

2009 SENATE NATURAL RESOURCES

SB 2298

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2298

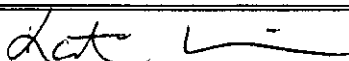
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 13, 2009

Recorder Job Number: 9460

Committee Clerk Signature



Minutes:

Senator Lyson Opens the hearing on SB 2298, relating to authorizing revenue bonds for the Red River Valley Water Supply project and the Garrison Diversion conservancy District.

Senator Gary Lee introduced the bill (see attached testimony #1).

Dave Koland, General Manager for the Garrison Diversion Conservancy District, I am here to introduced Mr. Campbell who will go through and explain the bill to you.

Bob Campbell, managing director with Barclays Capital, spoke in favor of the bill (see attached testimony #2).

Senator Lyson does this give the Garrison district the right to bond for anything or is this just for Lake Agassiz?

Bob Campbell it is intended for the Red River Water Supply Project, but it would go beyond that. It allows them to bond for any project they own or operate.

Senator Hogue does the market care whether the repayment is through local sales tax on all the communities receiving the water or from the user fees that come from the users to the city and then back up to the district?

Bob Campbell the market does care. They are about the source and security of the revenues to pay the bond holders. Whether they come from water rates and charges, which currently is

how this is designed, to eliminate any general obligation and any mortgages. This is a revenue bond structure which is known by the market and accepted by the market. To the extent that you can supplement that structure with taxes or with general obligations or anything else. It makes it stronger, but we have tried to stay away from those sources of funding and credit.

Senator Triplett why have you tried to stay away from those sources?

Bob Campell General obligation bonding capacity is available for a great number of governmental projects ranging from very broad projects to something that is very specific and oriented. We have attempted to say that the people who benefit from the project should pay for it and have constructed a revenue bond approach and avoid the consumption of debt capacity. Certainly you could add that capacity to this, but we have tried to avoid the consumption of capacity in general taxes.

Senator Triplett in the current market what is the differential between the rates that one would expect from a revenue bond versus a general obligation bond?

Bob Campbell our current market is upside down. Depending on the strength of the taxes and the nature of the general obligation. The greatest general obligation credit would be the state. You could be looking at 50-100 bases point ($\frac{1}{2}$ percent to 1 percent).

Dave Koland in looking at the bonding power we certainly see that there are other places that we could use revenue bonding. I have kept the language in the bill generic so we could use it for other projects also. At this moment in time, I believe the Lake Agassiz board has not selected which one they want to use. Clearly the advice we are getting is that we should issue these bonds through Garrison Diversion. We would like to keep the option open to use either Lake Agassiz or the Garrison Diversion.

Andrew Varvel spoke in opposition to the bill (see attached testimony #3).

Senator Lyson I don't disagree with what you are saying, but this bill is about the bonding issue not the water problems.

Andrew Varvel when I read the bill I was under the impression that the question of the bonding issue was on the furtherance of bringing water from the Missouri River to the Red River Valley Basin.

Senator Lyson it is about that but it is a bonding issue on where the money is going to come from if it does happen. It is really not about the water itself at this point.

Andrew Varvel it is interest rates and I do think there ought to be some venue to bring up the more strategic question of what the State of North Dakota ought to be doing. I do realize that this maybe a more tactical issue that we are dealing with concerning the actual funding of what North Dakota would be doing strategically.

Senator Lyson Closed the hearing on SB 2298.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2298

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 13, 2009

Recorder Job Number: 9469

Committee Clerk Signature

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Minutes:

Senator Lyson opens the discussion on SB 2298.

Senator Triplett I did have some questions about whether we should take away the bonding authority for the Lake Agassiz water authority if it has been determined that it is not necessary.

The fact that this does expand the authority of the Garrison Diversion Conservancy District, not just in its bonding authority but in its ability to do things outside of the district.

Senator Triplett asks Dave what it means to him.

Dave Koland the provision is in there because the Red River Valley Water Supply project is in the thirteen most eastern counties in North Dakota. Ten of the counties are members of the District. The other three are not members, but they are part of what is going to be served with the Red River Valley project as is the option available for three counties in Minnesota.

Originally an irrigation project in the counties that belonged to the district changed by the federal legislation to provide benefits for all of North Dakota. It presented a problem for the district because our authorities are only within the district. For two specific reasons we have a Joint Powers Agreement with the Water Commission so we can provide benefits outside the district. Specifically for the MR&I program and for the Red River Valley Supply Project. We

operate under the joint powers agreement when we are doing things outside the district.

Senator Triplett a court will look at this and see that we would be giving you more authority besides the Joint Powers Agreement and if that isn't your intent then we should amend this to say "to make available within the district, or outside the district to the extent of a joint powers agreement", and then continue on. Wouldn't that clarify it better than just giving you authority outside the district without any restrictions?

Dave Koland before I comment I need to see the amendment. The language is there because of the bonding. They require that some of these things be spelled out.

Bob we want to make clear is that the entities who are going to obligate themselves under the water purchase contract to make payments that will support the bonds can be served by Garrison and may enter into the water sales contracts.

Senator Triplett do you think my language is clear?

Bob I think it would work provided that these entities are participants in the joint powers agreement and it would have to be something that was documented.

Senator Triplett what would stop you from entering into a joint powers agreement with someone outside the district?

Dave Koland I don't know. You are in an area we haven't entered yet.

Senator Triplett I am just looking out for the counties. I would like to see the language a little tighter.

Dave Koland we could put the amendment on and let our bond attorney's peruse it. We have some time to look it over before it is heard in the other house. We are willing to look at it.

Senator Lyson this amendment will take a lot of heart burn away from some of the people who have to vote on it on the floor. I think we have to do this.

Senator Triplett moves to adopt the amendment.

Senator Erbele seconds the motion.

A voice vote was taken and the motion was passed.

Senator Triplett moves a Do Pass as amended.

Senator Pomeroy seconds the motion.

The bill received a Do Pass as amended on a vote of 7 to 0.

Date: Feb 13, 2009

Roll Call Vote #: 2298

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number 90862.0101

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sen. Triplett Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote on amendment only

Date: Feb 13, 2009

Roll Call Vote #: 2298

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sen. Triplett Seconded By Sen. Pomeroy

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Triplett

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2298: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2298 was placed on the Sixth order on the calendar.

Page 2, line 6, remove "or outside" and after the comma insert "or outside the district to the extent authorized by a joint powers agreement under chapter 54-40.3."

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

SB 2298

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2298

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-12-09

Recorder Job Number: 10809

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Open the hearing on SB 2298.

Senator Gary Lee – The changes to the code will allow the Garrison Conservancy District the authority to sell revenue bonds. Revenue bonds are one of the financing options under

consideration by the Lake Agassiz Water Authority to finance the local share of the cost of constructing the Red River Valley Water Supply Project. Lake Agassiz Water Authority currently has the powers necessary to issue the revenue bonds for the projects, but the uncertainty of the world's financial conditions has resulted in the recommendations that Garrison Diversion be prepared to issue the revenue bonds. SB 2298 takes the powers provided to Lake Agassiz Authority in chapter 61.39 concerning revenue bonds and simply duplicates them in chapter 61.24 of the Garrison Diversion section. It also includes technical language required for the issuance of revenue bonds by a political subdivision. If approved the Lake Agassiz board would have the option to use whichever entity is able to provide the most marketable bonds. Questions?

Tami Norgard – Vogel Law Firm – The Lake Agassiz group is authorized to issue revenue bonds to support the project. As the project has gone forward, and with the capital markets and the system in the situation they're in, it became evident this would cause a little complexity

in the situation. The way it is contemplated is Garrison Diversion would have a contract with Lake Agassiz who would have a contract with a number of water systems. What would happen is there will be, if Garrison is able to issue the revenue bonds it would take 1 level of contracting out of it. It would provide with greater accountability. It clears a problem with a city that's not paying their share toward the revenue bond. Garrison directly would be the enforcement. They have staff, they have the ability to make the payment, where Lake Agassiz is a group of politicians that are sitting on the board, but there's no staff. When this issue was brought up to Lake Agassiz it would streamline the financing and the accountability. The Lake Agassiz board said they would rather have Garrison Diversion issue the bonds. Under the century code Garrison Diversion does not have the statutory authority to issue revenue bonds. This bill was contemplated to add another tool to the tool box. Either Lake Agassiz could issue the bonds or Garrison Diversion could issue bonds.

David Koland – See **Attachment # 1 & 2**.

Chairman Porter - Can you go through the part that explain, as far as the obligation, how that obligation is contracted between the Garrison Conservancy District and the end user and if there is default on the bonds who has the obligation on the bonds, what equipment's being put up, what comes back because you are a political subdivision of the state of ND, what's our risk as a state because we are now giving you the authority to issue the bonds? I need a little more information on the side of – we're going to suddenly issue things – I want to know what happens if someone defaults from these.

Mr. Koland – The revenue bond concept is a debt instrument based on the water service contract between the users and Lake Agassiz. Lake Agassiz, in this case, is either a municipality or a water district. They will enter into water service contract with Garrison Diversion. What they are doing with this contract is reserving capacity in a pipeline we are

going to build. They will reserve X amount of capacity, and we are going to build a 120 CFS pipe line from the McClusky canal to Lake Ash to Beulah. These water users are going to have a contract that says "I'm going to pay for 10 CFS of this pipeline". We pay that over "X" number of years. We take that contract and go out into the bond market and issue a revenue bond. The investment people package that up and sell that bond based on this revenue stream that will be coming. If, for whatever reason, Fargo, Grand Forks or Cass Rural Water defaults on this water service contract and we have to default on the bond, the bond holder's only recourse is to take over operation of the revenue of the entity, in this case the pipeline. They would take the pipeline and get the revenue stream. When the bonds are paid off they have to give it back to you. There is no recourse to the state of ND or to the Garrison

Conservancy district, or to its directors, or to the city commission members in Fargo. The only recourse of the bond holders is to go back. The reason you have all these provisions in the bond, is the bondholders will do everything they can to make sure they have a good ?????? Chairman Porter – We had the transmission authority bill that basically said without the moral obligation of the state of ND these are virtually junk bonds. In today's world interest rate would be 2 to 3 points higher than having a set obligation from somebody. The way this reads these would be 9 or 10% bonds.

