**2013 SENATE NATURAL RESOURCES** 

SB 2233

#### 2013 SENATE STANDING COMMITTEE MINUTES

#### **Senate Natural Resources Committee**

Fort Lincoln Room, State Capitol

SB 2233 January 31, 2013 18123

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project, and relating to an infrastructure revolving loan fund allocation of moneys in the oil extraction tax development fund, the Red River water supply project, and oversight of the western area water supply project, and relating to funding of the Red River valley water supply project; and to provide a continuing appropriation

#### **Minutes:**

Written testimony attached

Darlen

Chairman Lyson opened the hearing on SB 2233.

Senator Grindberg, District 41, introduced the bill. He asked the committee to kill SB 2274. See attachment #1 for his written testimony.

There was discussion about the fact that Senator Grindberg was working off the 4001 version of the bill when he referenced section numbers, not the 4000 version. (Ends at 06:24)

Brad Wimmer, a Fargo City Commissioner and a representative of the F-M Diversion Authority, presented written testimony in favor of the bill. See attachment #2. (Ends at 8:06)

Dan Jonasson, Director of Public Works for the City of Minot, stood in support of the bill. See attachment #3. (Ends at 8:55)

Ken Vein, member of the Grand Forks city council and Chairman of the Garrison Diversion Conservancy District, presented written testimony in favor of the bill. See attachment #4. He spoke about the fact that the Red River valley experiences both flooding and drought. As an example on August 4<sup>th</sup> it was flowing at 653 cfs; two months later on October 8<sup>th</sup> it was at 95 cfs. In two months that was an 85% reduction of flow at Fargo. He cited other examples. He feels we have to be very cautious about the impacts for the future. Studies have shown if we have another drought similar to the 1930's, the impact on the state could

be \$2 billion/year and it could extend for quite a period of time. The proposed project will take about 6 years to build so we cannot wait for a drought to start before we take action. (12:00 to 16:40) There was discussion about the Bureau of Reclamation Study and the cost share plan for the federal, state and local to share the cost. The state has been waiting for 5 years for a record of decision from the Department of the Interior. They are not able to determine why it has not been forthcoming. If the federal funding doesn't come through they will have to look at additional state funding. The change in the bill away from the 1/3, 1/3 cost share is referenced in section 9, amendment, 61-24.7-01, paragraph one... The 1/3 has been struck through and it has been left open. The new cost share is yet to be determined.

(16:45 to 22:11) Dave Koland, the general manager of Garrison Diversion Conservancy District, stood in support of SB 2233. He addressed section 4, number 6 and 7 which deals with a title transfer and also with setting a limit on the number of acres that can be irrigated. There was discussion about page 7 of the 4001 version, section 6, line 8, the phrase "begin discussions". They discussed what is meant by that phrase and what do they expect as a result of the discussions. The discussion covered that a title transfer takes a lot of negotiating and generally takes 7-10 years. There were questions posed such as: "Would ND have another large expenditure in the future?" Mr. Koland made a point that a canal requires ongoing maintenance to keep it operating. Mr. Koland anticipates that the federal government would pay the state to take over the maintenance of the canal. When questioned, he estimated the cost to the federal government to construct the canal was 1.2 billion dollars.

John Olson, representing Western Area Water Supply Authority, suggested two amendments. See page 2 of attachment #5.

Denton Zubke, Chairman of the Western Area Water Supply Authority, presented written testimony in favor of the bill. See attachment #6. His testimony is centered on version 4000 of the bill. He was not aware that there was a version 4001 when his testimony was prepared. (25:00 to 43:00)

There was questioning and discussion: the 58,000 was determined by a study done at NDSU. The population went from 25,000 in 2011 to 58,000 presently.

Senator Hogue asked Mr. Zubke if the obligation to repay the state were taken away, would he have any objection to being subject to control by the State Water Commission and to letting the private water suppliers set up wherever the market took them.

Mr. Zubke said he would still object because if you take away their repayment requirements also imbedded in those industrial sales were some capital requirements. They had some additional plans for expansions that need to be done. They modeled that and found that even if the debt repayments were taken away, the rates would increase dramatically for the local water users. (Ends at 45:30)

(45:40 to 47:50) There was a discussion about when this was put in place during a previous legislative session WAWS felt there was room for everyone to be in the market for supplying water and now WAWS seems to feel differently about it.

(47:50 to 51:37) Mr. Zubke mentioned that HB 1206 is a good piece of legislation. There was discussion about the relationship between the State Water Commission and WAWS and how the bill would change that. Mr. Zubke feels WAWS has operated very well for two years and is wondering why it needs to be changed now. There was also discussion about whether WAWS would initiate a lawsuit. There was also discussion about the "chain of command". For the WAWS board to oppose an application for instance, the board would discuss it, it would be recorded in minutes, and then the chairman would initiate the correspondence.

(51:40 to 54:40) The competition issue was discussed further. Mr. Zubke explained that the industrial sales were targeted for repayment of the debt. If you allow other entities to parallel your pipeline and skim off the profitable sales and leave you with all of the unprofitable rural users, how are you going to repay those debts? Then the burden falls back on the ND taxpayer. There were also questions about how much WAWS has spent on legal fees in the last 2 years. Mr. Zubke will get that information to the committee.

Ward Koeser, Mayor of the City of Williston and a director of the Western Area Water Supply Authority, stood in favor of SB 2233, but he expressed concern over two sections of the bill. See attachment #7. (Ends at 59:15)

Senator Hogue asked Mr. Koeser if the debt obligation was removed from WAWS would the city of Williston have any objection to putting WAWS under the control of the State Water Commission and requiring it to allow competition? Mr. Koeser said that has not been an option to them so he has not thought that through.

Mr. Koeser explained the dynamics of the water suppliers and those being served by them. There were questions and discussion regarding the possibility of the reduction of flexibility, fear of the unknown, whether WAWS would be asking for additional funding from the legislature, and the possible amount of the request. (1:00:00 to 1:04:00)

Senator Triplett asked how WAWS could call this a private business model when they have the ability to come back to the legislature and ask for more public dollars. At the same time they are asking to be free from public regulation and they are asking the legislature to be sure they have a monopoly.

Mr. Koeser explained they are not asking for a monopoly, they just don't want others to be able to skim off the easy money from the project and leave the rest to WAWS. (1:05:00 to 1:06:40)

There were questions and discussion about the 40-80 million that may be asked for. That is not for cost over-runs, it is 40 million for the initial plan and 40 million for an expansion to the project. (Ends at 01:08:00)

Mr. Koeser in answering a question from Senator Laffen explained that the initial intent of how this was structured was to have the oil industry essentially pay for the infrastructure to get water to rural North Dakota. WAWS wants to keep a small portion of the sales to the oil

industry so they can be solvent as they provide water to the residents of North Dakota. (Ends at 1:12:00)

Richard Cayko presented written testimony #8 in favor of SB 2233 but with concerns with section 4, paragraph 7 and section 11. (Ends at 1:17:27)

There was discussion about the possible negative effects of section 11. (Ends at 1:20:00)

(1:23:00 to 1:26:40) Mark Owan, Chairman of the Williams Rural Water District, submitted attached testimony #9.

Michael Hynek, Mayor of the City of Stanley, submitted attached testimony #10.

There was questioning and discussion about the competition for the sales of water. (1:30:00 to 1:35:00)

Dale Patten, a taxpayer and concerned citizen, presented attached testimony #11. He expressed both support and concern.

There was discussion about whether the costs have been held down with WAWS supplying the water. There was a question about installation cost. Mr. Patten said he could look those up. Mr. Patten mentioned that in the extremely rural areas the only way it will work out is to have the industrial sales.

Glenn McCrory, a member of the board of directors of the ND Water Resource Districts Association, stood in support of SB 2233. See attached testimony #12. He is opposed to stopping people from getting permits.

John Andrist from District 2 spoke up as a creator of this (WAWS) project two years ago. He worked harder and longer on this project than on any other in his 20 years in the legislature. The vision was to build a municipal and rural water supply and delivery service and to pay for it by selling industrial water to the oil patch. It was an unprecedented plan. He feels we can't let the legs get cut from underneath it by letting private developers build industrial lines right over the top of ours so we can't sell the water, or we are going to be right back here two years from now figuring out how to pay for this system. (Ends at 1:47:20)

Mary Masset, Managing CEO for the Southwest Water Authority, stood in support of SB 2233. She much prefers this bill over SB 2274. See attachment #13. She stated that the state has not slowed up their project; it was funding that slowed it up.

(1:50:00 to 1:55:55) Robert Harms, lobbyist for the independent water providers, spoke "fully in support of the bill". He spoke about the competition issue in section 7 of section 4 and the oversight issue mentioned on page 9. He does not feel that WAWS has adequate state oversight. He feels that the governance structure of WAWS is an aberration in state law. He elaborated on the oversight issue, the governance issue, and the competition issue.

(1:56:20 to 1:58:30) There was a question about WAWS needing more oversight from the State Water Commission. Were there actual issues with the delivery of the product by that group? Mr. Harms addressed the question.

(1:58:50 to 2:12:37) Michael Moore is an attorney representing a collection of clients in the water industry and private families in the water industry in the Williston area since 2008. He gave a history of his involvement in this endeavor. He presented attached testimony #14. He feels they have always worked through the proper channels and is disappointed that this has become a battle. (He referred to the letters in attached testimony #14.) He explained that some of his clients have spent a lot of money to meet the demands for water. As an example one of his clients built a pipeline in 2009 to decrease the overland transfer of water. He feels his group helped to get the easements from the Corps of Engineers and now the state doesn't want them to be part of the water supply industry. He feels the story has changed mid-stream. Many of his clients have invested a lot and it is not that easy to just walk away from it.

There was discussion about the letter on page two of testimony #14. There has been no follow up to the letter even though the letter says it "requires further review".

Jon McCreary, owner of JMAC Resources, spoke in support of SB 2233. See attached testimony #15. He explained that on the previous map when it looked like their water line was following the same path as the WAWS line it was because they were following Highway 85 and the nature of water lines is that they are constructed by going from highpoint to high-point. (Ends at 2:24:48)

There was discussion about the competition and what fuels it.

JMAC's permit is 2000 acre ft., it is pending for 10,000 acre ft.; WAWS permit is for 40,000 acre ft. and they are requesting an additional 20,000 acre ft.

Dale Behan, an industrial water supplier, spoke in favor of SB 2233. He submitted Attachment #16. They have been in the water supply business since 2000. In Texas they pioneered the overland water supply business. In 2011 they came to ND and met with the governor, the State Water Commission and the Corps of Engineers. They laid out their proposal and everyone was in favor of it. It was taking water from Lake Sacagawea, building pipelines to reservoirs along the pipelines and, by using their overland water expertise, delivering water to the frac job without the use of trucks. A typical Bakken job requires 70,000 barrels of water. That is 600+ truck loads. Highway 85 would be spared the truck traffic. The water would be transported using aluminum piping and John Deere pumps. He expressed that the original intent of the WAWS project was good, but what is happening now is vastly different than those first intentions. The independent water suppliers were welcomed but now they are being pressured to get out. (Ends at 2:40:20)

There was a question of when they had been given the message "we will work with you" and when they got the message that they were not welcome. The first was after the 2011 legislative session and the other was on January 4, 2013 in the letter on page 3 of attachment #14.

Steve Martinson, a Williston farmer and rancher and Chairman of the Independent Water Providers, spoke in favor of SB 2233. They are in favor of the WAWS project. The Independent Water Suppliers were told that WAWS would need 365 fracs per year to make their payments. That would give them about one third of the market and the independent water suppliers would keep their part of the market which serves 70-80% of the industry. They had many meetings with WAWS and even went through mediation but ended up agreeing not to agree. He still feels there is room for both of them in the market. He presented a number of ideas as to why this competition has become a problem and presented a few possible solutions. (Ends at 2:48:15)

Senator Murphy asked about WAWS initially not intending to sell industrial water, but now they are selling industrial water. Mr. Martinson explained it to the committee.

(2:50:30 to 2:51:50) Senator Triplett asked about the comment concerning the decreased need for water. Mr. Martinson explained it and mentioned that it was based on a market study.

(2:51:52 to 2:54:00) There was questioning and answers about whether more oversight would be the answer. The independent water providers want the bill to be accepted as it has been drafted.

(2:54:10 to 2:55:20) Robert Harms, lobbyist for the independent water providers, addressed a question about water usage. Two years ago we projected the water usage at 20,000 acre feet; what was actually used in 2011 was around 9,000 acre feet. Of that 9,000 acre feet, 7,000 acre feet were for fracking. In answer to a question about the policy bulletin, (attachment #16), Mr. Harms said it is a statement that was distributed to most of the land owners in the WAWS service area. It was included in a letter that was sent to Mr. Behan. He felt the last paragraph in particular was the most striking.

(2:55:50 to 2:57:45) Robert Harms feels the bill as it is written will help solve the problems. It will provide oversight and help them solve the competition issue. He offered a number of cautions and suggestions for the committee.

Senator Lyson left the hearing open.

#### 2013 SENATE STANDING COMMITTEE MINUTES

### Senate Natural Resources Committee

Fort Lincoln Room, State Capitol

SB 2233 February 8, 2013 18607

Conference Committee

Committee Clerk Signature

#### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project, and relating to an infrastructure revolving loan fund allocation of moneys in the oil extraction tax development fund, the Red River water supply project, and oversight of the western area water supply project, and relating to funding of the Red River valley water supply project; and to provide a continuing appropriation

#### Minutes:

No attachments

Chairman Lyson opened the discussion on SB 2233. There is a committee working on resolving this issue. Because this bill has to be out of committee today, the majority leader asked that this committee get it out with a Do Pass motion.

Senator Hogue: Do Pass Senator Unruh: Second

Senator Triplett felt the bill deserves much more discussion than this committee has devoted to it. On page seven of the bill, the Fargo-Moorhead flood control project... that question by itself deserves attention in the legislature and it should be a policy discussion before we just say "whatever they want to do, we will fund them" which is essentially what this bill says. She just feels there are very large issues in this bill that they are passing over lightly. She can't support it but realizes it must get out of committee today. She will vote against it and plan to work on amendments with someone in the House. There are a variety of reasons she cannot vote for this bill.

Senator Lyson said the bill will go to conference committee.

Senator Unruh also said she is not comfortable with a lot of what is in the bill. Something will be worked out.

Roll Call Vote: 5, 1, 1

### FISCAL NOTE Requested by Legislative Council 01/18/2013

Bill/Resolution No.: SB 2233

 A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		
Expenditures						
Appropriations				7		

 B. County, city, school district and township fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

Sabarriorori.	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
	2011-2013 Diemman	2013-2013 Bleffilliam	2010-2017 Dieimidin
Counties			
Cities			
School Districts			
Townships			

 A. Bill and fiscal impact summary: Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

SB 2233 deals with water policy and project goals and development.

B. Fiscal impact sections: Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 2 of SB 2233 re-allocates a portion of the oil extraction tax to the infrastructure revolving loan fund.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

If enacted, SB 2233 will reduce revenues in the resources trust fund by an estimated \$54.695 million in the 2013-15 biennium. These revenues will be re-allocated to the infrastructure revolving loan fund. (Both of these are "other funds" in 1A. above.)

- B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.
- C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

**Telephone:** 328-3402 **Date Prepared:** 01/30/2013

Date:	2-8	-13
Roll Ca	Il Vote #:	1

### 2013 SENATE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. 2233

Senate Natural Resources				Com	mitte
☐ Check here for Confere	nce Committ	ee			
Legislative Council Amendme	nt Number				
Action Taken: 🛛 Do Pas	s 🗌 Do No	t Pass	Amended A	dopt Amer	ndme
Rerefer	to Appropria	tions	Reconsider	+	
Motion Made By	que.	s	econded By Ubuul	2	
Senators	Yes	No	Senators	Yes	No
Senator Lyson			Senator Triplett		V
Senator Burckhard			Senator Murphy	-	
Senator Hogue					
Senator Laffen					
Senator Unruh	\ \/				1 0
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the vote is on an amendment	briefly indicat	te inter	nt:		

Com Standing Committee Report February 8, 2013 1:17pm

#### REPORT OF STANDING COMMITTEE

Module ID: s\_stcomrep\_24\_010

Carrier: Hogue

SB 2233: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO PASS (5 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2233 was placed on the Eleventh order on the calendar.



SB 2233

#### 2013 HOUSE STANDING COMMITTEE MINUTES

## House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 March 7, 2013

19584

☐ Confere	nce Committee
Imineth	
Relating to funding of the Red River V provide a continuing appropriation;	'alley water supply project; and to
Minutes:	13"attached testimony."

Rep. Damschen: We will open the hearing on SB 2233.

Senator Grindberg: I have a handout I will discuss. (1 Testimony) I think this is a good piece of legislation; you will be dealing with some major water issues and making decisions on what direction to take in the subcommittee. We must decide what is more important; wants or needs in the state and finishing projects that we started. We need to have some serious discussions about finishing the projects that we started rather than continuing to fund them.

Mike Dwyer: I represent the North Dakota Water Users Association; in the last 20 years there was a Garrison Diversion Overview Committee consisting of the legislative leadership the 8 leaders and seven others. In 2009 the legislature created the Water Topics Overview Committee which is an interim legislative committee to deal with water. There is so much going on with the water issues during the time when there no interim committee; there was a disconnect because the only time that we would meet with legislators on water projects was before the appropriations meeting and not the policy committee like yourself.

The Water Interim Committee recommended another bill that is coming to you that will extend water interim committee permanently. We know that it is very important to have legislative oversight and an ongoing dialog with the legislature in terms of what is going on in water. We know we have to get water to the eastern part of the state. We have a new report from the Bureau of Reclamation proposing a 600,000 acre feet from the Missouri River to the Colorado River the Colorado River is completely over allocated, it provides water to Los Angeles, Phoenix to the entire southwest U.S.

The Missouri is a likely possibility source of water while our river has abundance at this time we want to be sure that we put ourselves to a position to claim as much right to that water as possible.

(testimony2) the blue sheet is a proposed amendment that came about with discussions with Rep. Porter and Rep. Grinberg. It changes the infrastructure loan fund and it proposes that the infrastructure loan fund instead of being a 2% loan of the oil extraction tax as SB 2233 currently proposes that is be 10% within the resources trust fund so that is continues to be protected for water and it also provides that the water commission would determine the water projects and it has the Bank of N.D. administrating the loans.

Rep. Kelsh: Is there any sort of legal presence that states that the state of North Dakota does own the water in the Missouri River or that still being fought?

Mike Dwyer: One of the areas of that issue is being addressed is the Corp. of Engineers claiming that they can charge us for that water. We claim that we have the right to the natural flows of the Missouri and we contribute 800,000 acre feet to the system. All of the states on the interstate rivers there are a lot of court cases but we don't think the corp. has good standing to claim that they have the right to charge for water behind the reservoir.

Rep. Nathe: you propose that 10% of your resources trust funds are to be appropriated do you know how much money is in the fund?

Mike Dwyer: The fiscal note 42233 indicated that there would be \$540,000.000 in the next biennium. 10% under either opposition it would be about \$54,000.000 that would be placed in that in that revolving fund

Rep. Nathe: How that compare to the last biennium?

Mike Dwyer: In 2007 when the legislature adopted the plan for the Red River WAWS project were at \$20,000.000 and that is why we used the bonding of the tobacco money to come with our share of the Red River WAWS project. In 2009 it was it was about \$200,000.00 in 2011 it was about \$235,000.000 it ended up being more than that. This biennium the governor's budget is \$215,000.000 of the resources trust fund.

Rep. Keiser: Who grants permits to the Missouri River water?

Mike Dwyer: The state engineer.

Rep. Anderson: Can't the State Water Commission give priority to the same projects without putting it into legislation?

Mike Dwyer: After you hear all of the testimony today we can answer that question.

Rep. Keiser: It says loans in this legislation what is the interest rate?

Mike Dwyer: I am assuming it would be closer to prime and the Bank of N.D. would set that.

Rep. Anderson: Is it a new concept to take water out of the Missouri River and putting it into the Colorado River?

Mike Dwyer: It is a study that the Bureau of Reclamation did with seven Colorado River states which was released in 2012. It is a likely choice.

Rep. Silbernagel: Other than the revolving loan fund that is available for these types of projects what other state funding might be available for these projects?

Mike Dwyer: The Bank of N.D. has a community loan program that is funded by general funds from the legislature and also the state revolving loan fund that provides funds and all of the oil impacts.

Rep. Keiser: Can the states say that they have ownership of the flow and the State Water Commission grants permits for 100% of the flow of the Missouri River to the state of N.D.?

Mike Dwyer: The legal argument on the natural flow is what the Corp. of Engineers and whether they have the right to charge us for water.

Dave Koland: General Manager of the Garrison Diversion Conservancy District I will address 2 sections of the bill. On page 6 section 4 it says the State Water Commission and the Garrison Conservancy District shall enter discussions with the Bureau of Reclamation concerning Garrison Diversion Unit Fallibilities and it gives a little bit further explanation on the next page in section? Our project is stilling the construction face and is not a completed project. What we are proposing here is to see what kind of conditions, under what circumstances could N.D. be involved in a title transfer of these facilities.

Rep. Hofstad: Do we have the appropriation to irrigate from the river those acres?

Dave Koland: Yes we have one million acre feet that was assigned to the state for irrigation, municipal water supply and whatever use we can put that to.

Rep. Hofstad: Is it a use it or lose it?

Dave Koland: That is a legal issue, my understanding is that once we put that first bit of irrigation to use then we perfected that water permit. There is a limit on water permits if you don't put them to use in x amount of time.

