

2013 HOUSE ENERGY AND NATURAL RESOURCES

HB 1440

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

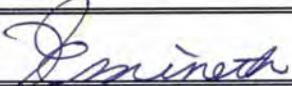
Pioneer Room, State Capital

HB 1440

February 14, 2013

18931

Conference Committee



Relating to exclusion of cities from water districts and state water commission policies on funds for water districts

Minutes:

1-8 Attachments

Rep. Porter: We will open the hearing on HB 1440

Rep. Kreun: I going to offer an amendment to replace the bill that is before you and hand out my testimony. The purpose of the bill is try and ensure that the citizens of N.D. both rural and urban receive quality and quantity of water needed for all facets of our life and our work. (Attachment 1-2)

Rep. Anderson: Have you studied what would happen to the economic liability of the rural water districts and their customers?

Rep. Kreun: One of the provisions in there is to accommodate all of those needs. If there is a loan that loan still is responsible and has to be paid off. If it has existing facilities or equipment and some of the ongoing expenses the daily expenses would be compensated in that area. It would take away the ability to expand around the district.

Rep. Anderson: I know that in some areas that might be a possibility but in other districts your growth is properly limited and if you are in a rural area and lose some customers your best chance of keeping your whole system viable is if you have customers nearby to these towns.

Rep. Kreun: That is why this bill does not force anybody into this process. If the need is there that is part of the negation process that can take place prior to getting into this. This document is only necessary when the two parties can't come to an agreement.

Rep. Hofstad: This is the unintended consequences of our prosperity because all across the state we are growing and expending. Do you know of any other systems or cities that have sat at the table and worked this out?

Do we have a model someplace of some cities and worked this out?

Rep. Kreun: Yes we do. We are in a situation that the capability is there and has been done. We are also in the situation where the growth of industry and the growth of population is looking down the road. As the growth takes place I do believe it would be nice to have a method which we don't have now. I see a lot of money being wasted in legation.

Rep. Hofstad: In the State Water Commission grants; did you ask the commission to consider whether the district and the city have developed an agreement? I am wondering if what you are saying here is an ongoing process.

Rep. Kreun: We are using some components already as the decision making process for these agreements and to decide which loans and grants should be applied. We don't have anything formal on a process to go through if we can't agree. If you look in there is says shall it doesn't they have to take each one and analyses each one.

Rep. Schmidt: The rural water system that I sit on the beneficial constituents is those within that encompass of the city of Mandan. We currently have USDA loan which provides us with the 1926b protection. We would like to refinance that loan and save our constituents about \$200.000 by refinancing that loan. In so doing we lose the 1926 from encroachment and the concern that I have is that is that it is difficult for us with respect to that because we do buy our water from the city of Mandan.

Rep. Kreun: I don't know if refinancing is going to chance that agreement with the city. What we are trying to address here is getting good quality water and not waste money.

Murray Sagsveen: Testifying for the League of Cities; and we support the amendment that was proposed. The first parts of the proposed amendments basically are patterned after Kansas law that has been adopted. They have established a process that may be very helpful to be followed in situations like this.(Attachment 3)

Rep. Hofstad: We also have state protection for rural systems because we have established boundaries. What are those protections?

Murray Sagsveen: I am not an expert on those protections. I focused on the 1926b issue.

Rep. Hofstad: The reason I asked that question is because there are rural systems that are financed with other finances that the federal finances.

Murray Sagsveen: That is logical that there are security interests in those loans like 1926b.

Jason Strand: city councilmen for the city of Surrey: and here in support HB 1440. This bill would strike a fair and necessary balance between the water districts and those of municipalities. (Attachment 4)

Rep. Porter: On your map the area to the south; is that component in city limits but the water is served from someone other than the city?

Jason Strand: Yes.

Rep. Porter: We do you get the city water from?

Jason Strand: We purchase our water from the rural water district.

Rep. Porter: So you do not have your own water infrastructure?

Jason Strand: No.

Rep. Porter: Who owns the pipes in the ground inside the city limits?

Jason Strand: The city of Surrey owns the infrastructure.

Rep. Porter: You do own your entire infrastructure and do they bring the main into your system?

Jason Strand: Yes.

Rep. Porter: Where does the water system get their water from?

Jason Strand: From the city of Minot.

Ryan Ackerman: Civil Engineer and am representing the city of Burlington in support of HB 1440. We feel this strikes a necessary balance between the small municipalities and rural water districts. (Attachment 5)

Rep. Froseth: Is that new development within your territory?

Ryan Ackerman: It is within one mile of the zoning jurisdiction.

Rep. Porter: If the city of Burlington has federal loans and the rural water system has federal loans how does the USA look at those competing systems and the fact that they both have federal loans? Has the rural water system exercised their 1926b authority?

Ryan Ackerman: To answer the second question first yes they have. I don't know the answer to the first question.

Rep. Porter: Do you know the amount of the debt that the rural water system carries?

Ryan Ackerman: No I do not.

Rep. Brabandt: What is the status of the proposed residential development there?

Ryan Ackerman: They are currently in design looking to get this issue regarding water service resolved so that it can move forward. They have two willing sellers from the developers prospective so hopefully we can get this resolved.

Rep. Hofstad: Did the city consider serving these residents before the rural system moved in? What was the density of the population?

Ryan Ackerman: I was part of that mix what is being proposed now is not that the city is wishing to take over existing rural water customers.

Rep. Hofstad: At some point that rural system made a financial comment as did the state and the federal government to provide services for them. Was the rural system the only player in town or did the city have an opportunity to serve those customers also?

Ryan Ackerman: I am not certain whether they were given that opportunity.

Rep. Porter: What is the population of Burlington?

Ryan Ackerman: The population is approximately 1200.

Rep. Porter: What would the proposed annexation do to the population of Burlington?

Ryan Ackerman: At ultimate build out the population of Burlington could be access of 6000.

Rep. Porter: Inside the city of Burlington are there fire hydrants?

Ryan Ackerman: yes.

Rep. Porter: Does your water supply come from Minot?

Ryan Ackerman: It is a combination of source.

Rep. Porter: Has the city of Burlington spend funds on legal fees dealing with this?

Ryan Ackerman: Yes but I do not know the amount.

Rep. Froseth: Does your rural water system get some water from the NAWWS system?

Ryan Ackerman: I believe so.

Rep. Porter: Does the city of Burlington sell off access water to the rural system?

Ryan Ackerman: They are stand alone.

Eric Volk: Executive Director ND Rural Water Systems Association: I am submitting opposition to HB 1440. (Attachment 6) This isn't a new federal law federal code; in 7 section 1926b for the last 40 years this has been an enormous success for developing the rural areas across America. In 1999 the state of ND developed a similar bill and that is Century Code 6-09.4-22 it is in the Public Finance Authority and a state law cannot override a 1926. There are also some condemnation provisions and some of the laws and that condemnation of federally indebted water have been found to be against the law since 1987. The water rate is

their source of income. We do have a recommended amendment in the packet the committee can study.

Rep. Porter: Do you think that by us not doing something that we are going to cause rural systems to make bad business decisions for their customers in the form of holding on to higher interest debt rather than refinance at a better rate?

Eric Volk: Each system would have to look at that and analyze it carefully, in Rep. Schmidt's case with his water system he would have to see what that does and what that would save versus the potential loss of customers around the city of Mandan.

Rep. Porter: Wouldn't you see it as part of our responsibility since the state of ND is a significant component to every water system in the state to make sure that these systems are being run efficiently and with good business models?

Eric Volk: Our districts were run like a great business over the last 40 years, there has been no water system that has ever been created that has gone out of business that provided water to business places.

Rep. Hofstad: You talked about a local decision and there to be a lot of local input into this issues which also a state decision because we have a lot invested in these systems. We have got to get to a point where we get this issue resolved. How do we get there? 1926b is pragmatic in many cases where we are expanding our systems and spending our money.

Eric Volk: I agree with you this has taken a lot of time on the part of many people. We are willing to figure something out.

Rep. Porter: The difference is that the State of ND didn't have money invested in transmission lines for rural electric. In this case we are a player with invested interest. The tax payers will not tolerate unnecessary duplication with their money.

Geneva Kaiser: Manager of Stutsman Rural Water District in Jamestown and also the representative to the ND Rural Water Systems Association Executive Board; I would like to point out that our system has state and federal loans that we are currently in negotiations with the city of Jamestown and are trying our best to work something out that can benefit both parties in moving forward. (Attachment 7) Please vote no on HB 1440.

Rep. Anderson: Was there any discussion prior to that?

Geneva Kaiser: They just annexed to the property.

Rep. Anderson: Then there has been no discussion of further plans to?

Geneva Kaiser: We are working and discussing on the open territory. The most resent we have had is that they may be willing to allow us to provide that backup service to the hospital but it is not definite.

Rep. Porter: How does your system get treated water?

Geneva Kaiser: We have our own treatment plant.

Rep. Porter: Where is that located?

Geneva Kaiser: That is 2 miles south of Spirit Wood on the Spirit Wood exit.

Rep. Porter: Is that out of the aquifer?

Geneva Kaiser: Yes it is. We also buy water from the city of Carrington for the north part of our system. And we do have a water service contract with the city of Jamestown; we haven't been buying a lot of water from them because the price has been too high.

Rep. Porter: Do you know the dollar amount of your USDA loans?

Geneva Kaiser: We have an \$814,000 loan we are in the process with our phase 2 project of 3.1 million and for the projects that we just got funded through 1269 yesterday it will be approximately another 4.5 million of federal loans.

Rep. Hofstad: Your testimony seems to assert that HB1440 picks winners and losers in that it would somehow trump 1926b and give all of the advantage to the cities. Why would you assert that this bill would trump 1926b or favor a municipality?

Geneva Kaiser: I don't necessarily think that it would trump 1926b. We do have state loans that as well as you know there can be buyouts of federal loans not by municipalities but they can be refinanced and bought out. What bothered me about the amendments is that each water district would have to have an agreement with all of the cities in there water district before they could receive grant funding from the State Water Commission. I felt that water districts were being singled out in that releasing state water commission funds that they could be withheld to a water district that does not have an agreement with all of the cities.

Rep. Hofstad: Could you point that out to me in the proposed legislation?

Geneva Kaiser: I thought it was on the last page on the bottom unless it has been rewritten since I last saw it.

Rep. Hofstad: I would tell you that in most cases they say the water commission in granting those funds in are considering if we those issues and feasibilities studies and if we have duplication.

Rep. Brabandt: You mention the number of \$.39 and \$1.69 what was that?

Geneva Kaiser: I was talking about the pumping costs and how the costs would raise to a system if we were to lose the most economical customers to serve which are the ones right around the city of Jamestown.

Teresa Sundsbak: General Manager for North Prairie Rural Water District; I am here to speak in opposition of HB 1440. The city of Burlington has not come to the table; I had to meet

with them several times to discuss our issues in the area. I do not have the map to show that they also do cherry picking because they came down the highway and strip annexed to get to the property that we are talking about. (Attachment 8) In my opinion this bill is very poor law; instead of enhancing corporation between entities it directly pits rural against city.

Rich Olson: Williams Rural Water; we went through annexation and had local territory issues these need to be resolved locally. It is not a one size fits all. Williams and the city of Williston worked on their issues for almost a year at the end of the negotiations we came to what we believe is a mutually beneficial agreement.

Rep. Porter: What city are you with?

Rick Olson: The city of Williston.

Neil Bredemback: Grand Forks Trail Water and Rural Water System; we have been operating since 1971 and a lot of our users are around Grand Forks and we do not have 1926b protection. We negotiated a deal with Grand Forks in 2000 and in the area that they took from us are about 9,000 acres and one of the areas we had 6 inch mains under and we have 250 homes over this 6 inch water main that we did have and stand to lose about six million dollars that we gave up at the time. We feel that negotiated is necessary and would like to renegotiate our contact with the city. I think negotiation is the key and has to happen.

Rep. Porter: We will close the hearing on HB 1440.

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1440

February 21, 2013

19317

Conference Committee

Minutes

Relating to the exclusion of water districts and state water commission policies on funds for water districts

Minutes:

Attachment 1

Rep porter: We will open HB 1440

Rep. Hofstad: You before the amendment of the bill 01.004 these amendments are very subtle to the amendments that Rep. Kreun presented. 1440 is a very contentious issue in the water world. (Attachment 1) The issue is a federal law 1926b which protects rural water systems from annexation from the city. We have many cities that are expanding and that is causing conflict. What we have today is a situation where we are spending millions of dollars to develop water across N.D. There are circumstances where we have rural and city water lines running side by side and that is not a very prudent use of public funds. This bill tries to bring both sides to the table to an arbitration process whereby they can work out their differences.

Rep. Porter: We have a motion to move the amendment from Rep. Hofstad to HB 1440 version 13.0625.01004 Seconded by Rep. Anderson. Voice

Rep. Froseth: What if the district takes over a portion of the city infrastructure? Does it say that this can work both ways does it?

Rep. Hofstad: The district boundaries are drawn if that city annexes part of that district into the city those contacts can work both ways. There is an opportunity within the bill for the district to contract with the city.

Rep. Keiser: On section one of the first page the fifth line down "full economic loss" that seems to me to be a term that would be very difficult because it doesn't say how long. Is it 200 years or 10 years?

Rep. Hofstad: That issue is prior to getting to the arbitration process.

Rep. Porter: In the terms of what this says for the first part of this negotiation is that they could sit down and say; not only are you paying for the pipe but that pipe was going to be in service for 100 years and our revenue per year is this times 100 and then that's the start of the negotiation process. That seems a little unreasonable from the stand point of what they can place in value on it. If we are going to use those terms we should say 10 years of revenue as the starting point of negotiation so that it is very specific.

Rep. Keiser: It says full economic loss by statue and now I go into arbitration, I would think the arbitrator would have to follow the law. That is a problem.

Rep. Hofstad: I would interrupt it as that full economic loss because they have a value placed on that particular customer. It ensures that they will have a customer base to make sure that that loan is paid off.

Rep. Porter: If we put language in there that said "for the districts asset plus 10 years of revenue" All of those capital expenses that created that asset are included in what that asset is and put in there plus 10 years wouldn't that start the process fairly?

Rep. Hofstad: That sets a very high standard. We did struggle with that language is there better language?

Rep. Anderson: In some cases it would be more than fair but should we tie that to the terms of the loan?

Rep. Porter: You are taking that asset so it is not like you aren't what the loan is tied to in the form of the full expense of the asset plus the revenue that that asset generated.

Rep. Anderson: If you are taking that part of the system away and it drops your revenue are you going to pay for the rest of the system?

Rep. Porter: If you have taken the portion as an asset you have taken the lump sum of what would cover the loan for that component of the asset plus you have 10 years of revenue to continue paying off that loan.

Rep. Kelsh: Was there discussion about the phrase "going concern value"? Because that is a legal defined term?

Rep. Hofstad: We did have some discussion with the council and he just ----- This amendment was modeled after Nebraska law.

Rep. Porter: The sentence would read" the city must fairly compensate the district for the districts asset plus 10 years of revenue as a result of the district being precluded from providing water service to the area being annexed.

Rep. Froseth: Do we want to say 10 years?

Rep. Porter: What we are setting up is the start of the negotiations.

Rep. Schmidt: On page 2 item number 4 " the value of the districts services located within the annexed area" With respect to Missouri West Water we have some subdivisions that we provide water too but the pumping station is a long ways from that subdivision and if the city of Mandan would take the subdivision over that pumping station that we have that is not within the annexed area now would be useless to us. How does that the wordage on line 4 impact that?

Rep. Hofstad: It is dealt with in number one.

Rep. Porter: We have a motion from Rep. Hofstad and a second from Rep. Anderson to move the amendment to HB 1440 Voice vote carries. Rep. Hofstad made a motion for a do pass as amended and a second from Rep. Anderson. Motion carried.

Yes 13 No 0 Absent 0 Carrier Rep. Hofstad

February 21, 2013

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CJW
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

Page 1, line 1, replace "three" with "four"

Page 1, remove lines 7 through 24

Page 2, replace lines 1 and 2 with:

"Annexation of lands located in district - Notice.

At least sixty days before the effective date of any ordinance annexing land that is located in a district into the boundaries of any city, the city shall give written notice to the district of the city's intent to annex the land. The notice must contain the description of the land and the city's plan for the provision of water service to the land."

Page 2, replace lines 5 through 20 with:

"Contract for city to provide water service - Franchise fee.

Following annexation of district territory by a city, the city and the district may contract for the city to provide water service to any portion of the annexed area."

Page 2, remove lines 23 through 30

Page 3 replace lines 1 through 10 with:

"City designates different supplier - Purchase of district property - Arbitrators - Factors - Detachment of territory from district.

1. Following annexation, the district must remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city shall purchase the property, facilities, and improvements of the district. The city shall fairly compensate the district for the district's asset, plus up to ten years of revenue, as a result of the district being precluded from providing water service to the area being annexed. If a water service agreement between the district and the city is not executed within ninety days after delivery of the notice designating a different supplier, the city and the district in good faith shall engage in mediation. Unless an agreement is executed, a change in the water service provider may not occur and an arbitrator may not be appointed until more than one hundred twenty days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.
2. If the district and the city are unable to reach an agreement, then the fair compensation to the district must be determined in the following manner:
 - a. The district and the city each shall select one qualified arbitrator, and the two selected arbitrators shall select a third arbitrator to determine the fair compensation for the district. The arbitration must be conducted in accordance with chapter 32-29.3. Unless the arbitrators agree otherwise, the arbitration proceedings must be conducted in the

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annexing city. The arbitrators shall consider all elements of value, employing any method of valuation the arbitrators deem appropriate, and shall specifically consider the following factors in determining the fair compensation:

- (1) Whether any property of the district is rendered useless or valueless to the district;
 - (2) The amount of damage to property remaining in the ownership of the district following annexation;
 - (3) Impact on the existing indebtedness of the district and district's ability to repay that debt;
 - (4) The value of the district's service facilities located within the annexed area;
 - (5) The amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service the annexed area;
 - (6) The amount of the district's contractual obligations allocable to the annexed area;
 - (7) If the annexed area consists of land that does not have water service being provided by the system at the time of the annexation, the value of the land based on the planning, design, and construction of improvements located outside the annexed area reasonably made to provide future water service to the annexed area;
 - (8) Any demonstrated impairment of service or increase of cost to the district's remaining customers after the annexation and the impact on future revenues lost from existing and future customers within the annexed area;
 - (9) Any necessary and reasonable legal expenses or professional fees;
 - (10) Any factors relevant to maintaining the district's current financial integrity;
 - (11) The average increase in the number of benefit units in the area annexed for the three years immediately preceding the annexation;
 - (12) The reasonable costs of detaching the water system facilities to be sold and all reasonable costs of integrating the remaining water system facilities of the water supplier whose rights are terminated; and
 - (13) Any other relevant factors agreed to by the three appointed arbitrators.
- b. At least two of the three arbitrators must agree to written findings and conclusions that must be presented to the city for payment and the district for acceptance.

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3. The compensation required by this section must be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city. The compensation must be paid within one hundred twenty days following the date upon which the fair market value of the facilities are certified to the city and district, or at a later date as may be mutually agreed upon by the city and district or as determined by the district court.
4. In any event, the district may elect to retain facilities located within the city and used for transmission of water if the district uses those facilities to continue to supply water service to benefit units outside the city. The district may not receive compensation for facilities it elects to retain.
5. Except as otherwise provided, this section does not limit the authority of a city to select water service suppliers to areas within the city limits or to adopt and enforce regulations for the operation of a water service supplier, including standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices, and other regulations for protection of the public health, safety, and welfare.
6. If a district will no longer be the water supplier to an area because of annexation and notice under subsection 1, the district shall continue to provide the service until the city gives notice of its assumption of responsibility for service, designating the date that the service must transfer to the city's designated supplier. The district and the city shall cooperate to minimize the inconvenience to water customers because of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred, specifying the new supplier's name and address, the effective transfer date, the reason for the transfer, and an applicable rate schedule. During the negotiation period, the district may not discontinue or limit service to customers who were supplied water by the district at the time of annexation unless the customer has violated district bylaws, rules, or regulations.
7. Following the transfer of water service, the annexed land for which water service has been transferred to the city must be deleted from the district's territory and all benefit units attached to the land must be canceled without compensation. The district shall provide notice of the deletion of territory to the state engineer.

SECTION 4. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

State water commission funding.

The state water commission, before providing grants or loans to a district or city, shall consider whether a district and city within a district have developed a mutually acceptable water service agreement to accommodate anticipated future growth of a city within a district, but the commission may not have these considerations affect the funding of other projects within a district."

Renumber accordingly

Date: 2-21-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1440

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By Rep Hospital Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
to make 13.0652.01004 Amendment. *voice carrier*

Date: 2-21-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1440

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0652.01005

Action Taken _____

Motion Made By Rep Hofstad Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Hofstad

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

Do pass as amended

REPORT OF STANDING COMMITTEE

HB 1440: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1440 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "three" with "four"

Page 1, remove lines 7 through 24

Page 2, replace lines 1 and 2 with:

"Annexation of lands located in district - Notice.

At least sixty days before the effective date of any ordinance annexing land that is located in a district into the boundaries of any city, the city shall give written notice to the district of the city's intent to annex the land. The notice must contain the description of the land and the city's plan for the provision of water service to the land."

Page 2, replace lines 5 through 20 with:

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1. Following annexation, the district must remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city shall purchase the property, facilities, and improvements of the district. The city shall fairly compensate the district for the district's asset, plus up to ten years of revenue, as a result of the district being precluded from providing water service to the area being annexed. If a water service agreement between the district and the city is not executed within ninety days after delivery of the notice designating a different supplier, the city and the district in good faith shall engage in mediation. Unless an agreement is executed, a change in the water service provider may not occur and an arbitrator may not be appointed until more than one hundred twenty days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.
2. If the district and the city are unable to reach an agreement, then the fair compensation to the district must be determined in the following manner:
 - a. The district and the city each shall select one qualified arbitrator, and the two selected arbitrators shall select a third arbitrator to determine the fair compensation for the district. The arbitration must be conducted in accordance with chapter 32-29.3. Unless the arbitrators agree otherwise, the arbitration proceedings must be conducted in the annexing city. The arbitrators shall consider all elements of value, employing any method of valuation the arbitrators deem appropriate, and shall specifically consider the following factors in determining the fair compensation:

- (1) Whether any property of the district is rendered useless or valueless to the district;
 - (2) The amount of damage to property remaining in the ownership of the district following annexation;
 - (3) Impact on the existing indebtedness of the district and district's ability to repay that debt;
 - (4) The value of the district's service facilities located within the annexed area;
 - (5) The amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service the annexed area;
 - (6) The amount of the district's contractual obligations allocable to the annexed area;
 - (7) If the annexed area consists of land that does not have water service being provided by the system at the time of the annexation, the value of the land based on the planning, design, and construction of improvements located outside the annexed area reasonably made to provide future water service to the annexed area;
 - (8) Any demonstrated impairment of service or increase of cost to the district's remaining customers after the annexation and the impact on future revenues lost from existing and future customers within the annexed area;
 - (9) Any necessary and reasonable legal expenses or professional fees;
 - (10) Any factors relevant to maintaining the district's current financial integrity;
 - (11) The average increase in the number of benefit units in the area annexed for the three years immediately preceding the annexation;
 - (12) The reasonable costs of detaching the water system facilities to be sold and all reasonable costs of integrating the remaining water system facilities of the water supplier whose rights are terminated; and
 - (13) Any other relevant factors agreed to by the three appointed arbitrators.
- b. At least two of the three arbitrators must agree to written findings and conclusions that must be presented to the city for payment and the district for acceptance.
3. The compensation required by this section must be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city. The compensation must be paid within one hundred twenty days following the date upon which the fair market value of the facilities are certified to the city and district, or at a later date as may be mutually agreed upon by the city and district or as determined by the district court.

4. In any event, the district may elect to retain facilities located within the city and used for transmission of water if the district uses those facilities to continue to supply water service to benefit units outside the city. The district may not receive compensation for facilities it elects to retain.
5. Except as otherwise provided, this section does not limit the authority of a city to select water service suppliers to areas within the city limits or to adopt and enforce regulations for the operation of a water service supplier, including standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices, and other regulations for protection of the public health, safety, and welfare.
6. If a district will no longer be the water supplier to an area because of annexation and notice under subsection 1, the district shall continue to provide the service until the city gives notice of its assumption of responsibility for service, designating the date that the service must transfer to the city's designated supplier. The district and the city shall cooperate to minimize the inconvenience to water customers because of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred, specifying the new supplier's name and address, the effective transfer date, the reason for the transfer, and an applicable rate schedule. During the negotiation period, the district may not discontinue or limit service to customers who were supplied water by the district at the time of annexation unless the customer has violated district bylaws, rules, or regulations.
7. Following the transfer of water service, the annexed land for which water service has been transferred to the city must be deleted from the district's territory and all benefit units attached to the land must be canceled without compensation. The district shall provide notice of the deletion of territory to the state engineer.