Mr. Koland – I can't disagree with you, in this market right now I don't believe we could have much of a bond. By the time we get ready to go to the bond market our investment people are confident the financial markets will be realigned. One of the reasons they look more favorably at Garrison Diversion issuing these bonds rather than Lake Agassiz water authority which is a relatively new political subdivision issuing the bonds. The fact is, they can't get the full credit of the state on any bond issue. The state water commission bonded on the tobacco money. They didn't get the full faith and credit of the state, but they knew, just as they know Fargo or

Bismarck, or Mandan are not going to default on a bond issue. The state probably would not let any of the bond issues they have, even though they don't have any moral obligation.

Chairman Porter – If this bond defaults, are you saying, it would affect the bond rating of the state of ND?

Mr. Koland – I'm sorry, I was discussing the tobacco bond issue, not this one. This would not have an impact on the credit rating of the state of ND.

Chairman Porter – One of the reasons I liked it in the Lake Agassiz side of it is because those members would have to put forth some kind of an obligation to guarantee the repayment of the bonds so that they wouldn't be junk classified. Why aren't we putting a set obligation from those end users. If Fargo's going to say they are going to use 10 CFS and that's 20% of the project they have a moral obligation for 20% of these bonds so they aren't classified as junk.

Mr. Koland – I don't believe these would be classified as junk. To answer your question, the users will have to do the same obligation for this bond issue as they would have for the Lake Agassiz Water Authority. That is a very curtail provision. The Fargo's and the Grand Forks are going to have to each commit in their agreement, that should Welsh Rural Water default on their share of the bond issue their going to have to pick up on that check.

Chairman Porter – Is that in there someplace?

Mr. Koland – Yes.

Rep. Keiser – If there is a default, under the current law, where Lake Agassiz is the bond issuer, vs. where Garrison Diversion is the bond issuer, what happens in the default under current law verses the default. It wouldn't be in the capacity in the pipe, with Lake Agassiz, it would be something else. They don't own the pipe.

Mr. Koland – I don't believe there's any difference. We would make an agreement with them to turn the operation of the pipe over to the bond holders. That is the only remedy for the bond holders is to take over the enterprise.

Rep. Keiser – What is their remedy?

Mr. Koland – That is their only remedy.

Tammi Norgard – The remedy to the bond holder is, if there is a default, is they can step into Garrison Diversion shoes, if Garrison is the bond issuer, or if it was Lake Agassiz they would step into Lake Agassiz's shoes. The money the bond holders are entitled to is the revenue stream. The contracts we have, regardless of whether they are with Lake Agassiz or Garrison, or hell or high water contracts. What that means is, we are going to say in the contracts in the beginning saying Fargo's going to pay 1 million dollars a year and Cass Rural Water will pay \$700,000 a year, etc. If somebody defaults through the future, - Fargo doesn't have the million dollars and they don't pay it – everybody else that's part of this project has to make that up that year to make sure that bond payment gets made. The bond holders are going to be made hole in the end of the day. If Fargo does default, it is up to either Lake Agassiz or Garrison to go to Fargo and say "We can bring a law suit against Fargo in district court". What we would be seeking is an order from the court to mandate they increase their water rates. This isn't just the general revenue of Fargo we are talking about, there's going to be a special account, and there's going to be a special assessment to all the consumers. If Fargo doesn't raise their rates for some reason, we will be asking for a court order to raise those rates. In which case, Fargo will be ordered to raise their rates to generate the revenue to pay the bond holders. If Fargo doesn't do that, it will either be Lake Agassiz jumping in trying to enforce it or Garrison. What Lake Agassiz has recognized is they prefer that falls to Garrison. Lake Agassiz is a group of people sitting around a table like this, including the mayor of Fargo and the chair of

the rural water system. There are political entities sitting around, - are they going to decide "We're going to sue Fargo, we're going to enforce this against Fargo". It seems like when you remove it a step against Garrison, it's easier for that group to say we want everybody held accountable. If it's Garrison, they already have the staff, they have the administration. There is no staff for Lake Agassiz. It is a more difficult political situation. There is the remedy the bond holder could come in could step into their shoes and take over the project.

Rep. Keiser – If Garrison is the bond issuer and there is a default, they could take over the whole supply system.

Tami Norgard – Right.

Rep. Keiser – They will set the rates. What happens if we don't and leave it the way it is Lake Agassiz issues the bonds, we go ahead and build this pipe, and put it to all the cities etc. and just Lake Agassiz defaults. The bond holder can take over Lake Agassiz, but they can't take over the pipe.

Tami Norgard – 1) They could step into the shoes of Lake Agassiz and seek a court order requiring everybody to raise their rates to get the income stream. 2) As part of this process and the contract provision, when they're lending this much money you can bet the bond holders are not going to let this happen. It will be dealt with through a contract that would allow the bond holders to come in and operate the system.

Rep. Keiser – That's if Garrison defaults, now what happens if we don't do this and leave it the way it is – Lake Agassiz issues the bonds. We go ahead and build this pipe and put it to all the cities and just Lake Agassiz defaults. Now the bond holder can take over Lake Agassiz, but they can't take over the pipe.

Tami Norgard – 1) They could step in the shoes of Lake Agassiz and seek a court order requiring everybody to raise their rates to get the income string. 2) As part of this process, in

the contract provisions, when they're lending this much money, you can bet the bond holders aren't going to allow that to happen. If it is Lake Agassiz issuing the bonds, Lake Agassiz has a water contract with Garrison Diversion and the provisions the bond council is going to want in that will be addressed at that time.

Rep. Keiser – It's not whether or not there's a problem, it's what happens if there's a problem. Garrison Diversion will take over the pipe. If it's through Lake Agassiz what will they take over?

Tami Norgard – its how the contract is written between Lake Agassiz and Garrison. What you're saying is Garrison owns the pipe, Garrison really doesn't own the pipe. Garrison's representing the state. The state would own the pipe. It is not a Garrison owned entity.

Garrison will be operating the pipe. One of the remedies that will be required in that bond will be the opportunity to step in if necessary.

Rep. Keiser - The state owns the pipe. This brings the state into play. The state does not own Lake Agassiz. You are bringing the state into play.

Tami Norgard – Not really. The remedies don't take anything from the state. The remedy is the income stream. If it means that Garrison or Lake Agassiz are walking away and not doing their job operating the pipe correctly then the bond holders can come in and make sure the pipe is operated properly. Operated to generate the income stream is going to be there. The provision # 27 Dave was referring to is basically the hell or high water contract saying, even if no water is ever delivered, all these entities are still required to pay their check every month or year or however it is set up. That income stream is what is subject to attachment, it's not necessarily that the bond holders are going to come in and take over ownership or take any right away from the state of ND. Their only right is in that income stream, and they can make sure it's being operated properly.

Rep. Keiser – We're talking only about Lake Agassiz, but if this bill is approved, it would apply to any water project within the system in terms of bonding.

Tami Norgard – It just gives general bonding authority to Garrison Diversion.

Rep. Pinkerton – This water system will more or less serve 50 to 60% of the population of ND is that correct?

Dave Koland – About 36%.

Rep. Pinkerton – This is really the water system for those towns. If this pipeline should default, there's no water going into Fargo, Garrison, Wahpeton or Cass County?

Dave Koland – This project is a supplemental water supply. All of these cities will still have their primary water supply. Unless there's a drought. During the period of drought we deliver water, there will be years where this project delivers no water. This water service contract is not to purchase water, it's to purchase a part of that pipe so that when the drought comes you will have water. That is what makes it different to get our arms around when we are talking about it. It is a supplemental water supply. The question was how are we going to finance this pipe? The way we are going to finance this pipe is to sell the capacity in the pipe. Operating this pipe line is somewhat a misnomer. They contracted to make payments on this pipe. It is a common method in water projects, and most water projects sell water. We were faced with the prospect of not delivering water in many years, so in the most part we're selling just the supplemental water supply. To finance the project, we're selling capacity in this pipe line. What they came to us and told us, in this market, going through Lake Agassiz, having 1 more intermediate in this step isn't going to work as well. You're going to take better price in the market by Garrison Diversion directly issuing the bonds.

Rep. Pinkerton – You're really just selling the capacity in case of a drought.

Mr. Koland – That is correct.

Rep. Pinkerton – This is much different than the Naas Project.

Mr. Koland – Yes, this is different than the SW Pipeline or the Naas system, where they're selling everyone a quantity of water and making their billings based on that quantity of water.

Rep. Pinkerton – What is the cost for the bonding? What are you looking at on this project?

Mr. Koland – I wouldn't know.

Rep. Keiser – I would guess 2 basis points.

Rep. Pinkerton – So 2%?

Rep. Keiser – Up to 2%. It depends on the market. Right now you couldn't sell it.

Mr. Koland – There is no market right now.

Chairman Porter – Have you heard anything other than like a BAA type rating or a BBB?

Mr. Koland – It would be in the A's. Before all of this collapsed we had very good rating, a very good outlook for this issue. It was very doable.

Chairman Porter – Can you get that to us from Mr. Campbell?

Mr. Koland – I don't think so.

Rep. Nottestad – As we look at the difference between the Lake Agassiz water authority issuing the bonds and Garrison Diversion Water Authority issuing the bonds, one of the statements you made if there was a default it would go to district court. As you look at the board for Lake Agassiz it has an entity out of state the members coming from Moorhead area. Is there any difference if they issued it or if Garrison issued it pertained to going to court to recoup money if the Minnesota entity defaulted or one of the Minnesota defaulted.

