

TESTIMONY ON SENATE BILL 2313

Senate Energy and Natural Resources

January 25, 2023

Chairman Patten and members of the Senate Energy and Natural Resources, my name is Jodi Smith and I am the Director of Lands and Compliance for the Metro Flood Diversion Authority (the "MFDA"). I want to thank you for the opportunity to provide testimony on SB 2313.

The MFDA is a North Dakota political subdivision that is cooperatively implementing the Fargo-Moorhead Area Diversion comprehensive project (the "project") with the U.S. Army Corps of Engineers. The MFDA also works in partnership with the Red River Valley Alliance in a public-private partnership, as well as working with the City of Fargo, City of Moorhead, Cass County, Clay County and the Cass County Joint Water Resource District.

Together, as a coalition of stakeholders and leaders on both sides of the river, we are working to bring permanent, reliable flood protection to our community. The project will provide a permanent solution to protect our communities, by using an innovative approach to divert excess water around the metro area during significant flood events.

In order to construct such public improvements, it does at times become necessary to acquire property interests from private landowners. In doing so, the Authority, in good faith, makes all reasonable and diligent efforts to acquire these property interests through negotiation as is required by N.D.C.C. § 32-15-06.1. However, despite such efforts, there are times these negotiations are not successful, which makes it necessary for our partner entities to acquire these property interests through eminent domain actions.

As this committee is aware, in an eminent domain action, the property owner is to receive and be paid "just compensation." Just compensation is defined as "the fair market value of the property interests sought to be acquired." Just compensation may also include severance damages, which is if the parcel sought to be acquired is part of a larger parcel, and consequential damages, which is if property is not acquired but damaged by the construction of the public improvement. Finally, the law allows the court to award the property owner the costs and attorneys' fees incurred in the eminent domain action.

Senate Bill 2313, as proposed, would increase the amount to be paid for the property interests that must be acquired through an eminent domain action to exceed the fair market value of the property acquired and any applicable damages by 33%. Senate Bill 2313 would essentially set the "floor" for property rights negotiations. This will negatively affect the MFDA and the Fargo-Moorhead Area Diversion. First, this proposed bill will create an obvious financial impact and add stress to the construction of the project, with the resulting financial then becoming a burden on other taxpayers.

Secondly, the proposed bill will also likely create an impediment to effectively negotiating the acquisition of property interests – which are pursued to avoid eminent domain actions – and reaching settlements without eminent domain litigation. This is because even with an offer - made during negotiation that is equal to fair market value and any applicable damages - it is the eminent domain litigation that would result in a 33% multiplier to land acquisition costs, additional litigation expenses and potential stress to the court systems with added eminent domain cases.

While the Fargo-Moorhead Diversion Project has made significant progress in acquiring the property interests required for the construction and operation of the Project, the current project budget and Financial Plan includes over \$200 million left to go for property acquisitions. The increase in costs that would likely result from the passage of SB 2313 would put significant stress on our Financial Plan and would require obtaining additional funds to complete the project.

For these reasons, the MFDA registers its opposition to SB 2313 as proposed.