SECTION 4. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

State water commission funding.

The state water commission, before providing grants or loans to a district or city, shall consider whether a district and city within a district have developed a mutually acceptable water service agreement to accommodate anticipated future growth of a city within a district, but the commission may not have these considerations affect the funding of other projects within a district."

Renumber accordingly

2013 SENATE POLITICAL SUBDIVISIONS

HB 1440

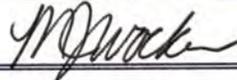
2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

HB 1440
March 21, 2013
20314

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to exclusion of cities from water districts and state water commission policies on funds for water districts

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing for HB 1440. All senators were present. There are four versions of the bill in front of the committee. We are working with the engrossment 02000 just to make sure.

Rep. Kreun, District 43 was the prime sponsor of this bill. (2:06- 7:55) Our goal is to work together to provide a service for all the residents of ND. I am here in support of 1440, and it started several years ago when the state embarked on a remarkably ambitious program to deliver quality, quantity, potable water for rural residents in every corner of the state. This successful program has been funded by state and federal grants, state and federal loans, user fees and other sources. The growth of population and industry has also generated some concern when cities have annexed territories within the rural water service areas. Currently, the state law does not provide any clear process for resolving such disputes. So the purpose of this bill is to try and ensure that the citizens of ND both rural and urban receive quality and quantity of water needed for all facets of life whether its industrial, rural life or urban life and to accomplish this, I think we have to work together and not waste our financial resources because it's all taxpayer dollars. You have the engrossed bill in front of the committee which was passed by the House of Representatives, since that particular time there has been some concerns to some degree of the wording of that bill. They has been some changes and part of that is in the handout. **Written testimony #1.**

Vice Chairman Ronald Sorvaag you're talking about handwritten 3rd revised. **Rep. Kreun** that is correct (continued explaining his 3rd revision). Goal always has been is to try and work this particular conflict out so that we have the ability to maximize our dollars which I indicated before are all tax dollars.

Chairman Andrist Have you supplied this newest version to members of the rural water districts services or organizations?

Rep. Kreun replied we have given that out but it may not have been early enough because this was worked on within just the last couple of days. They may not have had full time to study it yet. If I might suggest a possibility if in fact there are some questions that maybe we could indulge a sub-committee. I think there isn't many areas that we have difficulty here that probably could be worked out in one session if that would be your feeling.

Chairman Andrist I will take that into consideration Rep. Kreun. Are the copies of this latest draft been made available in the room? Rep. Kreun replied yes.

Senator John Grabinger Was there any consideration in this 3rd effort here, suggesting the three members of the arbitration group; any thought of the State Engineer being the 3rd member of that, rather than having it chosen by the other two?

Rep. Kreun What we did is we used the arbitration that is conducted that coordinates with chapter 32:29-3. That was consistent in one of our versions earlier. That is why that was put in there. If you think that is a good idea we can certainly listen to it.

Vice Chairman Ronald Sorvaag So the intent is the full section 3 is replaced on the engrossed bill by this? This is all that is left of section 3 and all the other wording is gone?

Rep. Kreun replied yes it is but I would like the concurrence of both sides to look at this and have a good chance to weigh in on it, but that would be my intent, yes.

Senator Jim Dotzenrod The #3 that you presented here to us this morning is fairly short. It is about 2/3 of a page. The Section 3 that is in the bill that came over from the House is really about 3 pages long. A lot of these standards that you wanted the arbiters to consider that you basically decided is maybe its better to get all of that out of there, and try not to spell out all the factors that they need to consider. But just replace all that with a requirement that they go to arbitration and then let those arbitrators work as they need too on the differences that are between them. There is really a lot of text difference in what came over in Section 3 and what you've put now in Section 3. Is that kind of the idea that you had?

Rep. Kreun replied that was by the request of both sides I believe. They felt that it would be better for those arbitrators to choose the situation that was at hand. I think quite frequently there is different components in different situations and if you limited it or just spelled out a few of those they felt that all the components wouldn't be addressed. We took that out. It does say according to the arbitrators understanding or what they need to put in there at that point in time. I do believe that was mutually agreed upon by both sides already.

Senator Judy Lee In 1997 we rewrote all of the annexation and extraterritorial zoning legislation. Senator Erlacher was chair of this committee at that time and there is a process in place there for mediation which ends actually with if the mediation group could not reach a conclusion that it goes to an administrative law judge. I think it will be really important not only for our committee to get that information as we move on to our discussion, but I would like to ask the stakeholders here to also take a look at that and here's the reason. Many of you remember extraordinary fights between Fargo, West Fargo and in some of the issues

Horace about extraterritorial zoning and annexation. It was just practically almost bloody. What we ended up with in that change in the way that it was done; has created a process that has worked extremely well since that time and I don't recall the last time there was any really contentious outcome from that. Everybody hears what everybody else has to say and its intended to be neutral and it works really well. I hope that everybody in the room might take a look at that. I have some concerns about this Rep. Kreun because it seems to me that the city is kind of in the driver's seat. Actually it all goes back to territorial integrity talking about utilities as well. When a city grows does the system a rural system whether it's a water system or an electrical system, REA's. Do they have to give up their territory as a city moves forward or not? And those processes are very similar to what we're talking about here and so I think there is some legislative history from which we can learn in doing this too. I understand how important it is to have a process but I don't think we're quite there yet. I think there are some things that we can look at all of us that will provide us with an enhanced process here that doesn't give at the beginning, somebody one side or the other more power. I see this as providing a city more power. Yes, I live in the city, but half of my city was in the country when this all started. So I would just like to know if you did any discussions about other processes that have already been put into place for other comparable issues or whether or not this was just something that was arrived at by the discussions of the stakeholders involved?

Rep. Kreun replied that conversation has been brought up several times. One of the major differences, there are similarities, yes, is it a territorial issue and who should serve water or who should serve electricity. But the major difference is every one of these are taxpayer dollars, whether it is state, federal or local. When you're in to the other dispute for electrical or services, they were not taxpayers dollars always in involved. This was looked at just a little bit different I in that respect, because every one of them no matter what is a taxpayer dollar. What we're trying to do is accomplish the goal of not duplicating services, not duplicating costs and to serve the people the best manner possible. Now I know the fight that took place with the IOU's and the co-ops and all of that as well. But I think this particular group understands that we have to provide that service to our customers. We're not really fighting over the territory. The issue is who's going to provide and how good can you provide it and at what cost. So, those were the considerations that we took a look at. One of the things, I sat on the interim committee for water topics and we worked throughout the state, and this doesn't come from one particular community or issue, this is drawn from throughout the state and from my observation, and our committee's observation it that this is going take place more because of the growth of our state which is a good problem to have. In all actuality these are good problems to have because we show growth, we're going to have some industry coming, we're going to have population growth and so we need to have this vehicle prior to our state money being put into place. That is kind of how it derived. We weren't looking at it as who's going to have the most control. In reference as to who has the upper hand; in the first bill that passed I thought maybe it was pretty good because both of them thought the same thing. The cities thought the rural districts had too much power and the rural districts thought the cities had too much power so that is why we went back to this first, second and now third edition after that particular bill was passed. If we could learn from those other ones, and brought forward I am not opposed to it at least. I don't have a personal interest in this. My main concern was being on the water coalition for the last 10-12 years having worked with all the water situations in Grand Forks. The flood protection project came through my committee, then the last two years that we had

throughout the state I saw a very definite need to have a road map on how to accomplish this so that we don't wind up suing each other. We don't utilize our funds other than for building and providing water.

Senator Judy Lee We do not have retail wheeling yet in electricity being provided, so that we get to choose our provider. But I think there is a much closer parallel with the extraterritorial and zoning and annexation rewrite that was done and I would encourage you and the other folks in the room to take a look at that because the problem solving is the same. The process I think we demonstrated that it works well and it also deals with growth. I couldn't agree more that we need a plan to do this. But I would hope that maybe we might take a look at that because there are some advantages to looking at a process that has proven to be effective that deals with a comparable issue and everybody's money is a tax payer dollar.

Rep. Kruen replied I couldn't agree more that we will utilize whatever tools that are available to us to come to a resolution.

Connie Sprynczynatyk Director North Dakota League of Cities (20:51-28:17) It is not our intent to get into a extraterritorial situation, but with regard to electricity. The problem here I think is that as these many cities been pushed to grow, they may have the water treatment capacity, distribution system that will work for excess capacity, but if annexation is requested for territory outside the current city limits and there is rural water service, that is where the rub is. What we really would like is to have everyone come to an agreement, every municipality that consider the needs of the rural residence and the facilities of the rural system and also recognizes the need for growth capacity within the cities. We are at a point in time where we need the state to weigh in and to say here is our policy. Our policy is you better have working agreements. That is really what the last section deals with. We're also were concerned that there isn't a process currently in place except to go to district court and I'm not so sure the idea is to replace that option for either the district or municipality. But it was to put process in place and so mediation and arbitration as it is available in state law was put into this bill. The reason you're essentially seeing a hog house which is what Rep. Kreun passed out is because the big hang up right away was the process in your engrossed version would delay annexations because in cities that are growing annexation actions happen very frequently. The original bill seemed to put too much of a hitch in that giddyup so that's why you're seeing yet another version of this bill. If the state continues to grow unless the state develops this policy and some procedures to help us resolve disputes when there are any, we're not here to ask you to solve an individual problem. We're not here to ask you to resolve anybody's dispute. We are here for a policy and a process that helps resolve disputes in the future because we think we're going to continue to grow and this problem will continue.

Chairman Andrist Since most of the city utility and the rural water are public entities it almost seems to me, that we somehow need is not a merging of the two, but each of the two taking ownership in the other.

Connie Spry replied I think that would be our preference. The people here from rural water are people that we see in our communities, work with for other reasons and the idea behind 1440, is not to create places where we'll never come to an agreement. We really need to

find a place where we can create a smoother transition between what is now a rub and that is a city being requested to grow. Annexations requested development requested and how we provide the kind of municipal services that we have an obligation to provide and typically there are all kinds of situations out there.

Mike Grafsgard (30:49- 36:19) City engineer for Devils Lake. We can get along and I think what happens in some instances we have particular boards and members of boards that sometimes that don't get along. It makes it very difficult for a city or those two boards to work together, so if you don't have an agreement in place it would be very beneficial I think a state layout some procedure so if you don't have the boards getting along, it lays out a procedure where reasonable people can discuss the reasonable issues and try and address the issue that is very important. In support of the amended version of HB 1440.

Everybody supports rural water the issue comes into play when we're talking about suburban water and cities expanding into those suburban areas. What we really want to do is talk about when those facilities are installed through state grant funds, how are they being installed, is the adjacent city being included in any of those discussions. We want to facilitate those discussions and I think the amended HB 1440 does, it puts in place if you're getting those state dollars, visit with the state engineer, city and rural water system and make sure everybody is talking and how that development is going to occur. It also talks about in Section 2, that is their rural water district does not have currently a pipe in any area that is going to be annexed to the city, if that pipe is not there it seems reasonable that the city should not have to a customer that doesn't exist. The city should be able to expand into that area and develop that system with the cities growth.

Senator Judy Lee you mentioned that the city has to go to the developer and not to grants and the developer obviously passes that along in almost every city in the form of special assessments for the costs of those water and sewer lines, streets, sidewalks, street lights; the bigger the lots the higher the balance in special assessments. People hate them almost as much as property taxes. We also recognize that in rural areas most of the time it is going to be fairly good size lot, and so that cost benefit ratio of sending those lines out for fewer users means that the cost individually would be prohibited. Would that not be accurate? So the grants that we've been putting into place facilitate providing water that can actually be affordable to rural residents coming in if its larger lots, but, tell me know since you talked about this, if we're looking at annexing to a Widget, ND which is a fast growing community, and the city would like to move into an area that is annexing space because we've got a lot of growth going on and your putting in residential size lots, how do you sort out the difference between me who had to pay all the cost of the improvements in my city neighborhood myself for water and sewer and moving into an area where we're going to be providing some structure for a different kind of financing potentially be available for the people coming in there that would not result in them paying individually for the cost of their water being provided? Any thoughts am I reading that wrong?

Mike Grafsgard replied I can speak to how the city develops. When they develop the city would pay 25% of the cost associated with the public improvements, so those improvements within the public right of way. Depending upon the size of the lots, we look at special assessments upwards to \$50,000 or more and that is to put in the infrastructure required including streets. So if the rural water system were there, then you have an issue

with was the rural water system pipes sized to facilitate the fire flow. Really in the city expanding area the big thing is the fire flow. We like to keep fire hydrants within 500 ft. and in order to provide that flow you need at least 6 inch mains. So if those pipes with the original system could handle that flow, then there can be discussion between the city and the rural water provider over who's going to continue to provide that water service. (ex. cited 39:13- 39:57)

Senator Judy Lee no, what I am talking about is the concept that there might and maybe it doesn't matter, between the city in which the property owners are paying the vast majority of the cost of putting in the infrastructure and that area being annexed being served by rural water systems qualifying for grants to help to put in those lines. I want adequate lines, but I am asking if you or anybody else sees any conflict with the fact that those that are being provided through a city municipal system are primarily paid by city taxpayers or property owners I should say and those that are coming in to a rural water system have grants that are being provided in many cases through state funding for those water systems which I am not at all troubled about the fact that we want to portable water too farms and rural homes. But if were going into a rural subdivision where it's standard size lots, now, there's a bit of an advantage there in a sense that the state tax dollars are going in to provide those systems as compared to the city taxpayers or property who are paying the bulk of what's going in on the city side, is that relevant at all to this discussion?

Mike Grafsgard replied it is when you look at the special assessment. Typically in a rural water system they have much higher water rates. They have a base fee \$30-50 relative to a base fee in a community that may be \$10. So really based on rates, it is a special assessment by another name. The city resident would pay that special assessment in the form of taxes, the rural water customer pays that special assessment in the form of fees. So you have that disparity. There is some jealousy I think on our part that there's grant funds available for rural water systems to go right beyond our border and put in the line. But when we are working within our own system we also have other mechanisms we have sales tax and we can off-set some of those costs differently. The rural water systems are looking for the cheap hookups, those typically close to town, they are looking at the cheap hookups to help fund some of those rural water users that may be out on that line and cost \$35,000-40,000 to get to.

Senator Judy Lee perhaps in Devils Lake they pay the improvements through taxes, but in the area of the state where I live, they are paid through special assessments and as you well know there is a difference. They are on our tax bill.

Bill Wocken, City Administrator, for the City of Bismarck; in support of HB 1440. See **written testimony #2.** (43:30- 45:55)

Chairman Andrist When your city annexes new territory where there is infrastructure already there, owned by the rural water district, do you normally or as a rule of thumb, do you think the City of Bismarck assume that they are going to have to replace that infrastructure with heavier, larger, lines and whatever else you need.

Bill Wocken replied the City of Bismarck has an agreement with the rural water system that was entered into some 20 years ago and in that agreement that were certain areas that was close to the city that were mutually agreed that rural water would not serve and the city

would serve. So we've not entered into the situation where we've had existing users who have been included in an annexed area. So we really haven't had that happen an awful lot. I know that we do try to visit ahead of time to find out if there are areas we know will be annexing soon to see if there is any opportunity to put in a heavier line. That is usually not very possible for the rural water system but we try to have those discussions. So we really haven't had that issue before us yet.

Darrell Bjerke Mayor of Beulah (47:32-51:47) It is customary to say whether you are for or against a bill. I am not exactly sure that I am for or against. I do have some concerns though that I really would like to share with the committee. Concerning the bill as amended, I would like to share with you some history of the city of Beulah. On behalf of the citizens of Beulah ask that you would consider very carefully that we not be limited to annexing property and serving the residents in that future area.

Katie Andersen Mayor of Jamestown (52:26-52:45) Today we're here in support of the bill and with a little bit of sadness I guess just because we had really hoped that this bill would've been in place prior to our particular situation regarding the expansion and growth of Jamestown and territorial area. (computer shut down, so the rest of her testimony is not recorded).

David Schelkoph, City Administrator, Valley City, ND. In support of HB 1440, **written testimony #3.** (52:46-55:48)

Senator John Grabinger It looks to me like you have a similar situation as Jamestown was faced with 1926 B and so forth. Can you tell me did you have any agreements in the past or have worked with your rural water system in the past? When I was in the council back in the early 2000, we reached an agreement with rural water and our rural water system and that's been apparently nullified by them and I am wondering if you have any agreements with your rural water systems or have you to this point?

David Schelkoph replied we do not, not that I know of any significant type. We are currently working with one single meter places right now and trying to make sure that customers that are close to the city limits are being able to be taken care of with the water service and we are working currently on a couple of other services with Barnes Rural Water on a case by case basis, but nothing in stone. However, we have met and as recently as yesterday to start the discussion to start the discussion of something broader to make it something we can work together and into the future. What I see in this bill is it allows us a larger voice in that negotiation.

Vice Chairman Ronald Sorvaag You brought up 1926 B, and in my understanding, if that is because of the federal loans so it's being used, no matter what we do here at the state level, we're still not going to trump that. We can't trump 1926B so irrelevant of 1440 or not 1440; if there imposing that with federal loans that is not going to change. Am I understanding that, right?

David Schelkoph replied I agree with that statement, however, the last part of this bill does talk about the State Water Commission requiring the review of the local agreements between city and rural water districts. That would provide us, and make us come together

and talk about the future and make some lemonade out of some lemons in my opinion. That is why there is portions of this bill that would help support us even though were underneath this umbrella of 1926B.

Rich Priesing (59:01-1:01:07) represent a property owner affected by the conflict between the city and a rural water district. The conflict itself is not at issue for us. We are trying to work through that between the entities. What we like about this bill is the arbitration. When the lawyers get involved things take much more time. Time affects everybody and it costs more money. The other issues that would be affected by having some kind of arbitration would reduce redundancy in pipelines. Currently we are trying to work out a situation where we would be required to run parallel pipelines. Working with the district and working with the city we feel that we can avoid that at a cost. Now regardless of whether or not the cost is passed on in the form of an SID, or whether we pass it on in the lot cost as our development is going to do, these taxpayers and homeowners will eventually pay the cost of the redundant infrastructure that really would not be required. The size of the project that we're talking about in Surrey will run to over \$4 Million dollars in water fees regardless of the agency that collects it. We're going to have over another \$5 Million dollars in infrastructure costs alone just in water. So if we reach the point where we can't mediate or arbitrate our differences between the water district and the city, that is going to affect your taxpayers, homeowners and the ability to develop property in that situation. I would ask that to given some consideration to including property owners in some form as having the ability of testifying or otherwise be involved in the arbitration procedure just so that their positions are respected as well as the city and the water districts.

Senator Howard Anderson Do you have a suggestion for how property owners might be included? **Rich Priesing** replied I suggest they have a seat at the table during the process while the arbitration is going on so that they can be heard by the neutral parties.

Chairman Andrist it would be my expectation that there would always be a seat at the table for anybody who has an interest in attending because our meetings in North Dakota at just about every level are open unless there are an exception for it.

Senator Judy Lee As a point of clarification in that mediation process that I mentioned with extraterritorial zoning and annexation, there is a spot at the table for anybody. I would encourage you to take a look at that area of statute and see if you see some advantage to that because the intent was that anybody from any position would have a representative at the table. It is big round table so nobody is kind of in charge. It is terribly important. There is more than one perspective, it is just not pro and con here. We all want these partnerships to exist and I don't know anybody who wouldn't think that is a good idea. But how do you make sure that all the various positions are reflected properly, so in that statute they don't just get to come to the meeting and testify; there are places at the table for various groups that are affected by the ultimate decision, so again I suggest that might be worth reviewing.

Opposition Testimony

Senator Gary Lee, District 22. (1:03:21-1:09:24) includes much of greater Cass County,

and that area south of I-94 including West Fargo, and even some of Fargo. I come from the perspective of being serving on a city council for several years in Casselton, a growing community that has substantial water needs and had to have greater capacity recently. Also having served on a rural water district for a number of years, and have not been engaged in this process except for the last couple of days. But what I see in this bill now was pointed out to me that raises a concern. Sen. Judy Lee pointed out in a sense that I think it tilts the table a bit trying to put the cities in the driver's seat when the rural water now has federal law, state law, that allows it certain territorial jurisdiction which to serve water. I am really talking just in the sense of to the rural people and the city people. We were able in our district to work collaboratively with Fargo, West Fargo, city of Casselton, big city, small city, rural water district, to make things happen. Sometimes we need to step back and take a look at what were really in this for, to serve water to constituents and who is in the best position to provide that (examples cited). I would urge you to take a look at what we have and try to make that work.

Chairman Andrist So Senator Lee, your suggestion is that not that we change the tilt of the table but that we really don't need a table, we can make it work without it?

Senator Gary Lee replied we've done that. My other concern is that the rules tilt to the city and also with this bill I am not so sure what it does to the attitudes and the agreements that are already in place. I don't want to see those disrupted and those relationships destroyed by putting something else in place and making it more difficult and more challenging for those who are already have agreements in place.

Eric Volk, North Dakota Rural Water Written Testimony #4 (1:10:40-1:22:34) in opposition of HB 1440. We recommended on the House side that maybe a study be proposed and we want to get everybody together. We still strongly feel we could work something out over the interim through the Water Topics Overview Committee and really look at this so we have something that has input truly from both sides.

Chairman Andrist Eric, it seems to me that and I need to be sensitive to the needs of rural water, because I am a rural guy, but I am concerned with some of the testimony I've had that rural water is not interested in coming to the table. I think what's happening when you deal with annexation, is your creating a new paradigm and it's the genie comes out of the bottle and one of the alternatives is not to put the genie back in because a city water needs are tied with fire protection but even more significantly with sewage needs because the old model of rural water with a user every half mile or mile in a septic system isn't going to work when you start putting a house 100 feet. So what do you say to the city people who said we've got to have a way to come to the table and work these things out, but the rural water people don't want to come to our table.

Eric Volk replied I believe that Connie mentioned that there are 357 incorporated cities in North Dakota, rural water serves about 223. I believe some of these are extremes. There is a lot of systems that get along just fine and are willing to negotiate and willing to come to the table. I don't believe a law put into place is the right thing to do.

Chairman Andrist But we had that testimony that they won't come to the table. I don't know if it's true or not, I am just trying to sort this out. You know the paradigm in my part of the world is that rural water has worked on a whole different model that its almost emerging of

the two entities and WAS, and I think in Southwest Water too. I am just trying to sort this out. I didn't want to put you on the spot and make you take a side. It seems to me there is compelling testimony that the sides have to deal with it, they can't just say we don't have to deal with it because we've got 1926 B here.

Eric Volk replied I can't speak to specifics. I hear both sides and I know the door swings both ways too. There's been instances where a city won't come to the table, or what not. I don't know what the best answer is, this is just taking a lot of my time too. We are willing to work out and come to the table and help solve this. This doesn't help anybody. We don't want to stop growth because we know if a city grows the growth tends to move out into rural area too.

Teresa Sundsbak General Manager North Prairie Rural Water District. Opposed to HB 1440. (1:27:17- 1:41:12). **Written testimony #5.**

Chairman Andrist Which version of HB 1440 are you saying your objecting too? **Teresa Sundsbak** replied I am objecting to the currently what the committee has on the table, the engrossed bill. I can't see the difference between the engrossed bill and the one handed out this morning.

Teresa Sundsbak rural water districts do talk and we do come to the table. Sometimes litigation happens when those negotiations have broken down or somebody has directly went against what you specifically said not to do until the matter was solved together as a group. It's not that we're not willing to work with cities, they are our community, we are a community its takes us all to make it work.

Chairman Andrist Is the City of Minot, making a practice of annexing an area that they don't have relatively immediate plans to develop?

Teresa Sundsbak replied no. The City of Minot has a growth area and so what has happened there in certain areas so the south of town, it's growing a little faster than maybe to the north east, and so there is a certain area that they annexed which is within my water district. So we are working together on how were going to serve. We're going serve the water in there but, I buy my water from the City of Minot, they pump and treat my well permits so we work collaborately together to try to build for the future. We are going to try and work together and be smart.

Senator John Grabinger Teresa, you say you're not in support of the advised version and you haven't really had a chance to review it much, but in it spells out how you can go into a negotiation process after negotiations have broken down. Wouldn't you agree that this is probably a better way to solve the issues than going to litigation and the cost that could be incurred from that?

Teresa Sundsbak replied I believe that litigation should be the last straw and you might get there anyway. It just might not be something that you can come to terms on, but I am not so sure we need a process. I believe that we're adults and should be able to sit at the table and negotiate. We should know how to give and take. I realize that every entity no matter what board you sit on, we all have that person who is obstinate and anything on a board, majority

rules. I would like to say and would hope that those who sit around the table that we're not all out in field. I believe that we can solve this. I think we have the ability to do that.