Tami Norgard – The situation would be guided by the actual water contracts, regardless of whether they are with Lake Agassiz or with Garrison Diversion. The water contracts with the Minnesota entity would say here is the remade if there's default. We would likely identify Cass County District Court as the venue for any disputes. What that entity would be doing is signing

on the dotted line saying I'm entering this contract and they have the ability to contract with out-of-state political subdivisions for utilities. If they enter the contract saying they will be governed by ND law there won't be any difference whether they are dealing with Lake Agassiz or with Garrison.

Rep. Nottestad – What you are saying is Minnesota law would permit them to do that.

Tami Norgard – Absolutely.

Rep. Kelsh – This bill is 1 option – are you looking at any other options?

Mr. Koland – When I was speaking of the options, we're retaining the ability, or the option for Lake Agassiz to issue the bonds.

Rep. Kelsh – What you're saying is your providing a revenue stream even if the water is not if the water is not taken. Essentially it's an insurance policy. The users are paying a premium into the system and if they need it they can draw it.

Mr. Koland – That's correct. I expect as we progress that we will have systems that this will become their water supply.

Rep. Hanson – You mentioned page 6 a while ago. What is our obligation to the Minnesota cities that get water?

Mr. Koland – Theirs is a little unique because we have grant money involved from the state of ND. Their rate structure will not include any of that grant money. They will pay the full ride to get any of that water. We sent letters of intend to all of their operating water systems right now in the 13 eastern most counties. We've received letters of intent for about 125 CFS of water from 1 Minnesota city. East Grand Forks signed their letter of intent. We only opened up the project to them at their request during the scoping process. They came forward and said they would like to participate.

Chairman Porter – If Morehead never signs up, but they still take water out of the Red River, why would they sign up?

Mr. Koland – That will be an interesting dilemma. One of the environmental commitments we are making is to get off of the Red River when the flows in the Red River get to 93 CFS at Fargo. You're right, Morehead could then still take water out of the Red River. We do have the ability to protect our project water. When the flows get below that 93 CFS and the only flow in the Red River is from our project water we can protect that water for our downstream entities. We can prevent Morehead from taking water so we can provide water to Grand Forks and Grafton. We will do that. We clearly need to do that to assure our downstream users. In providing water in a surface water system we can protect that water all the way to the Canadian border.

Chairman Porter – Do you think you would be able to turn the valve off at Morehead and say enough is enough?

Mr. Koland – We can't turn the valve off, but we can take them into court.

Chairman Porter – One of the comments you made was in regards to local political subdivisions using this water supply more than what the original intent was as far as a supplement to the Red River. Has the mission changed that we haven't been made aware of?

Mr. Koland – This project is to meet the water needs of the valley. The method we've chosen to meet those needs is to provide a supplemental water supply drought management plans and water conservation measure in the community. There is nothing in our mission that says for wherever it is appropriate and proper and where we have a system that would want a full time water supply we would provide that. For instance, if an ethanol plant would look for a new location and decide Cooperstown, at the end of our pipeline, before we put water into Lake Ashtabula would be a good place to have an assured water supply. There is nothing that

precludes us to provide them with a full time supply of water. We look at these alternatives of providing a SW type of water supply to eastern ND. You will hear many people say that is what we should be doing. That project cost 2 billion dollars and we could not afford it, the state couldn't afford it, the feds couldn't afford it, and the local users couldn't afford it. We've worked through that system to get to what is an affordable project for the users, for the people and for the state to have to pay for and what we are able to construct. Eventually the rural water systems will be in a replacement mode. They will get their water from a pipeline going from the end of our pipeline directly north up the inside edge of the valley. That's a future phase of the project, probably 20 to 25 years into the future.

Chairman Porter – When we dealt with this issue last issue last session, session before, we were told there would be periods in time where this pipe would be empty between Audubon and the Sheyenne because there is no flow needs required and now we are hearing that in order to put into place people prior to the drop off in the Sheyenne there would have to be water in it all the time so this thing would be pumping 24/7.

Mr. Koland – No one really knows the answer to that question until we have a completed operating plan. We have a conceptional plan we are dealing with. The engineers have worked through is a preliminary deal and say this would work. We're now working on the details of will this pipeline work 23/7? At this time we know it will operate 24/7 is during a drought when the pipeline the pipeline has been sized so we can keep Lake Ashtabula full under the known conditions. That's the only time it would have to operate at full capacity. The rest of the time we're not sure.

Chairman Porter – It appears the mission is changing right before us. It went from a drought recovery system that would only be operated in those instances where the flow was down in the Red River to replace water in the Sheyenne to keep it at a set level, to now having raw

users tap into it prior to it even getting to the Sheyenne. I've never heard that mission change before until right now.

Mr. Koland – We have no user signed up right now or even indicating they would want to do that. When we look at providing these answers to people and providing the pipeline we have to plan.

Rep. Kelsh – Can you tell me how much Morehead pulls out of the Red River and if there are any recrepicating agreements with Fargo if the flows in the Red River goes dry or goes down?

Tami Norgard – I don't think there's any agreement in place right now. When you look at water law, ND is in western water law, Minnesota is in eastern water law. Each is a little more difficult in deciding what would happen in the case of a shortage. These issues have been brought to court before, federal court, supreme court. The whole thing with supreme court is they are going to apply a rule of reason and each water system has a right to a reasonable amount of the natural flows of water. When we're in a drought situation that's between Fargo and Morehead. They each have a reasonable amount of water they can pull out of the Red River. That doesn't mean Morehead can have their standard capacity and pull out everything they normally did. The question of how you protect the project water? If you can identify the water you put in and you can use a stream as a conveyance just like a pipeline, If you can identify the amount of water you put in you can protect it. It is a matter of record keeping. Showing what you put into the Sheyenne and what you are able to take out. It is essentially a property right we can enforce.

Rep. Kelsh – It was said earlier that Minnesota DNR strongly encouraged those water systems not to purchase but they went ahead and did it anyway. They are asking to be part of the study. Does that mean their provisions have no teeth.

Tami Norgard – That is a policy decision of the state of Minnesota. They are concerned about other states coming into their state and taking water, because they are a part of the Great Lakes. They passed a policy. Minnesota regulations actually prioritize water permitting. If you apply for a water permit from a water source in the state of Minnesota, the commissioner of the DNR would look down their priority list, the last priority on their list is out of state diversions. They do not favor any out of state diversions.

Rep. Keiser – Is the policy changing on this project? I know the primary purpose of this legislation was bonding, but as I look on page 2 of the new subsection 6, that's a crucial section. That lists in statute this project is changing. All you have described will become acceptable in statute with this subsection.

Mr. Koland – Yes, the project has evolved since the first day we started studying it in 2002, 1995 actually, in 2002 we started this study process and will continue to evolve.

Rep. Keiser – If you read this language you open the door, you can do whatever you want.

Mr. Koland – Yes, our objective always was to find a solution for the water needs.

Rep. Keiser – You're the one that brought up that this is designed as a supplemental water supply. This legislation changes that. This is actually much more than a supplemental water supply.

Mr. Koland – I think our mandate always was to figure out what the water needs of the valley are and to find a solution for that water needs. I started down the road of a SW project.

Rep. Nottestad – I have been involved with these meetings from the very first and I ended up sitting next to the Minnesota DNR group. When East Grand Forks expressed an interest they went nuts. They didn't know and they were furious. They were looking at every way they could get the water supply shipped out of Minnesota into ND so they would have control of it. They went down 1 rout after another. Then they went to what ND could do. 1st) Shut off all

irrigation in Eastern ND. 2nd) Cut off all agricultural processing which takes a heavy amount of water. It was an interesting meeting to say the least. When they left they went over to the East Grand Forks people and you could almost see the hair flying.

Rep. Pinkerton – You say you've been through multiple law suites and there are probably 2 or 3 more down the road. ????????????????

Mr. Koland – In the Naas project, the issue is: did the state and federal government do an adequate environmental review. The law suites there have been saying they didn't look hard enough at the treatment options. We did a full blown environmental impact statement on this project. In the Naas project they are trying to attack the treatment of the water. It will be treated at Minot in the Hudson Bay drainage area. In the case of the Red River Project we're treating it before it gets into the Hudson Bay drainage area. We are entitled to use the water in the Missouri River to benefit our citizens.

Rep. Pinkerton – Your water treatment plant is going to be at the end?

Mr. Koland – It'll be just north of McClusky. It'll be in the Missouri Basin side.

Rep. Pinkerton – You're going to treat it there to the quality of drinking water and then you are going to dump it into the river and then you are going to retreat it again in Fargo or Grand Forks.

Mr. Koland – That's correct.

Rep. Pinkerton – That treatment plant could stand empty for 20 years.

Mr. Koland – It's one of the things we're going to be dealing with in the operating plan. How do we operate a water treatment plant on what type of schedule.

Rep. Pinkerton – You're still around 700 million dollars for this project.

Mr. Koland – Right now it is about 660 million for the total project, the pipeline portion is roughly 400 million.

Rep. Pinkerton – It would be 200 for the water treatment plant.

Mr. Koland – The water treatment plant is about 125 million.

Rep. Pinkerton – The federal government still pays about 1/3rd?

Mr. Koland – The federal government will pay 1/3, the state 1/3, and the users 1/3.

Rep. Clark – What is the status of the federal commitment to provide the money their 1/3?

Could you find yourself in a situation where you're operating the pipeline for just 1 user, say Jamestown.

Mr. Koland – I suppose you could. We have a commitment in this, and that's a minimum flow in the Sheyenne river of 20 CFS. The federal commitment is still there, we've been working with the federal delegation.

Chairman Porter - As you look at the expanded rolls now are you looking at possibly 2 pipes that would be laid as outlets out of the water treatment plant? One for permanent users and 1 just to ??? into the Sheyenne?

Mr. Koland – No – This will be a 66" pipe that will be buried from McClusky.

Chairman Porter – Further testimony in support of SB 2298? Opposition? Seeing none we will close the hearing on SB 2298.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2298

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-12-09

Recorder Job Number: 10813

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Let's pull out SB 2298.

Rep. DeKrey – Move Do Pass.

