

Testimony of Duane DeKrey
Garrison Diversion Conservancy District General Manager
Senate Bill 2364
House Energy and Natural Resources Committee
Bismarck, North Dakota – March 9, 2023

Chairman Porter, members of the Committee. Thank you for the opportunity to explain the reason for this legislation and our proposed Amendment. During conversations between landowners affected by the Red River Valley Water Supply Project (RRVWSP) and Representative Weisz, the landowners expressed fears the Garrison Diversion Conservancy District (Garrison Diversion) could cease to exist.

As background, Garrison Diversion was created by the ND Legislature in the 1950s, existing now for 70 years. Garrison Diversion could only cease to exist by legislation and signature of the Governor. However, if this were to happen, the landowner wanted to know what happens to the easements and the pipeline on their property. While seen as a remote possibility Garrison Diversion would cease to exist, an easy way to remove that fear is with simple legislation.

Currently, if Garrison Diversion ceases to exist, the responsibilities can be assigned to the State of ND or another political subdivision. The bill, as submitted, would assign those responsibilities to the State of ND.

The RRVWSP is a joint effort between Garrison Diversion and Lake Agassiz Water Authority (LAWA). LAWA is a water authority created by the legislature in 2005, to be the local government entity consisting of, and representing, local public water systems

in the RRVWSP. Therefore, it would make sense to assign the easement and responsibility to LAWA before the State of ND.

Including the option for LAWA or the State of ND to become the responsible party keeps the option open for the State of ND to become the ultimate responsible party if both Garrison Diversion and LAWA ceased to exist due to being deauthorized by law.

Please give this bill, with the proposed amendment, a DO PASS to allay the fear held by the affected landowners and clarify the language of who absorbs the RRVWSP easement and responsibilities in the event Garrison Diversion and LAWA should no longer exist. Thank you for your consideration.

PIPELINE EASEMENT

Parcel

THIS EASEMENT AGREEMENT, is made this _____ day of _____, 20____, between, _____ who is _____ [EX: *married couple, single, corporation, partnership*], with a post office address of _____

_____ (“Owner”), and the Garrison Diversion Conservancy District, a North Dakota political subdivision, with a post office address of P.O. Box 140, Carrington, North Dakota 58421 (“Garrison Diversion”). Owner, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which Owner hereby grants a permanent easement 150 feet in width across the Owner’s property, as is legally described on the attached exhibit(s), which are incorporated herein by reference.

Owner grants to Garrison Diversion, its officers, contractors, agents, and employees, a permanent and perpetual easement for the longest period by law over, upon, in, through, and across the Permanent Easement Property to lay, construct, inspect, maintain, alter, repair, replace, operate, and remove water pipeline(s) and all associated appurtenances and accompanying electrical or communication systems relating to current or future components of the Red River Valley Water Supply Project together with all necessary and reasonable rights of access to the Permanent Easement Property. The duration of this Permanent Easement shall be perpetual or to the maximum duration allowed by North Dakota law.

Garrison Diversion’s use of the Permanent Easement Property is solely restricted to the construction, operation and maintenance of water pipeline(s). Garrison Diversion will not rent, sell or assign its rights to the Permanent Easement, except reserving the right to assign the Permanent Easement to the State of North Dakota or another political subdivision if that is ever necessary for operation and maintenance of a public water pipeline(s).

As part of the Permanent Easement, Owner grants to Garrison Diversion the right to temporarily move, store, and remove construction equipment and supplies on the Permanent Easement Property; the right to erect and remove temporary structures on the Permanent Easement Property; the right to remove trees, underbrush, obstructions, and any other vegetation, structures or obstacles on the Permanent Easement Property; the right to temporarily excavate, pile, store, deposit, and spread excavated dirt, silt, or other materials on the Permanent Easement Property; and to perform any other work necessary and incident to the construction and installation of the pipeline(s). The parties acknowledge that Garrison Diversion’s work may result in permanent alterations of the Permanent Easement Property for which consideration has been paid.

Garrison Diversion, at its own expense, shall leave the Permanent Easement Property in as good condition as possible, taking into consideration the nature of Garrison

Diversion's work. All property that was farmable prior to taking the easement will be returned to farmable condition after construction. Garrison Diversion will remove construction debris and large rocks from the Permanent Easement. Garrison Diversion will haul away excess spoils that are not deemed appropriate to spread on the Permanent Easement Property, or that are otherwise requested to be removed by the Owner. No spoil piles will remain on the Owner's property without Owner's consent. Garrison Diversion agrees to replace soil if there is unreasonable settling and depressions along the pipeline route. If the parties cannot agree regarding the reasonableness of the soil settlement, an arbitrator will be selected to resolve the dispute. Garrison Diversion will require its contractors to follow the construction specifications for the project regarding construction practices, rock removal, and remediation requirements. Upon notice by a landowner, Garrison Diversion will contact the contractor for follow up work in the event the contractor leaves the property in a condition inconsistent with the contract specifications.

Garrison Diversion will undertake restoration efforts as soon as practicable after the pipeline has been installed. If Garrison Diversion is precluded from finishing the restoration work in the late fall in a manner that impacts spring planting, the Policy on Crop Damage Payments established by Garrison Diversion, which is incorporated herein by reference allows for preventative planting payments to accommodate that situation.

Owner, and Owner's successors and assigns, agrees not to disturb, injure, or in any manner interfere with Garrison Diversion's pipeline(s), systems, or any associated appurtenances. Owner expressly warrants that no buildings, structures, trees, power lines, or other obstacles of any kind shall be placed upon the Permanent Easement Property, for the term of the Permanent Easement that could interfere with Garrison Diversion's project. Garrison Diversion agrees that any, to the extent possible, fixture or appurtenance (i.e., pipes, hydrants, valves, etc.) located above or near the surface will be placed at locations to minimize the impacts associated with farming the property, such as at the edge of fields, roadways, fences, or other existing above-ground utilities. Garrison Diversion agrees that, in addition to the amount paid for the easement identified herein, that Garrison Diversion will pay the Owner the sum of \$1,000.00 for each general location where above-ground fixtures or appurtenances are installed.

Owner owns the Permanent Easement Property and all co-owners of this property are signators to this Permanent Easement. Owner further covenants Owner has authority to grant the Permanent Easement. Owner warrants that Owner has disclosed the existence of any liens or encumbrances in its abstract or otherwise in writing to Garrison Diversion. Owner will warrant and defend title to the Permanent Easement Property against all claims, and will release, hold harmless, and defend Garrison Diversion regarding Owner's representations above.

Garrison Diversion agrees to pay any damage done to the growing crops of Owner during the construction, installation, repair and maintenance of said water pipeline. This compensation shall be paid pursuant to the Policy on Crop Damage Payments.

Garrison Diversion will indemnify the Owner and hold Owner harmless for any