Senator John Grabinger I couldn't agree with you more that we should be able to sit down and settle these, but there are cases as were seeing. In a perfect world we wouldn't be here today. But that is not the case so, in looking at this I am wondering if you have a problem with either the mediation portion or arbitration in the way the arbitration is set up. If those cause you any problem for you?

Teresa Sundsbak replied I have no objection to the arbitration process. I don't have a problem with sitting down to the table, but I do have problems with the city shall, and designate. We don't stop annexation, we're not stopping growth. We are one piece of the pie to sell the water. We can do that together. We're not against any process if that makes you feel good, we should have a process, but I need that process to be fair. It's got to be fair for both sides. Set the process, but makes sure that the process you put in place neither says the cities are right or the water districts are right, but the reason we have the process is to make us come together and solve the issue. That I get! Make sure that's what happens.

Jerry Blomeke , General Manager of Cass Rural Water District. In opposition to HB 1440. (1:52:00- 1:54:13) **Written testimony #6.** These issues can be worked out on a local basis without this legislation. HB 1440 will have no effect on the federal law that protects the service territory of rural water system.

Tom Bodine Representing the North Dakota Farm Bureau (1:54:22- 1:59:33) North Dakota Farm Bureau stands in opposition of the bill as it's presented in front of you. But actually we do applaud Rep. Kreun taking on this issue because it is an important one for our members out there too as well. Because we do support the idea of a process being in place, where you can bring disagreements to the table when agreements can't be agreed upon. When there is taxpayer dollars used we would like the most efficient way for those dollars to use. Water is a basic necessity to all of us. Being able to have that is definitely one that municipalities and rural districts both agree upon, it's just how do we deliver it when there is boundaries that take place. (ex.cited in presentation)

Derek Fon Manager of Barnesville Water (2:10:47) you had asked the question about Barnesville water just did spit out 1926-B but I have a signed agreement with the city of Valley City as of only 45 days ago and I handed him two yesterday and they are going to take back to their commission and have them signed. In all three cases Barnesville Water will be buying water from the City of Valley so that if that's not in working with the city, I guess I don't know what is. I just wanted to clarify that because we were mentioned.

Chairman Andrist We are going to finish here until 3PM and provide for testimony then on both 1440 and 1202. Right now, the hearing is not closed on 1440.

Mary Massad Manager and CEO for the Southwest Water Authority. (2:12:41) We manage and operate and maintain the Southwest Pipeline project on behalf of the people of the state of North Dakota. We cover pretty much everything south and west of the Missouri River except for McKenzie county and Sioux County (**Map in testimony #7**). We currently Serve and have been under construction since 1986. We started service to Dickenson in

1991 and are still under construction. This last year we brought on Hazen, Zap, Center, and Stanton. We still have work to do. We currently serve 31 of the communities in our region. There are two that we do not. I am not sure on the bill, so I voting neutral at this point but we are working out our issues locally with the communities we serve and we don't really see a need for this mediation/ arbitration is already available to everyone. So, I can't see doing it under additional statute. We serve our communities, their annexing and their growing and its happening very quickly in our region and we're not holding them up. We've serving areas within the city, there serving areas rural customers of ours. (Ex cited)

Chairman Andrist Doesn't Southwest serve both rural and city. Mary Massad replied yes. Chairman Andrist So you don't have a competing situation anyplace do you? Mary Massad replied well we do and we don't. We serve rural customers and there is a cost differential as far as the capital repayment goes and as far as the recovering the capital repayment and our distribution costs. Because we charge our cities for transmittion and treatment, etc, but not for distribution. So that would be our concern and that is something we're working with our communities on.

Chairman Andrist You do distribute to the rural people? Mary Massad replied correct, we currently serve about 4600 farms and ranches.

Senator John Grabinger You said there are already arbitration avenues that can be pursued. What are you referring too? Is that the territorial? Mary Massad replied I believe its already in state statute in other areas. I can't tell you particularly where its at, but I do know that they are currently available. Arbitration and mediation.

Senator Howard Anderson Arbitration is always a voluntary process if both parties agree to go to arbitration and agree to the outcome. It is simple as that really. But both parties have to agree.

Chairman Andrist The difference here is the process which requires.

Mary Massad it is just that we are dealing with it locally and I don't see us ever needing mediation and arbitration and it's all that we're growing and developing and feeling some growing pains especially in our region. I think we can work it out.

Chairman Andrist So you're saying that your neither for nor against the bill, but you don't see a need for it.

Mary Massad Correct.

Chairman Andrist From your perspective.

Senator John Grabinger But wouldn't you agree that this brings the parties to the table? Mary massad replied our parties are at the table. They need to be at the table and I don't know that this would do that.

Chairman Andrist We are going to wait another week as we heard some expression of taking another whack at trying to reach some kind of a compromise language, and I would say encouraging such action that a chance of getting it passed are very good. If you tend to go your separate ways and you make us choose, you

may like what we chose, you may not like what we chose but that is the process and the only way we can do things around here. We could pass the bill, kill the bill, convert to a study, we have all those options before us.

Favorable testimony received from Jason Strand but not given at the podium. **Written testimony # 8.**

Chairman Andrist Closed the Hearing on HB 1440.

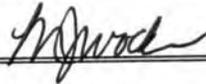
2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1440-2
March 28, 2013
20599

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to water service by cities and water districts and state water commission policies on funds for water districts

Minutes:

You may make reference to "attached testimony."

Chairman Andrist called the committee together for an update on the proposed amendment for HB 1440. All senators were in attendance.

Connie Syrczynatyk North Dakota League of Cities. We are certainly being diligent in our conversations. We have 3 people from rural water and I asked Eric Volk to pick on people who do have an agreement in place. Doug Nibauer from used to be Burleigh/ Rural Water where there's been an agreement since 1996, and works very well indeed, Doug now represents South Central Rural Water but that 40 year agreement that we did when I was city commission in 1996, is still in place and working very well. We have Jerry from Cass Rural, he has a bread of complicated multi-layered agreement. We learned about it yesterday. It is very complicated. But he is part of our conversation. Mary from Southwest Water Authority and she serves water too many cities. From the city side, we have Bismarck City Administrator, Bill Wocken who also has a deep background in planning so he can bennie this part of the negotiation back in 1996; our staff attorney who is drafting, Mike from Devils Lake (city engineer) and we have Al Grasser from Grand Forks.

So it's a very broad perspective. We are on our 3rd draft, so it is draft Connie (after hurricanes) and last night before everybody left, I said you know maybe what we need to do, now that we're looking at a 6 page and its getting unwieldy we're building a house of cards that we're not going to be able bring to the committee in that condition. We need to pare back to just a few essential sections.

We have looked across the state and I will tell you that there are probably bedrock disputes with people not willing to negotiate. I would say in good faith, it is probably less than half a dozen places but where there are problems there are deep-seeded problems. So we hope in a week to bring the committee a solution. It's not easy and its very complicated.

Senator John Grabinger Can I share one of my concerns? I don't think we really had an opportunity. One of my concerns is for example the makeup of the bill we had in the

arbitration you've got one person coming from this side the cities, one person from rural water and then their supposed to get together and pick a third one. I don't know if that's realistic in picking a third, those two picking a third one and I am wondering if there is some consideration for the State Engineer to be that third person.

Connie Sprynczynatyk replied my spousal unit was a that the State Water Commission almost 30 years and was State Engineer and I think if he were still state engineer he would hug me until my eyes bulged if I gave the state engineer that opportunity in a piece of legislation that we're supporting, because that really is like Solomon being asked to divide the baby. I will tell you that the model we're working with now, abandons the idea of mediation and arbitration. The engrossed bill uses what's currently in state law as a model, but Senator Judy Lee talked about the mechanism we put into place for dispute resolution when extraterritorial zoning jurisdiction butts up against, rubs up against each other. We used to be horrible disputes and in the 1980's or 1990's when we put into the middle to late 1990's we had just people bring in bills to solve a local dispute and it was really not so much different from this dispute. So we're looking at that mechanism because it encourages a committee for mediation where all perspectives come to the table and if they can't resolve then an administrative law judge comes into play. Here's the problem we are having with draft C. An administrative law judge Alan Holmberg were to come to you because you wanted to ask an administrative law judge to tell us how this is going to work. He is going to say you need to have criteria in state law that an administrative law judge can use to come to a decision, to resolve a dispute. Right now where we are hung up is just exactly on that issue. We have taken from the extraterritorial zoning dispute resolution, its 40-47:01.1 and we've taken the pieces that seem to apply. The problem is rural water wants additional license including compensation for future revenue. If you want to know the heart of the issue, that's it. People, from the municipal side, and I am going to try and be fair in representing perspective. Here's what I understand about it. People from the municipality presume that there is an area outside the city limits close to the city limits where in metropolitan areas you would call it the suburbs. It's really part and parcel, of the city service area but it's where the city is going to grow. The city reasonably expects to annex and provide municipal services. Now you have statutes that tell us that when we annex, when we incorporate, the municipal corporation has to be able to provide municipal services which includes for public safety, and health and welfare, and part of that is police and part of that is fire suppression. And so you tell us we have to be prepared to provide those services, so the municipality in when an annexation is requested the municipality isn't going to say yes unless or until those municipal services can be provided including water, including water for fire suppression which is a different size pipe. Think of a soda straw going out to serve rural customer 5 miles out of town, versus a main trunk line that will provide water for a dense number of customers and fire suppression. So, what's hanging us up is where rural water has the expectation that land is sort of like territorial integrity act of 1969, with regard to rural coops and investor owned utilities. Once its rural its always rural, that is our territory to serve no matter how dense the population and the rub where the city says but we're supposed to be providing services and this is land we're annexing into the city. We've begun to talk about something and I don't know if this will go anywhere but something like a presumptive clause meaning the presumption is you have established extra territorial zoning jurisdiction and you have described the geography. You said of city of x should expect to have a half mile zoning jurisdiction so the city can provide for orderly growth. So, streets match up, so arterial and collector streets are designated and there's a

reason for all of that and you've provided for that. So, this new concept is should there be a presumption of services in that authorized DT area, because you've given that to the municipalities to provide for orderly growth. I don't know if we can get anywhere with that concept. But the rub is in that area outside the city, where the city reasonably expects to grow. I would like to have the committee thoughts on it because we're just starting down that trail.

Senator Howard Anderson If I was a rural water district, under those circumstances, where my pay-off is based on future revenue from the people I hook up, not based on the taxes, just the city can levy. I wouldn't go into those areas unless the city provided funds in advance to put in those water lines and so forth under those circumstances, because obviously once the city moves in and I lose the revenue, future revenue which is intended to pay off my cost to extend those services. So, I think that is a workable solution for the future areas, but both parties need to know, what it is beforehand and the city needs to know that is your going zone 2 miles out then part of our responsibility is to provide services to those areas or get the developer to do it or whatever and not expect the rural water district to provide those and then at some point we cut them off and say now your revenue that you were going to pay off all this is gone. So looking at it from the perspective of the rural water district I would want those guarantees. Now you're still going to have the incidences where the city grows rapidly and they had no concept 10 years ago that they were going to go in this area and now all of a sudden, they need to and there is still going to be a conflict that could come up.

Connie Sprynczynatyk replied you have identified one of the issues and that is (ex.cited 11:10- 11:52) The rub is when a system decides that there could be a lot more users out there and if I just hang tight because I have some federal in the mix and now I have protection under 1926B, 1926 is REA, so we're really talking about the same concept just a different commodity and the differences is electricity is electricity lines are lines, but water lines are not created equal. If a system says well not only could I pay off my loan but I could take advantage of a lot more people to lower the costs if I just hang tight. That is the rub. So we have all recognized that, we've talked about it, but this is a small group of dedicated people trying to come up with a solution. I don't know if we can get there, because that is the piece. The city is saying we have to have a line big enough to provide fire protection as well as potable water to a much more dense population and this part of our growth area, so why would you think you're going to serve the customers. That is the pinch point, that growth area right outside the municipality. Whatever we do has to work everywhere. We're just starting to focus on that pinch point which really is the ET area, isn't it? Senator Lee you're very knowledgeable in that area, it's the ET area.

Chairman Andrist I also think at issue here with the annexation is the new people to the city and I mentioned it this morning have equal protection rights. They are going to pay the same taxes as the people in the central part of the city and I think they have a right to the expectations of the same quality of services particularly when it comes to fire protection and to some degree water and sewer supply which isn't going to exist in a rural water system. So, I think if the rural water system people were able to realize that they think they've got the hammer but they really would be better off to negotiate the best deal they could get out of this because this is going to become part of a city system someday. It is

inescapable because eventually it's going there is going to be another subdivision beyond this subdivision and that's going to be the way of life.

Connie Sprynczynatyk I wish you could hear Doug Neibauer talk about the 40 year agreement with Bismarck which is still going very well. His attitude is growth in Bismarck, growth of Bismarck is no problem it's been a benefit. He told our group on Monday that his system in 1996 was 1500 users and his system now even with Bismarck's growth is 5700 users. So, it's really funny to watch the dynamics. We have people connected from other cities by conference phone and we have people sitting around the conference table in our offices and Doug Neibauer sits with a puzzled look on his face. It's like why doesn't everybody understand just as Senator Andrist that this is the area where the city is going to grow and you have to expect that. Unfortunately, that isn't the prevailing attitude. Senator Grabinger might be right, that there is a money factor in some of the thinking. But again, we do have places where it's working.

Senator Judy Lee The area where I live has people who are now inside city limits who are served by rural water as well. It doesn't mean that the city takes over the system. Much of the city of West Fargo south of I-94, unless I am totally missing the boat, is served by rural water because it was before. So they both grow. But, I want to mention something about the REA and it does follow the money. The planning needs to be done frankly, that's what the Metropolitan Council of Governments does in West Fargo, Fargo Moorhead, and Dilworth to make sure that the streets line up as all of that was previously stated. But I live in an area inside the city limits of West Fargo, which is served partially by Xcel energy for electricity; and partially by Cass county electric because of territorial integrity being what it is which is fine. But, I am in a Cass County electric area for my electricity. There are three rates with Cass County Electric, I pay the lowest rate because I am in town and it's a densely populated area and it costs less for them to deliver power to me because we all live on standard residential lots. The people who pay the next middle rate are the ones who are in the suburban area because the lots are bigger, maybe half an acre, and the ones who pay the highest rate to the rural electric outfit are the ones that are actually on farms, which in my view totally defeats the whole concept of REA's in the first place. So, I am a little peevish about that, because I don't think it's right and I'm paying the lowest rate. So there are situations in this picture where the rate establishment is different also in the area of electricity; which I am not saying that is what you ought to talk about here. But that is the situation I am in. I benefit from that system. It seems to me that a government supported program like REA's who enjoy some tax benefits and I might add in each flood has reimbursed by FEMA for all of the damaged property when the investor owned utility has not gotten a nickel for any of the damaged property and it has happened more than one time. The rates are different because of the cost of delivery to a particular area and I win but I don't think it's right. I think that the farmers are the people for whom the system was set up in the first place so that power could be brought to farms and at least in our system they are paying the highest rate because it is based on how many bodies per line or how many farmsteads per mile.

Chairman Andrist It's not a part of the discussion, in this bill necessarily, but it does peak my curiosity. They established that 3 rate system so that they could be competitive in service to you with the private utility.

Senator Judy Lee I would be willing to bet that they had to be able to be fairly close to what the investor owned utility in this case, Xcel, it was NSP at the time was charging but because there would've been great resistance to paying a whole lot more money than your neighbor across the street. In parts of West Fargo it is across the street. So I am sure that was a part of it, and I am not saying they ought to change it, I am not trying not talk about something germane, but I am saying there are some parallels between an REA and a rural water system and the issues that one might have with the city. This has been resolved satisfactorily; I am not going to start to be complaining about this and saying you have to change the rates. I just thought you might be interested in how its' working. How about the details are about a system that is working, and quite frankly isn't equitable from the standpoint of Senator Dotzenrod is he's living 5 miles out on his farm and pays more rates than I do living in town when we both need power, but it is equitable from the standpoint that there are fewer users for mile on that line out in the townships in a really rural area. I am not talking suburban, than there are on my cul-de-sac and if it's based on front footage I really win. If we base it on square footage of the lot, I'm not so big a winner.

Chairman Andrist Connie as I was curious in your testimony, is Southwest Water getting that 1926 B money? **Connie Sprynczatyk** replied the money that some of the rural systems have gotten whether it's Stutsman Rural Water goes to the State Water Commission and gets their expansion project in the queue and there now at a point where they get state money. But they need more money so they take that state money and they go off and get a USDA Rural Development loan which is what then gives them that little umbrella of that special status that 1926 B umbrella of protection.

Chairman Andrist Is Southwest Water using that? **Connie Sprynczatyk** replied what's interesting is there are lots of rural water systems that could claim 1926B protection including South Central, Doug Neibauer who says well I could claim that same thing but, that doesn't make any sense to me. My system continues to grow as Bismarck continues to grow and so whether they can claim that protection and they actually invoke that or they say well that's fine but that's not what we are all about. We're about serving the people out there that need water. It's a personality thing and it's an attitude thing. I know that the committee was provided a U tube video link. If you watch that a 1:14- 1:49 you will hear the 1926 specialist lawyer tell Stutsman Rural they don't have to negotiate, they don't have to do anything. If you watch that video, you will instantly see what the problem is but only in some places. So what we're trying to do, is figure out how to change the characters so that we can continue to promote agreement and not promote disagreements because one of the parties to the agreement or disagreement has marbles that the other party can't access. That is why we're working really hard.

Senator John Grabinger it's really just to clear up something. In most of these places where they have agreements or existing agreements; we in Jamestown where you're talking about Stutsman Rural Water we used to have an agreement, too. In fact I was on the council back then and was the liaison that put that agreement together originally. But in that agreement we spelled out several things. One, was the purchase of the utilities from rural water, there loss of future revenue was adjusted in there and we took those things into consideration but the key to the whole thing was rural water needed the cities assistance at that time. They needed the water capacity that the city could afford them because they didn't have enough to supply their number of customers they had.

Connie Sprynczynatyk So Jamestown was selling them treated water? **Senator John Grabinger** We set up an agreement so we could, yes. That is why they came to the table with us and reached an agreement. Consequently, now that the state just allowed them \$10 Million dollars I believe in expansion funds, which is good in some respects, because it provides potable water to the Woodworth area and many rural residences which is what rural water was intended to do. But it also allows Stutsman Rural Water to expand their water system around Jamestown even more than it already is. That is the critical thing, because now they also, like Connie just explained in the scenario, got federal funding so now they claim 1926B; their expanding their system around Jamestown which consequently is going to prevent future growth of Jamestown because we can't access that area and that's what has caused this and they basically tore up the agreement they had reached with us just redone in 2007. So we were just 5 years out and they tore it up and said well, we're covered by the 1926 B so were not going to recognize that any longer. They will not come to the table and negotiate fairly and squarely. It all comes down to money and territory. That is why when Connie brings up the point about the video of their lawyer that they hired from Oklahoma and how he clearly straight out says, you don't have to negotiate and you shouldn't negotiate one inch of your territory, it's hard to get around it. I just thought you should all know that.

Connie Sprynczynatyk replied I think that goes to Senator Anderson's question about debt service. There is a difference between having the customers to service the debt that you've taken on that 1000 customers and \$5 Million dollars versus taking territory to serve because you want to do something else or you want the money in your system and that is that pinch point, that area of growth around the city. But we're working on it.

Senator Jim Dotzenrod I think as far as the bill goes I think we have a problem in that if you look at the testimony that was submitted by Eric Volk he is the head of the North Dakota Rural Water Systems. On his second page, he says that the proposed legislation 1440 or possible amendments would do nothing to take away the federal protection of 1926B. Similar state laws have previously been ruled unenforceable by federal courts. State laws cannot be enacted to eliminate this systems federal 1926 B protection. In other words, a state cannot impede upon a systems federal jurisdiction; and then he gives an exert, from a 8th Circuit Court which we are in North Dakota and continued reading the ruling. (28:19-29:02) so the head of the rural water people is telling us that you can go ahead if you want to and pass some bills here, but those bills are null and void because we have 1926B federal law says that there law pre-empts any state law and what it seems like when we found somebody's that they can't reach a negotiated agreement, and they can't come to some settlement is the rural water people appear to be sort of lawyered up, going into a negotiation saying we've been advised by our attorney that we don't have to deal with you. We have a trump card in our pocket, 1926 B, so that territory around your city belongs to us. The comments from the attorney that are on this tape on :14 and :49 he says very clearly on there he would never advise any of his rural water systems to give up voluntarily any of their territory. This is your territory and it belongs to you, and you shouldn't be giving any of it up. These negotiations it's like to me, the well has been poisoned here. This is not a good faith agreement going and there's not good faith negotiations going. Now on some of these cases and we've seen others like in Bismarck where the rural water people just sort of ignored 1926 B. I don't want to get involved in that and it just complicates it and it doesn't help figure out a solution. But, if you've got these others where that sort of what the

testimony is from their association leadership is we have this authority that you the state can't mess with and so our associations are going to act accordingly. I don't know how we fix that unless we can get some commitment from them that they are going to for the purposes of dealing with the municipalities that they are going to ignore 1926 B and try to reach some good faith agreement that is good for the city. This is kind of a conundrum I mean it's part of the problem we've got with finding a solution here on 1440.

Chairman Andrist 1926B I presume would also preclude the city from selling or competing water. Senator Jim Dotzenrod I think the city can do that. I think that what is happening like in some of these cities, is there is a rural water line in there and in order to get the fire protection they have to run or the city has to build or maybe doesn't have to, but as part of their commitment to these new areas they are putting in a line and sometimes.. **Chairman Andrist** Would they then be precluded from selling the water to the household? I would presume they would, based on the testimony I heard on the laws bill. So that makes it even bigger conundrum.

Senator Judy Lee it sounds like the discussions we have in my other committee about dealing with the tribes and thinking that the answer to all of our discussions and how we can best most effectively provide services would be if sovereignty went away and that's not happening either. There are some barriers created by in some cases long-standing and in other cases not so long standing, federal well-intended laws that make somebody got the trump card, it's the same discussion.

Connie Sprynczynatyk replied the one piece that Senator Dotzenrod brings up as excellent points, when I talked about mini-me it seems to me that at the very least and this would be a Legislative policy. You are the policy making body as well as the appropriator, so before either a municipality or a rural water system receives state funds, they must have a signed agreement before the water commission. If they don't have one, the Water Commission says well, we approved your money, but come back when you have that signed agreement and you've got the money. That's the one piece in that mini-me version that I think if you're going to try to solve anything here my opinion is that is going to have to be there. **Senator John Grabinger** Well and that what was the intent of 1440 was they have to come to the table with something and I forgot and may I add one more thing? Stutsman Rural Water now gets their extra capacity from the Foster County Water System that's why they didn't need Jamestown anymore.

Chairman Andrist I think the conundrum that we have is we can take another week here if we've got a plan when that happens. But if we don't have a plan when we meet next Thursday, we've got one day.

Connie Sprynczynatyk replied we will bring you something that I can promise you.

Senator Jim Dotzenrod The State Water Commission gave some money in the Jamestown example, because they required a written agreement. So they got the money and now it appears that they got the money and they've discarded their written agreement. Am I right on that?

Connie Sprynszynatyk replied I think that provision is not in state law right now that the written agreement has to be present. It is not in state law. In the case of Senator Grabinger's talking about, 1296, it was an expedited appropriation of \$10 Million dollars I think it included money for Stutsman Rural, McLean Sheridan and at least one other. So, I think and I am not speaking for Jamestown here, but I think I heard enough about their concern is then Stutsman Rural Water can take that state appropriation which had the emergency clause and was available immediately and it was a carve out. That's where there getting it and they take that money and get that USD Rural Development money and they are truly invoking that umbrella of 1926 B protection. But you do not have that water commission requirement in state law right now.

Senator Howard Anderson and regardless if there's a contract and they've reached or threw away their contract, it seems to me you could go to court and recover based on what they had signed but I don't know what the contract said or anything like that.

Chairman Andrist closed the hearing on HB 1440.

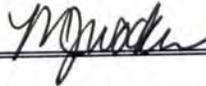
2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

HB 1440-3
April 4, 2013
20859

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to water service by cities and water districts and state water commission policies on funds for water districts

Minutes:

You may make reference to "attached testimony."

Chairman Andrist convened the committee to hear the proposed amendment. All senators were present, except for Senator Judy Lee who was attending a funeral.