Chairman Porter – We have a motion from Rep. DeKrey and a 2nd from Rep. Myxter for a Do Pass. Is there any discussion? Seeing none the clerk will call the roll for a Do Pass on SB 2298.

Vice Chairman Damschen – I would like to be brought up to speed.

Rep. Hofstad – I would appreciate that as well.

Chairman Porter – Basically Vice Chairman Damschen what it does is it duplicates the language that's currently in the Lake Agassiz District for the ????? bonding. It takes that language starting on sec. 2. It leaves the existing language for Lake Agassiz in the Lake Agassiz. It duplicates it here so either entity can bond for the project. Depending on what Lake Agassiz board decides. On page 2 at the top it expands the mission of the Lake Agassiz Water to include all of eastern ND to provide those water needs. Further discussion?

Rep. Keiser – Also on page 2 subsection 6 does puts into statute the definition for the Garrison Diversion project which really opens the door and gives them the flexibility to do any project they would so desire. It does place that into statute. There would be a value potentially in

terms of a lower rate on the bond if the diversion project as a whole could issue the bonds and these are revenue bonds. This escalates our exposure. It brings the state into play. This is different than the transmission authority. This does bond up to 1/3 just as the transmission authority did, and with the transmission authority the other 2/3 are coming from the private sector and a lien is placed against the investment of the private sector. That's different. This is 3 government entities providing the money for this project. There are subtle differences these projects. It has the advantage of accessing lower interest rate on the bond issue. It has the disadvantage of bringing the entire project into an injunction status. It changes the game a little bit on that end.

Rep. Hofstad – So where does the bonding authority lie?

Chairman Porter – Right now we gave the bonding authority to Lake Agassiz. This language is duplicated language out of the Lake Agassiz chapter.

Rep. Keiser – Which would allow Garrison Diversion to do it also. Either one could do it.

Rep. Pinkerton – I favor this project because it affects 46% of our state population. I also agree with Rep. Keiser that the state would eventually be the deep pockets in this. If you believe in the validity of the project which I guess you do, that we have to do the best we can to supply this with the least expensive capital as possible. I still worry about the transmission, because that's not 46% of the state. It's about the same amount of money, we're in for 1/3. This project, if the validity is there, and it appears to be, it's going to be built. Why not try to keep the cost of it down as much as possible.

Chairman Porter – Further discussion? Seeing no further discussion, the clerk will call the roll on a Do Pass for SB 2298.

Yes 10 No 2 Absent 1 Carrier Rep. Clark

Date: 3-12-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By DeKrey Seconded By Myxter

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter		✓	Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor		
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser		✓			
Rep Nottestad	✓				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Clark

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2298, as engrossed: Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2298 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2298

February 13, 2009

SB 2298 – Bonding Authority for Garrison Diversion.

Good morning Mr. Chairman & Members of the Natural Resources Committee, I am Gary A. Lee, Senator from District 22, which includes much of greater Cass County.

I am here simply to introduce SB 2298 & others will provide the detail of this somewhat lengthy Bill. The changes to this section of Code will allow the Garrison Conservancy District the authority to sell revenue bonds.

Revenue Bonds are one of the financing options under consideration by the Lake Agassiz Water Authority, to finance the local share of the cost of constructing the Red River Valley Water Supply Project.

The Lake Agassiz Water Authority currently has the powers necessary to issue revenue bonds for the project, but the uncertainty of the world's financial conditions have resulted in the recommendations that Garrison Diversion be prepared to issue the revenue bonds.

Senate Bill 2298 takes the powers that are provided to Lake Agassiz Authority in Chapter 61-39 concerning revenue bonds & duplicates them in Chapter 61-24 for Garrison Diversion. It also includes the technical language required for the issuance of revenue bonds by a political subdivision.

If approved the Lake Agassiz Board would have the option to use whichever entity is able to provide the most marketable bonds.

Mr. Chairman, that concludes a brief overview of SB 2298 & now others will be able to provide a more precise & in-depth review of the Bill.

**Testimony of
Robert H. Campbell
Barclays Capital
In Support of Senate Bill No. 2298
February 13, 2009**

Mr. Chairman, members of the Committee

My name is Bob Campbell. I am a managing director with Barclays Capital and have served as Lake Agassiz Water Authority's and Garrison Diversion Conservancy District's investment banker in designing a plan of finance for the Red River Valley Water Supply Project.

My testimony this morning is made in support of the proposed amendments to chapter 61-24 of the North Dakota Century Code that deal with options for financing the Red River Valley Water Supply Project.

By way of background, I have been involved in the municipal securities industry for 37 years and have participated in a number of large multi-party water and other utility project financings. Over the past five years, I have been working with representatives of Lake Agassiz Water Authority, Garrison Diversion Conservancy District and their consultants to design a plan of finance that would accomplish the following things:

- Permit phased or accelerated construction of the Project;
- Embed the flexibility to impose fair and equitable cost allocations among Project water users;
- Finance the Project at the lowest possible cost;
- Be simple and efficient to use; and
- Impose the fewest restrictive covenants on Project water users.

The initial concept for the Red River Valley Water Supply Project contemplated that Garrison Diversion Conservancy District would build and operate the Project, while the stakeholders, organized as the Lake Agassiz Water Authority, would finance its one-third share of the Project by issuing revenue bonds. The current expected financial plan is to have the Project cost split among the federal government, the State and the users, with each paying one-third. I have included with my testimony a schematic diagram of our financing plan assuming Lake Agassiz Water Authority would be the financing entity. In 2005, I testified on behalf of SB 2295 to modernize Lake Agassiz Water

Authority's financing powers to allow that entity revenue bonding authority as a means for the stakeholders to finance their portion of the Project. That bill was passed into law.

Since 2005, it has become clear from the way in which the Project has developed and the dramatic change in the financial markets that removing Lake Agassiz Water Authority as a financing conduit and authorizing Garrison Diversion Conservancy District to issue revenue bonds to finance the Project directly would lead to more efficient and cost-effective Project financing.

It is contemplated that the Lake Agassiz Water Authority stakeholders, which consist of many cities and water systems in the Red River Valley, will enter into water service contracts directly with Garrison Diversion Conservancy District. These water supply contracts must be strong and binding in order to get revenue bond underwriting approval. These contracts will require stakeholders to make payments in an amount necessary to meet Garrison Diversion Conservancy District's revenue bond payments, along with the operation and maintenance costs for the Project. The primary source of revenue contemplated to be used by a city or water district for payment of its obligations will be generated through rates imposed upon water service customers. Some other water systems may utilize special sales tax generation for the special purpose of paying obligations pursuant to the water service contracts. No general taxing authority or general obligation of any city or water district will be pledged for the repayment of the revenue bonds.

From the capital market perspective, the elimination of monoline bond insurers that for decades homogenized credits and, essentially, allowed investors to avoid performing their own credit analyses, has created a new need for clearer, simpler credit structures with more direct and brighter lines of operational, financial and enforcement mechanisms. I have apprized the Project stakeholders of these concerns and the stakeholders unanimously agreed that they would prefer to have Garrison Diversion Conservancy District as the entity to issue revenue bonds, rather than have Lake Agassiz Water Authority issue the bonds. Consequently, we have redesigned and simplified the Project financing plan by substituting Garrison Diversion Conservancy District for Lake Agassiz Water Authority as the Project's financing entity. This redesign would remove Lake Agassiz from the financing plan altogether, since it was serving only as a conduit issuer in the first place. Removing Lake Agassiz Water Authority as the financing middle-man for the Project would eliminate one layer of complex wholesale water supply and sale contracts, and contractual enforcement rights that would have to be created to support this complicated plan of finance. Bond underwriters prefer a less complicated plan, with one set of contracts between Garrison Diversion Conservancy District and the water users directly. I have included with my testimony a schematic

diagram showing the far simpler and more direct financing plan that would result if Garrison Diversion Conservancy District were to serve as the Project financing entity.

The proposed legislation simply grants Garrison Diversion Conservancy District the same Project financing power that the legislature approved for Lake Agassiz Water Authority in 2005. The benefits to the Project of substituting Garrison Diversion Conservancy District for Lake Agassiz Water Authority as the financing entity are as follows:

- **Simplicity.** In today's credit and structure sensitive market, being able to tell rating agencies and investors a simple story where the credit and sources of payment are direct and apparent would attract a larger universe of investors, create more competition for the bonds and drive the borrowing cost down. On major public works like the Project, it is much more commonplace that the entity constructing and operating the Project should also be the financier. This more typical business structure can only be achieved if Garrison Diversion Conservancy District were to issue the Project bonds. The bond rating agencies and bond purchasers will understand more clearly and embrace more readily a standardized Project construction, operation and financing package.
- **Accountability.** Unifying Project construction, operation and financing into one entity gives bondholders the opportunity to enforce covenants directly against the entity operating the Project. Under the Lake Agassiz Water Authority financing plan, bondholders would have to rely on Lake Agassiz Water Authority to take any remedial water supply and payment enforcement actions that might be necessary. Further, under a bifurcated ownership and financing structure, bondholders would have to assume the future political risk that Garrison Diversion Conservancy District and Lake Agassiz Water Authority may not see eye to eye on matters related to the Project and water delivery from it. The clarity of responsibility and direct enforcement opportunities resulting from Garrison Conservancy District financing and operating the Project would strengthen the bonds' credit, give bondholders greater confidence their bonds will be paid and result in lower interest rates.
- **Ease of Administration.** Eliminating a third-party conduit financier removes all of the cost, bureaucracy, and inefficiencies associated with involving two instead of one entity in the Project's financing and operation. Cutting out the middle-man would have an ongoing cost reduction impact in addition to the interest cost savings mentioned above. These cost reductions include the elimination of duplicate financial audits, bondholder reporting, board meetings, staffing and other organizational overhead associated with maintaining two entities rather than one. In the end, the stakeholders will ultimately be paying for all administration of the Project, so it makes little sense to have two separate

political subdivisions charging the stakeholders for duplicative administrative costs.