Rep. Keiser: In terms of perfecting it and the aquifer become lots lower and the Water Commission has to step in and say we have to stop even though it is perfected we are still at risk of having the federal government saying" in some point you are back out" is that a potential risk?

Dave Koland: These are legal questions; the states have reserved to themselves the right to allocate the water within their borders. There is a conflict between the federal and the state on who allocates water but it is the states that allocate their water and the states will go a long ways to defend our rights.

Robert Harms: I am the lobbyist for Independent Water Providers. You are going to hear testimony with regards to section 4 subsection 7 which addresses 1926B and section 11 which calls for oversight of the WAWS project by the State Water Commission. What is all

this fight about? The legislature authorized the creation of WAWS to pay much of the project through the sale of industrial water in the oil industry. WAWS has its own cash flow and its need to generate water sales. On the other side are the Independent Water Providers. WAWS has signaled to us that they don't view themselves as having any restraint other than the location of the water depots that was required in HB 1206. They signaled to us that they can sell as much water fast as they can. 100% of the funding has been N.D. tax payer's money and the current structure of the WAWS project house bill total of 6 WAWS is entitled to retain all of the cash flow once the debts are paid except for 5% of the profit. I handing out some pictures of what happens when you rush a project of this magnitude (testimony3) The project is not complete there is not water to Ray, Tioga, Stanley and Crosby is being served by the R and T system people are denied water while water is being sold to the oil industry.

I want to share a letter from Statoil and highlight some of the condiments that the local manager provides for us. (testimony4) Statoil does not support the efforts of WAWS or any other entity that would restrict the rights of other private companies from accessing Missouri River or Lake Sakakawea.

WAWS never used eminent domain but we have letters from the law firm that represents them and from WAWS themselves telling the landowner that if they don't agree to give them an easement that they not likely be provided from the project. The WAWS is not following the plan of 2 years ago. The legislature in HB 1206 said that we are going to give you free rein. We want you to immunize impact on water sellers when you consider the placement of these depots. WAWS view is that since they reduced their wells from 17 down to 12 and tried to immunize the impacts they thought that is all they needed to do.

You were not told the idea that we have overlaid northwestern N.D. a superstructure that would be used for delivering water to the oil industry. These are some of the reasons that we think SB 2233 and those 2 sections that we specially are interested in and is warranted.

Rep. Hofstad: Has you market share decreased?

Robert Harms: I think the market has remained static from a couple years ago because WAWS has not gotten into the market other than the municipal sales that they already had.

Rep. Keiser: Do you what the average price is?

Robert Harms: The WAWS project is scheduled to sell water for 84cents a barrel and the privates are selling for about 20 cents less than that.

Rep. Hofstad: Do they have the capacity with the 12 depots to increase that market share?

Robert Harms: I think that we have seen a plateau of the water sales. In 2011 when this bill was passed we used 940 acre feet of water there was some expectation that we would go to 20,000 acre feet but have never come close to that. We believe that they have 3to 4 times the capacity out of the depots to service their debt.

Rep. Nathe: What do your members need as far as price per gallon for the breaking point?

Robert Harms: That depends on the number, we have small mom and pop shops that they costs may be different. I don't know

Rep. Nathe: Have a lot of your members lost business to WAWS?

Robert Harms: Some of our members have contracts and haven't lost a lot to WAWS yet because WAWS is just started into the market this fall. We have had members lose contracts because of WAWS accusation of 1926B we have oil companies in Williams County that have not entered into contracts up in the Tioga Ray area because of the accusation of 1926B and in McKenzie County as well.

Steve Mortenson: Chairman from Independent Water Providers. (Testimony 5) We don't want this project to go back to the state. Section 11 is necessary to provide more oversight by the SWC.

Rep. Nathe: Why is there a 20 cents difference between the 2?

Steve Mortenson: I think the 84 cents was established by WAWS is what they felt they needed to cash flow their project and they do have more cost because they have to treat the water and none of our water is treated.

Rep. Nathe: So it is not really the same?

Steve Mortenson: That is right.

Rep. Silbernagel: Does that include the price for the value added heat treating that is done

at those sites?

Steve Mortenson: That does not include the heated cost.

Rep. Nathe: Do the oil companies prefer the heated water?

Steve Mortenson: This concept was started last year. Armstrong put in large heaters I don't know what the oil companies prefer. WAWS have contracted with a large heating company out of Florida and they in turn contract with the oil company.

Are those negotiations on going with Western Area Water and the Rep. Hofstad: Independent Water Users?

Steve Mortenson: I our negotiations are not happening anymore. Senator Wardner asked us to get together to see if we could meet we sat down and we tried to hammer out some things we can't come to that agreement to allow private projects to keep developing.

Rep. Kelsh: What has been the impact on the Independent Water Users since the implication of WAWS to date?

Steve Mortenson: We have not been impacted at all yet because they are not in operation yet.

Mike Forman: Attorney for Independent Water Providers; we are handing out packets that I think will be helpful. (Testimony 6)

You were told that this was going to be a \$150,000.000 project and you were also told that there would be enough water for everybody meaning the independents didn't have anything to worry about.

The Army Corp. of Engineers met with Secretary Darcy, the Corp. Leaders and kept everyone involved at the expense of the Independent Water Providers and Mr. Beehan. McKenzie County water district and WAWS began to send letters to the independent water providers and to the Army Corp. of Engineers asking them to delay or stop these permits that Mr. Beehan had in place a number of those letters are attached.

Rep. Brabandt: The project has gone from \$150,000.000 to \$350,000.000 was that because they were expanding the work?

Mike Forman: The common refrain is that the number of applications requesting rural water when this got started was less than 100 now the number is 15-17,000, I wonder are there really that people living away from these centers? Where are those numbers coming from?

Rep. Mock: Is 1926B a federal statute that is applicable as long as the project is in operation or is that limited to during the time when the loan is outstanding?

Mike Forman: 1926B is intended to protect those dollars that have been loaned for a project.

Dale Behan: I appreciate the opportunity to be here today. I will refer to some of the letters in the packet today. (Testimony 7 and also personal testimony) This entity that this legislature has created in 2011 called WAWS has taken the position that they alone control the water. They alone dictate the water policy in North Dakota. You have the opportunity to allow this entity to go forward at the way they posture themselves and way they assert 1926B that private guys like me to not have a business in Williston and in McKenzie County because WAWS has that authority. It is time that this prosperous 1926B assertion by WAWS dies here in the North Dakota legislature.

John McCreary: General Contractor and developer in Williston; With all the money that the oil industry has brought to the state some of that money could be used to bring clean drinking water to the people who provided it for the state. (Testimony 8) There are a lot of local residents in the area and a lot of new oil workers, all of those people deserve clean drinking water. The reason last in and last out is important is we have an opportunity because of the oil industry to put water to beneficial use; if we use that opportunity now, that will be water that the state will have forever Water that they won't have to fight for later.

Rep. Porter: Regarding the execrative session did you ask for the minutes?

John McCreary: I wasn't there but I looked at what was available on line and got a copy of what was changed and I can make copies of the original with the overtype.

Rep. Porter: Did you ask for copies of the type?

John McCreary: No

Dallas Lalim: From Tioga I have a depot along Lake Sakakawea. (Personal Testimony) I think the WAWS project is like a good race horse and it is going to win; the trouble is that some of the people that are taking care of this horse have got this horse cribble the other horses like me out. You have the ability to rein this horse in and put some oversight on it and get a fair race. We are being affected right now we are working to keep the business and we want to be treated fair.

Terry Jones: I came to North Dakota 14 months ago. (Personal testimony) I started working on 3 water depots during the course of the year because I want to get the truck traffic off of the highways and get depots placed so we don't have so many truck hours on the roads. I support WAWS but it needs some oversight. If you don't have the water appropriated, adjudicated, and allocated and put to beneficial use those states downstream will look at your water that you are not using as a source for them and through an interstate compact to get more water out of your state and all the stuff will be brought up to determine whether you have water that you are not using and if you aren't using the water they will lay claim to that water and then you will not be able to use it the future for N. D.

Dan Jonassson: Public works director for the city of Minot; (testimony 9) we are in support of SB 2233. The 2 very important items in there are the Mouse River and the enhance protection plan and the Northwest Area Water Supply. This is very important legislation to provide continued funding and support for these projects and urge your support in adopting SB2244.

Mary Massad: I manager and CEO for the Southwest Water Authority, we manage, operate and maintain the Southwest Pipeline Project on behalf of the people in the state of N. D. (testimony10) I have in the handouts fast facts about our project where we are today. The authority was formed by the legislature in 1991we took over in 1996. We look at hiring 13 more employees this year; our project has grown from \$9,000.000 to \$15,000.000. We still have people who are signed up 10-30 years ago they signed a water contract for service and paid their fees and are still waiting for water. At the same time we have growth issue that we must deal with. We are working to meet the needs of our current and incoming population as well as getting water to those that are still waiting for their water.

John Olson: I am a lobbyist for The Western Area Water Supply Authority; our opposition has already been discussed that is section 4 subsection7 and section 11. We support SB 223 except for those provisions. (Testimony 11) We are working to meet the needs of our current and incoming population as well as getting water to those that are still waiting for their water. I am bothered by the fact we get hung up on some emotional issues; and some very complex but very simple issues that the perspective is sometimes distorted. I have

attached the proposed amendments that we have and would like to present those amendments at the conclusion. I am bothered by the fact we get hung up on some emotional issues; and some very complex but very simple issues that the perspective is sometimes distorted. Mr. Forman made a statement saying in his words" we object to all independent water providers" and another statement "the water is all ours" meaning WAWS; that is not the entity that I represent. I think there are a number of those things that are being said that just aren't true. I think we have the responsibility to project facts here and not overstate our case. I am bothered by the fact we get hung up on some emotional issues; and some very complex but very simple issues that the perspective is sometimes distorted.

I have attached the proposed amendments that we have and would like to present those amendments at the conclusion.

Rep. Hofstad: What I heard Mr. Harms say was" during that commendation process because that Individual did not give an easement he was then denied water" Is that a true statement?

John Olson: I am not the one that can answer that question.

Denton Zubke: WAWS authority chairman; SB 2233 is a declaration of support for water projects for the State of N.D. Within this positive water bill there are two very pointed statements that go far beyond policy; section 4 paragraph 7 and section 11 completely change the financial plan that supports the WAWSA loans to the state and it compromises our ability to form and execute its mission to serve northwest N.D.

Rep. Porter: What is total amount inside of the project from those water systems as far as loans from the USDA?

Denton Zubke: I don't know exactly; but the state and federal indebtedness in the WAWS area is about \$45,000.000

Rep. Porter: \$45,000.000 total and does that include the money that we have given from the last session?

Denton Zubke: No. It is prior to the last session. We support access to the Missouri River and Lake Sakakawea. We are requesting that you amend SB 2233 to a policy supportive of maximizing the beneficial use of these water sources but without the negative impact on the WAWS on the local water systems as it is currently written. We started the concept of "let's try to bring everybody together" if we can and solve everybody's problems. So through a series of meetings then we secured a grant through Garrison Conservancy District and they studied the impact of having one treatment plant and pipelines as opposed to Watford city and others having a treatment plant. We found that in the initial term it would be more expensive for us but over the long run it was cheaper to maintain one treatment plant and maintain pipelines. We have peacefully coexisted with all of the independent water sellers since the start of this project without any adverse action to a lot

of the sly water sellers and there are a lot of them along here. What is new is the size of the these proposed competitors that threaten our revenue screen expected by the WAWSA to make good on our loans to the State of North Dakota and the federal government. This is a very finite market demand is not going up. There are enough permits along this river to quadruple the supply of water in McKenzie County. At the last legislature we didn't anticipate that the Corp. would ever open up the river so the information we provided you at that time was accurate and it is what we intended.

Roger Chinn: I am a McKenzie County Commissioner; our county commission is behind the McKenzie County Water Resource District. We started a line south of Watford in 1994 and we struggled it is hard to get grants and loans and get people signed up. Then we had a chance to get southwest water to feed into the Grassy Butte area and we took that too. Before WAWS started our commission felt so strong that we pledged on that \$8,000.000 loan our future oil and gas production tax.

Denton Zubke: I am sure you have seen some letters from the IWP you have stories that I and others are bulling them I want you to understand that not all of that information is accurate. We tried to prevent this issue. The IWP and Western Area Water Supply have met repeatedly we tried to resolve those issues. We were not aware in 2011 that there were pipelines being planned for this area. If we had known that before they started investing their dollars we would have notified them that we have this francize protection. The reason they want more committee oversight is because it is a smaller group to try and influence and to try and pressure into things that assist them. We do not want any more Sate Water Commission control.

Rep. Brabandt: How many rural water hook-ups do you have?

Denton Zubke: It changes so much I don't know.

Cory Chorne: Project manager for the WAWS with the grants. The total number of hookups in McKenzie County that are being served right now is about 700 and between Williston and Watford City about 400.

Rep. Branbandt: Is that total WAWS?

Cory Chorne: That is McKenzie County.

Rep. Brabandt: How many hook-ups in WAWS?

Cory Chorne: WAWS itself doesn't have any rural water hook-ups.

Rep. Silbernagel: The number of depots that exist today, how does that stack up to what was proposed to what was proposed to years ago and has the overall capacity stayed the same?

Denton Zubke: We originally had 22 depots. We scaled that back to 17.

Rep. Silbernagel: As it relates to the overall capacity for those 10 is that consistent?

Denton Zubke: It is one of the issues in HB 1130 is its funds to increase the gallons per day that we can get out of the Williston treatment plant. It takes a long time to update water treatment plants so we needed to get on that.

Rep. Hofstad: Do you use condemnation for the pipes that go into the ground to serve the depots?

Denton Zubke: No we have secured over 300 easements and we have not used condemnation for a regional transmission line or for a rural water line.

Rep. Hofstad: Back to 1926B this is an issue that we are dealing with not only in WAWS but all across the state and is an issue that we have to come some type of resolution to and I hope that through this committee we can find a solution rather than stand here and make accusations. The state of N.D. has invested a lot of money in this project so I am dismayed that you would suggest that you don't want us to get involved and put the kind of things in policy that would bring this to a resolution. What has changed? What happened to that business plan?

Denton Zubke: What has changed is that the Corp. has opened up the river and we are looking at quadrupling the supply of water.

Rep. Hofstad: Both sides are saying "you are taking my market" somebody is not telling the truth.

Denton Zubke: Our business plan is still intact. We still have the amount of water that we anticipated and there is no magic thing that has happened that has increased those pipelines or increased the supply out of Williston water treatment plant. So we only have so much water to sell. We intend on selling enough water to get this project done.

Rep. Hofstad: Give me a number of the percentage of the market share of the water sales that you need to cash flow this project?

Denton Zubke: The demand is a demonic number because we went from 7500 up to 1350 and now they are talking it is going to be less. It is hard to take a percentage it is about 20%.

Rep. Hofstad: You were at 15-18%.

Denton Zubke: ok.

Rep. Froseth: The demand for water is so great that neither the IWP alone nor WAWS alone could supply the demand that is expected in the future so one without the other really wouldn't serve the purpose would it?

Denton Zubke: We are saying that the demand is going to remain somewhat consistent the demand that is going to grow is the domestic use.

Rep. Porter: Inside of 1926B you made the comment that there are a lot of smaller water producers that didn't receive letters across that other area. There isn't any statute of limitations inside of 1926B that say if you are already in place and we came later it says that "if you are infringing on that franchise" so technically you could send a letter all along that transmission line to every IWP and tell them that they are infringing on 1926B.

Denton Zubke: In that 1926 B regulations it talks about when the rural water district would be reasonably assured that they could provide that supply. The courts have interrupted that all the way back to 18 months before that water district could have produced and filled that need.

Rep. Porter: Some of the permits that were shown to us this morning show dates of the application of the date back into 2010 before WAWS was presented to the legislature and then the Corp. releases those allocations off of an application that dates prior the WAWS project. That same project gets a 1926B letter from McKenzie County Water even through the water was dated before WAWS.

Denton Zubke: I cannot answer your question. We know that someone had received a permit and we tried to operate in good faith and notify them as quickly as possible.

Rep. Porter: In the first section of that we put the statement in there that the WAWS shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. We did that to alleviate the concerns that the IWP that this was going to work in harmony.

Denton Zubke: We have tried to resolve this. The IWP want to slow down or stop this.

Rep. Keiser: I thought that it wasn't WAWS that issued those letters but was McKenzie water district that was challenging.

Denton Zubke: That is correct. WAWS does not have 1926B water rights because it is not federally indebted.

Rep. Keiser: That indebtedness occurred long before these dates?

Denton Zubke: That is correct.

Rep. Keiser: The 1926B is not only a federal guideline but there is a state guideline that is essential to this project. If we are going to resolve 1926B we need to do that for the whole state and not be cherry picking projects along the way. The IWP folks are filing for permits as quickly as they can and getting approval so isn't that capacity expanding?

Denton Zubke: It is and one of the things that the State Water Commission has done is they approve a lot of surface water permits and we have taken some exceptions to those permits. It appears to us that whatever permits came to them they granted.

Rep. Keiser: Why don't we close it off at the \$110,000.000 and give you free access to whatever you want?

Denton Zubke: Are you saying don't approve house bill 1140 stop at the \$110,000.000?

Rep. Kesier: Finish the project as originally proposed.

Denton Zubke: We have looked at that as far as not taking the \$79,000.000 and take the \$150,000.000. Not only do we have the debt payments on the 150 we still have the industrial revenue to each one of the cities and the debt inside of each one of these districts and so if I calculate that I would have to look at a declining price model and fine out at what point in there would we be no longer able to support our debt payments and our revenue requirements.

Rep. Nathe: Has the demand as levelly off?

Denton Zubke: We get most our information from the oil and gas division. I believe the demand is going to decrease.

Rep. Hofstad: Let's go to oversight. What is the oversight that you object too?

Denton Zubke: In 2011 the IWP put a lot of pressure on the State Water Commission and they did adopt 3 additional policies that impacted our operations. At the last State Water Commission meeting the IWP were there again they circulated resolutions and asked that the State Water Commission pass those resolutions. That is a small group of people and when someone grinds on you long enough you say "how do I get rid of this?"

Rep. Brabandt: We have 700 rural water hook-ups how many do you hope to have and how soon?

Denton Zubke: We have a lot of man camps that have applied; we suggest that they write checks some of them do and some of them don't.

Rep. Keiser: How many applications are you getting?

Denton Zubke: It is so influx. We do not have the water to hook them up. We are going to have a lot of work in the McKenzie County Resource District. We don't have enough staff to work for us to go and monitor the water lines. We have rural water requests for another 17,000 hook-ups in the entire area.

Rep. Hofstad: Those hook ups are they concentrated and give me a cost per hook-up.

Denton Zubke: There is some contraction in there; about \$11,000.00 per hook up and up to \$100,000.

Rep. Hofstad: Have you established a limit as to the amount that you pay to hook that individual up?

Denton Zubke: We review things like that as to what the cost is to provide them.

Rep. Silbernagel: The permits that are being requested from the water commission, would that double it?

Denton Zubke: That is correct. It is hard for us to know what has been applied for on surface water because they usually approve surface water without contacting any of the landowners.

Rep. Hunskor: What part of the current policy do you have a problem with as far as oversight?

Denton Zubke: I cannot. I believe the State Water Commission does things at a different pace they have quarterly meeting we have monthly. I think the State Water Commission is subject to pressure from the IWP and they will adopt thinks that are contrary to our interests.

Rep. Hunskor: If the final decision of what is going to happen with the conflict here to this committee it is going to be difficult to deal with the oversight thing if we don't have any particulars as to where the problem is.

Denton Zubke: I understand that and that is one of the reasons we brought you options. We think these options are valid options. They don't require any additional State Water Commission oversight. We have to have a revenue guarantee from the state if we are going to do that.

Rep. Schmidt: You mentioned that WAWS did not have the 1926B correct?

Denton Zubke: Yes

Rep. Schmidt: So the McKenzie County Resource District has the 1926B?

Denton Zubke: That is correct

Rep. Schmidt: When did you get that loan from USDA?

Denton Zubke: That USDA Loan was probably closed in the 90s and closed in 2001.

Rep. Schmidt: In that loan application you made with the USDA from McKenzie County what was your service area?

Denton Zubke: That service area was 8-10 miles south of Watford City, 5-6 north of Watford city probably 15 miles west of Watford City and maybe 5-6 miles east of Watford City.

Rep. Schmidt: I would like to see that service area. What income sources were indicated under that loan?

Denton Zubke: That USDA loan did not have any industrial water sales in it. It was the system that we built on out at Keen and the Indian Hills depot.

Rep. Schmidt: When you got that loan you did not indicate that there was any income from industrial sales? What is the USDA rural development loan?

Denton Zubke: The USDA has to sign any agreement that we wave out 1926B rights.

Rep. Schmidt: If you are going to claim 1926B I would like to see what the USDA rural development opinion is on your decision. If your original loan was from the McKenzie water district and you indicated what your service area is on the map and if 1926B provides protection from encroachment or annexation from a municipality then can you explain to me how you can claim 1926B outside that service area and the McKenzie County water district?

Denton Zubke: We also have additional USDA loans as I indicated when we built the Keen depot. Those are federal loans and then we also have some SOF loans with the state in the Indian Hills depot.

Rep. Schmidt: Is that within McKenzie County Water Resource District? How can you claim 1926B for like Williams County?

Denton Zubke: We have not. We have only dealt with water providers in McKenzie County.