Connie Sprynczynatyk Director North Dakota League of Cities. The committee was self-policing. Everybody that was invited to come did participate either in person, or by telephone. From the rural water side, Mary Massad, SW Water Authority, Eric Volk, Ex. Director of the Rural Water Association, Jerry Blomeke, Manager for Cass Rural; Doug Neibauer Manager for South Central Rural. The agreement there goes back to Bismarck to 1996. City side we had Bill Wocken, Bismarck City Administer, Charlie Whitman, City Attorney, Jerry Hjelmstad ND League of Cities staff attorney did the drafting; Mike Grafsgaard City Engineer from Devils Lake, Al Grassor, City Engineer from Grand Forks.

Connie Sprynczynatyk explained the amendment to the committee (2:10-9:25).

Chairman Andrist I liked the bill because it was pretty straight forward and easy to understand and it doesn't sound near as complex when you read the bill as it often does.

Senator Howard Anderson Asked for comments from somebody representing the Rural Water districts.

Erik Volk Executive Director, North Dakota Rural Water (11:47-12:34) reflected on the proposed amendment.

Senator Dotzenrod asked several questions about the amendment. It was directed to Mr. Volk or Connie Syprnczynatyk. Their response followed. (12:40-15:19)

Senator Howard Anderson I would like to hear comments from the Water Commission that this workable from their perspective. Or maybe these people have already talked with them and can speak to that.

Erik Volk The Governor's office did participate in this process. Andrea did participate in the last conference call. I know we've been keeping her abreast of the situation.

Connie Sprynczynatyk We have been keeping Andrea Travnicek involved in this. Her question originally was the way we had it set out, and according to 40-47, and I don't know why it was done this way, but each side picks two for that mediation committee, and then the Governor's office picks the one to chair it. Well, why it's that way in 40-47 I don't know and the Governor office requested a change their and we made that change. We have not heard from anyone else from the State Water Commission. There not judging the sufficiency of the plans, they are simply the repository for the plans and the written agreement. I think all their going to have to do is before any funding goes out to a city or a water district, they check the file. There's a signed agreement and an executed agreement meaning signed or there is not. Get one and then here's the check is the vision for this.

Rep. Kreun In discussion with the Water Commission, prior to introducing this bill, we went through a lot of this information gathering with the Water Topics committee and also with the Water Coalition group. The theory and the philosophical view of this, is with the blessing of the Water Commission. If you look at the intent on here, normally you don't have that in legislation, but I think it was important to do that to remind people if we go back to the next session, what the intent was for this particular bill. It is very clear that we were trying to not duplicate services; we're trying to save the state some money because basically it is all taxpayer dollars. That's why the bill was put in there to make sure we have good potable water throughout the state of North Dakota for everybody closely capable of receiving it. This bill will help us do that.

Chairman Andrist I think the component role of the Water Commission is pretty the same as the original isn't it? **Rep. Kreun** replied yes.

Senator Howard Anderson John Walstad didn't complain too much about the statement of intent. Rep. Kreun no, actually he said thank you. We did a lot of his work.

Senator Dotzenrod asked several questions related to the amendment (21:27- 22:46)
Do you know the population breaks when you go up to the 4 miles?

Bill Wocken, City of Bismarck, Administrator (23:00- 24:24)

1 mile jurisdiction = 5,000 population or fewer; 2 mile jurisdiction 5,000 but fewer than 25,000; 4 mile jurisdiction is available to a city with a population of 25,000 or more.

Senator Jim Dotzenrod I didn't know we had an Office of Administrative Hearings? Is that part of the Attorney General's office? Where is that at in our system? **Bill Wocken** replied I can't tell you exactly where it is located within the system but I suspect Connie could tell you.

Chairman Andrist I think it's a separate agency. Alan Holmberg is in that office. It is an independent agency intentionally so. They want to be not subject to one or the other group and they work with different agencies when they have disciplinary hearings.

Senator John Grabinger move the amendment Draft F
2nd Vice Chair Senator Sorvaag
Roll Call Vote: 5 Yea 0 No, 1 Absent

Vice Chair Ron Sorvaag move do pass as amended
2nd Senator Grabinger
Roll call vote: 5 Yea, 0 No, 1 Absent
Carrier: Senator Sorvaag

April 4, 2013

3/4/13
TV
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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact four new sections to chapter 61-35 of the North Dakota Century Code, relating to water services by cities and water districts and state water commission policies on funds for water districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

SECTION 2. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall establish a city water service area plan. The city shall notify any other water service provider whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area. A city water service area plan is perfected by a water service agreement among the water service providers that are encompassed by or which abut the water service boundary.
3. The provisions of this Act do not supersede an existing water service agreement between a city and a district.

SECTION 3. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of

other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

2 of 3

SECTION 4. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been established, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.

2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;
 - g. Outstanding debt attributable to current users;
 - h. The impact on future revenues lost from existing infrastructure;
 - i. Whether development would have occurred without annexation; and

- i. Any other factor determined to be relevant by the administrative law judge."

3 of 3

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1440, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1440 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact four new sections to chapter 61-35 of the North Dakota Century Code, relating to water services by cities and water districts and state water commission policies on funds for water districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

SECTION 2. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall establish a city water service area plan. The city shall notify any other water service provider whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area. A city water service area plan is perfected by a water service agreement among the water service providers that are encompassed by or which abut the water service boundary.
3. The provisions of this Act do not supersede an existing water service agreement between a city and a district.

SECTION 3. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

SECTION 4. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been established, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.

2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;
 - g. Outstanding debt attributable to current users;
 - h. The impact on future revenues lost from existing infrastructure;
 - i. Whether development would have occurred without annexation; and
 - j. Any other factor determined to be relevant by the administrative law judge."

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1440

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1440
April 16, 2013
21159

Conference Committee

Minutes

Minutes:

2 "attached testimony."

Present were: Rep. Hofstad, Rep. Kelsh, Rep. Rep. Froseth, Senator Andrist, Senator Lee
Senator Dotzenrud

Others present: Eric Volk, and Connie sprynczynatyk

Rep. Hofstad: We will open the conference meeting for HB 1440 I think this was an error on our part. We understand how important this is piece of legislation is to our state and have issues across the state that are in the process of negotiating back and forth. We believe that HB 1440 as it came from the senate was a good product. We have some amendments to offer; the amendment address the part of the issue that we had in the floor debate. I offer these amendments and we can go through them. (Attachment 1)

Senator Lee: Are the only places that there are changes the once that you described?

Rep. Hofstad: There are a couple of other ones. Section 4 it talks about "a water service area plan has been developed" we made that change and number H where is says "revenues lost from existing infrastructure and future customers" that is a change. This is on page 3 item H line 15.

Senator Lee: Could you ask Mr. Volk whether or not they have concerns about these?

Senator Andrist: Eric represents the rural people and Connie the city people. Connie was the primary facilitator in this committee.

Connie Sprynczynatyk: N.D. League of Cities: I am not seeing anything that was missed. I know you had a question about item H on page 3 of the hog house amendment. When we

April 16, 2013

Page 2

drafted the items in section 4 for the administrative law judge to consider. If it goes to mediation or if it goes to administrative law judge it is not to decide who serves. That may have been part of the confusion on the house floor. It is to decide what the compensation should be because that existing section of the state law say that "if the city annexes and there is rural water there they have to be compensated.

Item F on the bottom of page 2 considers infrastructure we think that when the senate amendments were drafted it may be as simple as they a phone call and losing your place and so infrastructure was substituted for " and future customers" on item H when in fact item F is the piece that deals with infrastructure. H should read "the impact on futures revenues lost from existing and future customers."

Rep. Kelsh: How is that value determined?

Eric Volk: N.D. Rural Water; We did have a lengthy discussion on that and it was determined by both sides that could be a number that is figured based on if I have a 4inch line running through this area the 4 inch line can provide certain amount of water and if I was able to serve that area as a rural system I could serve 30 out of the 100 customers so it could be based on that.

Connie Sprynczynatyk: There could be an engineering study. In item J so it isn't a number based on the engineer study but the administrative law judge will also consider whether development wouldn't have happened without annexation. We believe the 2 will balance.

Rep. Froseth: Connie gave me a copy of the proposed amendment and the way the copy reads it is without the word "infrastructure" in item H so the intent was not to remove those 2 words. (Attachment 2)

Connie Sprynczynatyk: We need to further amend what you were given as the official amendment because it should say "existing and future customers."

Rep. Hofstad: There is a motion to remove the word "infrastructure" from Rep. Froseth and a second from Rep. Kelsh Voice motion Carried.

Senator Lee: I am hopeful that this will work well I am pleased to see what the state holders with all of the input of the people who are affected by this. I move that the house accede to the senate amendments and further amend by removing the word infrastructure as proposed by Rep. Froseth on line H in section 4.

Rep. Hofstad: We need to adopt the 02002 amendments.

Senator Andrist: Could we recede that the senate recede from the language 02002 with the change that we previously made?

Rep. Hofstad: I think the house wants to adopt the senate's amendments and then further amend as we have the amendments in front of us.

Senator Dotzenrod: On the amendments that we handed out 02002 that opening paragraph that is essentially is our motion.

Senator Lee: I move that the senate recede from its amendments as printed on pages 1262 to 1264 of the house journal and pages 1149 -1151 on the senate journal and engrossed HB 1440 be amended as described in 13.0652.02002. and further amend it to remove the word "infrastructure" in subsection H of section 4.

Rep. Hofstad: We have a move and a second from Senator Andrist motion carries.

April 16, 2013

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4/16/13
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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

That the Senate recede from its amendments as printed on pages 1262-1264 of the House Journal and pages 1149-1151 of the Senate Journal and that Engrossed House Bill No. 1440 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 61-35-26.1, 61-35-26.2, 61-35-26.3, and 61-35-26.4 of the North Dakota Century Code, relating to water services by cities and water districts and state water commission policies on funds for water districts and cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-35-26.1 of the North Dakota Century Code is created and enacted as follows:

61-35-26.1. Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

SECTION 2. Section 61-35-26.2 of the North Dakota Century Code is created and enacted as follows:

61-35-26.2. Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall develop a city water service area plan. The city shall consult with any other water service provider, including a district, whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area as provided in section 61-35-26. A city water service area plan is enforceable when there is a water service agreement among the water service providers, including a district, that are encompassed by or which abut the water service area boundary.
3. Sections 61-35-26.1 through 61-35-26.4 do not supersede an existing water service agreement between a city and a district.

SECTION 3. Section 61-35-26.3 of the North Dakota Century Code is created and enacted as follows:

61-35-26.3. State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

SECTION 4. Section 61-35-26.4 of the North Dakota Century Code is created and enacted as follows:

61-35-26.4. Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been developed, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.

2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;

- g. Outstanding debt attributable to current users;
- h. The impact on future revenues lost from existing and future customers;
- i. Whether development would have occurred without annexation; and
- j. Any other factor determined to be relevant by the administrative law judge."

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. HB 1440 as (re) engrossed

Date: 4-16-13

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1262 - 1264

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

(Re) Engrossed _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Lee Seconded by: Senator Andrist

Representatives				Senators			
		Yes	No			Yes	No
<u>Rep. Hoyle</u>		✓		<u>Senator Andrist</u>		✓	
<u>Rep. Prosser</u>		✓		<u>Senator Lee</u>		✓	
<u>Rep. Kelsch</u>		✓		<u>Senator Doty</u>		✓	
		✓					

Vote Count Yes: 6 No: _____ Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number 13.0652.02003 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1440, as engrossed: Your conference committee (Sens. Andrist, J. Lee, Dotzenrod and Reps. Hofstad, Froseth, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1262-1264, adopt amendments as follows, and place HB 1440 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1262-1264 of the House Journal and pages 1149-1151 of the Senate Journal and that Engrossed House Bill No. 1440 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 61-35-26.1, 61-35-26.2, 61-35-26.3, and 61-35-26.4 of the North Dakota Century Code, relating to water services by cities and water districts and state water commission policies on funds for water districts and cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-35-26.1 of the North Dakota Century Code is created and enacted as follows:

61-35-26.1. Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

SECTION 2. Section 61-35-26.2 of the North Dakota Century Code is created and enacted as follows:

61-35-26.2. Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall develop a city water service area plan. The city shall consult with any other water service provider, including a district, whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area as provided in section 61-35-26. A city water service area plan is enforceable when there is a water service agreement among the water service providers, including a district, that are encompassed by or which abut the water service area boundary.
3. Sections 61-35-26.1 through 61-35-26.4 do not supersede an existing water service agreement between a city and a district.

SECTION 3. Section 61-35-26.3 of the North Dakota Century Code is created and enacted as follows:

61-35-26.3. State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

SECTION 4. Section 61-35-26.4 of the North Dakota Century Code is created and enacted as follows:

61-35-26.4. Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been developed, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.

2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;
 - g. Outstanding debt attributable to current users;
 - h. The impact on future revenues lost from existing and future customers;
 - i. Whether development would have occurred without annexation; and
 - j. Any other factor determined to be relevant by the administrative law judge."

Renumber accordingly

Engrossed HB 1440 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1440

/

Testimony on House Bill 1440
for the
House Energy and Natural Resources Committee
February 14, 2013

Mr. Chairman and members of the committee, I am Rep. Curt Kreun, District 43, Grand Forks.

I am offering amendments to replace the bill before you. I request that the committee adopt the amendments and vote "do pass" as amended.

Years ago, this state embarked on a remarkably ambitious program to deliver quality, potable water to rural residents in every corner of the state. This successful program has been funded by state and federal grants, state and federal loans, user fees, and other sources.

The growth of population and industry has also generated some friction when cities have annexed territory within rural water systems' service areas. Currently, state law does not provide any clear process for resolving such disputes.

The proposed amendments establish a fair dispute-resolution process:

1. Prior to any annexation, the city must give written notice to an adjacent rural water district.
2. The city may contract with the district to provide water service to the annexed territory.
3. If the city council or commission decides the city should supply water to the annexed territory, the city shall purchase the district's property and facilities within the annexed territory.
4. If the city and district are unable to negotiate a purchase agreement, they shall engage in good faith mediation.
5. If mediation is unsuccessful, the parties shall submit to binding arbitration before a panel of three arbitrators, and the arbitrators shall consider twelve factors listed in the proposed amendments.
6. If either party is dissatisfied with the decision of the arbitrators, that party may appeal to the district court.
7. The district shall continue to provide water to the annexed territory until the city is prepared to provide the service.

However, this process would not work if the rural water district has financed its program with a 7 USC § 1926(a) loan from the U.S. Department of Agriculture (USDA). The USDA has a security interest in such loans, which places strict limitations upon an annexing city. The federal law that imposes the security interest, 7 USC § 1926(b), does not prohibit annexation, but it does prevent a city's curtailing or limiting a rural water system's operations in the newly-annexed area:

Curtailment or limitation of service prohibited

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

Accordingly, a USDA-financed rural water district that adjoins or encircles a city may, relying on 1926(b), absolutely refuse to cooperate with a growing city that needs to annex adjacent territory.

Section 4 in the proposed amendments addresses this situation:

State water commission grants. The state water commission, before providing grants or loans to a district or city, shall consider whether a district and city within a district have developed mutually acceptable water service plans to accommodate anticipated future growth of a city within a district.

This proposed amendment would require a rural water district seeking a grant from the State Water Commission, even if the district has a USDA loan, to explain to the Commission that it has "developed mutually acceptable water service plans" with the cities located in the district's service area. Similarly, a city seeking a grant would be expected to provide a similar explanation to the Commission. In effect, the proposed amendment requires a district or city seeking a grant to demonstrate that the applicant fairly treating its neighbor.

Again, I urge this committee to adopt the proposed amendments and vote "do pass" on House Bill 1440.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

Page 1, line 1, replace "three" with "four"

Page 1, remove lines 7 through 24

Page 2, replace lines 1 and 2 with:

"Annexation of lands located in district - Notice.

At least sixty days before the effective date of any ordinance annexing land into the boundaries of any city, the city shall give written notice of the city's intent to annex the land to any district organized under this chapter in whose territory the land is located. The notice shall contain the description of the land and the city's plan for the provision of water service to the land."

Page 2, replace lines 5 through 20 with:

"Contract for district to provide water service - Franchise fee.

Following annexation of district territory by a city, the city and the district may contract for the district to provide water service to any portion of the annexed area."

Page 2, remove lines 23 through 30

Page 3, replace lines 1 through 10 with:

"City designates different supplier - Purchase of district property - Appraisers - Factors - Appeal - Detachment of territory from district.

1. Following annexation, the district shall remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city shall purchase the property, facilities, improvements, and going concern value of the facilities of the district located within the territory annexed by the city. If an agreement for the purchase of the property, facilities, improvements, and going concern value of the facilities of the district annexed by the city is not executed within ninety days after delivery of the notice designating a different supplier, the city and the district in good faith shall engage in mediation. Unless an agreement is executed, a change in the water service provider may not occur and an appraiser may not be appointed until more than one hundred twenty days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.
2. If the district and the city are unable to reach an agreement on the reasonable value for the property, facilities, improvements, and going concern value of the facilities of the district, then the reasonable value must be determined in the following manner:
 - a. The district and the city each shall select one qualified arbitrator, and the two selected arbitrators shall select a third arbitrator to determine reasonable value of the property, facilities, improvements, and going

2

market value of the facilities are certified to the city and district, or at a later date as may be mutually agreed upon by the city and district or as determined by the district court.

4. In any event, the district may elect to retain facilities located within the city and used for transmission of water if the district uses those facilities to continue to supply water service to benefit units outside the city. The district may not receive compensation for facilities it elects to retain.
5. Except as otherwise provided, this section does not limit the authority of a city to select water service suppliers to areas within the city limits or to adopt and enforce regulations for the operation of a water service supplier, including standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices, and other regulations for protection of the public health, safety, and welfare.
6. If a district will no longer be the water supplier to land because of annexation and notice under subsection 1, the district shall continue to provide the service until the city gives notice of its assumption of responsibility for service, designating the date that the service must transfer to the city's designated supplier. The district and the city shall cooperate to minimize the inconvenience to water customers because of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred, specifying the new supplier's name and address, the effective transfer date, the reason for the transfer, and an applicable rate schedule. During the negotiation period, the district may not discontinue or limit service to customers who were supplied water by the district at the time of annexation unless the customer has violated district bylaws, rules, or regulations.
7. Following the transfer of water service, the annexed land for which water service has been transferred to the city must be deleted from the district's territory and all benefit units attached to the land must be canceled without compensation. The district shall provide notice of the deletion of territory to the state engineer.

SECTION 4. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

State water commission grants.

The state water commission, before providing grants or loans to a district or city, shall consider whether a district and city within a district have developed mutually acceptable water service plans to accommodate anticipated future growth of a city within a district."

Renumber accordingly

Testimony on House Bill 1440
before the
House Energy and Natural Resources Committee
February 14, 2013

Mr. Chairman and members of the committee, I am Murray Sagsveen, testifying in support of House Bill 1440 for the North Dakota League of Cities. My testimony will focus on the amendments proposed by Rep. Kreun.

As Rep. Kreun has explained, the growth of the rural water program sometimes generates friction when a city annexes territory within a rural water system's service area. Currently, state law does not provide any clear process for resolving such disputes.

The proposed amendments establish a progressive dispute-resolution process that includes written notice, mediation, arbitration, and appeal to the state district court. This process will work for disputes between a city and a rural water system if the rural water system does not have a USDA loan.

However, this process would not work if the rural water district has financed its program with a 7 USC § 1926(a) loan from the USDA. The USDA has a security interest in such loans, which places strict limitations upon an annexing city. The federal law that imposes the security interest, 7 USC § 1926(b), does not prohibit annexation, but it does prevent a city's curtailing or limiting a rural water system's operations in the newly-annexed area.

Therefore, an adjacent USDA-financed rural water district may refuse to cooperate with a growing city that must annex adjacent territory. Section 4 in the proposed amendments appropriately addresses this situation; it would require a rural water district seeking a grant from the State Water Commission to explain that it has appropriately collaborated with the cities located in the district's service area.

Accordingly, the North Dakota League of Cities urges this committee to adopt the proposed amendments and vote "do pass" on House Bill 1440.

Testimony of

In support of House Bill 1440

Energy and Natural Resources Committee

Bismarck, North Dakota- February 14, 2013

Chairman Porter and members of the Committee, for the record my name is Jason Strand, Surrey City Council member. I am here to urge your support of House Bill (HB) 1440, which strikes a fair and necessary balance between the needs of water districts and those of municipalities. I have included visuals with my testimony to help you understand the importance of this bill. Is it fair for a water district to be compensated the same for each picture?

Water districts are created by state law. It is important that the State exercise oversight over water districts. Historically, the state has given funding preference to Rural Water Districts over Municipalities to ensure the availability of reliable, clean, drinkable water in rural areas with an emphasis on rural. However, because of the economic growth of our state and the increase in population of once stagnant municipalities, it appears that most of the disagreements between municipalities and water districts are not occurring in rural areas, but within the boundaries of the municipalities as well as their extraterritorial area. North Dakota Century Code 61-35-26 presently requires a water district to be fairly compensated for losses resulting from *annexation* by a city under N.D.C.C. Chapter 40-51.2, but does not provide any guidance on how compensation is accounted for.

This bill fills the gap in the current Century Code regarding guidance for compensation to a water district for service territory that has been annexed by a city. It accomplishes this in two ways: 1) It allows a city to contract with a district to provide water service to the area that has been annexed. This would mean the district has not lost the service territory as the city determined to have the district supply the water. 2) It allows a city to designate a different water supplier and sets forth guidelines for the purchase of the service territory which is not currently offered in North Dakota Century Code.

In conclusion I would like to thank you for your time and urge your support of HB 1440.