- **More Efficient Follow-on Financing.** While unlikely, there may be a need to secure additional financing at a later date if a significant, unexpected cost arises. Later financings could be undertaken more efficiently by Garrison Diversion Conservancy District as the Project's operator than would be possible under a multiple party decision-making structure.

For these reasons, on behalf of Barclay Capital, I join the Lake Agassiz Water Authority stakeholders in believing that Garrison Diversion Conservancy District should be the entity that finances the Project. The language of the amendment you are considering has largely been lifted from the financing powers the Legislature gave Lake Agassiz Water Authority in 2005. In particular, the proposed legislation includes the following provisions:

Section 1 of the bill proposes an amendment to the Declaration of Intent to the Garrison Diversion Conservancy District legislation, found in the North Dakota Century Code Section 61-24-01, the Declaration of Intention. The existing declaration of intent provides for Garrison Diversion to construct and operate projects consistent with the federal Garrison Diversion Unit legislation. By adding "or outside" to subdivision 5 and the addition of subdivision 6 makes it clear that Garrison Diversion Conservancy District has authority to construct, and operate a Garrison Diversion Unit project that benefits entities located outside of the Garrison Diversion Conservancy District geographical boundaries, including water systems in Minnesota.

Section 2 of the bill proposes amendments to the Garrison Diversion Conservancy District Chapter of the Century Code Section 61-24-08. The first set of changes is to subsections 10, 11 and 26. The existing authorities allow Garrison Diversion Conservancy District to enter contracts for the supply of water and construction of projects within the district boundaries. The proposed amendments to Subsections 10, 11 and 26 expand the ability of Garrison Diversion Conservancy District to provide water service to entities outside the geographical borders of the district and to operate a project outside of the district. This change is necessary in order to serve water systems outside the district and Minnesota water systems with a water supply through the Red River Valley Water Supply Project.

Subsections 16-25. The existing authorities of Garrison Diversion Conservancy District do not allow Garrison Diversion to issue revenue bonds to finance projects. Proposed subsections 16 through 25 are added to allow Garrison Diversion Conservancy District to issue revenue bonds to finance projects. The language of these

provisions largely recites verbatim other revenue bonding authorities granted in the North Dakota Century Code, including authorities granted to Lake Agassiz Water Authority, water districts and municipalities. The new provisions make it clear that Garrison Diversion Conservancy District is authorized to finance projects and is authorized to issue revenue bonds to construct a project, with repayment through water supply contracts with benefitting water systems. It also allows Garrison Diversion Conservancy District to use revenue bond proceeds to facilitate the development or construction of the Project. These provisions are added to make certain that Garrison Diversion Conservancy District may lend its revenue bond proceeds as advances to pay the Project costs of others that may be repaid pursuant to a repayment obligation other than one contained in a water supply contract.

Subsection 27. The addition of Subsection 27 simply reaffirms Garrison Diversion Conservancy District's authority to enter into water supply contracts with the Project stakeholders. This amendment has a three-fold purpose:

- i) it is intended to confirm authority to enter into water supply contracts with cities, water districts, other political subdivisions and Minnesota public utilities;
- ii) it is intended to allow such contracts to coincide with the long useful life of the Project by eliminating term limitations for them;
- iii) it authorizes the type of "hell or high water" contractual commitments common to and required by the financial markets for the stand alone revenue bond type financing contemplated for the Project.

Section 3 adds pipelines to the types of construction for which easements across state lands is provided.

Section 4 has eleven new revenue bond sections that outline specific procedures for issuance of revenue bonds, terms and conditions that may be included in the bonds, remedies, and liability limitations associated with the revenue bonds. These provisions simply 'flesh out' Garrison Diversion's revenue bonding authority by adding specificity to that authority and including up to date financing flexibility. These provisions have been largely taken verbatim from other North Dakota Century Code revenue bond provisions for municipalities, water districts and Lake Agassiz Water Authority. Because of the amount and complexity of the revenue bond financing plan contemplated for the Project, there is a need for clear authority to issue those bonds without creating statutory or constitutional debt. Providing this specific revenue bond authority and procedures in the Garrison Diversion Conservancy District chapter will produce the strongest, surest and least expensive financing program for the stakeholders.

Page 7, beginning on line 8 is a new Section on "Resolutions authorizing the issuance of revenue bonds". This Section describes how Garrison Diversion Conservancy District may authorize revenue bonds and generally what must be included in the resolution. It provides that revenue bonds may be issued upon the approval of a bond resolution by a majority of the Garrison Diversion Conservancy District board and that the resolution will become effective immediately. At a minimum, the resolution must i) set forth the purpose or purposes of the bond; ii) contain provisions for bond repayment; and iii) describe the funds pledged to secure payment of the bonds.

Page 7, beginning on line 18 is a new Section on "Provisions governing bonds". This Section sets forth the categories of topics the bond resolution must cover. It requires the resolution to describe when, where and how the bonds will be repaid, the form and content of the bonds and the terms, conditions and covenants under which the bonds will be sold.

Page 8, beginning on line 1 is a new Section on "Sale of bonds". This Section deals with how the revenue bonds may be sold. It allows both of the commonly used forms of sale, public competitive sales or privately negotiated sales, under the terms and conditions Garrison Diversion Conservancy District deems most appropriate.

Page 8, beginning on line 7 is a new Section on "Validity of Notes and Bonds". This Section makes it clear that bonds properly authenticated by the officials in office at the time of execution are valid notwithstanding the fact those officials may not be in office when the bonds are delivered for payment. This type of section has been added to most bond statutes to make certain that bonds are not invalidated because the officials who properly executed the bonds died or were removed from office between the time the bonds were executed and the time the bonds were delivered at closing (usually, about two weeks after bond execution).

Page 8, beginning on line 14 is a new Section on "Notes and bonds exempt from taxation". This Section permits financial institutions to invest in Garrison Diversion's revenue bonds and declares that the interest on those bonds shall be exempt from State and local taxation. This is a common provision in all North Dakota Century Code bond authorizations. Exemption of interest on the bonds from federal income taxation is determined by federal law. State law governs the exemption from state and local taxation.

Page 8, beginning on line 25 is a new Section on "Covenants and provisions". This Section is key to Garrison Diversion Conservancy District's authority to issue revenue bonds. Revenue bonds do not create constitutional or statutory debt. The last paragraph of this Section makes that limitation abundantly clear. Instead, revenue bonds simply are promises to pay the principal of and interest on the bonds from the proceeds of specifically described revenues that are encumbered in the manner described in the bond resolution. Revenue bond resolutions are the contracts that contain those promises. To ensure that those promises are enforceable, state legislatures must grant issuers of revenue bonds the clear power to generate revenues, determine how and in what order the revenues it collects will be applied, pledge that revenue to payment of the revenue bonds, and describe the various ways bondholders will be protected against dilution, covenant modification and breaches of contract. This Section includes all of those powers and is virtually identical to Chapter 61-35 (the water district revenue bond chapter) and Chapter 61-39 (the Lake Agassiz Water Authority revenue bond chapter). It also permits Garrison Diversion Conservancy District to use modern provisions, such as synthetic interest rate contracts, interest rate caps, floors and collars, to lower its borrowing costs and reduce its exposure to interest rate risk.

Page 10, beginning on line 21 is a new Section on "Liability of district for notes and bonds". This Section re-enforces the revenue bond nature of Garrison Diversion Conservancy District's bonds. It prohibits the bonds from being payable from any revenues or sources other than the revenues pledged to their payment; it forbids the mortgage or other encumbrance of property to secure payment of the bonds; and it requires the bonds to state on their face that they do not create statutory or constitutional debt.

Page 11, beginning on line 3 is a new Section on "Duties of district and officers". Revenue bond financings rely exclusively on the faithful performance of the covenants contained in the bond resolution. This Section specifically recognizes the essentiality of the performance of those covenants and imposes on Garrison Diversion Conservancy District, its officers, agents and employees fiduciary duties that are essential to the contract between Garrison Diversion Conservancy District and its bondholders. Those duties include: the punctual payment of the bonds; the collection of sufficient revenues to enable Garrison Diversion Conservancy District to fulfill all of its obligations; the performance and enforcement of water purchase and sale contracts; the maintenance of its own property in good working order and free from liens; the keeping of good books; the protection and preservation of the security of its bonds; and the requirement that pledged revenues be held in trust for the benefit of the bondholders. This Section also re-enforces the restrictive nature of Garrison Diversion Conservancy District's revenue bonds by limiting to project revenues or water sale contract revenues the

categories of revenues that Garrison Diversion Conservancy District may be required to use to fulfill these duties.

Page 12, beginning on line 21 is a new Section on "Remedies". This Section grants bondholders the right to sue Garrison Diversion Conservancy District, its officers, agents and employees to force them to perform their statutory or bond covenant duties or to enjoin them from doing things that may be unlawful or in violation of the bond covenants. These equitable rights are cumulative to any rights bondholders may otherwise have at law or under the terms of the bond resolution.

Page 13, beginning on line 11 is a new Section on "Bonds as legal investments". This Section permits financial institutions to invest in Garrison Diversion's revenue bonds, classifying the revenue bonds as recognized legal investments. This is a common provision in all North Dakota Century Code bond authorizations.