Brent Sanford: from Watford City; I have 3 key issues that relate to water in western N.D. 1 is growth 2 Public verses private water sellers and 3 protections of our local water payers. Growth in western N.D. is more than our wildest dreams just a short time ago. In the last session the estimate population from the state study was 2600 people. HB 1140 and its 40 million additional funding is necessary for Watford City and our expansion plans. WAWS gives us hope that we can handle the influx of workers. We cannot afford to construct a rural water system of this magnitude without the industrial water sales. Please amend SB 2233 to support positive water development using water from the Missouri River and Lake Sakakawea resources without negative impact.

Rep. Damschen: I got the impression that you think the demand for the water is going to go up.

Brent Sanford: The municipal and rural population demand is going up.

Ward Koser: Mayor of Williston; Most of this bill is a wonderful bill I support this bill except for a couple of issues and you have heard about them. The opportunity to develop this system through the local needs and revenues generated by industrial water sales is an historic opportunity. We believe this project will be a success story. We all believe that the WAWS success is due to the commented local leaders coming together with a shared mission to implicating the WAWS project. We believe that the WAWS and the project itself do not need oversight. This does not mean that we do not respect and appreciate the work that the State Water Commission board and staff preform.

John Olson: This is about the amendments that have. (Testimony 2) There is something else going on here. The State Water Commission doesn't have the staff and man power and the resources that have been invested by the local people in these areas. They make

these decisions not because they meet once a month but they are meeting constantly and are on the phone talking to people. That is what section 11 does it says that "the plan ongoing contracts" it brings them in to dealings like this. The issue is that this committee has a lot of responsibility to make decisions as to what is the best interest of the people of this region and also the people for the state of N. D.

Rep. Damschen: The chairman wishes to appointment a subcommittee to work on SB 2233 they are Rep. Hofstad, Rep. Schmidt, Rep. Keiser and Rep. Hunskor. We close the hearing on SB 2233.

#### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 March 15, 2013 19981

Conference Committee

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A declaration of water policy	and objectives for water project development
A declaration of water, policy Meeting called to order at the Pioneer	and objectives for water project development.  Room @ 9:00 a.m.

Members present Rep. Hofstad, Rep. Schmidt, Rep. Keiser, and Rep. Hunskor Others present were John Olson, Steve Burian, Terry jones, Jon McCreary, Pat Ward, and Charles Vein

Topics Discussed: Look at solutions

To provide water to western N.D.

Get proposals and amendments.

Rep. Hofstad: I going to begin with western water I know that you have proposal for us and I ask for those now.

John Olson: We are concerned about what happens if WAWS defaults. We don't think the State Water Commission should have the project.

Rep. Hofstad: If we could come up with an agreement would that be acceptable to your client?

John Olson: That would be acceptable to me that would be part of the business plan that would have to be examined closely.

Rep. Hofstad: If the IWP were to buy the water depots would that be a consideration?

John Olson: Selling depots doesn't get us the full 10 yards. We still to be sure the revenue is there.

Rep. Hofstad: The debt that you acquired from the partners can you give that total?

Rep. Keiser: The option for Franchise fees have you worked out how much the fees would have to be and who would pay them?

John Olson: About 36 cents a barrel.

Rep. Keiser: So anyone that is selling water commercially would they would have to pay an additional fee of 36 cents per barrel?

Steve Burian: Yes we haven't been making the proposal so much as the board. The franchise protection is only for after WAWSA became real.

Rep. Hofstad: Williston was selling water before that time. You are excising 1926B under a loan that was acquired prior 2011?

Steve Burian: I think you are referring to when McKenzie had in 2004 It my understanding that rather than revering back to the original date of the debt; The board was looking the date going back to 2004. The amount of debt is 45.2 million

Rep. Schmidt: When I asked Mr. Subke if 1926B protection any of depots and industrial sales I never received an answer to that question

Steve Burian: CEO of A2S It is my understanding that if an entity has federal debt or state debt the applicable laws are the district boundary.

Rep. Schmidt: I am with rural water system and we have one of those loans and that is not at all the way it is with us.

Steve Burain: We will do some further inquiries with that.

Robert Harms: I handed a sheet where the summary is at (testimony 1)

Rep. Hofstad: Let's address the forgiving a portion of that loan and the percentage.

Robert Harms: Each year the Water Commission gets reports in terms of the amount of water sales. We would rely on the Water Commission to identify that.

Rep. Hofstad: That is a huge leap of faith because it could go both ways.

Robert Harms: That is one of the tools that we have laid out I would like to think about that.

Rep. Hofstad: Have you talked about the franchise fee?

Robert Harms: That was not part of the deal 2 years ago. They would put us out of business.

Rep. Hunskor: It seems like there a way the percentage is the only way both entities can exist.

Robert Harms: If we could come with an agreement that would service the debt for WAWS. I agree with that I think we need to spread the pain.

Rep. Hofstad: Your skin of the game would be limiting your percentages?

Robert Harms: Yes.

Rep. Hofstad: Would the IWP like to buy the water depots?

Robert Harms: That is not a concept that is going to be of interest to most.

Rep. Hofstad: We will close the sub committee meeting.

#### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 and 2359 March 21, 2013 20294

		ence Committee s SB 2233 and 2359
	Subcommittee	3 OD 2200 and 2000
To provide a declara		icy and goals and Relating to WAWSA
Minutes:		"attached testimony."
Meeting was called	to order at the	Pioneer Room at 9:00 a.m.

**Members Present:** Rep. Hofstad, Rep. Schmidt, Rep. Keiser, and Rep. Hunskor.

Other's Present: Patrick Ward, Steve Burian, Jon McCreary, Todd Sando, Ron Ness, Michelle and Andrea

Rep. Hofstad: called the subcommittee on SB 2233 and SB 2359 to order. I would like to lay some proposals on the table and have a discussion of those details.

### **Topics Discussed:**

- 1 Proposal
- 2. Oversights
- 3. To remove the default and have in Industrial commission grab the revenue off of the industrial sales portion.

Rep. Keiser: The only issue that we have to have a discussion is that state will be imposing its own 1926B because we need to guarantee the cash first. That has to be accomplished.

Rep. Hofstad: It moves the relational ship from WAWS to the independents to the state back to the WAWS. The other part of this is that we will have to find to implement this thing with the Independents.

Patrick Ward: Can I pass out the schedule that I showed you yesterday?

Rep. Hunskor: This both entities in the mix while furnishing water to the area that we are talking about.

Jon McCreary: Yes it does.

Todd Sando: Do you say the revenue from the Industrial sales would go to the Industrial Commission?

Rep. Hofstad: No.

Rep. Keiser: The Industrial Commission is the important component.

Todd Sando: We are not involved with the Industrial Commission.

Rep. Hofstad: We can use the Water Commission if that works or some other entity.

Rep. Keiser: I would be interested in hearing Todds comments whether the State Water Commission would be or not be a potential candidate be regulating these sales.

Patrick Ward: I think this is an excellent approach to this. The schedule that I handed out shows the repayment. There is plenty of water, there can be monthly projections.

Rep. Hofstad: The member entities and WAWS have debt which the Authority has occurred and we want to be sure that will work.

Rep. Keiser: I understand and when you run these numbers it appears that is works well.

Patrick Ward: Our concern is the price to adjust the price of the water below the market price.

Rep. Keiser: If the price drops to 60 cents a barrel then for them to be in the play they have to go to 60 cents.

Patrick Ward: I don't believe that the Independents have a problem with that.

House Energy and Natural Resources March 21, 2013 SB 2233 and 2359 Page 3

Jon McCreary: That is workable solution. Nobody wants to rush out and destroy the market.

Rep. Hofstad: What would happen if we were to come to the independents and say "we need 20 cents?"

Jon McCreary: This could all end. I do think there are other revenue resources like hook ups that aren't in the business plan.

Rep. Hofstad: I would prefer that we separate the industrial sales portion of this project to the municipal and rural sales.

John Olson: speaking on behave of WAWS. WAWS would like to get out from under default, 1206B is a troublesome issue. The state is not a party of interest to those laws.

Rep. Keiser: We are going to create standing in the legislation if we do this. When we get done we are going to have 1926B, the state is going to have a position similar to it saying" that we are going to guarantee our revenue stream whether we are going to set the price. We are not taking this dead on without guarantee that we can make these payments. What has changed so dramatically?

Steve Burian: with WAWS; we have always presented 6 different cost centers.

Rep. Keiser: One of the beauties of this plan is that the reserve requirement goes away.

Steve Burian: we have been asked to put an operating reserve together.

Rep. Hofstad: Those reserve funds would be part of the operating portion of your board.

Rep. Keiser: The reserve associated with the loans would be removed.

Steve Burian: The majority of the members in western N.D. already have some highest rates in the state.

Patrick Ward: Two points in response to that we are coming to a place where we can agree and I want to say there are water sales besides frack sales. I think we can cover those reserves as long as those other 3 cost centers are

House Energy and Natural Resources March 21, 2013 SB 2233 and 2359 Page 4

addressed by the Industrial Water. The existing debt that is assumed which is about \$39,000.000 from member entities is owed to other banks or whatever.

Jon McCreary: I think that is reasonable that they would get that back for a time. In regard to the 1926B why would the independent people be happy with it now and weren't before.

Rep. Keiser: If we do this and this becomes no different than any other water district we wouldn't use that as an argument.

Jon McCreary: And they won't expand in industrial sales?

Rep. Keiser: Right.

Steve Burain: I handed Rep. Keiser a new sheet when I realized that I gave the wrong figure. The reason that it is not so simple is that as we had to implement the new rates for the wholesale water for these customers.

Rep. Keiser: This is going to become very difficult to create the formula for ensuing that that the state will be paid.

Patrick Ward: As long as it was a level playing field I don't think that would be a problem.

Rep. Keiser: The bill that was turned in was a level playing field.

Jon McCreary: That is reasonable.

Patrick Ward: I don't recall what all the opposition was.

Rep. Hofstad: Rep. Keiser Would you envision this to be a trigger?

Rep. Keiser: Look at the payment schedule that we have to meet and the water tax would have to meet that schedule.

Ron Ness: With the North Dakota Petroleum Council: We are opposed to adding a tax on water.

John Olson: Mr. Ness was supporting that loan and I think it is important to note that the oil industry itself seeing the benefit and the necessity of having this project succeed.

House Energy and Natural Resources March 21, 2013 SB 2233 and 2359 Page 5

Ron Ness: The legislature created this structure last session. Recognize the value that is coming from this and who you design to pay for this system.

Rep. Keiser: Do you recognize that if we have to impose price controls to maintain the states revenue to the system that is going to arbitrarily increase the price.

Ron Ness: We knew who was going to pay for this system 2 years ago. That tax would apply to all of the old existing water fields and would be detrimental to their operations. You are beginning to mix by doing that.

Patrick Ward: I don't think you need that in this bill.

Rep. Schmidt: Let's look at the residential side; we talked about the state having a 1926B. When assume 1926B will that protect WAWS from encroachment form the city of Williston?

Rep Hofstad: It is regionalized water system. This is a mute issue.

Steve Burian: Williston's water plant is in effect been attributed to the project WAWS pays 100% of the cost to run the plant.

Rep. Keiser: You stated in the proposal that we would eliminate in the legislation 1926B. There isn't any need to do that.

Rep. Schmidt: After that debt is paid the state backs out so that protection that the state loan offers them for that goes away.

Rep. Hofstad: That is a federal law. The only time that the federal law applies is if they have a federal note. Todd I am going to ask you to ask your boss if we can utilize your staff to work through some of details.

Rep. Keiser: I would like to encourage all of the parties to sit as quickly as they can.

Rep. Hofstad: WE will call a meeting of this subcommittee tomorrow morning at 10:00 in this room. Meeting adjourned at 11:07.

#### 2013 HOUSE STANDING COMMITTEE MINUTES

### House Energy and Natural Resources Pioneer Room, State Capital

SB 2233, 2359 March 22, 2013 20369

☐ Conference Committee

mineth	
SUBCOMMITTEE Relating to a declaration of water policy, goals and relating	ng to WAWS

"attached testimony."

Roll Call; Rep. Hofstad, Rep. Schmidt, Rep Keiser: and Rep. Hunskor.

Others present: Denton Zubke, Steve Burian, Robert Harms, Dean Mortenson, Karlene Fine, Dave Laschkewitsch

Rep. Hofstad: we will open the subcommittee on SB 2233. I would like to open it up to questions and have a bill draft by next Thursday.

Denton Zubke: We did prepare a 2 page document which is a restatement of some of the things that are very important to us.

Rep. Hofstad: Would you please go through it?

Denton Zubke: Yes I will read through it.

Rep. Hofstad: If the \$40,000.000 to the house is passed by the senate would the sweep include that loan.

Rep. Keiser: That is right

Minutes:

Denton Zubke: SB 2233 is a very good water bill and it provides some legislative intent for some of those water projects.

Steve Burian: It was 6.3 from McKenzie \$475,000 for RNT and \$1.2 million for Williams.

Rep. Keiser: We had a discussion to wave that so if we don't wave then we don't need to worry about that.

Denton Zubke: If we are going to turn around and ask to wave that.

Rep. Hofstad: Removing that language removes the developing policy specifically to WAWS? Removing that language does not remove WAWS from the general policies that we operate under.

Denton Zubke: correct.

Rep. Hofstad: We talked about those depots and running lines back and forth directly to the industry to utilize that water. That makes good sense to me.

Rep. Keiser: Number 8 is irrelevant because if we take over the commercial sales we take over the depots the state will do what it needs to do to maintain the cash flow to make payments.

Denton Zubke: Number 9 is irrelevant then also.

Rep. Keiser: Yes.

Denton Zubke: Number 10 under this proposal WAWS can convince to not enforce 1926B rights.

Rep. Hofstad: That would be conditional upon adopting this. If we assume the debts is there a question of 1926B?

Rep. Schmidt: That would be more for the rural water systems.

Rep. Hofstad: We have a regionalized system now.

Rep. Schmidt: Why member entities need to keep 1926B protection for rural water is for territorial control with expanding communities.

Denton Zubke: Basin is in 2 of our member entities and are using a lot of water and they cost share some of the pipeline to get water to them; someone could come along and try to cherry-pick that away from them.

Rep. Keiser: Number 11 is why we don't need to carve out 1926B.

Denton Zubke: Number 12 there will be industrial water sales and we are asking if those be retained to where WAWS would be able through the Industrial Commission or State Water Commission to access those additional funds.

Rep. Keiser: Number 12 may be tuff.

Denton Zubke: We would like a caveat to where we could apply for some of those funds.

Rep. Hofstad: That source is available also.

Robert Harms: Explained proposed amendments.

Rep. Hofstad: Part of that is to carve out the industrial portion from WAWS and let the rest of the industry work as private enterprise ought to work. I am questioning some of your concerns.

Rep. Keiser: It is a little bit different in some significant ways. With this proposal I don't think the state has any objections to development of the Missouri River pipelines or Lake Sakakawea. Is that where the IWP is?

Robert Harms: That is the concept.

Rep. Keiser: The state's share would be treated water would have all the additional things. What do we do with your proposal when we can't service the debt?

Robert Harms: I am not certain of that answer.

Rep. Keiser: The bank of N. D. people were in today saying "protect our debt."

Dean Mortenson: I have an IWP support plan put together. Your depot will be successful with the 12 depots.

Rep. Hunskor: You said there is enough water out there to take care of the debt and enough left over to so that the IWP can make a profit. Why shouldn't the state have a set amount so that they know they can generate from month to month?

Robert Harms: Because of the capacity that the depots have and the great locations we thing short term there will be enough water to cash flow.

Rep. Hofstad: Part of this concept is to sweep that money and have the Industrial Commission sweep it and use that entity. I would Karlene to comment on that.

Karlene Fair: As to the sweeping of the accounts and keeping track of money through the Bank of N.D. we could do that.

Rep. Keiser: Would this be more appropriate to be managed by the Bank of N.D.?

Karlene Fair: The Industrial Commission would direct the Bank of N.D. on how to do this.

Rep. Keiser: Should we draft this legislation should we draft it through the Industrial Commission?

Karlene Fair: Let me visit with the Bank of N.D. see what would be best in the legal responsibilities.

Rep. Hofstad: There are water rates that need to be addressed, and what we how we would implement that kind of a contract.

Dean Mortenson: I believe that the water rate will determine the market to pay these off.

Rep. Keiser: I cannot support a complete opening of the industrial sales without some kind of plan to ensure that these loans get paid off.

Rep. Hofstad: I am trying to get back to the point of where we are entering into a contract with WAWS to -----

Rep. Keiser: We take whatever the cost is and then take whatever we need to add to that price to make our payment.

Rep. Hofstad: Do we do that legislatively? Who makes that determination? Where does that authority lie?

Dave Laschkewitsch: Some of the depots are under contract with a private firm so wouldn't that complicates it.

Denton Zubke: There is one that is owned by a private company and the water is still sold through a public lane and their designated lanes and we still receive the same dollar of price in revenue from that depot as any other depot.

Rep. Hofstad: Do you see that as an impasse?

Denton Zubke: All the water that is sold there is in our name and our price.

Rep. Keiser: What is the length of that contract?

Denton Zubke: They built the depot and I don't know that there is a contract for any specified time as to what they own that depot for.

Robert Harms: I don't which depot that is which depot is that? I don't think industrial water sale is the strong suit at B.N.D.

Rep. Keiser: How many more FTEs do you need to do the industrial sales and to manage it?

Rep. Hofstad: I am going back and forth on this to. There are so many issues I would envision I don't know if we can divorce ourselves from all those decisions.

Denton Zubke: You are correct we are managing that industrial revenue right now and we can continue to do that as long as we are able to recoup those costs.

Rep. Keiser: Could you give us some estimate of what it would cost to manage that?

Denton Zubke: We could it wouldn't take us long.

Rep. Hofstad: The lost industrial revenue what do those member entities expect?

Steve Burian: As we sat through the negotiations many of these municipalities and systems had served the oil industry for some time and they became dependent on that as one of the revenue streams especially in the growing part of the oil industry.

Rep. Hofstad: Do you have a contractual contract?

Denton Zubke: It is as long as there are industrial revenues at each depot that exceeds the 2010 base line sales.

Rep. Keiser: That is a contractual condition.

Rep. Hofstad: Do we assume that responsibility through the industrial sales portion?

Rep. Keiser: We can continue to talk about that.

Steve Burain: There is that significant operation of maintenance reserve that is built into this business model.

Rep. Hunskor: If the sweep is made according to what we are talking about is there sufficient revenue to service the loans without WAWS expanding?

Robert Harms: Yes

Jon McCreary: On the 3.8 million that goes to the cities that was there industrial water sales; is that a priority that is where the first dollars go?

Denton Zubke: I am not sure how that is laid out.

Rep. Hofstad: We will close this meeting and schedule another meeting on Thursday March 28, 2013 at 9:00 a.m. here at the Pioneer Room.

### 2013 HOUSE STANDING COMMITTEE MINUTES

### House Energy and Natural Resources Pioneer Room, State Capital

Subcommittee SB 2233 and 2359 March 28, 2013 20616

Conference Committee

28, 2013 at 9:35 at the iser, Rep. Hunskor, Rep.
isci, itep. Hallskoi, itep.
Steve Mortenson, Denton d, Jennifer Verleger, Jon

Rep. Hofstad: We will open the subcommittee on SB 2233 and 2359 we have a document that we are handing out go through that. (# 1)

#### TOPICS DISCUSSED:

- 1. Documents handed out by Rep. Hofstad
- 2. Revision of the terms of loan payments.
- 3. Oversight
- 4. IWP
- 5. WAWSA

Rep. Hofstad: We will meet at 8:00 on Friday March 28, 2013 in the Pioneer Room this subcommittee is adjourned.

### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB 2233&2359 March 29, 2013 20685

☐ Cc	onference Committee
Ini	peth
To provide a declaration of water policy ar	nd goals
Present were: Rep. Hofstad, Rep. Keiser	, Rep. Hunskor, and Rep, Schmidt
	n Olson, Denton Zubke, Robert Harms, Patrick Wards, reary, Michelle Klose, Todd Sando, Karlene Fine
Minutes:	1-2 "attached testimony."
	ommittee for SB 2233 and 2359. We asked you to give you an opportunity to explain them. WAWSA if d please do so
Denton Zubke: We do have amendme	ents explained (#1)
Rep. Keiser This will allow you debt fo	r residential debt?
Denton Zubke: Yes so that we can co	ontinue to build that domestic water supply. Explained
Rep Keiser: On the additional debt that	at you would be able to unilaterally take on. Is there

Rep. Hofstad: As you acquire a grant are you trying to fill the gap between grants money and loan money?

any opportunity for the State Water Commission or anybody else to see those projects that

Denton Zubke: We are trying to encompass both aspects.

would be funded with additional debt?

Rep. Hofstad: One of the problems that I see and the reason I like a water district is because now you have the authority to access and how you spread that assessment over your authority is not clear.

Rep. Keiser: I am not sure whether the Water Commission and we can ask the Water Commission to give us a chance to review this more formal statement.

Denton Zubke: Explained 61-40-06.1 - 61-40-06.5 (10:00-14; 39)

Rep. Schmidt: You say some additional payment can you define some?

Denton Zubke: "Some" is an ambiguous word.

Rep. Keiser: Is this just keeping it open that you could contract with the private IWP sellers at whatever rate they want to sell water to you for?

Denton Zubke: We believe that in order to retain what is left of our 1926B protection that we will have to have specific agreements with entities that are allowed to enter our franchise area. Explained (18:18-21:43) 61-40-06.2, 61-40-06.3, 61-40-06, 61-40-09, 61-40-10

Rep. Keiser: In 61-40-10 Why do we want that language in there?

Denton Zubke: What we are trying to do here is provide ourselves some options.