4-1



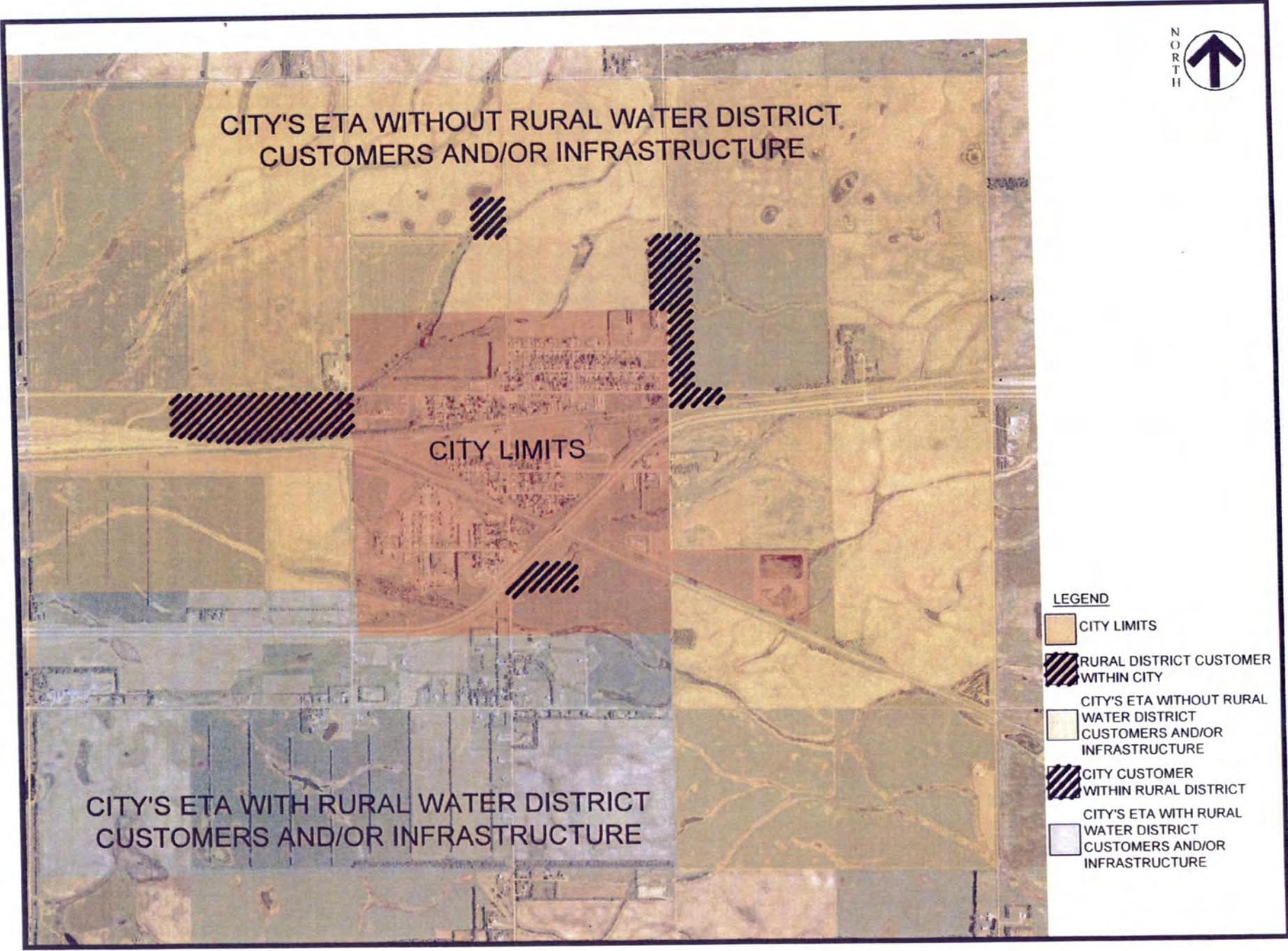
CITY'S ETA WITHOUT RURAL WATER DISTRICT CUSTOMERS AND/OR INFRASTRUCTURE

CITY LIMITS

CITY'S ETA WITH RURAL WATER DISTRICT CUSTOMERS AND/OR INFRASTRUCTURE

LEGEND

-  CITY LIMITS
-  RURAL DISTRICT CUSTOMER WITHIN CITY
-  CITY'S ETA WITHOUT RURAL WATER DISTRICT CUSTOMERS AND/OR INFRASTRUCTURE
-  CITY CUSTOMER WITHIN RURAL DISTRICT
-  CITY'S ETA WITH RURAL WATER DISTRICT CUSTOMERS AND/OR INFRASTRUCTURE



4-2



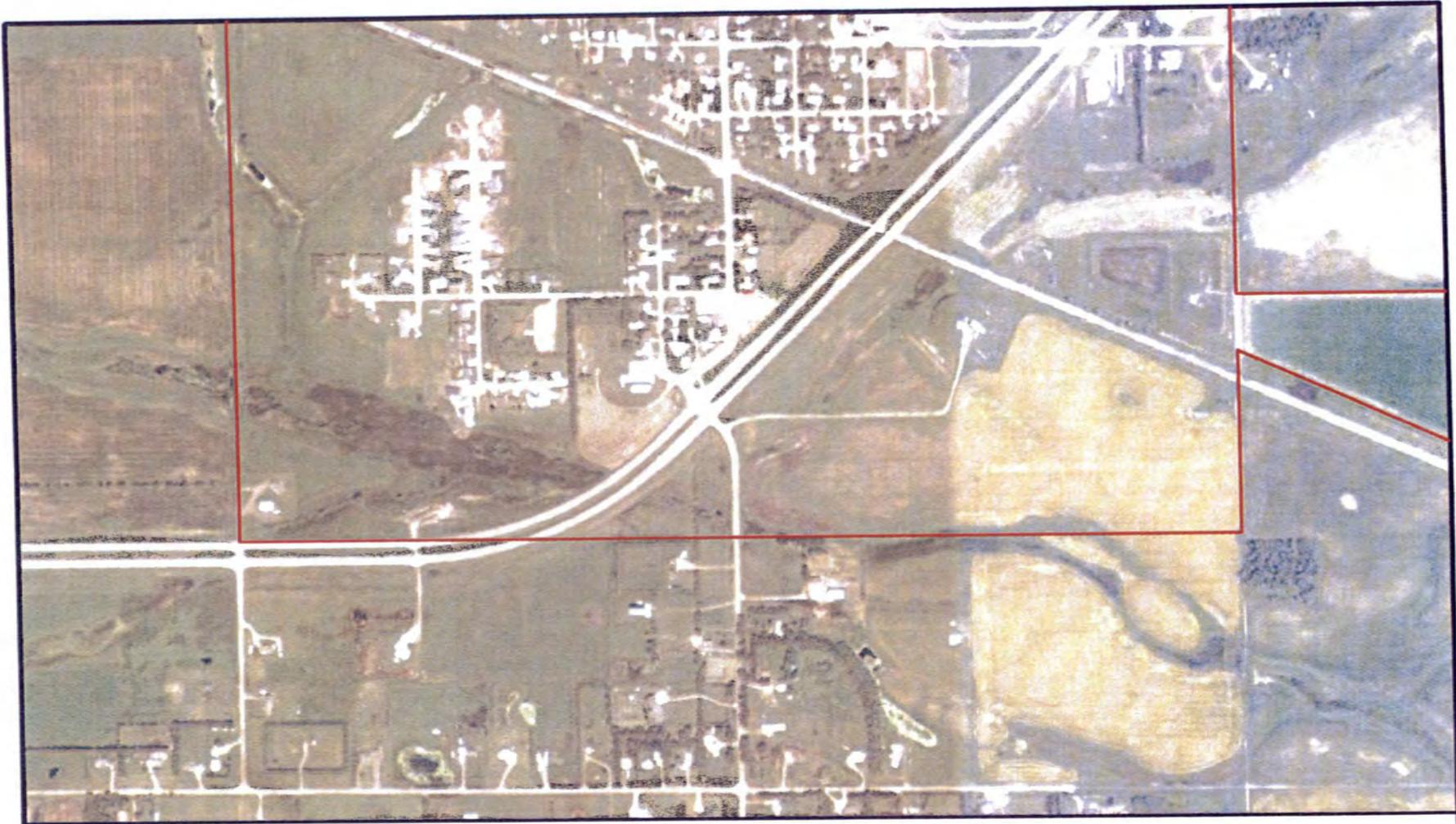
HB 1440
Testimony

SURREY, ND
- NORTH SIDE -

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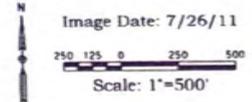
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4-3



HB 1440
Testimony

SURREY, ND
- SOUTH SIDE -



Surrey Corporate Limits = 

Surrey Water Situation as it Relates to North Prairie

1. Surrey has an existing bulk service contract with North Prairie for the purchase of 100% of the city's water dating back to 1975 for up to 3 million gallons per month. North Prairie has limited the flow rate to 70 gpm although the contract does not state this limit.
2. North Prairie purchases water from Minot to resell to Surrey
3. North Prairie delivers water through an 8 inch line to a 250,000 gallon reservoir owned by Surrey
4. Surrey then pumps the water into its own distribution system including a water tower to serve its existing customers
5. Surrey has approved a portion of the 640 acre Silver Spring Development that includes 1680 units, part of this development is within the "old city limits" and some has been annexed into the city
6. Surrey currently serves a rural customer at the discretion of North Prairie, and a couple that were required to be served when Surrey initially got funding for its water system
7. 43 acres of the development has been constructed including streets, sewer, and water. The water system has been tied into the city's existing water distribution system
8. An additional 36 acres have water and sewer but not streets
9. Surrey has been in discussion with North Prairie for over a year on possible expansions of the city.
10. Surrey has offered a couple options for providing water service and received no response when they were offered. The Council even met with a delegation from North Prairie regarding negotiating an agreement
11. North Prairie has initiated litigation against the City of Surrey and the Developer
12. A temporary short term agreement has been reached while the entities attempt to work towards a permanent solution
13. There is a history of supply issues to the City of Surrey from North Prairie
14. Surrey has asked that North Prairie provide information showing how they intent to serve the development to ensure it will not affect the water supply to Surrey
15. North Prairie has not provided information to show they have adequate supply to serve the entire development.
16. North Prairie has requested the developer to:
 - Not connect the water lines to the existing Surrey water lines but keep separate
 - Construct a new supply line around Surrey at the developers cost
 - Provide a lot and construct a new water tower at the developers cost
17. North Prairie will bill the users in the new development at the full rural water rate of \$40.50 per month plus \$6.75 per thousand gallons. Surrey rate is \$20 per month including 2000 gallons then \$4.50 per thousand. For 5000 gallons the North Prairie monthly bill will be \$74.25 while the Surrey bill will be \$33.50
18. North Prairie's attorney has previously stated that Surrey has no legal position for the development to comply with Surrey's ordinances, regulations, and policies regarding water infrastructure.

Testimony in Support of House Bill 1440
63rd North Dakota Legislative Assembly
Energy and Natural Resources Committee
February 14, 2013

Mr. Chairman and members of the committee, my name is Ryan Ackerman. I am a civil engineer and am here today representing the City of Burlington, who urges your support of House Bill 1440. This bill strikes a necessary balance between the initiatives of rural water districts and those of municipalities.

The City of Burlington is supportive of rural water initiatives as they relate to providing safe drinking water to the rural residents of North Dakota. The districts provide a necessary service, and we are supportive of the public investments in infrastructure intended to serve the residents of North Dakota.

First of all, opponents to this bill will almost certainly remind this committee of the protections that it claims to enjoy under 7 USC 1926 (b). They cite this provision of federal law as their protection from defaulting on federal debt. This bill contains language to protect rural water districts via the compensation to the district for the exclusion of municipally annexed property from the district.

Where the point of contention lies with many municipalities is that in many cases the federal investments were not made in infrastructure intended to serve a dense population. I cite as an example a current dispute between the City of Burlington and North Prairie Rural Water District. North Prairie currently has a small diameter water main in the vicinity of property that has been annexed by the City of Burlington and is intended for dense residential development. North Prairie cites 1926 (b) within their opposition to the city's intent to provide water and sewer service to the development, yet it is clear by the actual infrastructure in the ground that those investments were not intended to serve a dense, municipal population. They claim protection under 1926 (b), yet propose to construct new trunk line infrastructure a distance of several miles to serve the dense population.

A second reason why the passage of this bill is urged by the City of Burlington is that it provides a mechanism to remedy one of the unintended consequences surrounding the creation of water districts. In the case of Burlington, the adjacent rural water district essentially surrounds the city. That is, North Prairie Rural Water's boundaries exclude the City of Burlington. The problem lies in the interpretation of what is the City of Burlington. In other words, are the corporate boundaries of the city a fixed boundary or a boundary that changes with annexations? Clearly, the boundary of a municipality will change over time. However, it is the position of several rural water districts that the boundary of a municipality referenced at the time of district creation is the boundary as it existed at that one snapshot in time. Many municipalities, including Burlington, were both surprised and deeply disappointed in the rural water district's assertion that the municipality would no longer have the right to provide water services within its own city limits. This bill allows that concern to be addressed in a fashion equitable to both the municipality and the rural water district.

A third reason that the passage of this bill is urged is that the expansion of trunk line infrastructure by rural water districts to serve areas that are annexed within a city is oftentimes unnecessary and

uneconomical. I cite as an example, again, the current dispute between the City of Burlington and North Prairie Rural Water. There are two large developments adjacent to City of Burlington trunk line infrastructure. In fact, the developments are essentially bisected by existing City of Burlington infrastructure. In other words, the City has the trunk line infrastructure at the doorstep of these developments already. Yet, North Prairie Rural Water claims that these developments lie within their service area and tentatively propose expanding their system by constructing a trunk line from the City of Minot, several miles away from these developments, for the purpose of serving those developments. This type of expansion is both unnecessary and uneconomical. Public sector investments, including significant investments by the state of North Dakota, have been made in the City of Burlington facilities that I previously mentioned, yet North Prairie proposes to construct duplicate infrastructure to serve these future residents.

In addition to the capital costs being unnecessary and uneconomical, the cost to the end users will be significantly higher within the example that I have been citing. Based on current rate structures within the City of Burlington and North Prairie Rural Water District in that area, the cost of water is approximately three times higher for North Prairie customers as it is for City of Burlington residents. This isn't a criticism of North Prairie Rural Water's system or their rates – this is the reality associated with the efficiency of a system designed for dense populations versus one designed for the rural areas of North Dakota. To offer some perspective to what these rates would mean for the two developments that I have cited in Burlington's case, these two developments are planned to contain approximately 1,800 dwelling units following occupation. The annual disparity between the City of Burlington water rates and North Prairie's water rates would be approximately \$1,000,000. That is, again, the annual disparity, presumably sustained in perpetuity. This is unnecessary. This is uneconomical.

Another significant concern that prompts Burlington's support of this bill is the fact that the City of Burlington relies on transfers from its water funds to the City's general fund. Under current North Dakota state law, cities are allowed to transfer up to 20% of revenues from enterprise (water and sewer utility) funds to the general fund. Burlington regularly exercises its right to transfer these funds to cover budget shortfalls within the general fund related to police protection, fire protection, city administration and other essential services. In many instances, the City is levying property taxes at the maximum amount allowed under state law to cover its expenses for these essential services, and it relies on transfers from the enterprise funds to cover the shortfall.

If water or sewer service is provided within the city limits by a third party, it severely impairs the city's ability to cover the expenses related to providing essential services. If North Prairie Rural Water would be allowed to serve these proposed developments within Burlington's city limits, the burden associated with the shortfall in funding for essential services will have to be shifted to existing Burlington residents, which is also unnecessary and uneconomical.

Thank you for the opportunity to testify today. The City of Burlington urges your support of this bill.

**Testimony of Eric Volk, Executive Director, ND Rural Water Systems Association
House Energy and Natural Resources Committee – HB 1440 - February 14, 2013**

Chairman Porter and members of the committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA) which serves a membership of more than 250 cities, 28 rural/regional water systems, and four tribal systems. The NDRWSA is committed to ensuring North Dakota's residents receive affordable drinking water of excellent quality and sufficient quantity. NDRWSA is committed to completing North Dakota's water infrastructure for economic growth and quality of life. Today I am submitting testimony in opposition of House Bill 1440, relating to exclusion of cities from water districts and state water commission policies for water districts.

The federal government adopted a policy (referred today as, 7 U.S.C. Section 1926(b)) in 1961 in which federally indebted water districts received territorial protection, to be the exclusive water service providers in their service areas. This policy (which is now over 50 years old) has been an enormous success. It has caused development to flourish throughout the United States, particularly in rural areas. The policy was (and is) so good, that North Dakota adopted an identical policy in 1999 (6-09.4-22), in which the state granted the same level of exclusivity to water districts indebted to state affiliated lenders.

The purpose of 7 U.S.C. Section 1926(b):

- 1) Encourage Rural Development
- 2) Spread Fixed Costs Over Large Group Of Users (Create An Economy of Scale)
- 3) Prevent Rural Water Costs From Becoming Prohibitively Expensive To Any Particular User
- 4) Provide fresh and clean water to rural households

5) Protect the federal government as insurer of the loan

The proposed legislation is clearly in conflict with 7 U.S.C. Section 1926(b). Similar state laws have previously been ruled unenforceable by the federal courts. State law cannot be enacted to eliminate a system's *federal* 1926(b) protection. In other words, a state cannot impede upon the system's federal jurisdiction. Here's an excerpt from a federal case in the 8th Circuit (ND is in the 8th Circuit) regarding 1926(b) preemption of state law and state efforts to impede upon a systems 1926(b) protection:

Through express and conflict preemption, Consolidated Farm and Rural Development Act subsection protecting federally-indebted rural water associations against municipal encroachment preempts any state law that purports to take away from indebted association any territory in which association has both legal and physical ability to provide service at time association is first entitled to invoke protection of subsection. Rural Water System No. 1 v. City of Sioux Center, 967 F.Supp. 1483 (N.D. Iowa 1997)

Sections 1 and 2 of HB 1440 are condemnation provisions. Condemnation of a federally indebted water district is forbidden by federal law. That has been the law since 1987. Certainly Section 3(2)(a) is targeting 1926(b). Any state policy which serves to frustrate the policy of federal law (i.e. right of exclusivity enjoyed by federally indebted water districts) would be deemed preempted and therefore void/unenforceable.

Like it was stated above, 1926(b) was created to encourage rural development. It has succeeded. If municipalities are allowed to expand their monopoly to include areas they desire to acquire via annexation (which are always lucrative densely populated areas, i.e. subdivisions) such action will serve to "discourage" rural development. If a municipality is allowed to "cherry pick" areas they wish to serve, and decline to serve the sparsely populated areas, then rural

residents will see a dramatic increase in their "per user" cost of water, since sparsely populated areas are always more expensive to serve (more lines and infrastructure to serve fewer people). 1926(b) was intended to create an economy of scale for rural residents (expand the number of users to share in the fixed cost of water). If municipalities are interested in taking that benefit away from rural residents. That of course would be unfair.

City of Madison, Miss. v. Bear Creek Water Ass'n, Inc. 816 F.2d 1057, 1060 (5th Cir.1987):

"The case at bar exemplifies the evil Congress wished to avoid. Bear Creek's affidavits showed that Madison desires to condemn 60% of its facilities and 40% of its customers, including the most densely populated (and thus most profitable) territory now served by Bear Creek. Even if fair value is paid for the lost facilities, such an action would inevitably have an adverse effect on the remaining customers of Bear Creek, in the form of lost economies of scale and resulting higher per-user costs. To allow expanding municipalities to "skim the cream" by annexing and condemning those parts of a water association with the highest population density (and thus the lowest per-user cost) would undermine Congress's purpose of facilitating inexpensive water supplies for farmers and other rural residents and protecting those associations' ability to repay their FmHA debts."

On the cost-share front (Section 3), the language in HB 1440 is fundamentally unfair and highly discriminatory, for several reasons, including:

- 1) The "monopoly" language is broad; what is meant by "monopoly"? What about a City's attempts to take over a rural water district's service territory? The city in turn would then have this so called "monopoly".
- 2) There is reference to water districts' efforts to "harm another public entity's ability to operate"; what about efforts by cities to harm a water district's ability to operate? In some cases, 30-45% of a rural water system could be taken away. The remaining 55-70% of the system would have to

make up the difference in lost revenue. A city will benefit and the rural/other city customers would pay for that benefit.

- 3) Section 3(2)(c), you have to remember that there are two sides to a dispute. Withholding funding from one side would be discriminatory. I don't think it would be fair/legal to fund the city of Mandan and not fund Missouri West Water System because the two had a dispute. I am guessing a situation like that would go to court. As far as "advantage" goes, it does not matter if a system is federally indebted with \$1 or \$10,000,000 – they still have 1926(b) protection. There is language regarding water districts' efforts to resolve conflicts with cities in "good faith"; what about a City's obligation to negotiate in good faith before they attempt to impede upon a systems service territory? A city could lay pipe or sign service agreements with customers outside of their own territory and dare the other system to file suit. The only people that would be "neglected or harmed" if this bill would pass, are the remaining rural/city customers of the rural water system.

As you can see, this bill would do nothing to take away the federal protection of 1926(b). I am a strong supporter of all water projects across the state. We all worked hard the past two years to put together a strong list of water projects to be completed over the next biennium. These territorial disputes need to be resolved. It is in the best interests of each of the parties involved and for the other water projects waiting to be funded. How do we solve these issues? Each situation is so uniquely complicated, that question is difficult to answer. I am believer that these issues can still be and should be resolved locally. Solving these issues locally allow for each side to potentially be a winner.

Here is an excerpt from testimony given on January 31, 2013 by Ward Koeser, Mayor of Williston, "*The city of Williston has just completed successful negotiations on service territory with the Williams Rural Water District. We fully understand the frustrations that can result with the territory protections of rural water systems. However, we also understand the need for such*

protections if we are going to be able to serve the needs in the remote areas like northwest North Dakota. The negotiations are not easy, but they should remain a local issue resolved by the effected parties."

These are powerful words from the Mayor of Williston considering the extreme growth the city has went through in the past few years. Again, these issues are not always easy, but can be worked out without any additional regulations.

We would like to recommend the following simple amendment to be considered. We also feel like this is a very delicate issue that should be studied further to make sure all the effected parties have time to voice their full thoughts on this important issue.

With that said, we oppose House Bill 1440. Thank you for giving me the opportunity to provide testimony.

6-5

NORTH DAKOTA Rural Water SYSTEMS ASSOCIATION

Without quality water on tap it's nearly impossible for sustainment of rural North Dakota.

New Horizons in Rural Living

February, 2013

Greetings North Dakota Legislators!

On behalf of North Dakota Rural Water Systems Association (NDRWSA), thank you for your commitment to North Dakota's future growth and prosperity.

As the country suffers from the adverse effects of recession, North Dakota is rich with opportunity. Fortunately for us, as the 63rd Legislative Assembly begins, North Dakota is viewed as a "bright spot" in the nation. As the session begins with a renewed sense of optimism, leaders are searching for new and innovative ways to sustain our economic prosperity. North Dakota has worked hard to grow and diversify the economy. Rural water development plays a critical role in those efforts. From energy and agriculture to tourism and manufacturing, rural water development is an important partner in building our communities, expanding industries and sustaining economic prosperity.

We commend you for your hard work and perseverance. You can count on NDRWSA to support your efforts to continue growing North Dakota into the best place to live, work and play!



Sincerely,

Eric Volk

Eric Volk, Executive Director
North Dakota Rural Water Systems Association

About NDRWSA

The beginning...

NDRWSA is a nonprofit, independent corporation governed by an elected board of directors. The association was formed in 1974 in an effort to coordinate statewide rural water system programs. NDRWSA works to enhance the quality of life, maintains environmental integrity, as well as provides rural public water and wastewater utilities leadership and industry representation.

Our vision...

NDRWSA is committed to the vision of quality water on tap for all citizens of North Dakota.

Who we serve...

NDRWSA proudly serves 33 rural/regional water systems, approximately 250 cities, 100 individuals and 166 associate/business members. This includes rural water service to over 100,000 rural residents, numerous subdivisions, mobile home parks and manufacturing/processing plants throughout North Dakota.

Rural/regional water systems provide water to 63% of North Dakota's 357 incorporated cities.

The leaders...

NDRWSA is governed by an elected board of directors. The current executive board members are as follows:

- Keith Nilson, President
- Michele Schommer, Vice President
- LaVonne Althoff, Secretary
- Joe LaFave, Treasurer
- Gordy Blixt, Past President
- Jon Nelson, Director at Large
- Geneva Kaiser, Managers Representative
- John Bearman, National Representative

The problem...

In many areas throughout North Dakota, there is insufficient quality and quantity water for domestic, municipal and livestock needs. Without an adequate supply of quality water it is nearly impossible for community sustainment and economic growth.

The solution...

Rural water development is the solution to an insufficient supply of quality water in rural areas. NDRWSA supports developing rural water and provides public water and wastewater utility management the education and training needed to meet rigorous state and federal health standards, as well as other needed industry resources.

NDRWSA Programs

- Training and Technical Assistance
- Circuit Rider Programs
- Wastewater Technical Assistance
- Water Conservation/Drought Management
- Source Water Protection
- Operator Certification
- Water University

Funding sources...

Through a unique blend of federal and state funds, as well as membership dues, we are able to provide statewide water and wastewater systems, resources and products and services needed for public water and wastewater utility management.

We continuously collaborate with local, state and federal water advocates to find new and innovative ways to creatively finance rural water development, as well as support the Dakota Water Resources Act Appropriation.

NORTH DAKOTA
Rural Water
SYSTEMS ASSOCIATION

Rural/regional water systems provide water to 63% of North Dakota's 357 incorporated cities.

Leaders want to know...

Rural water development is a significant contributor to North Dakota's vibrant economy. It is critical for continued economic development and growth. NDRWSA is committed to working cooperatively with communities, tribal systems and rural water systems to complete North Dakota's infrastructure. As a leader, you can expect a reliable source of quality water to impact the following:

- quality of life
- agricultural and livestock producers return on investment
- job creation
- increase property values
- stabilize population
- infrastructure and more.

Rural water development contributes significantly to North Dakota's vibrant economy.

NDRWSA rural water solutions...

To ensure completion of North Dakota's water infrastructure, NDRWSA provides rural water systems and municipalities throughout North Dakota the following resources and support:

Technical Assistance

One-on-one on-site training and technical assistance in the areas of operation, maintenance, lab assistance, management, system troubleshooting and finance, to include:

- Formal Accredited Training Sessions
- Rule and Regulation Updates
- Operator Certification Preparation
- Leak Detection and Water Audits
- Curb Stop and Valve Location
- Treatment Process Evaluation
- Lagoon Sludge Testing
- Poly-Pigging (Water Main Cleaning)
- Hydrant Repair and Flow Testing
- Sewer System Smoke Testing
- On-Site Technical Assistance and Troubleshooting
- Rate Analysis and Financial Planning
- Wellhead and Source Water Protection Plans
- Consumer Confidence Reports
- Water Conservation and Drought Management Plans
- Meter Testing and Repair
- Decision Maker Training
- Loan and Grant Assistance
- Sewer Camera Video Equipment
- Gate Valve Exercisers

and MUCH MORE!

Rural water serves over 100,000 rural residents, numerous subdivisions, mobile home parks and manufacturing/processing plants statewide.

Legislative Advocacy/Support

- Full-Time Advocates (Federal)
- Active Advocate (State)
- Legislative Committee
- National Rural Water Association, Rural Water Rally, Washington, D.C.
- Publish Legislative Report (While Legislature is in Session, View Report at www.NDRW.org, Under "In the News" Tab Click on Publications.)

Training and Continuing Education

- NDRWSA Annual Water EXPO and Technical Conference
- Continuing Education and Training (Decision Makers, Managers, Office Staff, Operators)
- Leadership Retreat
- National Rural Water Association's Annual Leadership Forum and Technology Conference



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6-6

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

“Annexation of lands located in district – Notice & water service plan.

