

TESTIMONY OF

Reice Haase, Director, Department of Water Resources

Chairman Schauer, and members of the House Government and Veterans Affairs Committee – I am Reice Haase, Director of the Department of Water Resources (DWR). I am here today to testify in support of House Bill (HB) 1601, specifically in support of the proposed amendment to add the DWR to subsection 2 of North Dakota Century Code (NDCC) 54-12-08.

1. Complexity of Re-organized Department Necessitates its Own Attorney

The vital role of managing North Dakota’s water resources was recognized by the framers of North Dakota’s State Constitution, and since statehood, protection of our waters has been enshrined in our constitution:

All flowing streams and natural watercourses shall forever remain the property of the state for mining, irrigating and manufacturing purposes. – Article XI, Section 3

Historically, water resource management was entrusted to the Office of the State Engineer, established in 1905. The State Water Commission was later created in 1937 with its primary purpose being the development of water projects. Throughout much of its history, the Office of the State Engineer and State Water Commission had its own attorney on staff to advise it on legal issues. However, budget cuts in the mid-1990s led to the elimination of this position, and further reductions in 2017 removed the Commission’s paralegal position. **Since that time, the agency has relied solely on either the Attorney General’s Office or outside counsel for legal advice.**

Recognizing the growing complexities of water management, the 2021 Legislative Assembly created DWR by merging the Office of the State Water Commission and the Office of the State Engineer, elevating it to a cabinet agency directly accountable to the Governor. **Despite the expansion of responsibilities, the agency’s general counsel position has yet to be restored.**

DWR ORGANIZATIONAL CHART

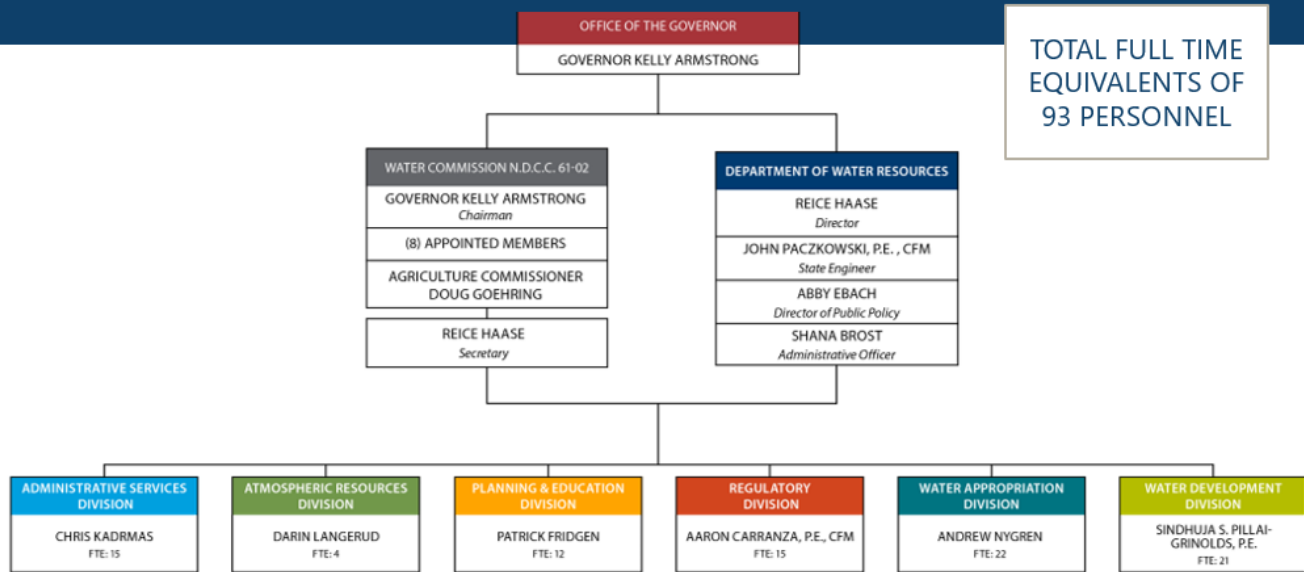


Figure 1: Organization Chart for DWR and State Water Commission. The Commission's role is primarily related to cost-share for water projects and oversight on state-owned projects, whereas DWR is tasked with regulatory oversight and management.