Rep. Keiser: This one doesn't fly. The Water Commission does a good job in awarding money based on demonstrated need.

Rep. Hofstad: That environment has changed dramatically over the last couple of years. The Water Commission has been very responsive in meeting the challenges and needs of the state.

Bob Humann: Bank of North Dakota; when it comes to borrowing money or revenue bonds, as a bank is very concerning is that we have all the revenues and the collateral tied up between the states loans and the USDA and the public finance loans. That will be challenged for them to go out and get other financing with everything being tied up and identified for repayments for the existing debt.

Denton Zubke: We are trying to look down the road. This is a long term proposal.

Rep. Keiser: The reality is that any legislation is good for 2 years.

Rep. Hofstad: Looking down the road these provisions are in the code when we address water districts.

Robert Harms: It is in the code. One of the problems we have we don't feel we can become a water district because we already have a water district in our area.

Rep. Hofstad: Let's go to the IWP and look at those amendments (#2)

Robert Harms: Explained the amendments handed out. We put this together with the state taking over the water sales.

Rep. Keiser: It is time to take this to the Legislative Council and have them draft and embed all of these amendments.

Robert Harms: The draft that we worked off of yesterday wasn't correct. (Explained the amendments) 31:03-33:17

Rep. Keiser: On number 3 "after an inventory of all" it should read WAWSA assets.

Rep. Hofstad: Let me ask someone from the state; do you have the authority to do value engineering on a project?

Michelle Klose: from the State Water Commission; we have some discretion on what the requirements are for looking at those projects.

Rep. Hofstad: There another \$80,000.000 that WAWSA requested from the Resources Trust Fund.

Robert Harms: We contemplated that the cost of that value engineering activity would come out of the Industrial Water Sales.

Rep. Keiser: Do we have this requirement for any other state water district?

Rep. Hofstad: Not that I am aware of. As this plan has been laid out are trying to separate these two entities. Why would we want the governor have a place on that board?

Robert Harms: It is not so much the governor but at least appointments that he would make for several reasons.

Rep. Keiser: If the state is going to become a commercial water seller in competition with the independent water sellers. The state has the authority to use eminent domain and the independent water user doesn't have that authority. So to give up the eminent domain and thereby embanking our potential to provide the services may be an unfair way.

Rep. Hofstad: On this issue you are trying to limit that market share also.

Robert Harms: We wouldn't disagree generally with the idea that if the state was agreeable to some type of cap.

Rep. Keiser: Whether we add your language or not shouldn't we add a provision that no additional debt may occur unless approved by the Industrial Commission?

Robert Harms: That is probably an appropriate change.

Denton Zubke: Would this prevent the city of Williston from taking on any debt?

Rep. Hofstad: We would make that clear.

Jennifer Verleger: They are referred to as member entities not participating entities.

Robert Harms: We think the retention of the State Water Commission Overview is appropriate in subsection 06.

Todd Sando: Does this apply only to the authority in the state or to the Independent Waters Users also?

Robert Harms: It applies to the state and to the authority.

Rep. Keiser: Karlene do you have a fiscal note for this?

Robert Harms: I think I understand why the language included depot and lateral sales.

Jennifer Verleger: That would include all Industrial sales not just the oil and gas.

Rep. Keiser: This would limit it to oil and gas?

Jennifer Verleger: Right.

Robert Harms: We are trying to put together some mechanism by which we could identify the cost of the water that the state would be buying.

Rep. Keiser: This is going to the Water Commission or the Industrial Commission doing this.

Denton Zubke: The proposal that we did was something based on what the member rates are paying.

Robert Harms: We would like to have some kind of a number.

Denton Zubke: That is what we look at all the cost associated with that.

Rep. Keiser: If you can have legislative council do the mark up you will see in every section the recommendation in each of the groups all combined into that section.

Jon McCreary: We want to do it at cost but we want to cap it at the wholesale rate that WAWS sells to it the member entities.

Robert Harms: When we speak as members rates we are not talking about domestic that you sell to the public.

Denton Zubke: That is the rate that we have established as the rate that we are charging to McKenzie County Water Resource District.

Robert Harms: Mr. McCreary said "they were trying to be fair to them" I don't understand.

Rep. Schmidt: Does IWP represent all private water providers?

Robert Harms: No there are about 70 members on IWP and 100 plus private water providers in the state.

Steve Mortenson: This varies a lot from year to year because a lot of this is temporary water that they sell with a temporary permit.

Rep. Schmidt: That is my point to be sure that they are.

Steve Mortenson: That could be included in that language that they would have to be responsible for this.

Denton Zubke: How many members did you have at your annual meeting?

Steve Mortenson: 8-12 people

Rep. Keiser: What about 614010?

Robert Harms: What will happen when this is all paid.

Rep. Keiser: We need to recognize that there are some continuing payments that would be excluded.

Robert Harms: We agree with that.

Rep. Keiser: That would be the \$40,000.000 and the \$79,000.000 if they were approved?

Robert Harms: To clarify our understanding of how we are going handle 1926B issues in this legislation.

Patrick Ward: I am not sure that this second paragraph 614012 says what we want it to say.

Steve Mortenson: We are not in support of having to help provide this avenue for the revenue screen but we are willing to except whatever the committee has to do to do this because we feel you guys are acting in the best interest of the people in Western North Dakota.

Bob Humannn: Our existing loan agreement that we have on the \$110,000.000 worth of loans we have 2 reserve accounts set up that are in the existing documents right now.

Rep. Keiser: This is the time to step up and tell us what does the bank want?

Bob Humann: This is going to depend on how these payments priorities come out.

Rep. Keiser: Then we are on the same page.

Jennifer Verleger: In the IWP amendment

Rep. Hofstad: We will adjourn and meet again on Monday Morning at 10:30. Adjourned at 9:20 a.m.

### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB 2233, 2359 April 1, 2013

20708

Conference Committee

Vnie	reth	
Subcommittee for SB 2233 and 23 To provide a declaration of water p		
Minutes:	1 -2 "attached testimony."	

Present were; Rep. Hofstad, Rep. Keiser, Rep. Schmidt, Rep. Hunskor Others Present; Denton Zubke, Jennifer Verleger, Karlene Fine,

Rep. Hofstad: We will call the subcommittee on SB 2233 and 2359 to order. (Handed out WAWSA amendments. #1)

Rep. Hostad: We have 2 bills in front of us SB 2233 and SB 2359 we need to deal with both of those.

Rep. Keiser: I move that we recommend that we do not pass on SB 2359 and take any part to the full committee and take anything that we need from SB 2359 and place it on SB 2233 so we can work with one bill Seconded by Rep. Schmidt.

Rep. Hofstad: We will take a roll call. Motion carried.

Denton Zubke: The only changes that we made is under 61-40-06.1 we have identified how to apply the revenues and item #5 we struck the words some and replaced that with 10% of available cash after items 1-4 have been met.

Rep. Hofstad: 10% of the bill will cash after items 1-4 have been met as additional ----

Denton Zubke: For example 1-4 have been taken care of and there is still one million dollars available, then one-thousand of that would go as additional principle on state guaranteed loans the other nine-hundred thousand would go down to item number 6 where

25% of it would go to the Resources Trust Fund and 75% would go to WAWS for continued built out of the domestic water supply.

Rep. Hofstad: You want 10% to go to the additional principle payments?

Rep. Schmidt: Number 6 then would be 90%?

Denton Zubke: I think if follow this along the wording is still correct; yes.

Rep. Kesier: If the state is taking over the debt why do we need to have built in a prepayment schedule? Why would we limit ourselves to 10%?

Denton Zubke: This was a huge piece of our revenue generating machine.

Rep. Keiser: Number 5 as it is worded goes against the principle of the state backed loans.

Denton Zubke: It only allows 10% of that free cash after items 1-4 have been satisfied.

Rep. Hunskor: 6140.01 are the Industrial Commission and the State Water Commission are they involved in the decision of the order that these come in?

Denton Zubke: This is very consistent with what our original plan was 2 years ago.

Rep. Hofstad: I understand that the cost of the water, the sales and that operational cost for the depots but the 15% for the administration for overhead that seems open-ended to me.

Denton Zubke: The domestic rate is not open ended and so I hope that is clear the way we calculate that.

Rep. Keiser: I would like to have a discussion not of the refinement but the proposal. Why do we need subsection B or A or 5?

Denton Zubke: This is a complex project and there are a lot of things going on out there.

Rep. Keiser: It is complex and dynamitic; but then we need to come up with some language where we will not be sharing these dollars but that the state adds to its debt those adjustments that are required after the original plans are developed.

Rep. Hofstad: This is to separate the two and let you develop your sales and that private enterprise to the people that you are servicing. The state is going a long ways in assuming your debt.

Rep. Hofstad: We are going to ask council to rework the amendments in a matter that is easier to understand. We will adjourn until tomorrow morning at 9:00 in this room. Adjourned at 10:35 a.m.

### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 April 2, 2013 20767

20767
☐ Conference Committee
Inineth
Subcommittee SB 2233 at 9:00 a.m. in the Pioneer Room adjourned at 11:45. To provide a declaration of water policy and goals
1 -2"attached testimony."
Present were: Rep. Hofstad, Rep. Keiser, Rep. Schmidt, and Rep. Hunskor
Others Present: Rep. Porter, Jeff Nelson, Karlene Fine, Michelle Klose, Jennifer Verleger, Robert Harms,
Rep. Hofstad: We will open subcommittee on SB 2233. We will begin with the amendments that we have on SB2233. (Attachment #1)
Jeff Nelson: These amendments are a compilation of amendments that came from several sources. We do have a marked up copy that is a copy of the bill that incorporated the amendments LC 13.057.04006.
Rep. Keiser: On page 5 the mill levy's whose amendment was that and what is the meaning of that?
Rep. Hofstad: Is a levy that is appropriated by south west water, and what we are looking at here is a process by which we will look at recapturing that South West Water Authority moving it from a state owned project to a authority owned project.
Rep. Keiser: Did came from the Water Commission?

Rep. Hofstad: The infrastructure is part of the loan package that we are looking at. We looked at this in another bill that went through this committee earlier.

Rep. Keiser: Who is requesting this amendment?

Rep. Hofstad: It came from Rep. Porter.

Page 2

Rep. Hofstad: I am.

Rep. Schmidt: page 8 line 4 item B, the estimated cost of the project and then looking at line 6 where we talk "about a benefit to the state" my amendment to that would be to remove those 2 parts and create item D which would say "develop overall economic impact to the project defined by a cost benefit analyses" which would do both of those things as one unit.

Rep. Hofstad: Some of these projects could be small in nature. Do you want set some limit as to when we get involved in a cost benefit analysis?

Rep. Schmidt: I would because we agreed to a previous bill where set \$500,000.

Rep. Porter: In response to Rep. Schmidt this is in the loan portion. They won't finance the project without the ability to repay.

Rep. Hofstad: This is part of the package.

Rep. Schmidt: However the ability to repay would be based on the benefits that are identified through analysis process.

Rep. Hofstad: I would hope that all of that analysis would be done on the front end of the project.

Rep. Keiser: Did you get any thought to placing in here the rate of interest for these loans?

Bob Humann: Chief Lending Officer for the Bank of North Dakota; We have some of the funds that are being established from money out of the sift funds that have an interest rate of 1% but we also have a community water facility loan fund that we currently work with rural water projects through rural utilities services that has a rate of 3%. If it is going to be somewhere between 1-3% the section that we have included is the bank is want to get paid something for doing all servicing work.

Rep. Keiser: We want this loan fund to benefit the rural communities. I move that amendment to add the language that the loan will be 11/2 % to pay the expenses associated to the bank.

Rep. Hofstad: We have a motion from Rep. Keiser and a second from Rep. Schmidt motion carried.

Rep. Keiser: I move the amended.

Page 3

Rep. Hofstad: We have a motion to accept and a second form Rep. Hunskor motion carried. Do we understand that the amendment that we approved supplants the intent in section 1 which allocated 18% of that money?

Jeff Nelson: Page 4 section 1 declaration of policy stays the same Section 2 legislative intent reports to the legislative assembly stays the same

Rep. Hofstad: Let's deal with section 2. I have a motion from Rep. Keiser and a second from Rep. Schmidt to make 2 small changes in section 2 motion carried.

Jeff Nelson: Section 3 page 6 stays the same.

Rep. Schmidt: page 6 line 17 "legislative assembly declare its intent to provide state funding for a share" what is the logic for not defining what that share is?

Rep. Hofstad: We need to have some further discussion on that issue.

Rep. Keiser: Do you want to keep this very general because we don't know the level of funding of the federal government.

Rep. Hofstad: I agree that we need to be broad in that language.

Rep. Porter: We want to be sure that our cost share is based on the federally approved project.

Rep. Schmidt: We should be paying for the one that gives the biggest bang for the buck. That share needs to be defined on that aspect.

Jeff Nelson: Section 5&6 remain the same.

Rep. Hofstad: The idea of exploring the issue with Garrison Diversion is a good one.

Jeff Nelson: Section 7 that is covered. Section 8 & 9 stay the same. Section 10 on page 9 this is a new section to chapter 6140 of the century code.

Rep. Hofstad: Section 10 is adding audit and value engineering on the project committee.

Rep. Schmidt: In the title it's pertaining to the WAWS project.

Rep. Keiser: If we were to adopt this it needs to be clearly identified that the audit is in reference to the WAWS infrastructure.

Rep. Hofstad: The State Water Commission does have the authority to do value engineering.

Page 4

Rep. Schmidt: On line 19 we should have specifically "the authority" if we are talking in general terms?

Rep. Hofstad: Do you feel that we should conduct an audit on WAWS and Number 2 do we want value engineering on WAWS?

Rep. Keiser: I do not support this amendment.

Rep. Schmidt: I agree with Rep. Keiser.

Rep. Hunskor: Does the Water Commission have a good enough handle on what we are talking about here. This is doubling up is it necessary.

Rep. Hofstad: Would you like to hear from somebody from the State Water Commission?

Michelle Klose: Assistant State Engineer of the State Water Commission; we do believe that we do have the authority for this review in the current statute.

Rep. Hofstad: Just as any water district would have?

Rep. Hunskor: If the new wording in section 10 did not pass and this bill moves ahead would you see that the need within the Water Commission to dig into the over sight deeper?

Michelle Klose: The larger facilities plants those are areas that we would want to have a review on.

Rep. Hunskor: Are you doing some of that in the new section 1, 2, 3 of section 10 page 9?

Michelle Klose: We would not be reviewing those audit reports; the political subdivision would have to respond to those audit reports.

Rep. Hofstad: If we were to develop language that would allow you to do value engineering and charge the project back would it be easier for you?

Michelle Klose: You could put that in there that If the value engineering study was required that the State Water Commission could make that request.

Rep. Hofstad: That language would apply to all projects.

Michelle Klose: It would go into a different if it was all projects going forward.

Rep. Keiser: I move that we do not include section 10 in the final draft.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried.

Jeff Nelson: Section 11 is an amendment to 614002 dealing with the authority.

Page 5

Rep. Keiser: Could you go into more detail into that next sentence? Does this allow them to unanimously convert to a new water district and does that need approval from the State Water Commission? What are we giving there?

Rep. Hofstad: The water districts have the authority to bond. They have the authority to set up assessment districts and those are two big ones. At this time they do not have the authority to bond.

Rep. Keiser: The individual entities within the district have the authority.

Jennifer Verleger: 613512 is section that talks about the powers of the water district.

Michelle Klose: There are different options; WAWS was looking for additional powers to be able to work on the system.

Rep. Schmidt: If the law allows them to do it why do we have to write it?

Michelle Klose: Because not all entities are a water resource district.

Rep. Hofstad: Given WAWS the power to assess and because we have different entities within there; if we give WAWS the power to assess does that cause some issues?

Michelle Klose: It is a weighted membership.

Rep. Keiser: On line 14 it says "unanimously votes" so that even though it is a weighted all of the parties have to be supportive. I move the amendments that Michelle recommended if Jeff understands them.

Rep. Hofstad: It has been moved and seconded by Rep. Hunskor that we adopt the amendments motion carried.

Rep. Keiser: I move this section as amended.

Rep. Hofstad: We have a motion to move the entire section 1-5 as amended and a second form Rep. Schmidt motion carries.

Jeff Nelson: Section 12 is amended to 614003.

Rep. Keiser: I move section 12.

Rep. Hofstad: We have a motion and a second from Rep. Hunskor; motion carries

Page 6

Jeff Nelson; Section 12 page 11 of the bill amendment to section 614003 of the compassion of the board of directors of the authority this amendment would add 3 members of the public appointed by the governor.

Rep. Schmidt: I move that we strike that amendment.

Rep. Hofstad: We have a motion and a second from Rep. Keiser motion carries.

Rep. Keiser: I move section 13.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt: motion carries.

Jennifer Verleger: 614003 the line above where you were trying to add "an addition to governing body must contain 3 members of the public" Above it says" in addition to the state engineer or designee is a voting member of the authority board of directors".

Jeff Nelson: Section 14 is an amendment to 614005.

Rep. Hofstad: Is this new language?

Jeff Nelson: No.

Rep. Hofstad: We need to be careful as go forward that everyone understands that the industrial sales portion is to address the original \$150,000.000 debt. We need to make clear so we don't take on additional debt.

Jeff Nelson: Subsection 17

Rep. Keiser: Where are these amendments coming from?

Jeff Nelson: The Water Commission.

Rep. Keiser: On line 17 is an important decision to be make because we have had a lot of debate relative to depots and laterals.

Rep. Hofstad: It is very important that we keep up with how the industry changes.

Rep. Keiser: On page 15 lines 16-17 must be approved in accordance with section 17. This section shouldn't be adopted until we define what section 17 is.

Jeff Nelson: Section 14 this is the power for the authority.

Rep. Keiser: The state is going to own Industrial Sales; why wouldn't the state want to maintain eminent domain if necessary?

Page 7

Rep. Hofstad: We have a motion from Rep. Schmidt to reject the amendment and a second from Rep. Hunskor; motion carries

Jeff Nelson: On subsection 13 which was discussed earlier.

Rep. Keiser: I think we should bring that back to page 15 lines 5-6.

Jennifer Verleger: Whatever you are doing on the policy there you need to clarify the participating member entities because this is only the WAWS stuff.

Jeff Nelson: Section 14 page 19 the power section for the authority; Subsection 13 this language is being proposed by the authority itself.

Page 22 these are additional powers that are proposed to be added by the authority.

Subsection 21 issue and sell revenue bonds and 22 refinance bonds; 23 pledges, 24 dealing with rates, 25 pledges revenues from the authority, 26 make all contract and contract debts and borrow, 27 and 28 long and short term contracts,

29 pledge already for the assessments levy to secure the payments and the bonds.

Rep. Keiser: I move that we delete this recommended amendment because the previous action gets them into the proper chapter and gives them some authority.

Rep. Hofstad: That authority does not exist until they make that move. We have a motion and a second from Rep. Hunskor motion carried.

Rep. Keiser: I asked "where did these amendments come from" and it was indicated that they came from the Water Commission. The Water Commission did write them but the Water Commission didn't submit them as Water Commission amendments they were submitted by the request of the chairman and would like this on record.

Jeff Nelson: Section 15 on page 23 deals with section 614006 "oversight of authority projects. In subsection 2 line 23 moratoriums and lateral lines for the Industrial Water Sales. In subsection 3 lateral lines must be approved by the Industrial Commission or the State Water Commission.

Rep. Keiser: I move the first amendment which is the deletion of the section 15- 614006 as indicated on page 23 lines 22-30 and page 24 lines 1-6.

Rep. Hofstad: We have a motion to move the first amendment and a second from Rep. Schmidt. Motion carried.

Jeff Nelson: This section creates a new chapter to section 6140 dealing with the WAWSA. This section deals with the industrial water depot and lateral sales.

Page 8

Rep. Hunskor: I would like to hear from all 3 briefly to hear whatever thoughts they have supporting their part.

Robert Harms: What I would like to do to help the committee in section 16 is we took the subcommittee's initial draft. On page 26 paragraph 1 that states that the Industrial Commission is going manage control of the Industrial water sales to the oil industry and make contract for management, maintenance, and operations of those assets for which the sales occur. The other primary change would be how the money gets allocated.

Rep. Keiser: On page 26 item 2 lines 14-15 A&B do you support or not making B A and A B?

Robert Harms: We don't have strong feelings the reverse order. The language in D is not excessive it is fair to both the state and WAWS and it is written with precise language so that everybody knows what is going on.

Rep. Keiser: Would you support the establishment of the reserve account which might be funded by Industrial Sales for maintenance and replacement.

Robert Harms: We haven't talked about that at length but we think that is a concept that makes some sense.

Rep. Hunskor: You talked about trust if the lack of trust wasn't an issue then #1 wouldn't be necessary right.

Robert Harms: Right.

Denton Zubke: Chairman of WAWSA; Yes we have our proposed amendments (#2) on page 27. We all have some debt that is included in those contracts and some debt that wasn't included in those contracts.

Then we go on to funding for operation and maintenance reserve accounts and capital reserves which are very standard. The item that was added yesterday is that the state shall pay any federal, state or local statutory or regulatory requirements that impose additional monetary costs upon the project.

Sentence # 2 identifies if there is a shortage as far as making those payments and request the Industrial Commission shall request funding from the state to make payments to the authority to make up an insufficiency.

Items # 3 is a comment from our participating members of WAWSA to allow private water sellers to sell water from the Missouri River for oil field hydraulic fracturing purposes.

Item # 4 is something that has been moved around from I think from HB 1206.

Rep. Keiser: Subsection A under 1 you are using the domestic rate as a base for repayment. I think that is different than the other proposals.