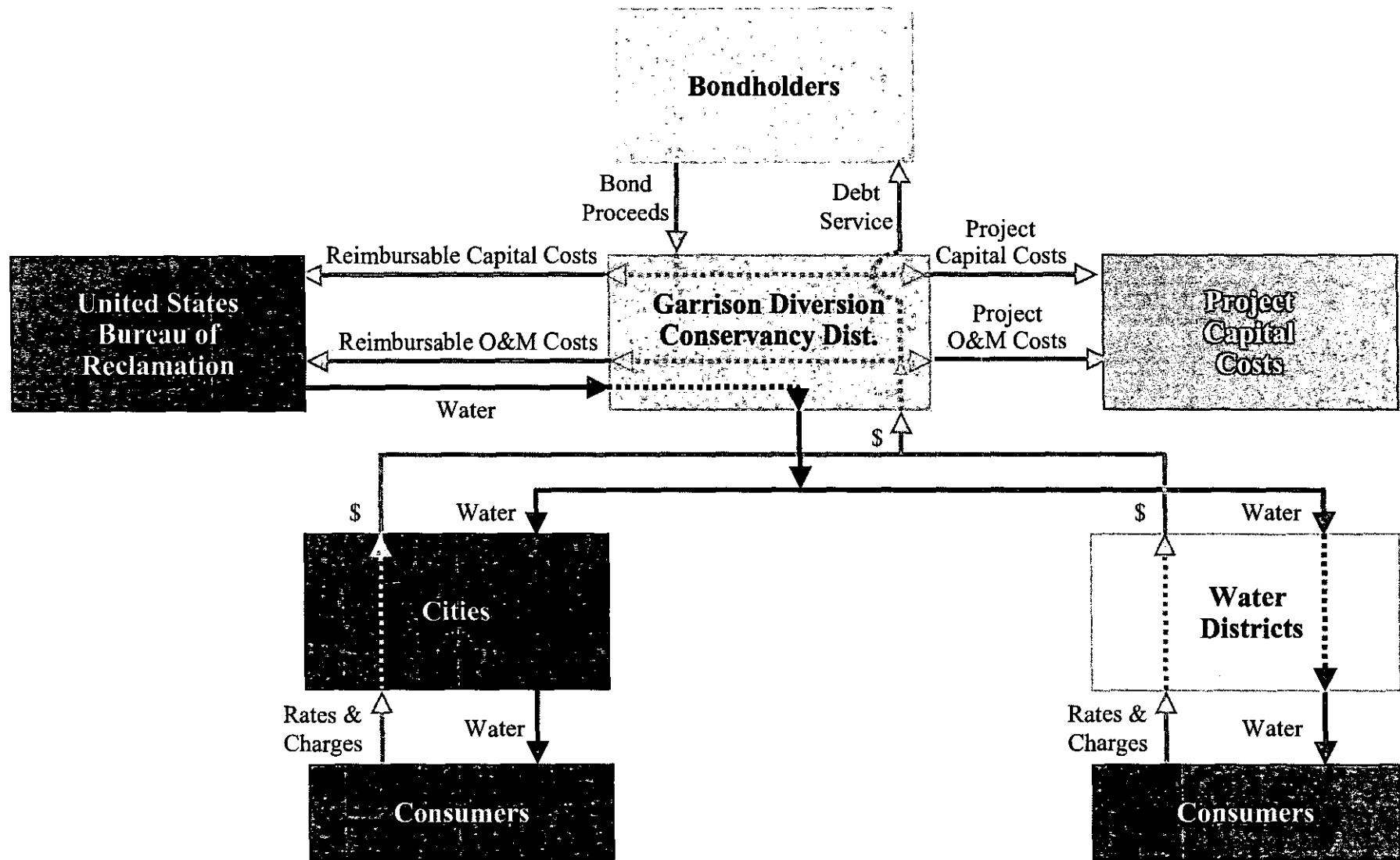
Section 5 of the bill amends the Lake Agassiz Water Authority chapter to provide consistency with the amendments in Section 1, subdivision 6, of this bill.

Section 6 of the bill addresses a requirement that Lake Agassiz Water Authority board members must be from a city or water district that has a water service contract with either the authority or the Garrison Diversion Conservancy District.

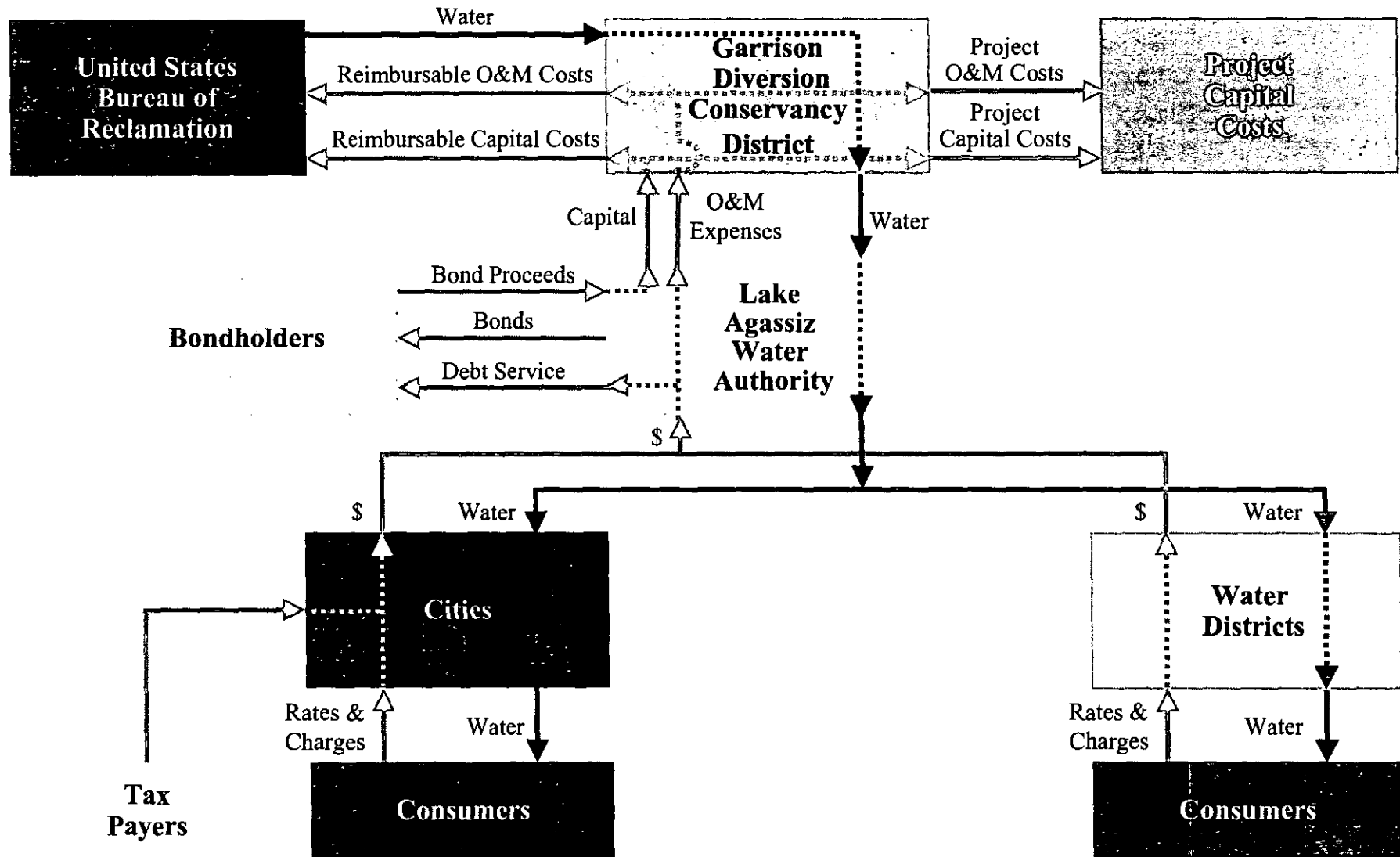
Each of the provisions proposed to be added to the Century Code are necessary to permit the most flexible and cost effective financing of the Red River Valley Water Supply Project and are consistent with the construction, operating and financing framework that has been contemplated for the Project for years. This structure gives all parties involved the opportunity to meet the financing goals I mentioned at the beginning of my presentation and will allow those parties to construct, finance, operate and maintain the Red River Valley Water Supply Project in a manner that best fits the stakeholders' current and future needs. Therefore, I would urge you to pass Senate Bill 2298.

Thank you for your time.

Garrison Diversion Conservancy District as Issuer



Lake Agassiz Water Authority as Issuer



Testimony to the Senate Natural Resources Committee

February 13, 2009

Chairman Lyson and members of the committee:

My name is Andrew Varvel. I oppose Senate Bill 2298.

Going forward with this plan will anger our northern neighbors in Canada, especially residents of Manitoba. Although I presently live in Bismarck, I grew up in Grand Forks. I remember the 1997 flood quite vividly. I know only too well that even if only one thimble full of water gets piped in from the Missouri River to the Red River Valley watershed and then another flood happens, Canadians will blame the entire flood on North Dakota. We don't need this aggravation.

The United States and North Dakota in particular need to be good neighbors to our northern friends. If our northern friends don't want Missouri River water, it would not be right to force it down their throats.

There comes a time when the people of North Dakota and our elected leaders need to consider what is and is not in our strategic interests. North Dakota's priorities on water need an overhaul. Given how Lake Sakakawea has been silting up, with resulting uncertainties about its future carrying capacity, it makes sense to consider what is or is not truly a vital interest for the state.

It makes more sense to transport water from a wet region to a dry region than vice versa. It is rather curious how North Dakota taxpayers are being asked to fund a transfer of Missouri River water to Fargo but not a transfer of Red River water to Bismarck. If people from the Red River Valley watershed truly want more water, they should consider getting it piped in from Lake Winnipeg.

Manitoba Hydro is considering building a dam on the northern edge of Lake Winnipeg to provide electrical power while also ensuring fish habitat and drinking water for traditional peoples on the lake. Given that Lake Winnipeg's water level in the summer would be higher due to greater demand for electricity during the winter, Governor Hoeven should consider approaching Premier Doer with the proposition of piping in water from Lake Winnipeg to Grand Forks, Fargo, and Minot during the summer.

If Red River Valley interests are truly desperate, they should seek to get water piped in from Lake Superior. There is a lot of fresh water in Lake Superior. Red River Valley interests could work with Minnesota, Ontario, Manitoba, our federal government, and the Canadian government to construct a trunk water pipeline from Lake Superior to Winnipeg. Branch pipelines could then be established for Brandon and Minot, as well as for Grand Forks and Fargo. However, interests from the Red River Valley must leave the Missouri River alone.