At least ninety days before the effective date of any ordinance annexing land into the boundaries of any city, the city shall give written notice of the city's intent to annex such land to any district organized under this chapter in whose territory the land is located. The notice shall contain the description of the land and the city's plan for the provision of water service to the land. Within ninety days of the effective date of any ordinance annexing land into the boundaries of any city, the city and the effected district shall, in good faith, develop a mutually acceptable water service plan for the annexed area. Unless an agreement is executed, no change in water service provider shall occur.”

My name is Geneva Kaiser and I am the Manager of Stutsman Rural Water District and I am also the Manager's Representative to the North Dakota Rural Water Systems Association Executive Board. I am here today to speak in opposition to HB 1440.

Stutsman Rural Water and the City of Jamestown are currently in negotiations over a territorial dispute. We are not in litigation. Stutsman's Board is hoping for a solution that can benefit both parties as our community moves forward with development.

HB 1440 is not a cure all or anywhere close to being one. It is my belief that it is rushed legislation that would simply invite more problems. Each Water District and the Cities that are currently involved in territorial disputes have their own individual set of circumstances. I will speak to several affecting Stutsman. As you can see by the map provided to you, the annexation policies of the past have allowed for strip annexation that takes property that has value to a City, often referred to as "Cherry Picking". A prime example of that is the two miles of road annexed to get to the Cavendish Potato Plant east of Jamestown. That was in Stutsman's territory and we actually served the business during construction. We turned it over to the City without compensation and had we kept that business; it would yield at a minimum, \$3,000 per day in water sales. From the Cavendish site, if the City were to annex another 6 miles of that same road, they would have the ability to annex the Spiritwood Industrial Park, where a \$1.2 billion Anhydrous ammonia Plant is due to break ground in 2014 and the Spirit Ethanol plant will be breaking ground this spring. The Great River Energy plant already exists there and is a customer of SRWD. The Industrial Park area is in Stutsman's territory - 2 miles from our treatment plant.

There is an area that covers about 2 quarter sections within Northwest Jamestown City Limits where the residents pay City taxes and have no city services. Stutsman borrowed the money in 2000 to install water service to this area and serves approximately 40 homes and businesses in there. The City doesn't have infrastructure, fire protection, or the desire to serve this area because it is not a profitable area to serve and yet will run a water and sewer line out to Titan Machinery, west of Jamestown, at an approximate cost of \$1m because that area has growth potential - once again "Cherry picking" the most profitable customers out of our territory.

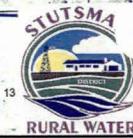
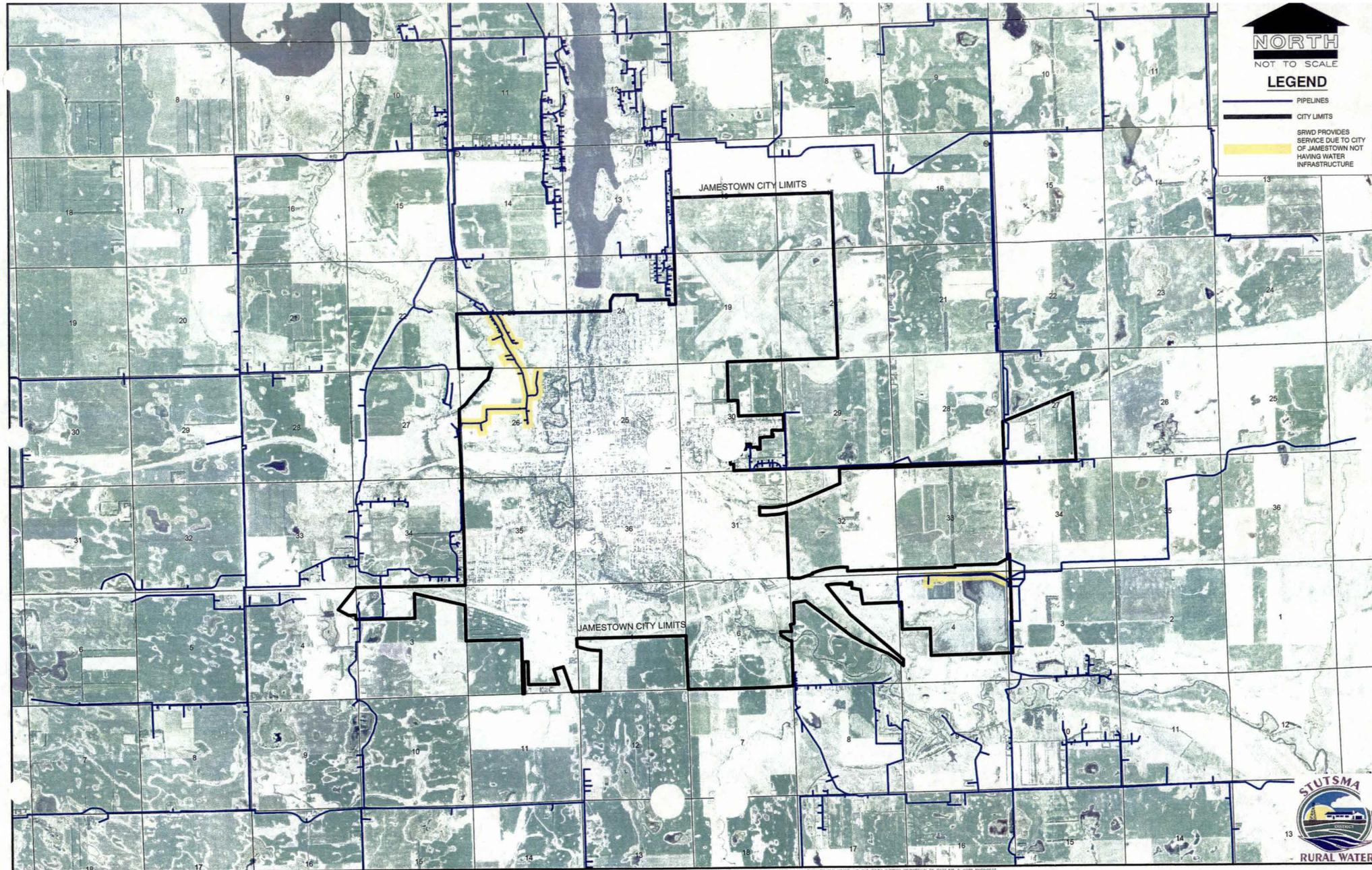
I also want to speak to annexation of existing customers included in this bill and how that would affect Stutsman Rural Water. We have approximately 30% of our customers within 2 miles of Jamestown- about 300 accounts. They are shown as the blue lines on the map. We serve 29 subdivisions in these areas and have served these areas for the past 26 years. Jamestown has platted these subdivisions and then had no long range plan for their development or annexation. Consequently, Stutsman has stepped up and



NOT TO SCALE

LEGEND

-  PIPELINES
-  CITY LIMITS
-  SRWD PROVIDES SERVICE DUE TO CITY OF JAMESTOWN NOT HAVING WATER INFRASTRUCTURE



15794-000 Jamestown Rural Water.swg Plot Date: 02/12/2012 ALL RIGHTS RESERVED. ALL SERVICES AND PRODUCTS ARE PROVIDED ASBESTOS AND LEAD TESTS REQUIRED. ALL SERVICES AND PRODUCTS ARE PROVIDED ASBESTOS AND LEAD TESTS REQUIRED. ALL SERVICES AND PRODUCTS ARE PROVIDED ASBESTOS AND LEAD TESTS REQUIRED. ALL SERVICES AND PRODUCTS ARE PROVIDED ASBESTOS AND LEAD TESTS REQUIRED.

Good Morning, Mr. Chairman and members of the committee. I am **Teresa Sundsbak** General Manager for **North Prairie Rural Water District**. I am here today to speak in opposition of **HB 1440**.

One reason I took my job, was to work on securing funding to bring good water to those within my community who have poor water quality or quantity issues. Who would think that in this day and age there are people who live 20 miles away from Minot which have water they can light on fire, or water the color of coffee that their children have to bath in. What we take for granted others value as priceless. To make this possible my water district must be in good financial health.

What makes good financial health for a water District?

1. **GROWTH** - As with any business a larger customer base allows you to spread additional costs such as regulatory, new improvements, repairs and replacement.
2. **Stable Revenue**- Unlike a City, the only way the Districts have of obtaining revenue is from the sale of water. These payments of the customer allow the district to borrow funds for system upgrades, make repairs, and hire qualified operators. A City on the other hand has the ability to levy property taxes, sales taxes, and special assessments.
3. **Planning**- Many Water Districts have gone into long term debt in areas other than those properties that would be directly annexed. This would include water treatment plants, pumping stations, and pipelines, which may be located many miles from the annexed area. The existing customers and future customers from these areas helps the District pay for this infrastructure. Water districts like any other good utility, constantly plan for the future assuming a certain base of users and areas of the system that need improvement.

Objections to HB 1440

This bill would deny the water districts the ability to recover our operating costs and debt. Over 45% of my customers are near cities. When the water district law Chapter 61-35 was enacted, the state recognized that the water district was the only entity with the ability to build a water system across county and city boundaries. This allowed the districts to do long range planning to best serve their jurisdiction.

What this bill says is that boundaries mean nothing. Why are we stopping here? Why shouldn't Burleigh County be allowed to annex the City of Mandan, or Montana annexing Williams County. This may sound crazy but so is this bill.

The statement has been made that a city cannot grow if they are not allowed to serve the water in an annexed area. This statement is simply **not true**. They use words such as monopoly, but the truth is if this bill passes the only entity which would have a monopoly would be the Cities themselves. Allowing cherry picking by cities will reduce the willingness of districts to invest or serve boundary areas. The rural residents in these areas would remain un-served.

The residents of a annexed area currently would still pay city taxes, drive on city streets, and receive city emergency protection. The only difference is that residents are served water by the District. How does this stop their growth?

The major portion of this bill is in direct violation of federal law 1926 B for those systems that have a Federal loan. Also the State of North Dakota must have felt that the 1926B law was a wise legislative effort as they mirrored it in Chapter 6-09.4-22 for repayment of state loans. In my district's case we have a federal loan. My attorney tells me that in the event of an action, that he will have most of this bill thrown out and it is not applicable.

In other parts of this bill it states that a water district will be denied funding to serve additional rural residents if there is a conflict with the City. This would not allow those users that I talked about in the first part of my testimony to receive funding to improve their lives, over a dispute of a few hundred acres.

The bill as amended requires the District and the city to cooperate on a plan for the city growth. What about the district's growth? If I am serving a City, I have to have a plan to help them grow. But if a city is not part of the District and has their own supply, how therefore am I supposed to come up with a plan for their growth? They are not in my jurisdiction.

In closing, in my opinion this bill is very poor law. Instead of enhancing cooperation between entities it directly pits rural against city. Please do not allow this to happen. We can settle our disputes locally and have in many parts of our state.

Respect our boundaries as we have respected the city's
boundaries.



*Richard and Mary Thompson
4120 20th Ave. S.E.
Minot, ND 58701*

8-4



The real true innocence
of Children.

IF they only knew
what they were taking
a bath in.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

Page 1, line 1, replace "three" with "four"

Page 1, remove lines 7 through 24

Page 2, replace lines 1 and 2 with:

"Annexation of lands located in district - Notice.

At least sixty days before the effective date of any ordinance annexing land that is located in a district into the boundaries of any city, the city shall give written notice to the district of the city's intent to annex the land. The notice must contain the description of the land and the city's plan for the provision of water service to the land."

Page 2, replace lines 5 through 20 with:

"Contract for city to provide water service - Franchise fee.

Following annexation of district territory by a city, the city and the district may contract for the city to provide water service to any portion of the annexed area."

Page 2, remove lines 23 through 30

Page 3 replace lines 1 through 10 with:

"City designates different supplier - Purchase of district property - Arbitrators - Factors - Detachment of territory from district.

1. Following annexation, the district must remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city must purchase the property, facilities, and improvements of the district. The city must fairly compensate the district for the district's full economic loss, including future revenues, as a result of the district being precluded from providing water service to the area being annexed. If a water service agreement between the district and the city is not executed within ninety days after delivery of the notice designating a different supplier, the city and the district in good faith must engage in mediation. Unless an agreement is executed, a change in the water service provider may not occur and an arbitrator may not be appointed until more than one hundred twenty days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.
2. If the district and the city are unable to reach an agreement, then the fair compensation to the district must be determined in the following manner:
 - a. The district and the city each shall select one qualified arbitrator, and the two selected arbitrators shall select a third arbitrator to determine the fair compensation for the district. The arbitration must be conducted in accordance with chapter 32-29.3. Unless the arbitrators agree otherwise, the arbitration proceedings must be conducted in the

annexing city. The arbitrators shall consider all elements of value, employing any method of valuation the arbitrators deem appropriate, and shall specifically consider the following factors in determining the fair compensation:

- (1) Whether any property of the district is rendered useless or valueless to the district;
 - (2) The amount of damage to property remaining in the ownership of the district following annexation;
 - (3) Impact on the existing indebtedness of the district and district's ability to repay that debt;
 - (4) The value of the district's service facilities located within the annexed area;
 - (5) The amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the annexed area;
 - (6) The amount of the district's contractual obligations allocable to the annexed area;
 - (7) If the annexed area consists of land that does not have water service being provided by the system at the time of the annexation, the value of the land based on the planning, design, and construction of improvements located outside the annexed area reasonably made to provide future water service to the annexed area;
 - (8) Any demonstrated impairment of service or increase of cost to the district's remaining customers after the annexation and the impact on future revenues lost from existing and future customers within the annexed area;
 - (9) Any necessary and reasonable legal expenses or professional fees;
 - (10) Any factors relevant to maintaining the district's current financial integrity;
 - (11) The average increase in the number of benefit units in the area annexed for the three years immediately preceding the annexation;
 - (12) The reasonable costs of detaching the water system facilities to be sold and all reasonable costs of integrating the remaining water system facilities of the water supplier whose rights are terminated; and
 - (13) Any other relevant factors agreed to by the three appointed arbitrators.
- b. At least two of the three arbitrators must agree to written findings and conclusions that must be presented to the city for payment and the district for acceptance.

3. The compensation required by this section must be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city. The compensation must be paid within one hundred twenty days following the date upon which the fair market value of the facilities are certified to the city and district, or at a later date as may be mutually agreed upon by the city and district or as determined by the district court.
4. In any event, the district may elect to retain facilities located within the city and used for transmission of water if the district uses those facilities to continue to supply water service to benefit units outside the city. The district may not receive compensation for facilities it elects to retain.
5. Except as otherwise provided, this section does not limit the authority of a city to select water service suppliers to areas within the city limits or to adopt and enforce regulations for the operation of a water service supplier, including standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices, and other regulations for protection of the public health, safety, and welfare.
6. If a district will no longer be the water supplier to an area because of annexation and notice under subsection 1, the district shall continue to provide the service until the city gives notice of its assumption of responsibility for service, designating the date that the service must transfer to the city's designated supplier. The district and the city shall cooperate to minimize the inconvenience to water customers because of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred, specifying the new supplier's name and address, the effective transfer date, the reason for the transfer, and an applicable rate schedule. During the negotiation period, the district may not discontinue or limit service to customers who were supplied water by the district at the time of annexation unless the customer has violated district bylaws, rules, or regulations.
7. Following the transfer of water service, the annexed land for which water service has been transferred to the city must be deleted from the district's territory and all benefit units attached to the land must be canceled without compensation. The district shall provide notice of the deletion of territory to the state engineer.

SECTION 4. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

State water commission funding.

The state water commission, before providing grants or loans to a district or city, shall consider whether a district and city within a district have developed mutually acceptable water service agreement to accommodate anticipated future growth of a city within a district, but the commission may not have these considerations affect the funding of other projects within a district."

Renumber accordingly

#1
3-21-13

Sixty-third
Legislative Assembly
of North Dakota

REVISED HOUSE BILL NO. 1440
3rd

Introduced by

1 A BILL for an Act to create three new sections to chapter 61-35 of the North Dakota
2 Century Code, relating to water service by cities and water districts and state water
3 commission policies on funds for water districts.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 61-35 of the North Dakota Century Code
6 is created and enacted as follows:

7 **Annexation of lands located in district – Notice – Water service.**

8 Within ten days after an annexation resolution or receipt of a petition for
9 annexation into a city of property that is part of a district, the city shall provide the district
10 with a copy of the annexation petition or resolution. Following annexation of district
11 territory by a city, the city may provide water service to any portion of the annexed area
12 as provided in this Act.

13 **SECTION 2.** A new section to chapter 61-35 of the North Dakota Century Code
14 is created and enacted as follows:

15 **Designation of water service provider.**

16 1. If the district does not currently have customers within the annexed area, the
17 city shall provide water service unless the city designates a different provider. District
18 facilities located within the annexed area shall remain the property of the district unless
19 otherwise provided by agreement. Any costs related to relocation of these facilities
20 required as part of the annexation shall be paid by the city.

21 2. If the district has existing customers within the annexed area, those
22 customers shall continue to be served by the district unless the city gives written notice
23 to the district designating a different provider. The district shall not provide service to

1 any new customers with the area to be annexed unless an agreement to provide such
2 service is approved by the city.

3 **SECTION 3.** A new section to chapter 61-35 of the North Dakota Century Code
4 is created and enacted as follows:

5 **Transfer of water service provider – Negotiation – Arbitration.**

6 1. If the city chooses to provide water service in annexed areas containing district
7 customers, the city shall negotiate with the district for the transfer of the service. Any
8 payment to the district for district facilities within the annexed area shall be included in
9 the negotiation. If a water service agreement between the district and the city is not
10 executed within sixty days after delivery of the notice designating a different provider,
11 the city and the district in good faith shall engage in mediation.

12 2. If the district and the city are unable to reach an agreement through mediation
13 within sixty days, the district and the city shall each select one qualified arbitrator, and
14 the two selected arbitrators shall select a third arbitrator. The arbitration must be
15 conducted in accordance with chapter 32-29.3. Unless the arbitrators agree otherwise,
16 the arbitration proceedings must be conducted in the annexing city. The arbitrators
17 shall consider all issues they deem relevant to the development of a final agreement
18 between the parties. At least two of the three arbitrators must agree to the final
19 agreement that will govern current and future annexations.

20 3. The provisions of this Act may not supersede an existing agreement between
21 a city and a district.

22 **SECTION 4.** A new section to chapter 61-35 of the North Dakota Century Code
23 is created and enacted as follows:

24 **State water commission funding.**

25 The commission, before providing grants or loans to a district or city, shall require
26 that a district and city have a mutually acceptable water service agreement, which must
27 include provisions for health, safety, and firefighting flow, and must accommodate

Sixty-third
Legislative Assembly

- 1 anticipated future growth of a city within a district. The absence of a mutually
- 2 acceptable water service agreement shall not affect the funding by the commission of
- 3 other projects for a district or city.

#2
3-21-13

House Bill 1440
Senate Political Subdivisions Committee
March 21, 2013

Mr. Chairman and committee members. My name is Bill Wocken. I am City Administrator for the City of Bismarck and I am here with the knowledge of my City Commission to ask you to amend the Engrossed Bill you have before you.

House Bill 1440 started out as an attempt to have the Public Service Commission mediate the transfer of water service from a water district to a city upon annexation. A quasi-judicial eminent domain procedure was utilized for this purpose. The bill still deals with the same subject but it uses a negotiated, mediated or arbitrated agreement to settle issues related to the transfer of water service responsibilities.

In the original bill the State Water Commission was also tasked to set policies for the coexistence of neighboring water systems and to provide funding to suppliers, with a preference for those who were good neighbors. The engrossed bill still talks about funding but it is much less related to annexation issues.

Since the engrossed bill was amended and passed during the final days before crossover very little discussion has been held about the amendments. The ND League of Cities has facilitated a discussion of the effects of the bill and it is offering an amended bill for your consideration. Although the amendment is of the "hog house" type it parallels the engrossed bill quite closely. I will try to summarize the bills referring to them as the "engrossed bill" and the "proposal".

In Section 1 of the engrossed bill the city needed to notify the water district of a proposed annexation at least 60 days before it became effective. The proposal changes that notice to 10 days after the request for annexation is made. This notice will likely amount to a similar length of notice but it is easier to notice everyone going forward so that the water district can participate in annexation discussions more easily.

Section 2 of the engrossed bill simply says the city may serve the annexed area after the annexation is complete. The proposal does this in Section 1.

Section 3, paragraph 1 of the engrossed bill says that the city needs to purchase district improvements supplying the annexed area and pay up to 10 years of lost revenue from service in the area being annexed. The proposal says the city needs to pay for relocated facilities and that the district may not add any new customers within the annexed area after the annexation notice is received. The major difference I see here is that the proposal does not offer to pay for lost revenue. Even the original bill only talked about only operation and maintenance costs for up to 10 years in the annexed area. The revenue payment is in my opinion an overstep. Legitimate costs should be covered in the negotiation process.

Section 3, paragraph 1 of the engrossed bill proposes a 90 day period to negotiate the transfer of service between the systems with a 30 day mediation period if the negotiation is not fruitful. The proposal gives both the negotiation and the mediation procedures a 60 day period.

Section 3, paragraph 2 of the engrossed bill invokes arbitration under NDCC 32-29.3 if the mediation process was unsuccessful as does the proposal. The difference here is that the engrossed bill calls out 13 issues that the arbitrators must specifically consider while the proposal says the process should cover "all issues they (the arbitrators) deem relevant". It is my opinion that the 13 enumerated standards in the engrossed bill are not all objectively determinable and that the principles of cost can be selected and determined by the arbitrators without this listing.

The remaining paragraphs in Section 3 of the engrossed bill state when the agreed upon expenses should be paid (3), that a district may retain facilities (4) that the agreement will not affect the city services (5) that the users whose service is switched should be treated well (6) and that the areas removed from a water district need to be reported to the Water Commission (8). I do not think there is a need to mention any of

these items specifically since they can be included in the negotiated agreement. The proposal carries a sentence that says the legislation will not affect a service agreement that has already been decided and agreed upon.

Section 4 of the engrossed bill and the proposal both deal with plans for mutually acceptable service agreements between providers as recognized by the State Water Commission but both say funding of other projects engaged in by the entities and funded by the Water Commission will not be affected by the service plans.

There are then only a few real differences between the engrossed bill and the proposal. One is the payment of up to 10 years of unrealized profits from an area being annexed and the other is the finely detailed instruction to arbitrators about what they are to discuss. My position is that both these provisions are unreasonable and that the negotiation, mediation, arbitration solution included in both the engrossed bill and the proposal will bring about the desired results.

The engrossed bill, as you have it before you, is difficult to use. It will likely have a chilling effect on annexations which to this point have proceeded with very few issues in most localities. I think the proposal offered by the League of Cities would provide a stable platform from which an efficient and effective water service policy for newly annexed areas can be developed.

3
3-21-13

Chairman: Senator Andrist

Members of the committee

My name is David Schelkoph City Administrator, Valley City ND

I am here today to talk to you about neighbors. Neighbors that have for decades lived and worked together as friends but in recent months some neighbors have become embattled in territorial fights. In my opinion these disputes are fueled by lawyers using a federal law, 1926B, to destroy relationships and replace fairness and negotiations with ultimatums and threats. It is because of this change that I speak in favor of HB 1440. I believe that this bill brings to light the challenges cities are facing.

The Valley City Commission has unanimously approved Resolution #1904 supporting the passing of HB 1440. There are many reasons for this support but mostly it is to provide an opportunity for Valley City to express its desire for orderly development through annexation. The City believes that HB 1440 will give all North Dakota cities a voice that will provide efficiencies, fairness, and safety to our citizens.

Our Commission has the highest respect for Rural Water Districts and their contributions to rural residents of this great state. They have helped slow down the diaspora of rural farm families to the cities. Providing clean potable water is essential if we are to keep our family farms. Our intent is not to harm their great endeavor. We only ask for a voice in the process.

In December of last year Valley City started the process of annexing 77 acres of land in the hopes of developing a much needed industrial park along highway 94. The North Dakota National Guard and John Deere Seeding Group have already acquired (or about to acquire) land in the new park. We have been informed by Barnes Rural Water (BRW) that this and all future annexations from now on would be served by the Water District. We tried to talk to BRW about orderly development and that Valley City had built water infrastructure to serve this and future growth in the area. There was no negotiating or give and take but only take. We have since meet with BRW and are trying to make lemon aid out of the lemons 1926B has dealt us.

