive. ~~It~~ SB 2251 should be rejected
for three reasons:

1. First and foremost, these surveys require no private property rights ~~are to~~
~~being~~ taken and no damage to property ~~is expected during preliminary property reviews.~~
The governmental intrusion is minimal, with superficial reviews such as identifying
sensitive wetlands, endangered plant or animal species, teepee rings, checking
groundwater depth, creating a map of the property or other project-specific needs. ~~-This is~~
important information for project planning, yet does not require any taking or give rise to
~~the~~ need for payment for property damage. ~~-Additional~~ landowner protections are simply
not needed since current law is sufficient. ~~-If there is an abuse by a rouge~~ governmental
entity, that would merit court action, ~~but~~ it should not be thrust on all projects as a pre-
cursor to access.

2. SB 2251 will result in project delays. ~~-Certainly, landowners have private property rights to safeguard their interests in property and keep damage from occurring.~~ Yet, if landowners are opposed to a project, they should not be armed with a tool to cause undue delay to projects that are simply in the review and design phase. ~~-Oftentimes numerous properties or alignments are being considered for a public use, with various reviews conducted to identify a property or route that makes the most sense from a constructability standpoint, that avoids disrupting sensitive grasslands, species or natural resources, and that can be constructed in a cost effective manner without requiring any special construction standards given the terrain or hydrology on properties.~~ ~~-The purpose in allowing this pre-condemnation access is to allow the governmental entity to make the best decision on a route or parcel. Garrison Diversion has engaged in landowner negotiation for Options and Easements, sometimes lasting years before an easement is signed or eminent domain would need to begets initiated.~~ It would unduly delay projects to add another layer of landowner negotiations, requiring a landowner signature for survey access. Certainly, landowners are entitled to notice, negotiation, and due process if any interests are to be taken. Since no interests are being taken, the approval rights being requested in SB 2251 will add months of negotiation and demands for compensation that will unduly delay projects, add expense and may limit the alignment or property selection.

3. Court processes take time and are expensive. ~~-Again, demanding a government entity seek a court order before accessing properties will require significant expenditures of public funds and add months of delay to work through the court system. In large pipeline construction projects, there can be hundreds of parcels impacted.~~ ~~-If the design~~

stage requires court orders before parcels can be accessed as candidates for a public use, this will unduly clog the court systems and judicial resources, as well as add months of delay.

For public projects like the Red River Valley Water Supply Project, there no question that this project has a public purpose. ~~The s~~Statute already demands that the surveys be done with the least injury to property. ~~Most~~ projects work well with landowners to hear and accommodate concerns. ~~Given~~ those factors, there is nothing for a court to determine regarding access. ~~Of~~ course the access will be allowed in a manner that will cause the least amount of injury to property. ~~This~~ is simply another hoop to jump through that is not needed to protect a landowner. If the property is actually selected for the public use, the landowner has ample opportunity to object to the taking and object to just compensation before the taking will occur, so no private property rights are lost.

I urge you to reject SB 2251, as there is no need to add additional preliminary obstacles for governmental project planning. Landowners are currently adequately protected, and they are fairly compensated~~made whole~~ for any damage done. Thank you for considering my testimony.