North Dakota has vital interests concerning the Missouri River watershed.

1. There must be sufficient drinking water for present and future needs of people who live in the Upper Missouri River Basin.
2. There must be sufficient flood control to protect existing populated areas in the Upper Missouri River Basin.
3. All tribal lands taken by the federal government to create Lake Sakakawea must be restored to the Three Affiliated Tribes. These bottomlands include but are not limited to all settlements and cemeteries that have been underwater.
4. There must be sufficient habitat for indigenous Missouri River fauna, including the pallid sturgeon.
5. Other concerns such as power generation and recreation should be addressed in keeping with the first four principles.

The dispossession of the people of Fort Berthold is a national disgrace. Restoring the Missouri River bottomlands ought to be a national priority for anyone with a conscience or anyone who cares about the honor of the United States of America. This need not be a zero sum game. Coal companies can be part of the solution. Rather than reclaiming existing coalfields in the traditional manner, alternative reclamation can involve coal companies excavating future reservoirs for recreation, drinking water, and flood control to replace Lake Sakakawea. It is in North Dakota's long-term interests to exercise moral leadership on this issue and put its weight behind plans to restore the traditional bottomlands to the Mandan, Hidatsa, and Arikara. This can be done. This should be done. This must be done.

If the leaders of Fargo and Grand Forks truly desire to bring more water into the Red River Valley watershed, they ought to have the full support of North Dakota to work with the Province of Manitoba to gain access to water from Lake Winnipeg and possibly Lake Superior. Such a strategy is the only realistic means to ensure Canadian cooperation. I think it would be much wiser to find mutually beneficial arrangements with Manitoba Hydro than to butt heads against the Canadian government yet again.

Please reject Senate Bill 2298. Thank you.

Andrew Varvel
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Testimony by Dave Koland, General Manager
Garrison Diversion Conservancy District

To the

House Natural Resources Committee Hearing on SB 2298

Bismarck, North Dakota
March 12, 2009

Mr. Chairman, members of the committee; my name is Dave Koland. I serve as the General Manager of the Garrison Diversion Conservancy District. Garrison Diversion is a political subdivision of the state created in 1955 to construct the Garrison Diversion Unit of the Missouri River Basin Project as authorized by Congress on December 22, 1944. Amendments in 1986 and 2000 have changed Garrison Diversion from a million-acre irrigation project into a multipurpose project with an emphasis on the development and delivery of municipal and rural water supplies. The Dakota Water Resources Act of 2000 (an amendment to the Garrison Diversion Reformulation Act of 1986) authorizes \$200 million for construction of the Red River Valley Water Supply Project to meet the water supply needs of the Red River Valley.

The proposed project relies on three elements to meet the projected water shortages: drought management plans, water conservation measures and a supplemental water supply from the Missouri River.

SB2298 provides an option for the local water users to provide their one-third share of financing the Red River Valley Water Supply Project by having the Garrison Diversion Conservancy District issue Revenue Bonds based on water service contracts.

Section 1 of the bill makes it clear that Garrison Diversion can provide water to Minnesota cities and also to users outside the district boundaries under a joint-powers agreement.

Section 2 adds the various revenue bond authorities to the powers of the district.

Section 3 makes it clear that pipeline easements are included in the easements granted on any public lands.

Section 4 contains the bond provisions that may be included in a revenue bond issue.

Section 5 clarifies, in the Lake Agassiz Water Authority section of the code, that Garrison Diversion may be the entity that enters into water supply contracts with its members.

Section 6 addresses the qualifications to be a member of the Lake Agassiz Water Authority board of directors after the project has been built.

I have attached the testimony of Robert H. Campbell with Barclays Capital, who serves as our Investment Banker. Mr. Campbell's testimony goes into detail on each of the sections in SB2298

Mr. Chairman, members of the committee; thank you for your time, I will be happy to answer any questions you might have.

Testimony of
Robert H. Campbell
Barclays Capital
In Support of Senate Bill 2298
March 12, 2009

Mr. Chairman, members of the Committee

My name is Bob Campbell. I am a managing director with Barclays Capital and have served as Lake Agassiz Water Authority's and Garrison Diversion Conservancy District's investment banker in designing a plan of finance for the Red River Valley Water Supply Project.

My testimony this morning is made in support of the proposed amendments to chapter 61-24 of the North Dakota Century Code that deal with options for financing the Red River Valley Water Supply Project.

By way of background, I have been involved in the municipal securities industry for 37 years and have participated in a number of large multi-party water and other utility project financings. Over the past five years, I have been working with representatives of Lake Agassiz Water Authority, Garrison Diversion Conservancy District and their consultants to design a plan of finance that would accomplish the following things:

- Permit phased or accelerated construction of the Project;
- Embed the flexibility to impose fair and equitable cost allocations among Project water users;
- Finance the Project at the lowest possible cost;
- Be simple and efficient to use; and
- Impose the fewest restrictive covenants on Project water users.

The initial concept for the Red River Valley Water Supply Project contemplated that Garrison Diversion Conservancy District would build and operate the Project, while the stakeholders, organized as the Lake Agassiz Water Authority, would finance its one-third share of the Project by issuing revenue bonds. The current expected financial plan is to have the Project cost split among the federal government, the State and the users, with each paying one-third. I have included with my testimony a schematic diagram of our

financing plan assuming Lake Agassiz Water Authority would be the financing entity. In 2005, I testified on behalf of SB 2295 to modernize Lake Agassiz Water Authority's financing powers to allow that entity revenue bonding authority as a means for the stakeholders to finance their portion of the Project. That bill was passed into law.

Since 2005, it has become clear from the way in which the Project has developed and the dramatic change in the financial markets that removing Lake Agassiz Water Authority as a financing conduit and authorizing Garrison Diversion Conservancy District to issue revenue bonds to finance the Project directly would lead to more efficient and cost-effective Project financing.

It is contemplated that the Lake Agassiz Water Authority stakeholders, which consist of many cities and water systems in the Red River Valley, will enter into water service contracts directly with Garrison Diversion Conservancy District. These water supply contracts must be strong and binding in order to get revenue bond underwriting approval. These contracts will require stakeholders to make payments in an amount necessary to meet Garrison Diversion Conservancy District's revenue bond payments, along with the operation and maintenance costs for the Project. The primary source of revenue contemplated to be used by a city or water district for payment of its obligations will be generated through rates imposed upon water service customers. Some other water systems may utilize special sales tax generation for the special purpose of paying obligations pursuant to the water service contracts. No general taxing authority or general obligation of any city or water district will be pledged for the repayment of the revenue bonds.

From the capital market perspective, the elimination of monoline bond insurers that for decades homogenized credits and, essentially, allowed investors to avoid performing their own credit analyses, has created a new need for clearer, simpler credit structures with more direct and brighter lines of operational, financial and enforcement mechanisms. I have apprized the Project stakeholders of these concerns and the stakeholders unanimously agreed that they would prefer to have Garrison Diversion Conservancy District as the entity to issue revenue bonds, rather than have Lake Agassiz Water Authority issue the bonds. Consequently, we have redesigned and simplified the Project financing plan by substituting Garrison Diversion Conservancy District for Lake Agassiz Water Authority as the Project's financing entity. This redesign would remove Lake Agassiz from the financing plan altogether, since it was serving only as a conduit issuer in the first place. Removing Lake

Agassiz Water Authority as the financing middle-man for the Project would eliminate one layer of complex wholesale water supply and sale contracts, and contractual enforcement rights that would have to be created to support this complicated plan of finance. Bond underwriters prefer a less complicated plan, with one set of contracts between Garrison Diversion Conservancy District and the water users directly. I have included with my testimony a schematic diagram showing the far simpler and more direct financing plan that would result if Garrison Diversion Conservancy District were to serve as the Project financing entity.

The proposed legislation simply grants Garrison Diversion Conservancy District the same Project financing power that the legislature approved for Lake Agassiz Water Authority in 2005. The benefits to the Project of substituting Garrison Diversion Conservancy District for Lake Agassiz Water Authority as the financing entity are as follows:

- **Simplicity.** In today's credit and structure sensitive market, being able to tell rating agencies and investors a simple story where the credit and sources of payment are direct and apparent would attract a larger universe of investors, create more competition for the bonds and drive the borrowing cost down. On major public works like the Project, it is much more commonplace that the entity constructing and operating the Project should also be the financier. This more typical business structure can only be achieved if Garrison Diversion Conservancy District were to issue the Project bonds. The bond rating agencies and bond purchasers will understand more clearly and embrace more readily a standardized Project construction, operation and financing package.
- **Accountability.** Unifying Project construction, operation and financing into one entity gives bondholders the opportunity to enforce covenants directly against the entity operating the Project. Under the Lake Agassiz Water Authority financing plan, bondholders would have to rely on Lake Agassiz Water Authority to take any remedial water supply and payment enforcement actions that might be necessary. Further, under a bifurcated ownership and financing structure, bondholders would have to assume the future political risk that Garrison Diversion Conservancy District and Lake Agassiz Water Authority may not see eye to eye on matters related to the Project and water delivery from it. The clarity of responsibility and direct enforcement opportunities resulting from Garrison Conservancy District financing and operating the Project would strengthen the bonds'

credit, give bondholders greater confidence their bonds will be paid and result in lower interest rates.

- **Ease of Administration.** Eliminating a third-party conduit financier removes all of the cost, bureaucracy, and inefficiencies associated with involving two instead of one entity in the Project's financing and operation. Cutting out the middle-man would have an ongoing cost reduction impact in addition to the interest cost savings mentioned above. These cost reductions include the elimination of duplicate financial audits, bondholder reporting, board meetings, staffing and other organizational overhead associated with maintaining two entities rather than one. In the end, the stakeholders will ultimately be paying for all administration of the Project, so it makes little sense to have two separate political subdivisions charging the stakeholders for duplicative administrative costs.
- **More Efficient Follow-on Financing.** While unlikely, there may be a need to secure additional financing at a later date if a significant, unexpected cost arises. Later financings could be undertaken more efficiently by Garrison Diversion Conservancy District as the Project's operator than would be possible under a multiple party decision-making structure.