GENERAL COUNSEL

AGENCY IN-HOUSE LEGAL SERVICES COMPARISON			
Agency	Attorneys	Other Legal Support	Total Legal Support In-House
Transportation	2	8 (hearing officers) (3 FTE, 5 Temp)	10
Trust Lands	1	1	2
Public Service Commission	2	0.5	2.5
Agriculture	1	0	1
Environmental Quality	0	1	1
Water Resources	0	0	0

Figure 2: Comparison of DWR to other state agencies with in-house legal counsel. Despite its increase in responsibilities and scope-of-work, DWR has not had its in-house legal counsel position restored.

2. An Attorney is Needed Due to Increasing Complexity in Water Law

DWR requires substantial legal expertise to fulfill its core responsibilities, which include:

- Water project development
- Appropriation of surface and groundwater
- Regulation of drainage, dams, floodplain management and sovereign lands

All of these responsibilities require a specialized knowledge of water law.

The Assistant Attorney General currently supporting DWR is also tasked with representing other agencies and boards like the Dept. of Environmental Quality, Game & Fish, Parks and Recreation, Dept. of Agriculture, Dept. of Trust Lands, and the Public Service Commission. These agencies all play an important and increasingly complex role in the management of North Dakota's natural resources, which in turn places more demand on the Attorney General's (AG) Office. **An in-house attorney at DWR would not replace the important work of the AG's Office, but would complement and enhance it, granting DWR the specialized and dedicated legal advice it needs to continue management of North Dakota's water resources.**