The position BRW has taken here perplexes me as someone responsible to the Commissioners and ultimately the citizens of Valley City. Like all cities we struggle with expansion and orderly development of the city. Fire protection, future growth, and costs are always considered when expansion attempts are made. We have been doing this for over a hundred years and are pretty good at what we do. What benefit do the people of Valley City receive from BRW taking over the water delivery systems in newly annexed areas? The short answer for Valley City is nothing as a matter of fact it costs them money. To help clarify this position let's analyze each of three points mentioned above.

1. Fire protection is critical to the safety and wellbeing of any city. Fire Departments and hydrant systems are essential in accomplishing this task. Fire protection has to be considered in any annexation process to protect loss of life and property.
2. Future growth must be considered in any water project. As the city grows you don't want to rip up roads to install larger pipes to serve the new growth.
3. Costs are measured in two ways.
 - a. First in the cost of installation. Two different companies in one trench increases construction costs over one company owning both.
 - b. Second the water rate charged to the citizens. Currently BRW's residential rate is approximately twice Valley City's residential rates.

The city of Valley City wants to work with BRW and create a win-win here. Our new Water Treatment plant has excess capacity and would like to make that available to BRW for their members. Using this fresh water supply BRW could reduce transportation and treatment costs and Valley City would be able to sell some water.... Win-win Orderly development for the city and a new source of potable water to serve BRW's new members.

Thank you for your time. I will remain to answer any of your questions.

Testimony of Eric Volk, ND Rural Water Systems Association
Senate Political Subdivisions Committee – HB 1440 – March 21, 2013

Chairman Andrist and members of the committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA) which serves a membership of more than 250 cities, 28 rural/regional water systems, and four tribal systems. The NDRWSA is committed to ensuring all of North Dakota's residents receive affordable drinking water of excellent quality and sufficient quantity. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today I am submitting testimony in opposition of House Bill 1440, relating to exclusion of cities from water districts and state water commission policies for water districts.

The federal government adopted a policy (referred today as, 7 U.S.C. Section 1926(b)) in 1961 in which federally indebted water districts received territorial protection, to be the exclusive water service providers in their service areas. This policy (which is now over 50 years old) has been an enormous success. It has caused development to flourish throughout the United States, particularly in rural areas. The policy was (and is) so good, that North Dakota adopted an identical policy in 1997 (6-09.4-22), in which the state granted the same level of exclusivity to water districts indebted to state affiliated lenders.

The purposes of 7 U.S.C. Section 1926(b):

- 1) Encourage rural development
- 2) Spread fixed costs over a large group of users (create an economy of scale)
- 3) Prevent rural water costs from becoming prohibitively expensive to any one user
- 4) Provide fresh and clean water to rural areas
- 5) Protect the federal government as insurer of the loan

6-09.4-22. Protection of service during term of loan.

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues there from, financed in whole or in part with a loan to the political subdivision from the public finance authority or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.

2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the public finance authority or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the public finance authority or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the public finance authority issued to fund the loan.

The proposed legislation or possible amendments would do nothing to take away the federal protection of 1926(b). Similar state laws have previously been ruled unenforceable by the federal courts. State law cannot be enacted to eliminate a system's *federal* 1926(b) protection. In

other words, a state cannot impede upon the system's federal jurisdiction. Here's an excerpt from a federal case in the 8th Circuit (ND is in the 8th Circuit) regarding 1926(b) preemption of state law and state efforts to impede upon a systems 1926(b) protection:

Through express and conflict preemption, Consolidated Farm and Rural Development Act subsection protecting federally-indebted rural water associations against municipal encroachment preempts any state law that purports to take away from indebted association any territory in which association has both legal and physical ability to provide service at time association is first entitled to invoke protection of subsection. Rural Water System No. 1 v. City of Sioux Center, 967 F.Supp. 1483 (N.D. Iowa 1997)

Like it was stated above, 1926(b) was created to encourage rural development. It has succeeded. Municipalities in the state have successfully managed to get an extraterritorial zoning authority which gives them annexation powers of their outlying potential growth areas. Even though the municipalities control these areas, they are sometimes unwilling or incapable of building the necessary infrastructure unless and until they could be guaranteed a certain rate of return. This leaves rural subdivisions, business parks and fringe areas in a virtual "no man's land" for public health infrastructure. Rural water districts have built in many of these areas over the last 40 years to satisfy an unmet need. Many rural water districts now depend on these fringe areas to keep their rates affordable for all customers.

Urban sprawl is a term to describe a haphazard, unplanned, unorganized outward expansion of an urban area. If municipalities are allowed to expand their water service to include areas they desire to acquire via strip or flag pole annexation (which are always lucrative densely populated areas, i.e. subdivisions) such action will serve to "discourage" rural development. If a municipality is allowed to "cherry pick" areas they wish to serve, and decline to serve the

sparsely populated areas, then rural residents will see a dramatic increase in their "per user" cost of water, since sparsely populated areas are always more expensive to serve (more lines and infrastructure to serve fewer people). 1926(b) was intended to create an economy of scale for rural residents (expand the number of users to share in the fixed cost of water). If municipalities are interested in taking that benefit away from rural residents, that of course would be unfair. Open territory is also a concern. It is often devalued when annexed but held in speculation awaiting higher prices and development.

City of Madison, Miss. v. Bear Creek Water Ass'n, Inc. 816 F.2d 1057, 1060 (5th Cir.1987):

"The case at bar exemplifies the evil Congress wished to avoid. Bear Creek's affidavits showed that Madison desires to condemn 60% of its facilities and 40% of its customers, including the most densely populated (and thus most profitable) territory now served by Bear Creek. Even if fair value is paid for the lost facilities, such an action would inevitably have an adverse effect on the remaining customers of Bear Creek, in the form of lost economies of scale and resulting higher per-user costs. To allow expanding municipalities to "skim the cream" by annexing and condemning those parts of a water association with the highest population density (and thus the lowest per-user cost) would undermine Congress's purpose of facilitating inexpensive water supplies for farmers and other rural residents and protecting those associations' ability to repay their FmHA debts."

I am a strong supporter of all water projects across the state. We all worked hard the past two years to put together a strong list of water projects to be funded over the next biennium. These territorial issues need to be resolved. It is in the best interests of each of the parties involved and for the best interests of other water projects waiting to be funded. How do we solve these issues? Each situation is so uniquely complicated, that question is difficult to answer. I am

a believer these issues can still be and should be resolved locally. Solving these issues locally allow for each side to potentially be a winner.

Here is an excerpt from testimony given on January 31, 2013 by Ward Koeser, Mayor of Williston, *"The city of Williston has just completed successful negotiations on service territory with the Williams Rural Water District. We fully understand the frustrations that can result with the territory protections of rural water systems. However, we also understand the need for such protections if we are going to be able to serve the needs in the remote areas like northwest North Dakota. The negotiations are not easy, but they should remain a local issue resolved by the effected parties."*

These are powerful words from the Mayor of Williston considering the extreme growth the city has went through in the past few years. Again, these issues are not always easy, but can be worked out without any additional regulations.

We believe this is a very delicate and complicated issue that should be studied in great detail to make sure all the effected parties have time to voice their full thoughts on this important issue. Passing quick, incomplete legislation is not the cure for these issues.

With that said, we oppose House Bill 1440. Thank you for giving me the opportunity to provide testimony.

Good Morning, Mr. Chairman and members of the committee. I am **Teresa Sundsbak** General Manager for **North Prairie Rural Water District**. I am here today to speak in opposition of **HB 1440**.

One reason I took my job, was to work on securing funding to bring good water to those within my community who have poor water quality or quantity issues. Who would think that in this day and age there are people who live 20 miles away from Minot which have water they can light on fire, or water the color of coffee that their children have to bath in. What we take for granted others value as priceless. To make this possible my water district must be in good financial health.

What is a Water District?

A Water District is a public entity that has the charter to provide water supply to a wide geographical area. This area may encompass multiple counties and includes rural residents, commercial businesses, industry and cities. In fact over 66% of the cities and over 60% of North Dakota are served by water districts.

The intent of a water district is to serve **all** the geographical area no matter whom they are or where they live. Can we meet this in all cases if the potential customer lives a long distance from another customer? Unfortunately no! However water districts have made great strides in ultimately achieving that goal. We have done so because water districts are based upon the

"postage stamp" rate structure. We do not charge the customer 60 miles from the water source more than the customer only 2 miles from the source.

This means that the high density areas surrounding a city help support the more distant rural customer. This is the same as telephone or electrical service. Our goal is universal service to anyone and anywhere.

What makes good financial health for a water District?

- 1. GROWTH** - As with any business a larger customer base allows you to spread additional costs such as regulatory, new improvements, repairs and replacement.
- 2. Stable Revenue**- Unlike a City, the only way the Districts have of obtaining revenue is from the sale of water. These payments of the customer allow the district to borrow funds for system upgrades, make repairs, and hire qualified operators. A City on the other hand has the ability to levy property taxes, sales taxes, and special assessments.
- 3. Planning**- Many Water Districts have gone into long term debt in areas other than those properties that would be directly annexed. This would include water treatment plants, pumping stations, and pipelines, which may be located many miles from the annexed area. The existing customers and future customers from these areas

helps the District pay for this infrastructure. Water districts like any other good utility, constantly plan for the future assuming a certain base of users and areas of the system that need improvement.

Objections to HB 1440

This bill would deny the water districts the ability to recover our **long term** operating costs and debt. Over 45% of my customers are near cities. When the water district law Chapter 61-35 was enacted, the state recognized that the water district was the only entity with the ability to build a water system across county and city boundaries. This allowed the districts to do long range planning to best serve their jurisdiction.

What this bill is all about is setting up ways for cities to cherry pick high density users or potential users. It uses words such as "the city shall designate", "the city shall fairly compensate", "following the transfer" all of these words **assume** that the city can do what they wish and only discusses what compensation to the district they make.

Section 2. The heading says it all does it not. Franchise Fee.

Section 3

"unless the city gives written notice designating a different supplier"

"if unable to reach an agreement" then "Fair compensation to the district"

5. city to "adopt and enforce regulations for the operations of a water service supplier, including standards of water quality, classification of water customers, rates and billing practices" When has the city become a regulator of a utility other than their own? So the city can arbitrarily annex several miles around the city and dictate what the district can charge? That's like the city telling the county what its taxes can be.

The only agency which is capable of regulating water quality and operations is the ND State Department of Health and EPA.

All of these assumptions do not take into account what is in the best interest of the regional community of the water district. The interest of the city is located only on a small area of that community not the area as a whole. If you feel this bill is truly fair as one water district manager stated just switch the words "city" and "water district" around and read it again.

For many years the majorities of cities have done nothing to improve the lives of those just outside of their boundaries. Now only because it is in their financial interest to annex and serve a high density area are they worried about who serves the area water.

The statement has been made that a city cannot grow if they are not allowed to serve the water in an annexed area. This statement is simply **not true**. They use words such as monopoly, but the truth is if this bill passes, the only entity which would have a monopoly would be the Cities themselves. Allowing cherry picking by cities will reduce the willingness of districts to invest or serve boundary areas. The rural residents in these areas would remain un-served. We will be creating green zones around each City.

The residents of an annexed area currently would still pay city taxes, drive on city streets, and receive city emergency protection. The only difference is that residents are served water by the District. How does this stop their growth?

The major portion of this bill is in direct violation of federal law 1926 B for those systems that have a Federal loan. Also the State of North Dakota must have felt that the 1926B law was a wise legislative effort as they mirrored it in Chapter 6-09.4-22 for repayment of state loans. In my district's case we have a federal loan. My attorney tells me that in the event of an action that he will have most of this bill thrown out and it is not applicable.

SWC funding

The state water commission, before providing grants or loans to a district or city, shall consider whether a district and city within a district have developed a mutually acceptable water service agreement to accommodate anticipated future growth of a

city within a district, but the commission may not have these considerations affect the funding of other projects within a district.

I don't even know what this is supposed to say. The SWC will consider? So the SWC is supposed to ask if each city and District have a "mutually acceptable" plan? Are we talking about the ones which are within my jurisdiction and part of the district or the ones which want nothing to do with cooperation with their neighbors? What consideration is the SWC supposed to make?

In my opinion this bill is very poor law. Instead of enhancing cooperation between entities it directly pits rural against city. Please do not allow this to happen. We can settle our disputes locally and have in many parts of our state.

This bill appears to be only aimed at very specific districts and cities. It has been said by the sponsors of this bill that they only want to set up a process to foster communication and set up a method to decide disputes. **It's interesting that the outcome envisioned is only a one way street.**

Another thing said by some is that they wanted to set up a process to limit tax payers from wasting money in lawsuits. This bill does exactly the opposite. This bill because of its unfair purpose will encourage each water district with a federal loan to immediately file in federal court upon notice of annexation.

For example let's look at the map of the Burlington area. The two areas in red are the two potential subdivisions which the city wants to serve the water. My district water mains have been surrounding these vacant lands for many years. The city can only annex and serve water by using what's called strip annexation or in other words cherry picking. Will I have to improve infrastructure to serve these? Of course! The only issue is the supply infrastructure as the infrastructure inside the subdivision will have to be the same no matter who serves it. The difference is the area which can benefit from the same improvements.

Many of the improvements of a district in one area can benefit a large area. The service by a city can only benefit that small area annexed.

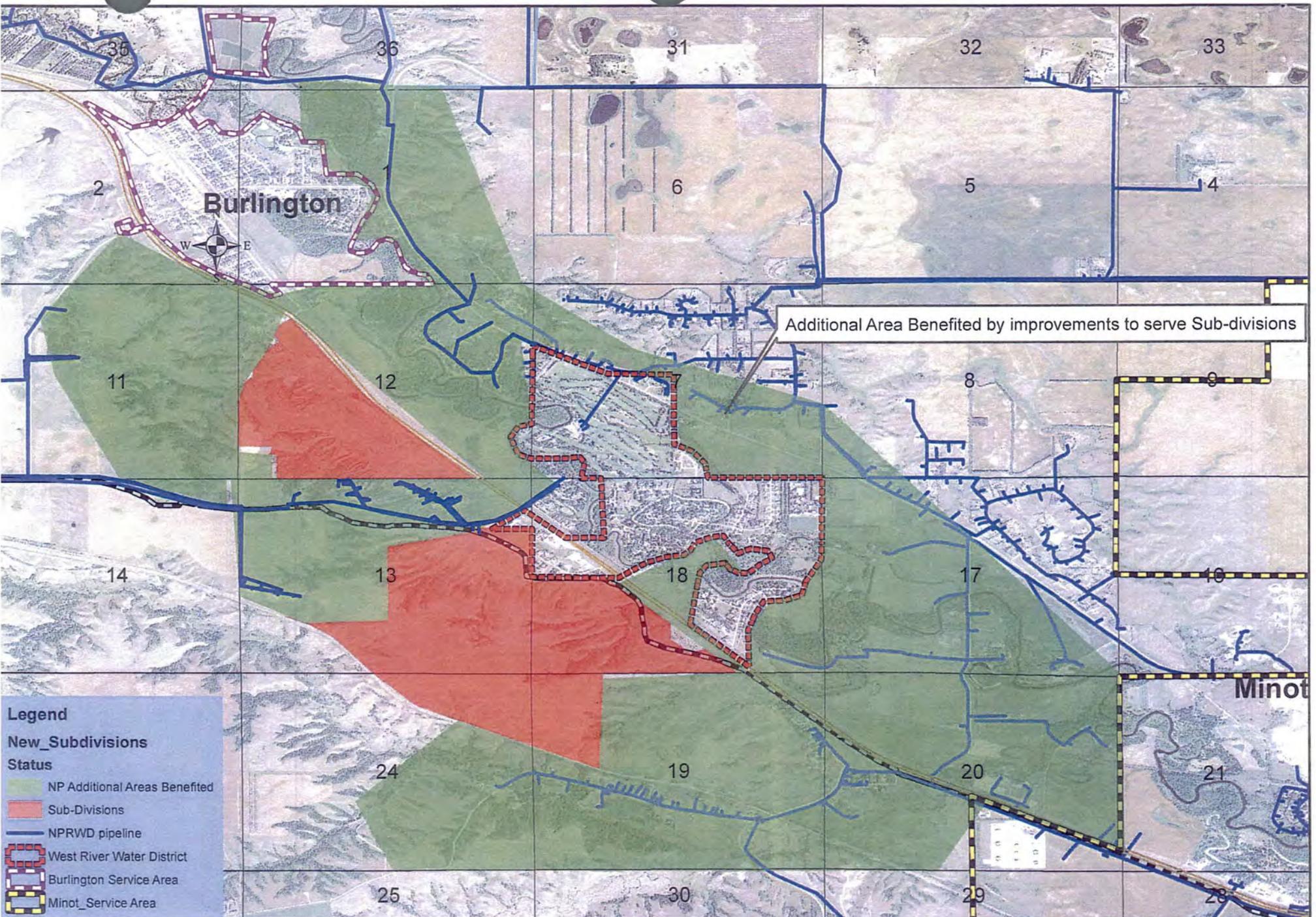
The state of North Dakota for many years has promoted regionalization of water through water districts and the state water projects such as NAWS, South West Water Authority and the Red River Valley Project.

This bill is in direct opposition to that policy, this bill is about reversing the regional solution of water issues. The addition of an area served by a city only serves that area, an expansion of a sub-division served by a water district benefits the entire district geographical area.

This bill only causes more problems than it attempts to solve. And again it appears to be an attempt to use a state hammer to solve a specific local issue.

If the framers of this bill are successful who will serve the water to the rural residents, agricultural businesses and industry along with the other cities when the water district is rendered financially defunct.

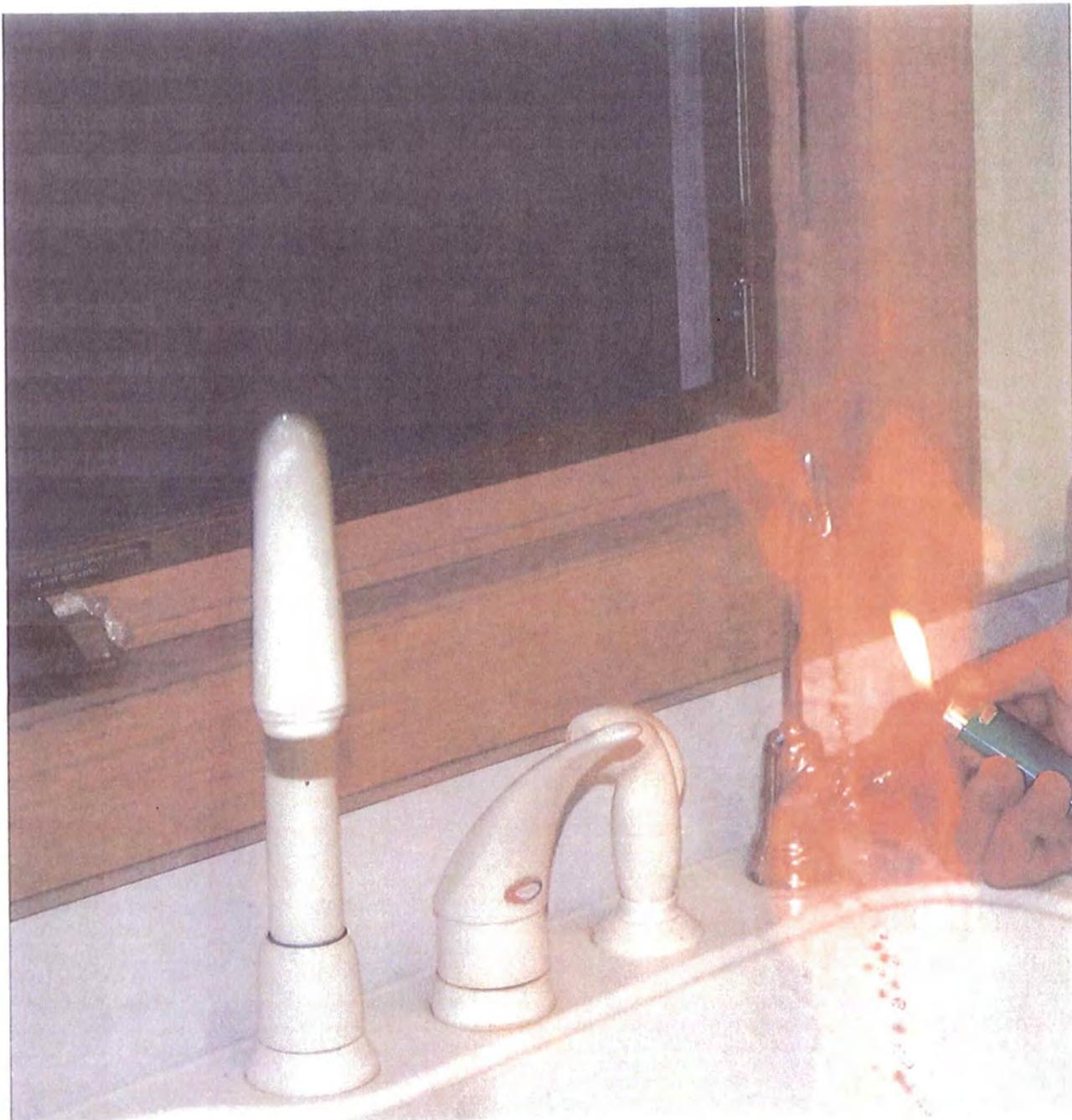
NORTH PRAIRIE RURAL WATER DISTRICT



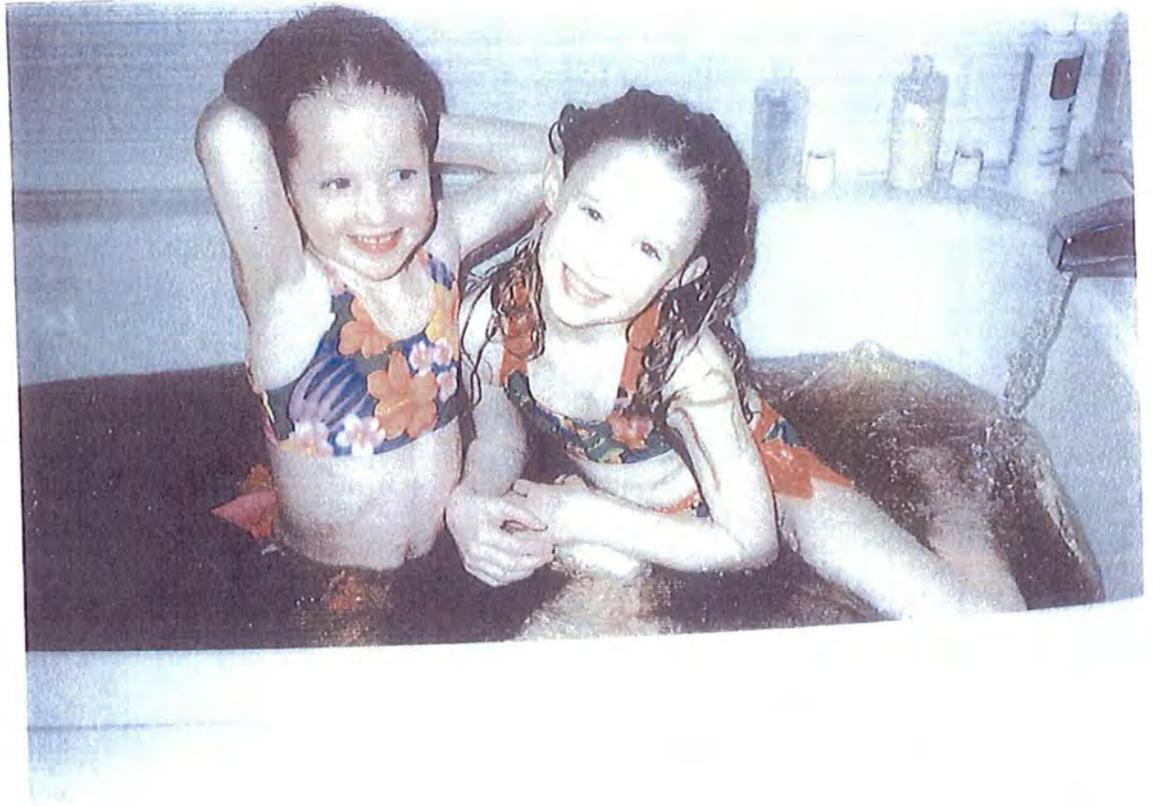
Additional Area Benefited by improvements to serve Sub-divisions

Burlington

Minot



Richard and Mary Thompson
4110 20th Ave. S.E.
Minot, ND 58701



The real true innocence
of Children.

IF they only knew
what they were taking
a bath in.

TESTIMONY IN OPPOSITION TO HB 1440

Chairman Andrist and members of the committee, my name is Jerry Blomeke and I am the General Manager of Cass Rural Water District. I am testifying in opposition to HB 1440.