Page 9

Denton Zubke: Our domestic rate is defined as the rate we charge our participating member entities. That has to do with some of the costs that were incurred when we picked up some of that debt on the infrastructure.

Rep. Keiser: So that is what you are proposing. What are you currently charging for industrial sales?

Denton Zubke: Are you asking what we are charging the industry \$20.00 per thousand.

Cory Chorne: The project manager with Advanced Engineering; that \$3.87per thousand gallons that Denton was talking about charging would be the cost of producing that water and getting it distributed in McKenzie County. That \$3.87 is a bulk rate that is charged. McKenzie County buys that for that amount.

Rep. Hofstad: Item # E can you explain that to me?

Denton Zubke: That is what we discussed yesterday. We found out that McKenzie County Water Resource District is going to have to move 71/2 miles of pipeline because the highway on the west side of Watford City is going to be a 4 lane highway. When we sweep out these industrial sales that will leave us little change of being able to pay for that improvement this would allow us to take that out of those industrial sales.

Rep. Keiser: You do have 2 reserves one on the capital side and one the operations side why can't we use a reserve fund? Are they to big?

Denton Zubke: Correct. Our reserves funds are not well funded at this time.

Michelle Klose: I was hoping to provide an explanation of water rates and how they are different between these plans if that would be beneficial. What we are looking at is which costs are going to be domestic water costs and which will be industrial costs and how to separate those out. 200:20-203:00

Rep. Keiser: You have made an important point; whenever we do have a cost that arises we need to have both the industrial and the domestic portion of this project assume some liability in paying for that.

Michelle Klose: That should cover the reserve portion of the O&M rate already.

Rep. Hofstad: The domestic rate that we talk about in our amendments on page 25 line13 you are saying that rate should incorporate those other costs.

Michelle Klose: The ones on page 25 would not be included but if you want to change the language to say that is stead of the "cost for water treatment and proportional pumping power costs for that water supply" if you remove that language and you are saying that the first paying member entity rate at that depot location then that should include the domestic rate.

Page 10

And in addition to that using this base rate as proposed by WAWS should be incorporated in the section 1 on line 4.

Rep. Hunskor: I would like to go to page 27 one E again the any part and the fact that there is no cap doesn't sit well with me.

Rep. Hofstad: I am going to have Michelle work with us to develop that language. Before we vote on it I would like to see it.

Jeff Nelson: Section 17 page 28 we have 3 proposed sections 6140 dealing with water rates.

Rep. Keiser: I think we should wait for Michelle's language because what that language did was establish a water rate.

Rep. Hofstad: We will table section 17. We can move to 18 construction funding.

Jeff Nelson: On this section we have 3 proposals dealing with construction funding.

Rep. Keiser: The difference is the Water Commissions proposal is simply to place into statue the current procedure that is followed by the Water Commission on project by project bases. The other 2 amendments talk about an overall plan, contracts plan and specification for contract components which seems to me impossible to do well. I support the proposed amendment from the State Water Commission.

Rep. Schmidt: I think Michelle addressed this in section 18.

Michelle Klose: Right after the Resources Trust Fund add in "and Bank on North Dakota state guaranteed loans" on line 8. The funding is through either the Resources Trust Fund or the Bank of North Dakota state guaranteed loans.

Rep. Keiser: Should it be or, or and?

Michelle Klose: It can be and. This is only dealing with the sources of funding.

Rep. Hofstad: We will adjourn we will come back after session.

#### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 April 2, 2013 Job #20777 Subcommittee PM

□ Conference Committee

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To provide a declaration of water policy and goals

Present were: Rep. Hofstad, Rep. Keiser, Rep. Schmidt, and Rep. Hunskor

Attachment 1

Others Present: Jennifer Verleger, Jeff Nelson, Denton Zubke, Robert Harms, Michelle Klose, Karlene Fine

Rep. Hofstad: We will open the subcommittee for SB2233. We will start on section 17.

**Jeff Nelson**: Will switch the order of A and B. This is our new language on section 16. "Reimbursement authority for the cost for water supply sold at industrial water depots and lateral lines at the participating member entity rate at the location of the depot or lateral line."

Rep. Hofstad: Do we want to move to Section 17? Water rights?

**Jeff Nelson**: Chapter 6140; three different proposals dealing with the determination or development of industrial water rates. The first version is water commission; second version independent water providers; third is the Western Area Water Supply Authority. (WAWSA)

Rep. Hofstad: Do you have motions that you would like to bring forward?

**Rep. Keiser**: This is the rate that the water will be sold for industrial sales to the oil and gas industry. My question is the rational for annual basis. Does it make sense to set rates or give them flexibility where they could adjust rates quarterly? All three of them have annual basis for rate setting. There is not much flexibility if the rates drop significantly and they have a fixed selling rate that is not marketable that could create a problem.

Rep. Hofstad: Further in the bill the Industrial Commission has set authority to review those rates and adjust those rates.

**Rep. Keiser**: I think we have got it addressed somewhere else, but then the language here Instead of annual rates as per section 19 they may adjust the rates.

**Rep. Hofstad**: 61-40-09 Section 19 of the bill page 31 "the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to repay."

Rep. Keiser: We need to make those consistent.

Rep. Hofstad: Page 29, under Section 18 we amendments proposed by the WAWA by the State Water Commission and the independent water providers. Are you ready at this time to look at the differences in those three proposals and make a recommendation? Let's talk about this 1926 protection because this is really one of the major issues we are addressing. Rep. Schmidt you have talked about making sure as we go forward here that these entities still have protection for their municipal sales to that part of the projects. Do we have that spelled out clearly so we separate the oil development and the other domestic water supply areas? I think it is.

**Michelle Klose**: There are a couple of pieces we are trying to look at here. There was some discussion last week on making the water rate 2 sections with domestic and industrial rate similar to the first two numbers under what is shown as proposed by the independent water providers. You already have any subsequent industrial water depot and lateral rate adjustments must have the approval of the Industrial Commission before going into effect so this language might address what Rep. Keiser had mentioned before. It can be presented on an annual basis, but then if you know there is a need for a change it can still be presented to the Industrial Commission for that change.

Rep. Keiser: If you take and strike on an annual basis then you are setting it like the other section.

**Michelle Klose**: It would be better to address it here rather than in the default language because that is only if they are having problems paying the 1-3. In 17 it was what was proposed by the independent water providers that at least are language that you had considered last week to separate it into two sections.

**Rep. Keiser**: If we take Section 17 proposed by the State Water Commission and simply strike on line 4, on an annual basis, we satisfy the intention of setting water rate. We don't want to set residential water rates. We only want to set commercial rates.

**Jeff Nelson**: Do you want to cross reference that to 61-40-09 or do you think that is OK?

Rep. Hofstad: Starting at line 6 page 28 Section 17 please explain that. What authority is this?

**Michelle Klose**: The WAWSA sets the industrial rate because they understand what the market is and what is happening locally. Then they report this information to the Industrial Commission.

Rep. Hofstad: How does the domestic rate fit into that component?

**Michelle Klose**: The domestic rate doesn't; but the lines following that define what the domestic rate does cover to make sure that all costs that aren't swept from the industrial sales actually do get covered by the domestic rate. The only change that has happened so far is that is different from this is now you have that domestic rate actually being a part of what is subtracted from the sweep funds. I don't know if that changes anything as far as if you want that domestic rate reviewed since it is part of a sweep or if you don't want that review.

**Rep. Hofstad**: So we know where we are at so we can develop that industrial rate and sweep it.

**Rep. Kaiser** made a motion to move the amendment on Section 17 as proposed in lines 1-10 proposed their draft by the Water Commission as referenced by removing on an annual basis and referencing section. Seconded by Rep. Schmidt. Voice vote carried.

Jeff Nelson: Section 18 would add a new section to Chapter 61-40. This deals with construction funding. First proposal is the Water Commission; Second independent water providers and third is the WAWSA. I have changed this to read the authority shall follow the State Water Commission requirements for funding through the resources trust fund or Bank of North Dakota state guaranteed loans and shall present the overall plan. Amendment moved by Rep. Keiser; Seconded by Rep. Hunskor. Voice vote carried.

**Rep. Hofstad**: We are saying the priority of funding is first reserved for state guaranteed loan payments if not meet by those industrial depots or lateral sales. Second is for full repayment of existing federal debt; protection for oil development and industrial water sales is asserted and third for expanding domestic water sales. We take care of those.

Rep. Schmidt: 21:14 on line 12 on expanding domestic water supply; does that give the protection for the rural water systems that we are looking for?

**Michelle Close**: When it is trying to carve out specifically if the 1926 B protection for oil development industrial water sales is asserted so they can assert it for any other purpose; then it pushes repayment of that loan through the resources trust fund for the funding available for this next biennium.

**Rep. Schmidt**: I am not so sure that we understand this it is not 1926 B, but it is the state version of that protection. I am not so sure that the existing federal debt is the verbiage we should use?

**Michelle Klose**: When you deal with the public finance language that is the state protection that is specifically political subdivisions and political subdivisions not being encroached. So here if you have a private entity the independent water providers are not a

political subdivision. So there is no protection there because it is not the political subversus the political sub. So that protection remains with any system.

**Rep. Keiser**: On line 14; it is not right. We want to agree to not hinder the independent water producers to oil and gas sales. But the way it reads they could be domestic sales.

**Michelle Klose**: 24:45 The one language in section 16 I think the language that was worked on showed reimbursement; it should be reimbursed.

**Rep. Hofstad**: We will want to see this amendment before we vote on it. Do you see the language the independent water providers have provided? Are there any differences there? Do you see anything provided in the proposal by the WAWSA amendments or the independent that we need to look at?

**Rep. Keiser**: I support the language in the State Water Commission. Both of the other suggestions are requiring them presenting and overall plan which I don't see essential. Line 23 of the independent water users if there is a short on the industrial sales on the guaranteed state loan funds must be considered as local cost share of these construction funds. That is a significant difference, I do believe. The proposal by the WAWSA doesn't have enough detail.

**Michelle Klose**: The independent water providers they had mentioned there was some changes that weren't from what had been presented before to the committee. It is not something the independents are proposing. That was a mix up between drafts.

Rep. Hofstad: Tomorrow we will have that language drafted and we will be able to vote on that.

**Jeff Nelson**: 29:03 What I have lines 13-14 on page 29 is in accepting construction funding the authority and participating member entities agree not to hinder or prevent industrial water sales to the oil and gas industry.

**Michelle Klose**: If you can keep the language that is the water depot and lateral sales that will be language used throughout the bill to distinguish industrial sales from water fracking or depot cycles. So you would say industrial water rather than industrial water sales; say industrial water depot and lateral sales.

**Rep. Hofstad**: 30:39 Motion made to move the amendment by Rep. Keiser, Seconded by Rep. Schmidt. Voice vote carried.

**Rep. Keiser**: Once we get these amendments in written form to see them at some point are we going to allow the representatives from the groups to come up and address the changes we have made in case there is a word here or there that we should take into consideration?

Rep. Hofstad: That would be appropriate. Let's move on to Section 19.

Jeff Nelson: Section 19 is an amendment to Section 61-40-09. This is the default section for the WAWA and we have three versions. 1. Water Commission 2. Independent Water Providers 3. WAWSA. 4. Version with some language in here. Looks like the Water Commission and Independent Water Providers are similar. Looks like the authorities' version is that the commission may review the ability of water depot or lateral sales to meet expenses and if the commission is uncertain of that ability the commission shall provide written notification to the Water Commission and consider review of loan repayments.

**Rep. Schmidt**: 34:34 Line 23 on page 30 and 31 and 15 on page 32. Shall request funding from the legislative assembly? What is this?

**Rep. Keiser**: I think that is right. The debt is at the Bank of North Dakota. We own the bank so the bank will continue to accrue interest on that note and if it cannot be repaid then at a legislative session they would have to make a decision on how to restore the Bank of North Dakota through an appropriation or grant.

Rep. Hofstad: This loan is carried on their balance sheet. It is part of their debt.

**Jeff Nelson**: All three versions take out the sentence beginning on page 30 line 24 upon written notice through the budget section. The fourth version leaves that language in.

Karlene Fine: You can forget that whole piece

**Rep. Kesier**: I think it would be worthy of a discussion as to why this clearly takes the default away. If we haven't already done that we need to do that. The default provision said we took over possession. This language is saying if there is a default you are not taking our assets. You are stating the default is gone.

Rep. Hofstad: This is the default language that came from 12-06?

Michelle Klose: 38:41 basically the bottom area that is struck upon written notice the members of the governing board are removed. That is all stuck now. The water commission takes over and then determines the governance. On page 32 lines 13-16 the Bank of North Dakota needs that for the state guaranteed loans; otherwise they weren't able to issue those loans in the first place. Now if the Industrial Commission is concerned that they may go into default then they can look at changing the terms of the loan and they can tell the Water Commission to look at the domestic water rates as a default mechanism.

**Rep. Keiser**: This is the default section without saying" you cannot default? On the language proposed by the WAWSA page 32 lines 22-24 it is confusing because they are talking about you cannot take property associated with any bonds; where are the bonds?

**Jeff Nelson**: That ties into the power section where under the authority amendments they have bonding authority which we are not adopting.

Rep. Keiser: Do we need this in the default section 19 submitted by the Water Commission?

Rep. Hofstad: They are now requesting the authority to issue revenue bonds.

**Denton Zubke**: page 32 lines 22, 23, 24 I do not find that we submitted that language. I have noticed in a couple other sections with some of the language was changed a little bit. On page 33 if you read between 19 and 20 we did ask that Section 20 be added to give us the ability to issue revenue bonds. Also that Section 21 is added so we could continue to build out our project by raising some financing.

**Rep. Schmidt**: Amendments 4005 page 10; is what is presented in this document in front of us under 61-40-09 default. I don't know where 4005 came from?

**Rep. Hofstad**: In 2233 we have language that deals with that. 45:16 Rep. Keiser moved we adopt the proposed language from the State Water Commission in Section 19 regarding default; Seconded by Hunskor. Voice vote carried.

**Rep. Keiser**: I did see the cap and will not support a cap. We need to guarantee repayment of those loans so any percentage approach doesn't work based on the pricing. When we adopted the language for those other proposals it wasn't because we did not discuss those things; it was aware of them and did not support them.

**Rep. Hofstad**: I thought we would inflict upon ourselves some kind of a cap. As we develop as we have gotten to this point the point has been made that we are now moving into a free market and I think that is what we are doing us is moving us into that free market. We can look at this through the coming year to see how this goes.

**Rep. Keiser**: As we were in Williston for an interim topics committee meeting. The discussion there was 15-18% of the market share and we were comfortable with that under that scenario. That has changed dramatically and I am not sure that is applicable at this time.

**Rep. Schmidt**: We have to be careful and sensitive to meeting our obligations. I think we should restrict the number of depots.

Rep. Hofstad: Let's move to the revenue bonds.

**Jeff Nelson**: 51:47 Section 20 would add a new chapter to Chapter 61; 40 and section 21 these are both proposed by the authority and would authorize the authority to issue revenue bonds.

**Rep. Hofstad**: Because of the makeup of the authority and because we have different entities out there including water resource districts and a board that is really squired a little bit. Has this become an issue for us as we special assess for projects?

**Michelle Klose**: I am not sure how to respond to that. There are 22 votes on the board as it is today. Williston had 11 of those; McKenzie has 4; and the other board members have 3 and the State Water Commission had 1 to make up the 22. It does not sound like they are interested in forming a district.

**Rep. Hofstad**: In the language that allowed them to form a district we said that all the board members had to approve.

**Michelle Klose**: That was in the language to form a district that is had to be unanimous decision. There are restrictions on not adding any new debt for this next biennium so I don't know if it is something we want to see how it plays out before you added that or if you want to add it now so it is available as a resource to this entity?

**Rep. Keiser**: I don't support this section. It was our proposal that we take the debt and sweep the revenues to pay for the debt and they can use the revenues from residential sales. If they need additional dollars; rather than revenue bonds, they come to the State Water Commission through the normal granting process and we treat them as a water district. That is our plan to grant them the additional authority to issue these kinds of bonds is inconsistent with our thought process.

**Rep. Hofstad**: As we go forward there will likely be a mix-up of grant and loan and as they fulfill that loan portion of that project they are going to have to have some kind of mechanism. Certainly we can revisit this thing in the next biennium. 56:18 Motion made to strike Section 20 by Rep. Schmidt; Seconded by Rep. Keiser. Voice vote carried.

Rep. Hofstad: Section 21.

Rep. Keiser: Is this an authority that they need as they are growing?

**Rep. Hofstad**: It is another method by which they would raise revenue and they would use that assessment off that district to pay the revenue for the bond.

**Rep. Hunskor**: The WAWSA needs that come up on an emergency basis or something like this would be useful. I don't know if there is an oversight needed.

Rep. Hofstad: Both of these are really opportunities that are given in a water resource district so they have that ability to take that vote and go that direction too.

**Rep. Schmidt**: How do the reserve funds play into the fact with this? 58:52 Motion made by Rep. Keiser to delete Section 21; Seconded by Rep. Schmidt. Voice vote carried.

Rep. Hofstad: Section 22:

**Jeff Nelson**: This would add a new section to Chapter 61-40 dealing with the project as it relates to industrial water sales and once debt is paid the Industrial Commission has the discursion to continue to manage and operate industrial water sales, dispose of all or some of the assets upon public sales and then any revenue from the sales would be returned to the Resources Trust Fund.

**Rep. Keiser**: When we had it set up as a loan and they had the liability we had them paying then they were paying the state some proportion of the payment in the original legislation. As the partner in the project there should be some distribution back to WAWSA when some of the loans are paid off. I don't know what that percentage should be. They

were partners that invested assets and their only purpose is domestic application. We should want to give them some reinforcement to continue to do that kind of develops once these loans are all paid off. I don't think we should take 100% doesn't seem fair.

Rep. Schmidt: The idea of disposing all or some of the assets upon public sales I don't agree with that.

Rep. Hofstad: Let's sleep on this one. Section 23:

**Jeff Nelson**: This would add a new Section 61-40 and is being proposed by the Independent Water Providers and deals with grant funds. They must be grant funds. 1:02:39 Rep. Keiser moved we delete this; Seconded by Rep. Schmidt. The water commission doesn't have enough capacity to meet all of the dollars that are in the current proposal; the \$40 million. Voice vote carried.

**Rep. Hofstad**: There would be no opportunity to move the \$120 million into the State Water Commission budget at this time. Section 24:

**Jeff Nelson**: This section was proposed by the Independent Water Providers and would provide that the WAWSA and its participating member entities waive the right to reserve franchise protection under federal law or state law for any existing or subsequently acquired debt with regard to industrial water sales to the oil and gas industry or against any person attempting to sell industrial water to the oil and gas industry.

Rep. Hofstad: Let rectify that with section 18. Is that addressed in 18 to our satisfaction?

Michelle Klose: 1:05:02 We have concerns if you are trying to waive the protection in federal law.

Rep. Hofstad: Do we address our concerns with 19-26 B and 18? It seems to be that we do.

Michelle Klose: Yes.

1:05:44 Motion made to remove omission of Section 24 by Rep. Schmidt; Seconded by Rep. Keiser. Voice vote carried.

Rep. Hofstad: We are looking at Section 25. Discussion: 1:07:11 - 1:14:

Rep. Schmidt: Back to page 18, Lines 12-14. Jeff had some additional words to that; could you please repeat those.

**Jeff Nelson**: Beginning on line 12, the underscores language in green would be changed to read additional debt that requires repayment through authority or member entity water sales; then we go back to the proposed language, except state guaranteed loans may not be acquired before August 1, 2015 unless an unforeseen circumstance or hardship arises and then only upon approval by the Industrial Commission or budget section. Motion made by Rep. Keiser; seconded by Rep. Hunskor. Voice vote carried.

**Michelle Klose**: 1:18:07 On page 6, line 6, Item #7; there had been language previously in 2233 that talked about projects receiving state funds for construction not asserting claims or seeking to prevent other entities. This language says industrial uses and it may actually cause concerns with Rep. Schmidt talking about 1926 B protections. I don't think you want to open up all industrial sales. You may not need this language now so you may want to remove this now. 1:19:37 Motion made to remove subsection 7, line 6-8 on page 6 by Rep. Keiser; seconded by Rep. Hunskor. Voice vote carried.

**Karlene Fine**: The Industrial Commission, If they are taking on a role of rate setting or that sort of role, I do think we want to be exempt from the administrative practices act so if that could be incorporated in here that the Industrial Commission would be exempt. We talk about state guarantee debt. Under the public finance authority who have a number of loans to the entities we do not consider those to be part of the state guaranteed debt. That is a part of the participating entity debt.

**Rep. Schmidt**: Should we have HB 1020; Section 18 deals with Section 7 of 2233 so he wanted to make sure we were aware of that to avoid duplication. That is just a thought.

Adjourned.

#### 2013 HOUSE STANDING COMMITTEE MINUTES

### House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 April 3, 2013 20844

Conference Committee

d'Penrose
Subcommittee to provide a declaration of water policy and goals started @ 10:00 in the Pioneer Room
Present were Rep. Hofstad, Rep. Keiser, Rep. Hunskor, Rep. Schmidt
Others present: Rep. Porter, Michelle Klose, Robert Harms, Jennifer Vergeler, Denton Zubke, Jeff Nelson, David Laschkewitsch

Minutes:

1-2-3-4-5 "attached testimony."

Rep. Hofstad: We will open subcommittee SB 2233. We will go through the marked-up bill that we went through it yesterday. After we have had an opportunity to go through and discuss the various sections in the bill, we are going to ask the people on both sides of the issue to come to the table and to comment on the bill as it is marked up.