For these reasons, on behalf of Barclay Capital, I join the Lake Agassiz Water Authority stakeholders in believing that Garrison Diversion Conservancy District should be the entity that finances the Project. The language of the amendment you are considering has largely been lifted from the financing powers the Legislature gave Lake Agassiz Water Authority in 2005. In particular, the proposed legislation includes the following provisions:

Section 1 of the bill proposes an amendment to the Declaration of Intent to the Garrison Diversion Conservancy District legislation, found in the North Dakota Century Code Section 61-24-01, the Declaration of Intention. The existing declaration of intent provides for Garrison Diversion to construct and operate projects consistent with the federal Garrison Diversion Unit legislation. By adding "or outside" to subdivision 5 and the addition of subdivision 6 makes it clear that Garrison Diversion Conservancy District has authority to construct, and operate a Garrison Diversion Unit project that benefits entities located outside of the Garrison Diversion Conservancy District geographical boundaries, including water systems in Minnesota.

Section 2 of the bill proposes amendments to the Garrison Diversion Conservancy District Chapter of the Century Code Section 61-24-08. The first set of changes is to subsections 10, 11 and 26. The existing authorities allow Garrison Diversion Conservancy District to enter contracts for the supply of water and construction of projects within the district boundaries. The proposed amendments to Subsections 10, 11 and 26 expand the ability of Garrison Diversion Conservancy District to provide water service to entities outside the geographical borders of the district and to operate a project outside of the district. This change is necessary in order to serve water systems outside the district and Minnesota water systems with a water supply through the Red River Valley Water Supply Project.

Subsections 16-25. The existing authorities of Garrison Diversion Conservancy District do not allow Garrison Diversion to issue revenue bonds to finance projects. Proposed subsections 16 through 25 are added to allow Garrison Diversion Conservancy District to issue revenue bonds to finance projects. The language of these provisions largely recites verbatim other revenue bonding authorities granted in the North Dakota Century Code, including authorities granted to Lake Agassiz Water Authority, water districts and municipalities. The new provisions make it clear that Garrison Diversion Conservancy District is authorized to finance projects and is authorized to issue revenue bonds to construct a project, with repayment through water supply contracts with benefitting water systems. It also allows Garrison Diversion Conservancy District to use revenue bond proceeds to facilitate the development or construction of the Project. These provisions are added to make certain that Garrison Diversion Conservancy District may lend its revenue bond proceeds as advances to pay the Project costs of others that may be repaid pursuant to a repayment obligation other than one contained in a water supply contract.

Subsection 27. The addition of Subsection 27 simply reaffirms Garrison Diversion Conservancy District's authority to enter into water supply contracts with the Project stakeholders. This amendment has a three-fold purpose:

- i) it is intended to confirm authority to enter into water supply contracts with cities, water districts, other political subdivisions and Minnesota public utilities;
- ii) it is intended to allow such contracts to coincide with the long useful life of the Project by eliminating term limitations for them;

- iii) it authorizes the type of “hell or high water” contractual commitments common to and required by the financial markets for the stand alone revenue bond type financing contemplated for the Project.

Section 3 adds pipelines to the types of construction for which easements across state lands is provided.

Section 4 has eleven new revenue bond sections that outline specific procedures for issuance of revenue bonds, terms and conditions that may be included in the bonds, remedies, and liability limitations associated with the revenue bonds. These provisions simply ‘flesh out’ Garrison Diversion’s revenue bonding authority by adding specificity to that authority and including up to date financing flexibility. These provisions have been largely taken verbatim from other North Dakota Century Code revenue bond provisions for municipalities, water districts and Lake Agassiz Water Authority. Because of the amount and complexity of the revenue bond financing plan contemplated for the Project, there is a need for clear authority to issue those bonds without creating statutory or constitutional debt. Providing this specific revenue bond authority and procedures in the Garrison Diversion Conservancy District chapter will produce the strongest, surest and least expensive financing program for the stakeholders.

Page 7, beginning on line 8 is a new Section on “Resolutions authorizing the issuance of revenue bonds”. This Section describes how Garrison Diversion Conservancy District may authorize revenue bonds and generally what must be included in the resolution. It provides that revenue bonds may be issued upon the approval of a bond resolution by a majority of the Garrison Diversion Conservancy District board and that the resolution will become effective immediately. At a minimum, the resolution must i) set forth the purpose or purposes of the bond; ii) contain provisions for bond repayment; and iii) describe the funds pledged to secure payment of the bonds.

Page 7, beginning on line 18 is a new Section on “Provisions governing bonds”. This Section sets forth the categories of topics the bond resolution must cover. It requires the resolution to describe when, where and how the bonds will be repaid, the form and content of the bonds and the terms, conditions and covenants under which the bonds will be sold.

Page 8, beginning on line 1 is a new Section on "Sale of bonds". This Section deals with how the revenue bonds may be sold. It allows both of the commonly used forms of sale, public competitive sales or privately negotiated sales, under the terms and conditions Garrison Diversion Conservancy District deems most appropriate.

Page 8, beginning on line 7 is a new Section on "Validity of Notes and Bonds". This Section makes it clear that bonds properly authenticated by the officials in office at the time of execution are valid notwithstanding the fact those officials may not be in office when the bonds are delivered for payment. This type of section has been added to most bond statutes to make certain that bonds are not invalidated because the officials who properly executed the bonds died or were removed from office between the time the bonds were executed and the time the bonds were delivered at closing (usually, about two weeks after bond execution).

Page 8, beginning on line 14 is a new Section on "Notes and bonds exempt from taxation". This Section permits financial institutions to invest in Garrison Diversion's revenue bonds and declares that the interest on those bonds shall be exempt from State and local taxation. This is a common provision in all North Dakota Century Code bond authorizations. Exemption of interest on the bonds from federal income taxation is determined by federal law. State law governs the exemption from state and local taxation.

Page 8, beginning on line 25 is a new Section on "Covenants and provisions". This Section is key to Garrison Diversion Conservancy District's authority to issue revenue bonds. Revenue bonds do not create constitutional or statutory debt. The last paragraph of this Section makes that limitation abundantly clear. Instead, revenue bonds simply are promises to pay the principal of and interest on the bonds from the proceeds of specifically described revenues that are encumbered in the manner described in the bond resolution. Revenue bond resolutions are the contracts that contain those promises. To ensure that those promises are enforceable, state legislatures must grant issuers of revenue bonds the clear power to generate revenues, determine how and in what order the revenues it collects will be applied, pledge that revenue to payment of the revenue bonds, and describe the various ways bondholders will be protected against dilution, covenant modification and breaches of contract. This Section includes all of those powers and is virtually identical to Chapter 61-35 (the water district revenue bond chapter) and Chapter 61-39 (the Lake Agassiz Water Authority revenue bond chapter). It also

permits Garrison Diversion Conservancy District to use modern provisions, such as synthetic interest rate contracts, interest rate caps, floors and collars, to lower its borrowing costs and reduce its exposure to interest rate risk.

Page 10, beginning on line 21 is a new Section on "Liability of district for notes and bonds". This Section re-enforces the revenue bond nature of Garrison Diversion Conservancy District's bonds. It prohibits the bonds from being payable from any revenues or sources other than the revenues pledged to their payment; it forbids the mortgage or other encumbrance of property to secure payment of the bonds; and it requires the bonds to state on their face that they do not create statutory or constitutional debt.

Page 11, beginning on line 3 is a new Section on "Duties of district and officers". Revenue bond financings rely exclusively on the faithful performance of the covenants contained in the bond resolution. This Section specifically recognizes the essentiality of the performance of those covenants and imposes on Garrison Diversion Conservancy District, its officers, agents and employees fiduciary duties that are essential to the contract between Garrison Diversion Conservancy District and its bondholders. Those duties include: the punctual payment of the bonds; the collection of sufficient revenues to enable Garrison Diversion Conservancy District to fulfill all of its obligations; the performance and enforcement of water purchase and sale contracts; the maintenance of its own property in good working order and free from liens; the keeping of good books; the protection and preservation of the security of its bonds; and the requirement that pledged revenues be held in trust for the benefit of the bondholders. This Section also re-enforces the restrictive nature of Garrison Diversion Conservancy District's revenue bonds by limiting to project revenues or water sale contract revenues the categories of revenues that Garrison Diversion Conservancy District may be required to use to fulfill these duties.

Page 12, beginning on line 21 is a new Section on "Remedies". This Section grants bondholders the right to sue Garrison Diversion Conservancy District, its officers, agents and employees to force them to perform their statutory or bond covenant duties or to enjoin them from doing things that may be unlawful or in violation of the bond covenants. These equitable rights are cumulative to any rights bondholders may otherwise have at law or under the terms of the bond resolution.

Page 13, beginning on line 11 is a new Section on "Bonds as legal investments". This Section permits financial institutions to invest in Garrison

Diversion's revenue bonds, classifying the revenue bonds as recognized legal investments. This is a common provision in all North Dakota Century Code bond authorizations.

Section 5 of the bill amends the Lake Agassiz Water Authority chapter to provide consistency with the amendments in Section 1, subdivision 6, of this bill.

Section 6 of the bill addresses a requirement that Lake Agassiz Water Authority board members must be from a city or water district that has a water service contract with either the authority or the Garrison Diversion Conservancy District.

Each of the provisions proposed to be added to the Century Code are necessary to permit the most flexible and cost effective financing of the Red River Valley Water Supply Project and are consistent with the construction, operating and financing framework that has been contemplated for the Project for years. This structure gives all parties involved the opportunity to meet the financing goals I mentioned at the beginning of my presentation and will allow those parties to construct, finance, operate and maintain the Red River Valley Water Supply Project in a manner that best fits the stakeholders' current and future needs. Therefore, I would urge you to pass Senate Bill 2298.

Thank you for your time.