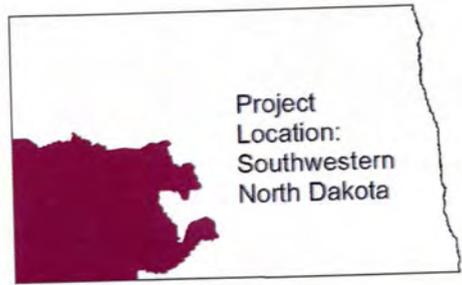
First this proposed legislation is unnecessary. In situations where a rural water district and a municipality do not agree on service territory it is best if those disagreements are worked out on the local level rather than dictated by the state legislature. Each situation is a little different and consequently, a one size fits all solution may not work in all cases. In our case we have been able to work out solutions with both the cities of Fargo and West Fargo in ways that have benefited all parties. It took time for the parties reach an agreement that was acceptable, however it can be done. These solutions would have been made much more difficult had this legislation been in place when we were in negotiations with Fargo and West Fargo.

Second, HB 1440 will have no effect on the federal law that protects the service territory of rural water systems that are indebted to the United States Department of Agriculture. This federal law commonly referred to as 1926b has been in place since the mid 1960's. It has been challenged numerous times by municipalities and states all across the country and the federal courts have been very consistent in upholding the right of rural water systems to maintain their service territories. In addition North Dakota Century Code 6-09.4-22 is a state law patterned after 1926b that also protects the service territory of North Dakota Public Finance Authority borrowers from encroachment. As a result HB 1440 not only flies in the face of federal law but also is in opposition to North Dakota Law.

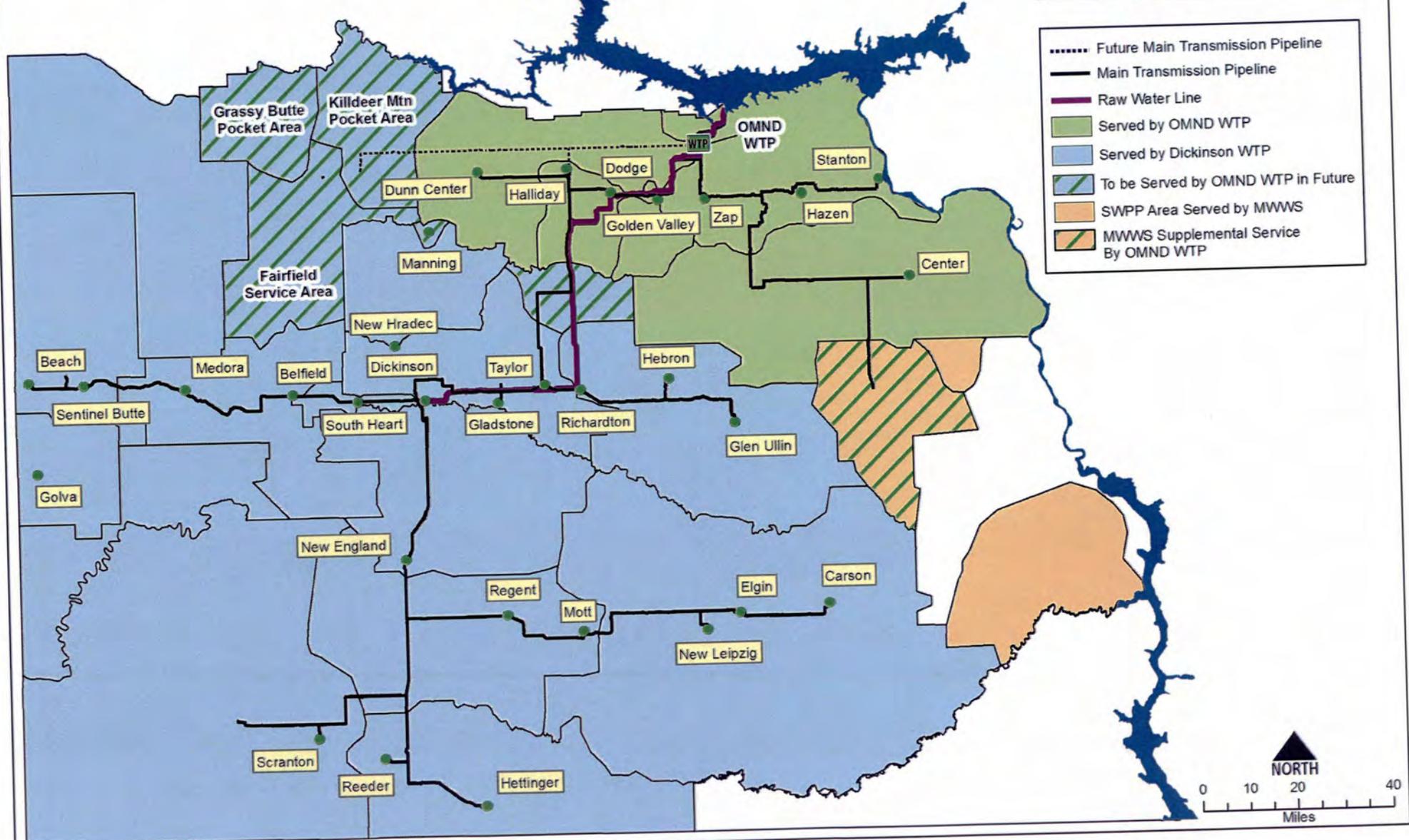
Finally, it is my belief that HB 1440 will not result in an efficient mechanism for resolving territorial disputes between a rural water district and a municipality. Since HB 1440 sets up a situation where a state statute opposes both federal and state law it will certainly result in litigation. Again HB 1440 takes the decision out of local hands and puts it in the hands of the state legislature.

As a result of these problems I am suggesting that this issue be referred to an interim study committee so that it can be more fully analyzed.

Southwest Pipeline Project



- Future Main Transmission Pipeline
- Main Transmission Pipeline
- Raw Water Line
- Served by OMND WTP
- Served by Dickinson WTP
- To be Served by OMND WTP in Future
- SWPP Area Served by MWWS
- MWWS Supplemental Service By OMND WTP



Testimony of Jason Strand
In Support of HB 1440
Political Subdivisions Committee
Bismarck, North Dakota- March 21, 2013

Chairman Andrist and members of the Committee, for the record my name is Jason Strand, Surrey City Council member. I am here to urge your support of House Bill (HB) 1440, which provides much needed guidance for both municipalities and water districts. This addresses the needed ability for a municipality to grow. Included in my testimony are visuals to help you understand the importance of this bill. Is it fair for a water district to be compensated the same for each situation depicted in these pictures?

Water Districts are created by state law. As such it is important that the State exercise oversight of the water districts. Historically, the state has given funding preference to Rural Water Districts over Municipalities. This was done to ensure the availability of reliable, clean, drinkable water in rural areas to the residents of this state. However, because of the economic growth of our state and the increase in population of once stagnant municipalities, it appears most of the disagreements between municipalities and water districts are not occurring in rural areas but in some cases within the municipalities' corporate boundaries and in the extraterritorial zones of municipalities. Currently N.D.C.C. 61-35-26 requires a municipality to compensate a water district for losses resulting from annexation by a city under N.D.C.C 40-51.2, but does not provide any guidance on how compensation is accounted for. Some water districts have claimed that even though there are no customers in the area they still need to be compensated as the area is within their exclusive service territory.

This bill provides guidance on water service for multiple situations such as when there are no customers in the area that is to be annexed, and when there are district customers in the area to be annexed. Again I ask you to recall the visual situations that I have provided. I believe that each of the situations is different in those pictures and this bill covers both situations. Additionally the bill covers the negotiation process for water service to these areas. As elected officials we have the duty to serve the best interest of our constituents.

Are we serving the best interest of our constituents to allow public funds to be used to fund projects in these disputed areas without mutually acceptable water service agreements being in place? I would argue no. Without an agreement in place there could be duplication of infrastructure. Which would affect the amount of funding needed. This may or may not result in a duplication of state funding, however it could result in special assessments to residents of the municipality if no state funds are received. In the end wouldn't you agree these additional costs end up being passed to the cost of the lots of the area being developed, or the taxes paid by the constituents that we have taken an oath to serve? This is why it is important for the state water commission to consider if there are mutually acceptable agreements in place before the authorize grants or loans for funding projects.

In conclusion I would like to thank you for your time and urge your support of HB 1440.



CITY'S ETA WITHOUT RURAL WATER DISTRICT
CUSTOMERS AND/OR INFRASTRUCTURE

CITY LIMITS

CITY'S ETA WITH RURAL WATER DISTRICT
CUSTOMERS AND/OR INFRASTRUCTURE

LEGEND

-  CITY LIMITS
-  RURAL DISTRICT CUSTOMER
WITHIN CITY
-  CITY'S ETA WITHOUT RURAL
WATER DISTRICT
CUSTOMERS AND/OR
INFRASTRUCTURE
-  CITY CUSTOMER
WITHIN RURAL DISTRICT
-  CITY'S ETA WITH RURAL
WATER DISTRICT
CUSTOMERS AND/OR
INFRASTRUCTURE



HB 1440
Testimony

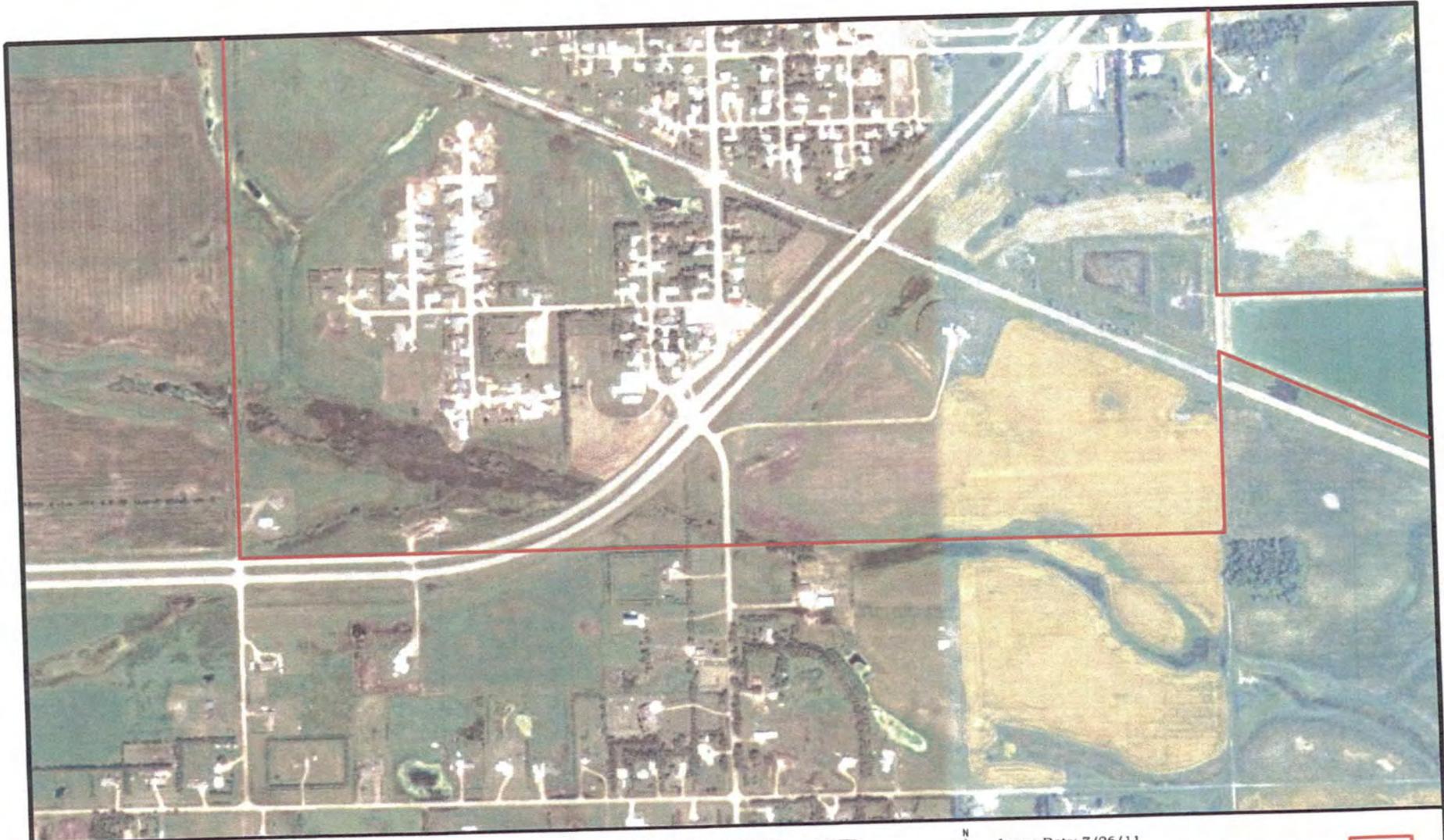
SURREY, ND
- NORTH SIDE -



Image Date: 7/26/11
250 125 0 250 500
Scale: 1"=500'

Surrey Corporate Limits =





HB 1440
Testimony

SURREY, ND
- SOUTH SIDE -



Image Date: 7/26/11
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Scale: 1"=500'

Surrey Corporate Limits =



Surrey Water Situation as it Relates to North Prairie

1. Surrey has an existing bulk service contract with North Prairie for the purchase of 100% of the city's water dating back to 1975 for up to 3 million gallons per month. North Prairie has limited the flow rate to 70 gpm although the contract does not state this limit.
2. North Prairie purchases water from Minot to resell to Surrey
3. North Prairie delivers water through an 8 inch line to a 250,000 gallon reservoir owned by Surrey
4. Surrey then pumps the water into its own distribution system including a water tower to serve its existing customers
5. Surrey has approved a portion of the 640 acre Silver Spring Development that includes 1680 units, part of this development is within the "old city limits" and some has been annexed into the city
6. Surrey currently serves a rural customer at the discretion of North Prairie, and a couple that were required to be served when Surrey initially got funding for its water system
7. 43 acres of the development has been constructed including streets, sewer, and water. The water system has been tied into the city's existing water distribution system
8. An additional 36 acres have water and sewer but not streets
9. Surrey has been in discussion with North Prairie for over a year on possible expansions of the city.
10. Surrey has offered a couple options for providing water service and received no response when they were offered. The Council even met with a delegation from North Prairie regarding negotiating an agreement
11. North Prairie has initiated litigation against the City of Surrey and the Developer
12. A temporary short term agreement has been reached while the entities attempt to work towards a permanent solution
13. There is a history of supply issues to the City of Surrey from North Prairie
14. Surrey has asked that North Prairie provide information showing how they intent to serve the development to ensure it will not affect the water supply to Surrey
15. North Prairie has not provided information to show they have adequate supply to serve the entire development.
16. North Prairie has requested the developer to:
 - Not connect the water lines to the existing Surrey water lines but keep separate
 - Construct a new supply line around Surrey at the developers cost
 - Provide a lot and construct a new water tower at the developers cost
17. North Prairie will bill the users in the new development at the full rural water rate of \$40.50 per month plus \$6.75 per thousand gallons. Surrey rate is \$20 per month including 2000 gallons then \$4.50 per thousand. For 5000 gallons the North Prairie monthly bill will be \$74.25 while the Surrey bill will be \$33.50
18. North Prairie's attorney has previously stated that Surrey has no legal position for the development to comply with Surrey's ordinances, regulations, and policies regarding water infrastructure.

#1

Sixty-third
Legislative Assembly
of North Dakota

REVISED HOUSE BILL NO. 1440
(Draft F for discussion)

Introduced by

1 A BILL for an Act to create and enact section 61-35-26.1, section 61-35-26.2, section
2 61-35-26.3, and section 61-35-26.4 of the North Dakota Century Code, relating to water
3 service by cities and water districts and state water commission policies on funds for
4 water districts.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** Section 61-35-26.1 of the North Dakota Century Code is created
7 and enacted as follows:

8 **61-35-26.1. Statement of Intent.**

9 It is the intent of the Legislative Assembly that potable water should be available
10 in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard
11 of living and to promote economic growth and development. In order to meet this
12 objective in the most economical way, water service districts and city water service
13 systems need to coordinate their service plans. Competition for users and duplication of
14 service are to be avoided whenever possible.

15 **SECTION 2.** Section 61-35-26.2 of the North Dakota Century Code is created
16 and enacted as follows:

17 **61-35-26.2. Plans for water service by providers – Filing plans – Existing**
18 **agreements.**

19 1. Any city planning to expand water service through annexation shall establish
20 its city water service area plan. In doing so, the city shall notify any other water service
provider whose water service area is affected by the city's water service area plan.

1 2. Each city water service area plan shall be filed with the commission and will be
2 of record. Upon filing of the plan with the commission, the city may proceed with water
3 service to the annexed area. Each city water service area plan will be perfected by a
4 water service agreement among the water service providers who are encompassed by
5 or who abut the water service area boundary.

6 3. The provisions of this Act may not supersede an existing water service
7 agreement between a city and a district.

8 **SECTION 3.** Section 61-35-26.3 of the North Dakota Century Code is created
9 and enacted as follows:

10 **61-35-26.3. State water commission funding.**

11 The commission, before providing grants or loans to a district or city for a water
12 service project in any area within the extraterritorial zoning jurisdiction of any affected
13 city, shall require that a district and city have a water service agreement. The absence
14 of a water service agreement shall not affect the funding by the commission of other
15 projects for a district or city that are not related to potable water service and are not
16 located within the extraterritorial zoning jurisdiction.

17 **SECTION 4.** Section 61-35-26.4 of the North Dakota Century Code is created
18 and enacted as follows:

19 **61-35-26.4. Water service agreement – Mediation – Administrative law judge.**

20 1. If a water service agreement between the district and the city is not executed
21 within sixty days after the city notifies the district that a city water service area plan has
22 been developed, the matter must be submitted to a committee for mediation. The
23 committee must be comprised of a mediator retained jointly by the city and the district,
24 two members appointed by the governing body of the city and two members appointed

1 by the district. The retained mediator shall arrange and preside over the mediation
2 proceedings.

3 2. If the mediation committee is unable to resolve the dispute to the satisfaction
4 of the parties involved, either party may petition the office of administrative hearings to
5 appoint an administrative law judge to determine the terms of the water service
6 agreement. A hearing may not be held until after at least two weeks' written notice has
7 been given to the parties involved in the dispute. At the hearing, the retained mediator
8 who presided over the mediation proceedings under subsection 1 may provide
9 information to the administrative law judge on the dispute between the parties involved
10 and any proposed resolutions or recommendations made by a majority of the members
11 appointed to the committee. Any resident of, or person owning property in, a city or
12 district involved in the dispute, a representative of such a resident or property owner,
13 and any representative of a city or district involved, may appear at the hearing and
14 present evidence on any matter to be determined by the administrative law judge. A
15 decision by the administrative law judge is binding upon all the parties involved in the
16 dispute and remains effective until the city and the district agree to a change in the
17 water service agreement. An administrative law judge shall consider the following
18 factors related to water service in the annexed area in making a decision under this
19 subsection:

- 20 a. The recommendations of the mediation committee;
21 b. The firefighting flow capacity of the water system;
22 c. The anticipated growth patterns of the district and city involved in the
23 dispute;

- 1 d. Special conditions or needs including topographic or physical features
- 2 influencing service;
- 3 e. The system capacity and trunk main delivery structure of each provider;
- 4 f. The age, condition and worth of the affected existing infrastructure;
- 5 g. Outstanding debt attributable to current users;
- 6 h. The impact on future revenues lost from existing and future customers;
- 7 i. Whether development would have occurred without annexation; and
- 8 j. Any other factor determined to be relevant by the administrative law
- 9 judge.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

That the Senate recede from its amendments as printed on pages 1262-1264 of the House Journal and pages 1149-1151 of the Senate Journal and that Engrossed House Bill No. 1440 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact sections 61-35-26.1, 61-35-26.2, 61-35-26.3, and 61-35-26.4 of the North Dakota Century Code, relating to water services by cities and water districts and state water commission policies on funds for water districts and cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-35-26.1 of the North Dakota Century Code is created and enacted as follows:

61-35-26.1. Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

SECTION 2. Section 61-35-26.2 of the North Dakota Century Code is created and enacted as follows:

61-35-26.2. Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall develop a city water service area plan. The city shall consult with any other water service provider, including a district, whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area as provided in section 61-35-26. A city water service area plan is enforceable when there is a water service agreement among the water service providers, including a district, that are encompassed by or which abut the water service area boundary.
3. Sections 61-35-26.1 through 61-35-26.4 do not supersede an existing water service agreement between a city and a district.

SECTION 3. Section 61-35-26.3 of the North Dakota Century Code is created and enacted as follows:

61-35-26.3. State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

SECTION 4. Section 61-35-26.4 of the North Dakota Century Code is created and enacted as follows:

61-35-26.4. Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been developed, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.

2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;

- g. Outstanding debt attributable to current users;
- h. The impact on future revenues lost from existing infrastructure and future customers;
- i. Whether development would have occurred without annexation; and
- j. Any other factor determined to be relevant by the administrative law judge."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

Page 1, line 1, after "A BILL" replace the remainder of the bill with

1 "for an Act to create and enact section 61-35-26.1, section 61-35-26.2, section 61-35-
2 26.3, and section 61-35-26.4 of the North Dakota Century Code, relating to water
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8 **61-35-26.1. Statement of Intent.**

9 It is the intent of the Legislative Assembly that potable water should be available
10 in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard
11 of living and to promote economic growth and development. In order to meet this
12 objective in the most economical way, water districts and city water systems need to
13 coordinate their service plans. Competition for users and duplication of service must be
14 avoided whenever possible.

15 **SECTION 2.** Section 61-35-26.2 of the North Dakota Century Code is created
16 and enacted as follows:

17 **61-35-26.2. Plans for water service by providers – Filing plans – Existing**
18 **agreements.**

19 1. A city planning to expand water service through annexation shall develop a
20 water service area plan. The city shall consult with any other water service provider,
21 including a district, whose water service area is affected by the water service area plan.

1 2. The city shall file the water service area plan with the commission. Upon filing
2 of the plan with the commission, the city may proceed with water service to the annexed
3 area as provided in section 61-35-26. A water service area plan is perfected by a water
4 service agreement among the water service providers, including a district, that are
5 encompassed by or which abut the water service area boundary.

6 3. The provisions of this Act do not supersede an existing water service
7 agreement between a city and a district.

8 **SECTION 3.** Section 61-35-26.3 of the North Dakota Century Code is created
9 and enacted as follows:

10 **61-35-26.3. State water commission funding.**

11 Before providing grants or loans to a district or city for a water service project in
12 any area within the extraterritorial zoning jurisdiction of any affected city, the
13 commission shall require the district and city have a water service agreement. The
14 absence of a water service agreement shall not affect the funding by the commission of
15 other projects for a district or city which are not related to potable water service and are
16 not located within the extraterritorial zoning jurisdiction.

17 **SECTION 4.** Section 61-35-26.4 of the North Dakota Century Code is created
18 and enacted as follows:

19 **61-35-26.4. Water service agreement – Mediation – Administrative law judge.**

20 1. If a water service agreement between the district and the city is not executed
21 within sixty days after the city notifies the district that a city water service area plan has
22 been developed, the matter must be submitted to a committee for mediation. The
23 committee must be comprised of a mediator retained jointly by the city and the district,
24 two members appointed by the governing body of the city and two members appointed

1 by the district. The retained mediator shall arrange and preside over the mediation
2 proceedings.

3 2. If the mediation committee is unable to resolve the dispute to the satisfaction
4 of the parties involved, either party may petition the office of administrative hearings to
5 appoint an administrative law judge to determine the terms of the water service
6 agreement. Before a hearing may be held, at least two weeks' written notice must be
7 given to the parties involved in the dispute. At the hearing, the retained mediator who
8 presided over the mediation proceedings may provide information to the administrative
9 law judge on the dispute between the parties involved and any proposed resolutions or
10 recommendations made by a majority of the members appointed to the committee. Any
11 resident of or person owning property in a city or district involved in the dispute, or a
12 representative of such a resident or property owner, and any representative of a city or
13 district involved, may appear at the hearing and present evidence on any matter to be
14 determined by the administrative law judge. A decision by the administrative law judge
15 must consider the following factors related to water service in the annexed area in
16 making a decision under this subsection:

- 17 a. The recommendation of the mediation committee;
18 b. The firefighting flow capacity of the water system;
19 c. The anticipated growth patterns of the district and city involved in the
20 dispute;
21 d. Special conditions or needs including topographic or physical features
22 influencing service;
23 e. The system capacity and trunk main delivery structure of each provider;
24 f. The age, condition and worth of the affected existing infrastructure;

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- 1 g. Outstanding debt attributable to current users;
- 2 h. The impact on future revenues lost from existing and future customers;
- 3 i. Whether development would have occurred without annexation; and
- 4 j. Any other factor determined to be relevant by the administrative law
- 5 judge."

6

7

Renumber accordingly