Rep. Keiser: I do have an amendment that I would like to propose to the committee. (#1) When we originally passed this legislation there was some concern expressed. As you can tell, on the bottom of section 61-40-01, if you look not at the amendment language but at the sentence before it, the Western Area Water Supply Authority shall consider in the process of locating industrial water, the location of private water sellers so as to minimize impact by water sellers. Given that we have a difference environment now, especially with the larger line coming off of the Missouri River, I thought that it would be appropriate for the committee to address that proactively and add the language, as provided, the independent water providers shall consider in the process of locating industrial water, the location of private water sellers to as to minimize the impact on the private water seller. I move the amendment.

Rep. Schmidt: Second.

Rep. Hofstad: It has been moved and seconded to adopt attached #1 amendment. Voice vote, motion carried. Are there additional amendments to be offered?

Rep. Schmidt: I don't have anything printed, but on page 6, line 18, after the word adopt, where it would read "for a share of the nonfederal or local cost of constructing the", so

between the word "the" and "mouse" insert federally approved national economic development alternative for the Mouse River islet control". That would read for the whole subsection 1 would read, "the legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost of constructing the federally approved national economic development alternative for the Mouse River and the Islet Control project".

Rep. Hunskor: Second the motion.

Rep. Hofstad: Rep. Schmidt would you explain your amendment.

Rep. Schmidt: Rep. Porter indicates that we also need to add to that "one foot between a share on line 17 and one-half share". So again, it would read "the legislative assembly declares its intent to provide state funding for one half share of the nonfederal local cost of constructing federally approved national economic development alternative for the Mouse River Enhanced Flood Control Project". This is from the .04006 version. I don't have the .04007 version. The same type of amendment would apply to the Fargo flood control What we're discussing here is that as we request the Corp of Engineers assistance, the Corp of Engineers and their flood control project planning process are to identify, what is referred to as the National Economic Funding Development Alternative, which is the biggest bang for the buck. The local entity is not required to select the national economic development alternative, they can select another alternative if they so desire. However, the federal government cost shares based on the national economic development alternative, which again is the biggest bang for the buck. With respect to the Mouse River, the federal government is not yet participated in that project and the discussions that I've had outside the committee, the desire to get the federal government involved into the project is high. At this point in time, there are no funds to do so, and we would work on this wordage for the Mouse River in Conference Committee.

Rep. Keiser: I know that we are receiving input from a variety of sources, but I do just want the record to show that I don't support the one-half because there could conceivably be a time when there is a project that the local community, no matter what they do, cannot match one-half, but yet the law would say that they have to do it or we can't do it even if it is a number 1 priority. I would encourage us to at least consider alternative language that says, that basically one-half or under special consideration there is an alternative to increase that one-half.

Rep. Hofstad: Council has just informed me, of course, that this is intent language. This language sets out the intent. Any other discussion on the amendment, committee? Hearing none, we will take a voice vote. Motion carried.

Rep. Schmidt: I have another amendment. On .04006, page 7, under section 6, Fargo/Moorhead Flood Control Project, line 13, we would add in front of "share" the term "half", so on line 13, "the legislative assembly declares its intent to provide state funding for half share of the nonfederal or local cost of constructing" and then inserting "the federally approved national economic development alternative for the Fargo/Moorhead flood control project". I move that amendment.

Rep. Hunskor: Second the motion.

Rep. Hofstad: We're looking at the same arguments that they could use on Mouse River.

Rep. Schmidt: Same arguments, yes.

Rep. Hofstad: Voice vote, motion carried. Moving on to page 6, we struck the language yesterday that protects the appropriation for waters of the Missouri River. That's really been an integral and important part of this process. This is intent language as well. I think I would like to call Michelle to the podium so we can have a discussion about the appropriation out the Missouri River, how we maximize it, how we minimize any restrictions or infringements upon the use of that water, so that we can craft language that, as we go forward, and I understand that this is "intent" language. We want to make sure that we don't restrict, in any way, the utilization of the appropriation of water out of that river system. I understand we are looking at page 6, lines 12-14, which we struck out yesterday, and I think we did so because we thought that later on in the bill, that we would really address this issue, but I think it is important that we get this language back into the bill, back into the "intent". Help me understanding, if this does what we want, and that's to maximize the utilization of that river so that we can maximize the appropriation out of that river at every possible way that we can.

Michelle Klose: I agree with what you are trying to do to include the language in there. This is for the protection of the entire Missouri River system. Maybe this recognition means that basically all projects need to be cautious and careful on this, in making sure that others are able to access Missouri River water.

Rep. Hofstad: This is not about WAWS; this is about the river system as a whole. In looking at where it says that it is particular to state funds and I was wondering if that intent should be broadened, if we can. Let's take some time to make sure that the language is crafted correctly and in a manner that does exactly what we want it to do.

Rep. Keiser: I think it is good language the way it is. If you read it carefully, it only applies to any project that's receiving state funds from instruction, because they cannot acclimate and if you want to make it broader that any water taken from there cannot be restricted by anyone else. The way it is written, it is a protection for access to the water on a limited basis.

Rep. Hofstad: Let's do this. I will entertain a motion to bring it back into the bill and if we need to change the language to broaden the language, we can work on that; if not, we'll go with what we've got.

Rep. Schmidt: I so move because I believe we need to allocate every drop that ND's water in the Missouri River that we can possibly allocate. I move to bring that back.

Rep. Hofstad: So the motion is would be that lines 12 through 14 be brought back into the bill as they are written.

Rep. Keiser: Second the motion.

Rep. Hofstad: Further discussion on the issue.

Rep. Keiser: Again, I'm not sure that putting it back in does what you really want it to do. I think this is something that you want to be very careful about. This means that any state-funded project can't utilize that, but any private project can.

Rep. Schmidt: I read that a little differently; it says "seek to prevent other opportunities either public or private to utilize those waters".

Rep. Keiser: That's only restricting the project's that are receiving state funds for construction. I would suggest not recognizing, if we want to address it, but don't bring it back until we make sure that we are right on this.

Rep. Hofstad: Okay, that's a good recommendation. If the 1<sup>st</sup> and 2<sup>nd</sup> will withdraw their motion, we will work on this. Understand that this is intent language. This is not law, this is not policy; it is intent language.

Rep. Keiser: But it is what the court will address.

Rep. Hofstad: The court will certainly look at it.

Rep. Schmidt: I withdraw my motion.

Rep. Keiser: So will I.

Rep. Hofstad: Okay, we will table this issue until we have additional information. Let's move to Section 8, the infrastructure revolving loans. I have an amendment I would offer towards that. There have been a couple of problems as we have gone forward here in developing this infrastructure loan. One is that there are more sources that come into the resource trust fund than just the oil extraction. Southwest pays some money and there are other issues. We want to make sure that the intent is to limit it to that oil extraction funds that flow into there. Also as the language is right now, it would restrict and conflict with the money we have appropriated for the 2013-15 budget cycle. The amendment that I would offer is on line 31, after management projects, it would then say, "beginning in the 2015-17 biennium, 10% of the money derived from oil extraction tax". Then as we go over to page 8, line 1, after the first sentence, it would then say "in the 2013-15 biennium, revenues to the resource trust fund which exceeds \$515 million shall be deposited in the infrastructure revolving loan fund until such revenues equal 10% of the money in the resource trust fund".

Jeff Nelson: The sentence were it says 10%, "Beginning in the 2015-17 biennium, 10% of the monies derived from the oil extraction tax" and then the old language "in the resources trust fund is appropriated on a continuing basis for making loans in accordance with this section" and then we would add a new sentence, "in the 2013-15 biennium, revenues to the resources trust fund that exceed \$515 million must be deposited in the infrastructure revolving loan fund until the revenues equal 10 percent of the monies in the resources trust fund."

Rep. Hofstad: The amendment really deals simply with making sure that the 10 percent is restricted to the one-eighth of the extraction tax. Then we're not impacting this budget cycle.

David Laschkewitsch: I'm trying to understand the 10% of the resources trust fund. The resources trust fund will have in it a large beginning balance. It will have cost-share from other projects, it will have oil extraction, and we'll have all of those amounts in it. Currently they amended our budget to take the operations out of the resources trust fund from the agency also. We are exceeding that 515 number that you referenced. I am looking for some clarification.

Rep. Hofstad: We're using your language. I've used the 10% of oil extraction monies appropriated to the Commission from the resource trust. That's your language.

David Laschkewitsch: I understand that. Where you got to taking the excess monies that are in one of those extraction taxes at the tail end, is where my question is.

Rep. Hofstad: Well the intent is simply to move it out so that if there is excess revenue beyond the amount that we are looking at, the \$515 million that flows into the resource trust fund, from the oil extraction tax, if there are additional funds there, we will begin to accumulate those funds in this 10% revolving loan fund.

David Laschkewitsch: At this point, those would not be appropriated to the Water Commission. There is a balance in the resources trust fund, but under the executive budget it was not fully funded. It is my understanding that some of the bills that are out there now, it is actually over-appropriated.

Todd Sando: Now I'm concerned about this 10% of the resources trust fund. We're allocated 20%. I thought you were looking at 10% of the 20%, which would be 2%, so it was \$500 million that would be in the trust fund. We're concerned that it's written that half money coming in.

Rep. Hofstad: The intent is 10% of the resources trust fund until it's worth \$515 million. Any other amendments from the committee.

Jeff Nelson: .04007 version (#3). The first change was made as a result of discussions yesterday, on page 4, line 23, there is a new subdivision, subsection 1 of section 28-32-01 which is the administrative practices act. This would exempt the Industrial Commission from the administrative rulemaking process for purposes of approving or setting water rates under chapter 61-40. That was at the request of the Industrial Commission.

Jennifer Vergeler: I think that is actually supposed to say subsection 2, because subsection 2 is where it lists out all the exemptions; subsection 1 is where it defines administrative rules.

Jeff Nelson: I will double-check that. We discussed the change on page 6, on lines 12-14. The next change is on page 8, lines 15-16; additional language added there that loans made out of this section must be made at the interest rate of 1.5%.

Rep. Porter: As we looked at that, did we want to on line 17, I thought we were going to set the fee up to 1/2 % and a service fee of ½ of 1% for administrative infrastructure.

Jeff Nelson: On page 10, line 3, new language provides the provisions of subsection 1-5, Section 61-35-02.1 applies the authority. The next change deals with section 61-40-05 on page 11, section 14 of the bill. There was a proposed amendment prohibiting the authority from using eminent domain for the purposes of providing industrial water to the oil and gas industry. Subsection 13 after it was revised to say additional debt, and new language that requires repayment through authority or member entity water sales and current language, except state guaranteed loans cannot be acquired before August 1, 2015, and new language unless an unforeseen circumstance or hardship arises, then only upon approval by the Industrial Commission or budget section.

Rep. Keiser: If the Industrial Commission approves it where does the money come from? Does the Commission fund it, does it say that they are restricted to taking on additional debt. It seems the implication was that the Industrial Commission would approve it and fund it, but just not state.

Rep. Hofstad: If the language is just the budget section, does that make it no easier.

Rep. Keiser: It's better than the Industrial Commission's budget in the interim. They can actually spend money into the next biennium. We've got the process down but we haven't identified once they get approval where does the money come from.

Rep. Hofstad: If we were to say "upon approval by Industrial Commission and appropriated by the emergency commission.

Rep. Keiser: That would be a double review process, yes. But we have an asset out there; we need to keep our industrial sales volume to pay off the loan. There is a real need for these to be funded. We want to have the capacity to do this.

Jeff Nelson: It would say "upon approval of the Industrial Commission, and appropriated by the Emergency Commission".

Rep. Keiser: I move that amendment.

Rep. Schmidt: Second the motion.

Rep. Hofstad: Voice vote, motion carried. That change will be made.

Rep. Keiser: Perhaps LC can help me understand what we are trying to say. On lines 12-13, the law reads "in recognition that a large component of the project expense is being incurred to meet the demands of industrial users". I don't understand how that language fits here. We're going to adopt a rate; this says the authority may adopt a rate structure. I don't know that's true anymore. But the authority can adopt the commercial rate structure which would take authority.... I don't know what this means and if it's inconsistent to say that the authority may adopt a rate, given our previous actions...

Rep. Hofstad: I guess I would concur that it is inconsistent.

Jeff Nelson: Subsection 17 is permissive language giving the authority to adopt a rate. I think it goes on to say that it must be approved in accordance with section 16, so they can adopt a rate and it has to be approved.

Rep. Keiser: In section 16, it says that we're going to set the rate. So they really can't adopt a rate, they can recommend a rate.

Rep. Hofstad: I think you could strike that, maybe.

Rep. Keiser: Maybe the whole section with the exception of the new language.

Jeff Nelson: In section 16 - water rates. It says the authority shall develop an industrial water depot and lateral rates pursuant to section 61-40-09 and present the rate to the industrial commission. So the authority is still there. They are still developing the rate to be approved by the industrial commission.

Rep. Keiser: Can you explain lines 12-13. I can read the words but I can't understand it.

Jeff Nelson: (43.54) To me that language means the authority may adopt, elevate the rates for industrial water in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. For example, if they were just going to use residential and commercial, for example, there might be smaller lines, they may have to incur more expense to install larger lines; that as a result of the industrial use, they can incorporate that into their rate higher restructure.

Michelle Klose: It is a recognition that it can be higher than the bulk rate that folks in those parts, the member entities and it's actually positive or good to have that language in here, so that everybody is aware that the rate is going to be higher because it is not based on the true cost of delivery to that specific point or location. You're actually, through legislation, saying that this is higher, which they have and it's under \$20 for 1000 gallons. It is positive to have that language in there.

Jeff Nelson: Section 15 page 15 lines 12-15. First the subcommittee reversed those, the old language required monthly payments of state guaranteed loans as the priority; as they move down to b) and a) has been revised to say that reimburse authority for the costs for water supply sold at industrial water depots and lateral lines, at participating member entity rate at the location of the depot or lateral line. That has to be the first priority.

Rep. Keiser: On the regular monthly payments on state-guaranteed loans, I know what that means. But functionally, should we be more specific, that each month be paid within 60 days of, or I can't pay you for this for a month, until all paperwork has been processed; usually there is a delay in the required payment for a monthly payment. There are 15 days after, by the 15<sup>th</sup> of the following month that monthly transfer occurs for the previous month. Because the way it reads, if you're on a month transfer, the monthly payment, and typically that is identified in the contract.

Rep. Hofstad: Did you hear anything from the Bank or the Industrial Commission that they have any concerns with the language.

Rep. Keiser: No; I have concerns. Usually it's by the 15<sup>th</sup> of the following month, for the monthly payments to be received by the 15<sup>th</sup>.

Rep. Hofstad: Would you like to change the language.

Rep. Keiser: It would require monthly payments on state guaranteed loans that the transfer is by the 20<sup>th</sup> of the following month; the previous month's transfer occurs by the 20<sup>th</sup> day of the following month. I move that amendment.

Rep. Schmidt: I second the motion.

Rep. Hofstad: Voice vote, motion carried. Do you want to read that back to us?

Jeff Nelson: Repeats the amendment regarding the transfer of the payments each month. Next change is on Section 16, line 30-31, beginning with Water rates. The authority shall develop an industrial water depot and lateral rate pursuant to section 61-40-09 and present the rate to the industrial commission. Section 17 - Construction funding. Line 8, the authority shall follow the state water commission requirements for funding through the resources trust fund and the subcommittee added "or Bank of North Dakota state-guaranteed loans" and shall present the overall plan and project components to the state water commission for funding approval. In the last sentence, in accepting construction funding, the authority and participating member entities agree to not hinder or prevent (added language) "depot and lateral" and existing language industrial water sales to the oil and gas industry.

Rep. Hofstad: Michelle can you come back up here. Once again can we have that discussion on section 17 on those lines which deal with 1926(b)? I think the committee's concern is that we restrict the water sales to the oil industry and yet we don't restrict those member entities from that sort of territorial protection that they have. I want to make sure that the language that is crafted here does that.

Michelle Klose: The language here is, if it is asserted for oil development/industrial water sales that those loans would have to be paid off but it could be asserted for any other purpose and then it doesn't create a conflict here. So it's really the creating of the oil development industrial water sales. In the past, there are other pieces of this legislation we've used where we've used the industrial water depot and lateral sales. If you want to be specific here, we do know that there is manufacturing, a refinery, so if you didn't want to include refinery, which could be processed in oil development/refinery, we want to be specific on a lateral depot sales. Would that language be better? We want to make sure that it's not related to the other industries out there. If we can be protectionist for industrial water depot and lateral sales, you're getting to the point that it's for fracking purposes and not for those other industries that might be related to energy or development.

Rep. Keiser: What if you add a lateral sale to a refinery? That would be a lateral sale; the refinery could be located within a protected area.

M. Klose: Right.

Rep. Keiser: It just can't be lateral, for the refinery.

Michelle Klose: You could potentially use the word protection for oil and gas exploration water sales or something like that, if you want to be specific with oil and gas exploration that could be a possibility.

Rep. Hofstad: Could you help us work that language so that we are doing what we intend to do. The other question is when we talk about those loans, does this, in essence, then require us or require that federal debt to be repair before we can assert that protection, because we're talking about water or money, eventually to pay off the existing federal debt, so does that mean that we have to first pay that off before we can get them to comply.

Michelle Klose: The way that I see this priority list, it would need playing out within the Water Commission; this is tied to funding that would be coming through the Water Commission. The priority on project funding first is reserved for the state guaranteed loan payments. In the next biennium, those state guaranteed loans payment are around \$5 million. Then the next portion, the second part if it's asserted, is for full repayment of the existing federal debt which is around \$4 million in preexisting debt in McKenzie County; and then you would have third, for expanding domestic water supply to areas currently not being served. If you're looking at this, towards the latter portion of payment of whatever was set aside from laws, if you find you are asserting the 1926(b) protection related to this oil/gas exploration or water development from industrial sales, you get all the portion of that to say okay, if you're going to push this issue, that means that it has to be repaid with the water resource funding. If you don't push it, then that could be sent out or provided for an extension, so that the first part for the reserve for the loan payment, the portion that could also be said if we need any amount of \$5 million for payment this biennium, as long as the revenues are coming in, and kicking in, and you've got extra payments under that other category coming in, as soon as you have that covered for the year, then you would probably have to set aside some of the funding so that it would be opened up for domestic sales, so it's kind of that prioritization, that you would actually look ahead and see what you're trying to backstop here.

Rep. Hofstad: It would seem to me that from the authority's position it would be as long as you don't pay off my debts, I still assert them.

Michelle Klose: They are able to keep that protection for all of these other purposes, except the one that you are specifying here. It's really giving them the opportunity to decide if there is an issue or not. If you continue to push them on an issue then that lowers the offer.

Rep. Hofstad: Committee, are we okay with this.

Rep. Keiser: There is a 1926(b) and my understanding of that is if you have federal loans for your project, you can assert 1926(b); if those loans are paid off, you no longer can assert 1926(b). However, there is kind of an companion part of the NDCC which in 1926(b) that the state approach, as long as there are state loans or do you not even need that loan to assert the rights under state law.

Michelle Klose: There are a couple of levels here. One is the protection through Public Finance on the state funds is for political subdivisions against political subdivisions; protection from one political sub from infringing on another. So there really is no protection for private individuals, at least from what we were seeing of not being able to go into that territory because they are not considered a political subdivision. The other component is currently most of the state loans, or \$33 million of those state loans, are actually part of the existing debt that's in the, trying to be repaid by the industrial revenues. So those industrial revenues are the source of funding for the repayment of those loans and we're sweeping or they're being swept to pay off those loans. You actually are kind of protecting on the state loans as well, because you have a revenue source that's coming in for doing those repayments too. Not all the loans, not all the debt of each of these member entities have that rolled into what the industrial sales would see. They may still have some areas that were dropped domestic or rural expansion, that may still have some state loans for protection but you don't have those domestic sales being affected by the industry that is coming into that area either.

Rep. Keiser: The domestic sales are kind of in a sense protected because they are so expensive, without subsidies and other sources of support, you can't really be a player in domestic sales.

Michelle Klose: In addition to that, as you know, so much compliance would safeguard water standards and being possible systems and those responsibilities that it would be very difficult for taking on that level of responsibility for water service.

Jeff Nelson: On page 17, the last issue was section 19 - Final Disposition.

Jennifer Vergeler: You skipped ahead over the default section. I had some changes there.

Rep. Hofstad: Changes are what?

Jennifer Vergeler: Starting on line 27, we added new language. The Industrial Commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through e, which should be "c" of subsection 1 of section 15 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. I think that should say consider notification to the state water commission and the Bank of ND, because the industrial commission isn't set up to review or reconsider the loan repayment terms.

Rep. Hofstad: You have state water commission and Bank of ND.

Jennifer Vergeler: Yes, and then I would, looking over to the next page, page 17, at the end of the language you inserted, I would have a line that said "if the industrial commission notifies the Bank of ND, it shall consider a revision of the terms of the loan repayment". I think that is what you were trying to say. I think you were trying to say, that if they were unable to pay all of their expenses, you want the industrial commission to notify the state water commission and the Bank of ND. The Bank of ND will look at maybe restructuring their loan program, but right now it doesn't read that way.

Rep. Hunskor: I don't have any of that language.

Jennifer Vergeler: I can bring you what I have.

Rep. Hofstad: Are you looking at .04007.

J. Vergeler: I am looking at .04007. I can bring you some new language.

Jeff Nelson: Section 19, the final disposition section. There was discussion on whether this section should be included in the bill and it was stated that there should be some action on that, so I left it in for now.