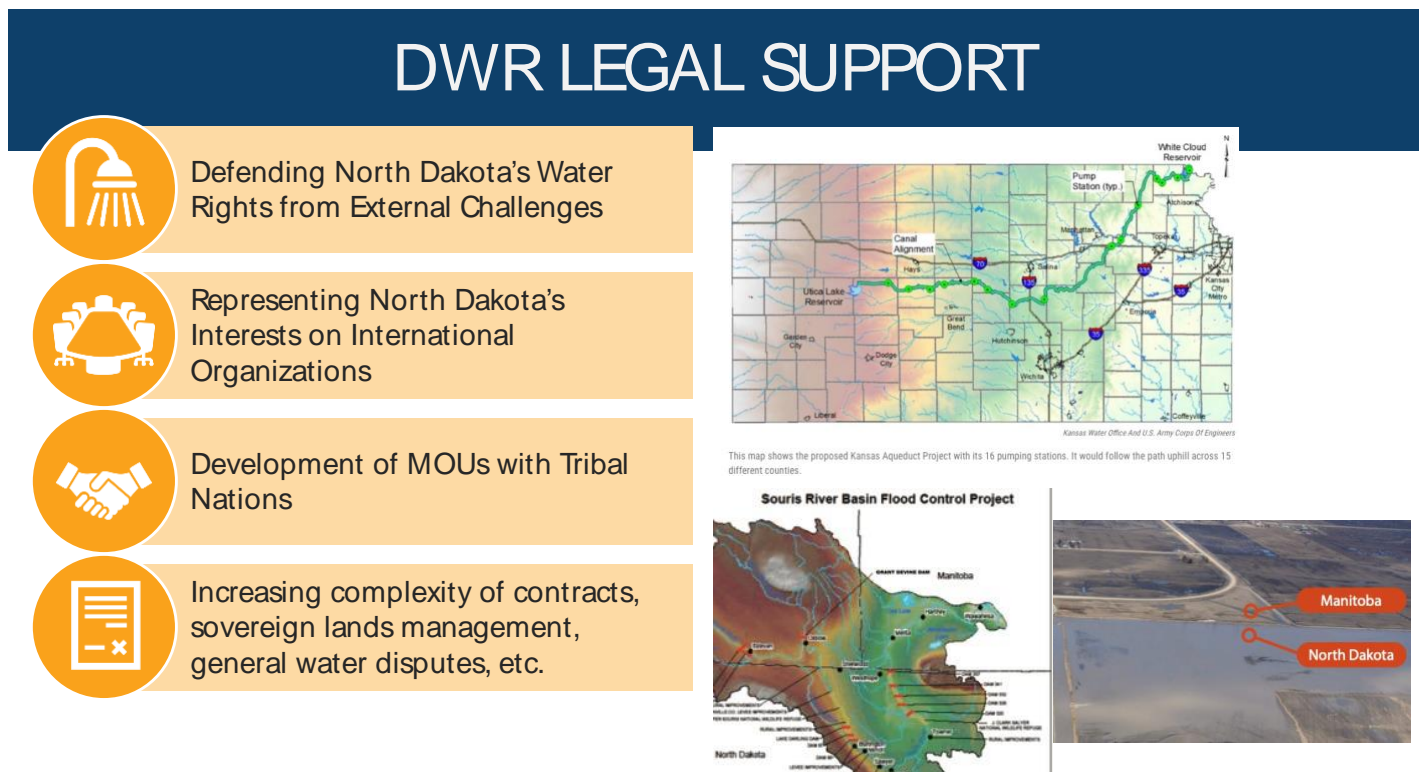


Figure 3: Summary of DWR legal support needs.

DWR is currently requesting funding for a General Counsel position as part of HB 1020, our agency's appropriation bill. The necessity for this addition is underscored by increasing legal complexities in:

- Construction management and contracting
- Development of Memoranda of Understanding (MOUs) with Tribal Nations
- Federal challenges to North Dakota's water rights
- Representation in international water management organizations
- Sovereign lands management and water-related disputes

Approval of the proposed amendment adding DWR to NDCC 54-12-08 will ensure that DWR receives the legal support necessary to effectively safeguard North Dakota's water resources.

3. The Requested Attorney for DWR Has Overwhelming Support from Stakeholders

Key stakeholders from North Dakota's agriculture and energy industries have testified in strong support of DWR's request for restoring the in-house general counsel position. These industries contribute over 63% of the state's tax revenues, funding critical infrastructure, education, and public services. They recognize that water resource management is integral to North Dakota's future.

*North Dakota is involved in continual international discussions over water. **While we participate politically, we've lacked continual, constant legal representation to support DWR attendance.** Additionally, North Dakota experiences numerous agricultural land drainage legal issues regarding local government compliance and interpretation of existing state law and Water Commission policy. **These are legal issues, not engineering issues, and the Commission/DWR usually gets included in these issues.** Based on my experiences, I support a DWR full time staff lawyer.*

- Former Rep. Jim Schmit



*This is not just about protecting a resource; it's about defending North Dakota's sovereignty, securing economic stability, and preserving our ability to grow and innovate. **Without this investment in legal counsel, we risk losing the ability to effectively counter regulatory and legal challenges that could have far-reaching consequences for our state.***

- Jonathan Fortner, Lignite Energy Council

An in-house general counsel will give the Department of Water Resources the expertise and capacity to protect our water rights.

We strongly encourage you to make this investment and protect our state's most vital resource.

- Matt Perdue, North Dakota Farmers Union



*North Dakota Grain Growers Association strongly supports the addition of a new attorney position within the Department of Water Resources as proposed in HB 1020. Water is a critical resource for our state's agriculture industry, and **having adequate legal expertise within the department is essential for addressing the complex water issues that impact our members.***

- Dan Wogsland, North Dakota Grain Growers Association

The inclusion of a general counsel for the ND Department of Water Resources is an essential step in protecting North Dakota's water sovereignty, infrastructure investments, and long-term economic growth. *Without dedicated legal expertise, the state is at risk of losing control over its water resources to out-of-state interests and facing costly legal battles that could delay or derail critical water projects.*

- Duane DeKrey, Garrison Diversion Conservancy District