Rep. Hofstad: Let's take a look at section 19, and discuss that, make changes or if you want to adopt the language that is there.

Rep. Keiser: I would support deleting this section; we can look at it in 25 years down the road. There are going to be a lot of legislative sessions between now and then; if for whatever reason we can't make payments on the loan then that is a very different position. Every two years we have the opportunity to address the issue.

Rep. Schmidt: I voiced yesterday the concern about them being able to dispose of ALL of the assets.

Rep. Hofstad: Would someone like to make a motion.

Rep. Keiser: I move to delete section 19.

Rep. Schmidt: Second the motion.

Rep. Hofstad: Voice vote, motion carried. Any other general discussions on the bill as we have it in front of us right now. Let's give both sides an opportunity to come to the podium.

(Short break)

Rep. Hofstad: We will take this section by section and then allow both sides to come so we don't get lost in the mix here. I don't think we will start with the first part of the bill; the section that begins to deal with WAWS. Let's start on section 11.

Denton Zubke, Chairman of the WAWS: I do not have any comments on section 11, 12, 13.

IWP: No comments on section 11, 12, 13.

Denton Zubke: I do have a comment on section 14, on the bottom of page 13, line 31. My only concern is where we have the words, "or member entity water sales". It's the same concern that I had before, I believe that will reach out and affect the city of Williston. For example, inside of their city limits and I would respectfully request that we just delete those words "or member entity water sales".

Rep. Keiser: There was an amendment that we adopted yesterday, we adopted different sections and did, in fact, adopt this section but there was another section which had an amendment in it, that I asked to be included in the section, and perhaps John Olson could address that issue. As was indicated, we may not have the funding in this section correctly stated, but I also think we haven't correctly stated the problem, in the sense that additional debt requires repayment through the authority. We have to consider what kinds of additional debt there are and then who owns that additional debt, whether the authority owns it or commercial sales owns it, or the state owns it; somebody owns it and is going to pay it. We've got to revise subsection 13 to make it work. I don't have that amendment, but if the reset was of consideration and one of the amendments just delete.

John Olson, WAWS: The amendment that Rep. Keiser placed into the bill yesterday was found on page 27 of .04006. That was subsection (e) where "the state shall pay any federal, state or local statutory or regulatory requirements that impose additional monetary costs upon the project. Those are anticipated costs that would be imposed by any kind of government intervention, whatever that may be. We're lending more out of state. That was adopted yesterday, until it was taken out.

Rep. Keiser: It was in one of the options.

John Olson: It was, and that was placed in the old section 15 I believe, which has been renumbered now. It was actually in section 16. That doesn't really address completely what the issue is here, but that will meet someplace and you're going to cover those costs.

Jeff Nelson: The new language as being proposed would be our new subdivision (f) to subsection 1 in section 15, page 15. The section deals with industrial water depot and lateral sales. That subdivision would read the state shall pay any federal, state or local authority, or local statutory or regulatory requirements that oppose additional monetary costs about the project. That was in a version that was not adopted by the committee yesterday. That's why I think you need it in this version.

Denton Zubke: Again, that isn't really my intention to skip ahead to that other section at this point. I am just very concerned for say the city of Williston as they annex additional property into the city limits. A lot of that rural water infrastructure is not satisfactory to be inside the city limits. Obviously they may have to take some additional debt, and I'm afraid that this reaches out and stops.

Robert Harms: I will hand out these proposed amendments IWP has proposed (# 4) to make this go easier for everyone. I would like to pick up on page 14, going through that additional debt language and I think that raises the point. My suggestion would be on the

top of page 14, the question you're trying to address is if Williston has the need for some additional debt, you don't really intend to hamstring their ability to borrow additional debt for building a community center or road improvement; whatever they might need. Your only concern would be, the way I understand it, is that you don't want them to acquire additional debt for industrial water supply. That was my understanding. I would insert that language on top of page 14, line 1, for industrial water supplies, that would be one suggestion, and then the other, you want the industrial commission to at least approve that debt before it's acquired but not necessarily that you're going to appropriate the funding. For example, if the mayor and my commission has voted to seek \$3 million of funding from USDA, or whatever funding source they may acquire, they may have the funding lined up, all you're looking for is the safety valve of the Industrial commission approves the funding, you don't necessarily need the state to appropriate the funding. More specific to that section is in reference to the eminent domain comment. We would urge you to, at least, reconsider the idea of limiting the power of eminent domain. You may want to reconsider because the amendment to the ND Constitution....(1:18) you can't take private property for essentially commercial purposes. The only other recommendation that was requested, in section 14, to eliminate the language that we've started to use in the bill that includes depot and language and just simply use industrial water sales. The concern that we have is the idea that we continue to discuss laterals. I've listed there in the comments requested that we remove similar language throughout the bill. Just simply use industrial water sales; here is the concern on laterals. I've listed them there in 5 or 6 points that we understand the state's interest in maintain the ability to pay the debts that it is assuming in this compromise; we understand that. But our members' views is that the idea that we debated two years ago, did not include the concept of having laterals built throughout northwestern ND as part of the launch project (1:20); number 2, that we don't think those laterals will be necessary for you to cash flow or pay the bills that you are assuming in this confines; and three, we know there are members of the oil and gas industry that have been lobbying for utilization of laterals here just within the last 48 hours. We know that companies are lobbying to allow laterals to remain a part of this discussion. We think that is inappropriate or unfair for other members of the industry. If company A succeeds in negotiating a lateral in a 2013-14, they sort of are the first ones to the table and even if they pay the cost of the lateral, is that fair to the rest of the oil industry, or companies B, C, D, E or F to have that same opportunity. What happens are that they are the first companies to the table, so we think are represented unfairly. If we allow the oil industry to utilize WAWS in the structure that way, the accelerated utilization water supply, we're going to exacerbate the water shortages that the system has right now. As early as yesterday, we have McKenzie County water telling McKenzie County developers and land owners that their water capacity ...(1:22). Their recommendation is to go drill his own water well. The idea of using laterals throughout this bill, we think is repugnant to the concept two years ago and is something that we prefer the committee to reconsider throughout the bill.

Rep. Keiser: In subsection 13, on the issue of funding. I think you have done a great job of identifying the fact that there are two funding issues here. One, the issue we need to address is normal development; we don't want to limit the city of Williston from attaining financing for something outside of the oil and gas, the commercial area. The other issue which I think we need to impress. As we take away the industrial sales from WAWS and the state becomes the owner of those sales, what should be the procedure if, outside of all the preliminary and final engineering plans and design, and implementation, government

comes in and makes a request and requires a change that they have said they would fight in a particular area. Now the county says we're going to build a 4 lane road there, the easement simply moved, you would have to move. They incur an expense out of these funds; that expense in that we now own the industrial sales and they had the residential sales. How did we get to that? Not the city of Williston being able to borrow, but governmental changes that require additional costs for WAWS.

Robert Harms: I guess I would answer that in two or three ways. One, the example that we have been discussing the last couple of days, I think is a member entity example not a WAWS example. So the member entity is going to have an issue as a matter of operations, on an ongoing basis. That would be my first answer. I think we would have a cash flow, the ability to accommodate those kinds of changes that would be necessary. I'm struggling why they would have to move that pipeline in order to accommodate a highway unless they were laying a highway right on top of my easement and that brings to mind another question, how is my easement being moved, in place of a highway. I would handle it through operations of the member unit/entity and the cash flow. Second, the resources as the reserve amount that we've been talking about. I think that would be a second source where they could come to, where the committee is anticipating that over the year we will build a reserve account to accommodate those types of things. Third, the language that I am suggesting is that all you do, if you want to have some safety valve before they incur that, that you look into that as it comes to the Industrial Commission for industrial water.

Rep. Keiser: All those options are good. But, what if the cash flow only pays for debt that is assumed? So you have to go out and get the money to do the project, and then your cash flow can manage it. Reserve accounts can only cover if the reserves have been allowed to build up. In this case, we may not have built up significant reserves. We need the money for the adjustment caused by government, so we've got to go out and get that money but there are places in the bill that say you can't go borrow the money for this commercial oil/industrial sale, you're supposed to cash flow it, you need the money today. When I go to the bank as a business person, to get a loan, my cash flow is going to pay the loan off, but I need to get the financing upfront, and they need the financing to pay all the contractors for the project. The cash flow can pay it back but we have to get the loan. Well we can set another place at the table and incur more debt so we have a difficult situation here that I can't resolve.

Robert Harms: If the debt is being incurred for an industrial water supply asset, a depot or a lateral that's in place today, if government does something that incurs an expense that you made, that's not an asset, it seems to me that's the obligations that flows back to the state and I think all of us would be completely comfortable with that. I wouldn't see any problem with them incurring that kind of debt. If the example from yesterday was a WAWS waterline that has to be moved by this industrial one, I think we would all probably agree that would be an appropriate part of this model that we are trying to refine.

Rep. Keiser: That is great, that's what the amendment that we included says. That if the government requires it, that it becomes a payment due, payable by the state.

Denton Zubke: Just for the record, let's be clear that what Bob said may have actually happened on the McKenzie County Resource District supply system, because we have

some areas where the pipes are not sized big enough for the additional growth that has come on and so we have put a moratorium on in some places, not because of water supply, but because of pipe size. Going back to page 13, if we strike "or member entity water sales"; some of the language that we suggested was that additional debt that requires repayment through industrial water depot and lateral sales. I don't know that you as a committee are interested in confining Williston like that. You are more interested about having to pay any additional debt through your industrial water sales and laterals, so we were trying to find some language that would be mutually agreeable and still accomplish what the committee was trying to accomplish.

Rep. Hofstad: We will revisit that language. We are looking at section 15. Does anyone have comments on Section 15?

Mr. Zubke: On section 15, subsection 1; we have a subdivision b) and c). The information that I am getting from our participating member entities is that they think that their debt was incurred long before the state guaranteed loans and they would really like to invert b) and c) since we are using a priority order. They feel that some of that infrastructure and some of those loans that have been in the ground for 10-15 years, should actually have priority of state guaranteed loans. Then I would request a clarification, I'm not an attorney but I want to make sure that we have the legislative intent correct, when we say regular payments on both the participating member entity debt and, I want to make sure that we are talking about all the debt that those member entities have, and that's the way I understood it from the committee. I'm not sure, and maybe I need an attorney to interpret that section, are we talking about all of the participating member entity debt. I understood that there was, but I want that to be clear.

Rep. Hofstad: It is my understanding that it is that debt that the authority assumed when you established the authority that you provided for us. Those particular debts, I guess that's my understanding. It's the debt that you assumed when the authority was established.

Mr. Zubke: I do have some participating member entities that have additional debt and they have some concerns, by losing this industrial revenue that they are being left with those payments on those debts. I believe that debt is approximately \$12 million. On section 15, subsection 1, that language that John Olsen talked about where the state shall pay any federal, state or local statutory or regulatory requirements, that impose additional monetary costs on the project or member entities. We are recommending that that be included. We're asking respectfully that it be included. As you aware, McKenzie Water Resource District is in that dilemma right now, and I would subsequently change the lettering there, to where d) would have to become e) and e) would have to become d). I know that is a little confusing the way I threw all those three of those things out there, for consideration for section 15.

Rep. Hofstad: Back to your member entity debt, those baseline industrial sales, would they not cover that member entity debt.

Denton Zubke: No, actually it doesn't. Most of those baseline 2010 sales are two municipalities. For example, the McKenzie County Water Resource District, which is the

one I am most familiar with, our industrial sales didn't start until January of 2012, we didn't have any 2010 industrial baseline sales.

Rep. Hofstad: What about the revenue that is generated off of sales to the participants, to the people that they are providing water to.

Denton Zubke: Most of that revenue is actually used up in operation and maintenance. For example, right now we are adding approx. 200 users over on the west side of McKenzie County. Some of those users are 50-60 miles away. Those 200 users, we calculate will approx. produce revenue of \$135,000 annually and just one person, for us out in the oil industry is costing us \$65-70,000 a year. So 200 users, and I don't know how many miles of pipeline, 200 miles of pipeline.

Rep. Keiser: In subsection a) of line 13, again it states, at the participating member entity rate, that's a range that you folks set, and that rate should include all of your costs somehow factored in, I would assume. Why would that not include those previous loans, in that factor to service those loans? Why wouldn't that member rate be covering today all of your costs.

Denton Zubke: The entity rate is calculated on operation and maintenance, which goes back to the Williston Treatment Plant and some of those things that it does not include that other debt.

Rep. Keiser: But that other debt would then be covered today by the additional upcharge that those member entities have to be collecting to pay that current debt. Is that not correct that, right now, we are servicing the debt?

Mr. Zubke: I understand that most of this debt is just coming online for us; we haven't even closed on this yet. We were anticipating industrial water sales to assist in that process, because we have the people out at Kay and Indian Hills.

Rep. Hofstad: Let's go to the Independents on section 15.

Robert Harms: You've got in front of you our first suggested change, on page 15, line 16 in section 15 where you reference the baseline 2010 industrial sales included in the initial contracts and our reasoning for that is set forth below in the comments section. We think that part of the underlying thought here that we've been discussing in the last 10 days is this division between industrial water sales and domestic water sales. We think that having the 2010 baseline sales as part of the state's obligation is contrary to that basic principal that we've been talking about. It potentially puts laws in the participating members in the revenue stream of industrial water sales. That's one of our concerns. Second is just the fact that the state is taking over \$150-200 million of the net, leaving the members essentially with a new water system that has thousands of new customers in it. So we don't think that they really need it. Lastly we think there is kind of a double-dipping here. If the state is going to pay WAWS a charge for the water that is sold to industrial water sales, which we think we are all agreeing with, that's a charge that WAWS would not have gotten otherwise? If you give them that charge and the payment for the \$3.8 million fee that is represented by this 2010 baseline, you're really paying them twice, so we think for those

reasons you should reconsider embracing or accepting that obligation. I want to touch on one other thing and we don't have language to address this, but two other areas in this section are of concern. On line 30, where it talks about that there will be payment to the resources trust fund, so that's the allocation of where the revenue is going to go. During the break, we asked if people's understanding of employers or committee members as to what happens when all of the debts are paid; what's the understanding after all the debts are paid, whether it takes 10 years or 25 years. It seems that everyone is of the same mind, that once all of the debts are paid, that revenue stream would go to the resources trust fund. We're comfortable with that. We suggested that for most of this session. I want to be clear that's our understanding as well. If there is a disagreement, that then should be part of the record. The last comment is something that we should look at is how do we address well water coming out of the depots that may be owned by Watford City or Minot, Tioga or some other communities. Our understanding is that those industrial sales will be part sweep, but there aren't any treatment costs, that should have a different cost factor addressed too, so that would be an issue that I don't think we have spoken to yet, but our understanding is that those sales of the swept, as part of this compromise as well, we should think about how we address the cost component to that transaction because we understand that is one of the problems that we're going to be seeing here in the coming season.

Rep. Hofstad: Bob, before you go. You talked about WAWS double-dipping. When we look at the cost of the water, whether or not WAWS prior to this time was actually getting paid for that, but realizing and understanding that there is a cost in providing that water and that certainly is an item that is deducted from the revenue. It seems to me that that needs to be a consideration for us. It's that difference, what that actual cost is, and what they are charging us. We might be able to swaddle over what that real price is, but in fact there is a cost to them whether it's them that is corking that money and paying that debt or it's us. Are you saying that they are going to charge us too much for that water or what.

Robert Harms: No, I think we are comfortable with the language that you adopted yesterday with the price. We recognize that WAWS has a cost of that water that is sold for industrial water supply. We understand that and I think there were a number of different mechanisms that will be looked at again today and considered for the cost of the water, the member entity. Williston has the cheapest water rate. Their depot probably sells the most water...; that won't work. If there's another depot over by Rader's Housing that is being developed, that water.....We're okay with that. Our point is that, that was not a component in their revenue stream and business plan, so essentially we are playing them for that cost that they wouldn't have had otherwise. So we see that revenue stream being there, in addition to the \$3.8 million that they're asking the state to give them breaks...we don't think they need both; that's where we see the double-dipping going on.

(Went to lunch, will return for the afternoon)

Rep. Hofstad: We will call the meeting to order. When Mr. Harms left, he left me with some questions. Those questions were the remaining depots. Some of those depots not being necessarily old ...., I have some questions where that revenue stream comes to, who bills the remaining depots or how we get the authorization where the engineering is, where that money stream comes from. How we complete this process.

Michelle Klose: There are nine depots that have been constructed and there is a 10<sup>th</sup> depot that has guaranteed that the land has been purchased or at least is under contract. That one is going to be under construction for resale and then there were going to be two additional depots at some point in time constructed. One of those is closer.....those are future developments. What he may have mentioned was the lack of old lines, rather than the specific depot locations.

Rep. Hofstad: Those remaining depots, who has the responsibility to build them out, what pool of money do we take to build them. Is that the original \$110 million, or is that future funding; exactly where does money come from and where the authorizations to do that are. Is it assumed going forward that we're going to build out all of the depots and who owns them. I think we need to know the answers to all of those questions.

Michelle Klose: (1:46:54) ... The one that ....needed, the authority is currently pursuing and my understanding is that funding would actually be coming from the first \$110 million. When you are looking at future development of the remaining two depots, I think there is actually some uncertainty of are they going to be built or when they would be built. I think there is uncertainty even before heading into this section because it was ....... The way the prioritization is in here for resource trust fund funding, is it doesn't mention industrial sales. So the priority right now is basically the 1926(b) payoff, if that's needed or if that .... the industrial sales. The second part was the refocus of expanding domestic into areas currently not being served. Right now, we do not direction really to be putting additional funding in towards that development of new industrial depots. The understanding of .... Rules, is that would be the company investing their own resources and back to the main transmission lines, so that wasn't something that was going to be funded here anyway. We don't have any specific legislation that says it won't study it on there, but you don't have that as a priority in the system. There are still a lot of domestic areas that are unserved and that are either focused on it as a sole priority for the \$79 million coming through the resources trust fund.

Rep. Hofstad: We need to be very clear as to what depots that have, which ones are operational and which ones we intend to deplete so that we have that inventory of exactly what those depots are, if there are future depots to build, where that funding stream will come from and also as we go forward, any laterals that will be built. I understand that would more likely be an industry expense but I think we need to have some direction because those would likely be contracts, with the industry. So how were those contracts held, who administers those contracts, who signs those contracts and is there authority, does the Industrial Commission sign off on them, does the Water Commission sign off on them or look at them. Those are questions that we need to have answered for this bill.

Michelle Klose: Do you have a specific direction of what involvement you want with those contracts. The way that it would be now is that the authority would actually have those contracts signed. There is Water Commission policy that is set up as domestic use at the priority...(1:50:07). Those connections that are being made for industrial water know that in times of shortage, the shortage for domestic supply, their use would be shut off, that was part of the agreement (part of the Water Commission policies). So that the future contracts

of lateral sales, would have to have the same caveat within them. They should not impact those domestic sales. They should not be taking up ..... take away from industrial sales.

Rep. Keiser: I think you have a good point. If this legislation is passed there has to be a transition of responsibility and what's the timing. Clearly the emergency clause wouldn't be any faster. We can't do it that quickly. At this point, the state has no more authority than in the previous legislation, relative to managing the business plan of the authority. They have all the authority they need to develop a business plan....., it's just that we should have the discussion about when we take it over, what we take over, as we sweep these commercial sales. That's the key question, if we could pass this and put the emergency clause on it for policy but not for implementation, which I don't think you can do, until everyone understands from some point, when do we take over the sweep of sales, because at that time, we assume all debt and I would assume that we have nothing in this bill to dictate the limit of depots or anything else. I think we can monitor rates, etc. but that's an area that needs to be addressed.

Rep. Hofstad: Maybe we need to begin to work this thing backwards also. We need to look at an amortization schedule so that we to know what kind of monthly payments we need and what kind of annual payments that we need, so that we know exactly what our obligation is. I think that is going to be critical as we move this bill before the full committee and floor of the House. We will need to know that number so we will to work with the Bank or with the Water Commission and WAWS to know how that all comes together so we're not guessing or not assuming anything.

Michelle Klose: We can put together some background information on the sweep and what we're actually intending with that sweep, more phones, and all of those assets. We've been getting some additional this session of having pulled that information together. I think that would help with your discussion. I didn't know the timing of that because it may take a little bit of time, but we know that there will probably be adjustments to this eventually too.

Rep. Hofstad: As we develop the legislation, we need to know what kinds of things need to be inside of the legislation and what kinds of things can be outside. We don't need to get too detailed yet we need to have the parameters so that as we go forward we don't stumble on the way and leave things that we assumed would be the way they are, and find out later that they are not.

Michelle Klose: There are some broad concepts in this right now; it's really trying to balance out. The debt isn't being paid down by the state. The debt remaining would still be the authority, the revenues of that is being swept and the revenues that I have oversight, are under the Water Commission. So the largest change here is that anything not heading to repay the minimum payment of the Bank of North Dakota's debt. In the past, where the legislation is currently today, not with this draft, but from .04006, is that the authority had a lot of flexibility in how those resources could be used, by either helping new projects or paying off other debt, or finding water rights. So the state, really in this area, is trying to say no, they have to go to these loan payments. They have to go to these specific areas and so there is, there is probably a little bit less risk the state is taking on because the......(1:55:35). There are other pieces as well, because it is being swept, that entity or that mobile area, still has a source of revenue that was going to be generated in the past. I

think you are trying to balance that by saying, instead of directly doing that, we're going to try and cut that drag time but we're also going to be supportive of the water development we've seen in this region through the resources trust fund. I think you're making that balancer, that's what you are attempting to do here.

Rep. Hofstad: Questions from the committee. Thanks. Jeff, do you want to continue taking us down this road. We were at Section 16.

Jeff Nelson: Section 16 page 16 line 3.

Denton Zubke: I passed out a list of clarifications (# 5) and suggested changes. In section 16, on page 16, line 3, there is a word "replacement", we would like to delete replacement and replace it with "operating and capital reserves". I don't think that is a significant change, operating and capital reserves is very common in the modern world, whereas replacement probably isn't quite so common. That would be the only suggested change that I would have for section 16.

Rep. Keiser: Why do you need capital reserves if we're taking over the debt? I can see the operational, but I don't see the need for capital reserves.

Denton Zubke: All of the pipelines subsequently will wear out and that's what those capital reserves are. Sometimes they spring a leak. Company contractors typically give you a warranty period, but shortly after that warranty period, you start having some leaks or somebody may cut your pipeline; there are a variety of things that can go wrong. It's kind of what the word replacement is, but it's more commonly referred to as operating and capital reserves.

Rep. Hofstad: In your budget, I would assume that you would have a fund for extraordinary expenses or extra reserves for your operation. Would not that be true?

Denton Zubke: We have contingencies in all of our construction funding, but I don't know that we routinely have contingencies just in our operating budget, so for example, right now we're involved in a situation where the contractor was boring and hit a bunch of rocks, and he figures he has about \$216,000 worth of additional costs. We have contingencies in that contract funding for that. But again, in your routine operating and maintenance, you don't build in a lot of contingencies, if any.

Rep. Hofstad: Don't you have a replacement fund that you grow for depreciation, for replacement in your budgets as you go forward?

Denton Zubke: That's actually what capital reserves are for. It's for some of the depreciation on your pipelines.

Rep. Hofstad: I guess I'm asking you, you are building that fund in your operating budget for your system.

Denton Zubke: Yes, what this is distinguishing in section 16 is that the authority shall develop domestic water rates that must include all costs of operation, maintenance; we're just saying that included in that typically you have an operating and capital reserve account.

Robert Harms: We would recommend to the subcommittee on page 15, line 31 and the subcommittee talked about these two word changes, on a couple of pages ago, and that would be to insert on line 31, "must have approval of the industrial commission" and on the same line insert "subsequent" there. That was a discussion that didn't make it into your draft. On the same page, I was visiting with Michelle and we were concerned about what "rates" we're actually setting here as I understand it, it was setting "sales price rates". That might be helpful to insert that on line 30, where it says "the authority shall develop an industrial water depot and lateral 'sales price' rate". Again structurally, it provides the clarity in the discussion that was had a few days ago. That would be helpful to break that paragraph up into two numbered sections, #1 starting on line 30 which deals with industrial water rates and then on the next page, on line 2, #2, "the authority shall develop domestic water rates", I think that would be helpful.

Rep. Keiser: On page 16 line 3, I would move that we strike "replacement" and insert "operating and capital reserves". That is more common terminology.

Rep. Schmidt: Second the motion.

Rep. Hofstad: Voice vote, motion carried. Let's turn back to Mr. Harm's suggestion that the authority shall develop an industrial depot and lateral sales 'price' rate, does that make more sense to you.

Rep. Keiser: I think the one advantage is that we do use rates in a couple of places and I was confused with the wording "setting the rate" that made me think it was being sold on a bulk basis versus the mark-up rate. I don't know if sales price rate is the right terminology but there should be some way of distinguishing the two. The retail price is really what we are talking about here. It's okay this way too. We're talking about the retail rate, really.

Rep. Schmidt: I would agree with Rep. Keiser's calling it retail rate.

Rep. Hofstad: Just "retail rate".

Rep. Schmidt: I would move that amendment.

Rep. Keiser: Second the motion.

Rep. Hofstad: Voice vote, motion carried.

Rep. Keiser: I also think that the discussion about page 15, line 31, because it does read, it will update the Industrial Commission with how it is doing with it. All that is required is that they present a rate, but I think we want a rate presented for approval and any subsequent rates proposed.

Rep. Hofstad: So you're saying on line 31, and present the rate for approval to the industrial commission.

Rep. Keiser: It would present any rate for approval to the industrial commission. Any rate proposal has to be approved by the industrial commission.

Rep. Hofstad: Let's move on to section 17.

Denton Zubke: I wanted to clarify something that I said this morning. I had a chance to look through this a little more clearly, and on page 15, back in section 15, subdivision "c" where I asked for clarification on what the committee intended on the participating member entity debt that was outside of those contracts. I know that we got caught up with what's in the contracts and what's outside of the contracts. I identified exactly what that debt is and within a reasonable number, it's actually about \$10.3 million; I said it was about \$12 million earlier. Of that \$10.3 million, \$3.7 million is the city of Williston's and they have had an alternative source for paying that debt. Actually, instead of \$12 million, it would be \$6.6 million that is in participating member entity debt and is not under those initial contracts.

Rep. Keiser: Should we state that so we can fix it.

Rep. Hofstad: Either we need to state it and fix it, or we need to have a definition of what it is.

Rep. Keiser: Right now, what is it, participating member entity.

Rep. Hofstad: I guess what I would like to see too, as a supplement to this, is a listing so that we can have it on the record of those debts. We need to see them in front of us so we can look at them and decide which ones we'll be plugged into on our floor sweep.

Robert Harms: Then to section 17, on page 16 and it ends on line 17. What we would suggest, trying to clarify this a little bit is striking the word "to the oil and gas industry" and replacing with "oil and gas exploration". I know there was discussion this morning about how broad this language is and how far someone could reach out with it. That's a suggestion for your consideration, to define that a little closer. That would be the only recommended change I have for section 17.

Rep. Keiser: Does exploration mean that under this, the drilling and fracking.

Robert Harms: I guess that would be my understanding.

Rep. Keiser: Should we say "drilling and fracking", or is "exploration" better. Neither one is good.

Mr. Harms: I guess the only thing that I would respond to is, the oil and gas industry I understand the concern about picking up a refinery, but maybe we'll be talking about it just simply as the oil and gas exploration and development industry. That would cover the ongoing activities of drilling more wells, maintenance of the wells once they are in production, but it doesn't include refinery and that part of the industry.

Rep. Hofstad: So your suggestion is "oil and gas exploration and development". I think, however we define it, somebody else is going to define it differently at some point.

Rep. Keiser: I would move that line 17 read, "industrial water sales to oil and gas exploration and development".

Rep. Hunskor: Second the motion.

Rep. Hofstad: Voice vote. Motion carried.

Robert Harms: On that very line, it might add some clarity too if you inserted on line 17, "industrial water sales by the private sector to the oil and gas", some reference to the private sector might be useful in there as well.

Rep. Hofstad: You're saying industrial water sales by private water providers or providers in the private sector.

Rep. Keiser: There are some communities out there that aren't political subdivisions and not a part of WAWS that are selling water as a community. I know that because when I took a trip out there and asked where their water was, why they needed to be hooked up to Southwest Water, was because they were selling their water to the oil fields. I don't think we want to blow them out and I think that specification would do it so I think it is best not to do it.

Mr. Harms: The limiting language though begins on the first part of that sentence, which refers to an accepting construction funding authority and participating members. That's where the restraint goes to, and we're just suggesting in accepting the money, those public entities will simply not interfere with the sales by the private sector.

Denton Zubke: Section 18, page 16, line 28, I think it was identified this morning that that needs to be clarified to make sure that we get all of those proper subsections in section 15. We have that on our sheet. We would just like to make sure that our debt gets included with all of that and also in section 18, page 16, starting on line 30, the last 4 words there, "if notified within 30", we're suggesting that those four words, along with line 31 and on the next page, on page 17, lines 1,2,3 also be struck. We have some very serious concerns about the birthing of this project could tip over on to our domestic rates if that is left in there and I don't think that is the intention, that we would subsequently put that burden on those domestic rates. In section 18, page 17, line 4, it references of payment of the principal of lower interest on the obligation to the Bank of North Dakota for a loan for which the Bank of ND is a source of funds", continuing on, "for which the Bank of ND is the source of funds for the loan". We'd ask that would be deleted and be replaced with "in the payment of expenses in subdivisions a, b, c, d of subsection 1 of section 15 of this act". In other words, those revenue requirements that we've identified in section 15. We think that in the event of a default, those revenue requirements have to be included and not just the principal and interest of the Bank of ND's loans, because we have all of the loans of the member entities, 2010 baseline sales, and then that subsequently creates another change on section 18, page 17, line 6, we ask that you spread the words "to repay the principal and interest due",

continuing on line 7, and replace that with "to pay the deficiency" and that's that deficiency again in section 15 that are those revenue requirements that we are specifically identifying as part of this project. Again, that's in the handout I presented to you earlier.

Rep. Keiser: Where did this section come from? I never did catch that it is dealing with domestic water rates and this whole proposal, as I understood it, was we were going to sweep the industrial and we were going to change the industrial rates to meet the loan repayment requirements and leave WAWS alone to do their domestic. This gives us the power to dictate domestic rates and at least I never got the impression that this was part of this.

Rep. Hofstad: I am confused, what are we looking at.

Mr. Harms: Yesterday, the committee went through these, there were three versions; the state water commission, independent water providers and the Western Area Water Supply. Now there is a fourth version under consideration. The version that was approved is one proposed by the state water commission. Then this morning I have changes that would say beginning on line 26, page 16, "the industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through e, of subsection 1 of section 15 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of ND to consider revision of the terms of the loan repayments". That is how the section looks right now. The section "direct the Bank of ND" were handwritten changes. It looks like it is on the .04007 version.

Rep. Keiser: I would move that starting on line 30, page 16, we delete the sentence which begins "If notified, within 30 days" and the rest of line 31 and lines all the green lines 1, 2 and 3 on page 17.

Rep. Schmidt: Second the motion.

Rep. Hofstad: I believe that this language came from you, can you explain that to us, please.

Michelle Klose: When we were trying to put these pieces together and what information you wanted to have considered in here, part of that included their ability to pay. So it wasn't trying to put all said burden on these domestic water users. However, there was a recognition that we can't have three drawers of this depot, rather than what was in there before, here you are looking at the industrial commission providing a notice before anybody is in default, to take a look at actually considering those loan payments can actually be changed around a bit, to see if that can also be worked out for ability to pay, but then you look at those water rates and just to see, can the system be sustainable on its own, can it actually take on a little bit more of a debt payment for both existing and future systems. Because it's capped at ability to pay, it might not be worth it to take on additional debt. There are a couple of levels that can be factored in here; it does give some flexibility as well.

Rep. Keiser: I would support the amendment that I proposed. I do recognize now what the water commission perspective was. There is always the possibility to renegotiate the terms of the loan and extend the period of repayment, lower the interest rate, do those kinds of things, that's all that's available. As we have spoken, it is my understanding of the default, removal of the default provision and not giving us the authority to go back in and impact the domestic rates.

Rep. Hofstad: Voice vote. Motion carried. Did we delete section 19?

Mr. Olson: Yes.

Denton Zubke: Keep in mind that we did ask that some of that revenue requirement in section 15 be reordered and we still do feel that the default language needs to be looked at because it only refers to the payment of principal and interest on the Bank of ND obligations. We have revenue requirements that have been consistent throughout this project and were a couple of years ago; those are very specific. If you are taking away our protection, which I think is your intention and you want people to be allowed to get into the river and the lake and you also are taking away our revenue, I just feel that those revenue requirements have to be included in this default language also. Please simply consider that. I realize it is a little more complex when you get into that. As far as section 19, I appreciate the fact that you have deleted that. When we started this process two years ago, we came here just to get bonding authority, so that we could go out and put this project together, and now subsequently we're turning over this industrial piece and I guess at some point in time, we still would be under the impression that industrial piece could come back to us after that debt was paid off because all of these member entities were selling and relying on the industrial sales. I understand that is for a later date, but I do appreciate the fact that you struck section 19.

Rep. Hofstad: I would submit that there is more than one revenue stream out there. We realize, of course, that the industrial sales is one of your revenue streams but the other revenue stream, as is with most water resource districts, it is that sales to your customer base too. I think we have to be cognizant of that fact and that you're building a pretty profitable, we would hope certainly a profitable district in years to come.

Mr. Zubke: I appreciate that also. Western North Dakota is a difficult place, and I know there are getting to be a lot more concentration of people there now and the future is yet to be seen. At this point in time, McKenzie County Water Resource District, for example, is borrowing money from the county commissioners repeatedly to continue to operate that project and they are paying our operation and maintenance through their general fund, because we do not have enough revenue coming into that. We don't want to be bankrupting our water resource districts or water districts out there either. I'd hate to see us getting into a situation like that.

Rep. Keiser: I don't understand your concern on the default. Can you show us a specific area/language that you think is problematic? We had the industrial commission review the sale and the expenses in subdivision a) and we may not have talked with you yet, but I think it does have to be a) through d).

Mr. Zubke: I think when you go to page 17, line 3, it says "if the authority is in default when the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of ND is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due". I'm saying that's only taking one item out of section 15, which is on page 15, and we've actually identified a number of items there that are revenue requirements. So it appears like we picked out the state of ND's loans and said that we are going to request funding to pay those, but forget about the member entity loans, forget about the cost of producing the water, for any of those payments under those 2010 baselines, of the member entities loans. I'm saying there are four or five specific items in section 15 that I think should be in that default language and should be requested then from whatever subsequent entity.

Rep. Keiser: If I understand your argument, we should have something like, "if the authority is in default in the payment of items a) through d) in section 15, the state water commission shall request funding from the legislative assembly and we pay the principal and interest due".

Mr. Zubke: "To who" to pay the deficiency; the deficiency in those revenue requirements. Because we don't refer to those revenue requirements, it's just debt payments. They are just revenue requirements that we have.

Rep. Keiser: I guess my concern is that this little section is addressing, I agree with you, only one of those. The others we are not addressing. But we are saying specifically the Bank of ND is going to be paid back. The Legislature will appropriate money for that. The other loans, we're going to try and find another source or maybe the legislature but we're not committing or writing that we will be paying them. That is something we have to figure out.

Rep. Hofstad: Well I think it is a question, certainly those notes and obligations were signed by the authority, and the State of ND did not. I am just a little reluctant to take on another \$36-37 million worth of debt that was theirs.

John Olson: The reason for the inversion was to give some kind of priority to those loans and obligations over which you have no control, and we don't have any control over. We can't renegotiate those; you had talked about renegotiating those loans and terms from the Bank of ND. We're giving up all the protections of the 1926(b) the accompanying state protections were stripped; the protections that secured that revenue. We made that point before.

Rep. Schmidt: Earlier, I wrote down on line 6, page 17, I've replaced in my notes "to repay the principal and interest due", I replaced that with "to pay the deficiency" did we accept that or not. It wasn't just now, didn't we do that earlier.

Rep. Hofstad: I don't believe we dealt with that, because that's existing language. We didn't act on it.

Rep. Keiser: As I understand this, we removed the default provision. We're taking on all the debt. We have all the debt, including the loans to the Bank of ND, all of those other loans that are in this package, we are going to take on. All this is doing, and we do this frequently in legislation, and say that if there is a default in one area, we are directing the state water commission to come to the legislature, those other debts may have to be handled by the water commission and the resources trust fund. We still have the debt; we're taking the debt right. We'll have the debt, this is simply saying, when it comes to the Bank of ND, if there is a default, the water commission is obligated by law to come to the Legislature and request that portion of the debt to be paid by the legislature, we still own the rest of that debt, as I understand it. We aren't designating how we're going to pay for it but we own it. Is that not true.

Jeff Nelson: Yes I believe so, on the assumption that in the event of a default that the water commission or the state is going to assume the obligation of the default.

Denton Zubke: I think from a legal standpoint that that is actually not being assigned to ensure it. I think what we are doing in section 15 is we're structuring the order that the debt is to be paid. In no place will it say that those notes or that this loan has been assigned to the state of ND, so from a legal standpoint, I think a few years down the road someone could say, "No, this legislation says that the only thing we're paying is the principal and interest to the Bank of ND".

Rep. Hofstad: That's really the way I understand it. It's on your balance sheet and not ours. I don't know if this obligates us to pay for that amount.

Ms. Klose: Yes, part of the discussion here was what the state would backstop; if the state backing was on the \$110 million and then any loans that could come out of this section. So the state backing was on those portions. This is really the sweep of the revenues and where those ...... are going to be dedicated for industrial sales. It is trying to continue to gear those industrial sales for the repayment of the cost to sell the water at the depot; the next one is the required payments, which is the minimum payment of what is due; the third one was those, it was supposed to be interpreted both for the member entity debt and the baseline sales that were in the contracts. The contracts waive something else, and may not be needed to be the initial contracts. The contracts laid out what the member entity debt and the baseline sales would both be used, so you would have a document that had those in. ......(2:40:52) is really what you're trying to make sure is covered, and then in your depot, if you can't make any of those payments, that's when it comes in, but you don't really need the default language covering d) which was the initial principal payment because those you don't need to have, whether you have them or not it's not a big deal. It really depends on what you want State backstopping on. Did you want the \$110 million plus additional \$40 or \$80 million this time, was the member entity debt of the \$33 million, or potentially if you are trying to add in new debt, that wasn't turned over to WAWS, that was another \$6.6 million. The intention originally had not been to backstop those other loans; that that was existing debt, those contracts that we have for \$33 million, we actually have those that that the debt repayment of March 31 of this year, all of those were through public finance and all of those were based on domestic sales. So none of these were relying on the industrial sales for repayment, at least not in those loan packages that were presented. The industrial sales one that we know of, is with (2:42:10).....depot which was

a USDA loan, but that loan was not swept in with the rest of the loans that are covered under this section, at least at this point in time. I don't know if you want state backing of those loans or not. This was written to not have state backing on those other loans, only to have state backing on the Bank of ND loans.

John Olson: That was the reason for the inversion of b) and c) because you get b) and you get paid. We get the c) and we're in trouble. So b) gets paid first, so you don't need to worry about it, going back and renegotiating terms, you're going to see the legislature for more money. That's our concern, the loans that we have, the obligations that we have, and c) need to be paid; pure and simple.

Ms. Klose: When the agreements for industrial sales repayments were made and those contracts, those were in the authority to have watching enough revenues to do those repayments back. So in that case, they were not planned to be guaranteed payments in the future or backed by the State of ND. So when you're talking specifically about industrial sales and having state backing of the industrial sales, that is a very different step than where you were previously. Then you'd actually be asking for the resources trust fund to pay communities for industrial sales that they had back in 2010. That would be a bit of a stretch for us, at least for, typically our resource trust fund is when we try to go through domestic, to buy or plan co-projects, or other type of projects we had across the state; not as a replacement fund for industrial sales.

Mr. Zubke: Those 2010 baseline industrial sales were a key component at the beginning of this project. They were something that everyone of us entities were willing to give up, they are in the contracts, and I don't see how you can strip us of our revenues, strip us of our protection and then leave us exposed like this.

Rep. Keiser: The industrial revenues I can understand. What about the domestic revenues, what about the loans that were given for domestic development prior to two years ago, if it's \$33 million or whatever the number is. Those were given out on domestic sales, should those be paid for through domestic sales, or were they somehow incorporated in the business model for WAWS.

Mr. Zubke: Yes, that infrastructure was turned over to WAWS as a key component of not only delivering the domestic water to those entities but also bringing that water to those industrial depots; Alexander, Keene, Watford City, and so as a key component of that, that is part of that industrial piece.

Rep. Keiser: I understand that it is a self-input but the revenues that were originally designed to make the payment on those loans also got transferred in, not only the debt for \$33 million but the revenues that were going to support that \$33 million are also transferred. So why should those be backed.

Mr. Zubke: Because you are stripping us of our protection and our ability to protect that industrial revenue.

Rep. Keiser: I'm going back to page 16, the default section and trying to read what's there versus what is intended. We have designed clear language that if the authority is in default

of the payment of the principal and interest on any of the obligations of the authority under this chapter, that says any obligations, not the Bank of ND, and if the budget section determines that the authority is unable to reimburse the state and factors the part by the budget section, the budget section may get rid of those ....... (2:47:34) and the assets become transferred to the state. We are getting rid of that. We are taking away that default provision; we are taking over control of the revenues from all industrial sales. We are creating an opportunity to negotiate new rates, to control the rate of industrial sales, and to, if necessary, to restrict access to water or by the Independent water folks and assess a fee. It seems to me, with those kinds of powers, we own everything. We can't do all of those things and not own the asset, whatever the asset it, however we define it. I struggle with the thought that we are not taking all of WAWS, whatever it is. We may not like it, but that's really what this bill does, I think. Am I wrong?

Rep. Hofstad: Let's go back to page 6, when we talked about subsection 7, I think that language from one of the conversations that I had is acceptable. This is intent language.

Rep. Keiser: I move that we remove the overstrike on lines 12-14.

Rep. Schmidt: Second the motion.

Rep. Hofstad: Voice vote, motion carried. Additional questions or comments.

Rep. Porter: Going back to Rep. Keiser's comment, as you look at what we are leaving behind as we do this, then if it's going to be the position of WAWS to take all of their debt and to backstop all of their debt, then they can't have the ability of their members to go into Further testimony in support debt with the backstop of the state of ND. There has to be a distinction, a separation, here of what is owned as an asset of WAWS and what is owned by the members of WAWS. The other thing that really comes into play and I missed the discussion, you can't expect the state then to not take over or have the ability to control the water rates on the municipal side if they are undercharging on their other debts, and not have the ability to increase those revenues to protect the state if the state is backstopping. So you create this little problem by picking and choosing. If you're going to take all of the debt, then you have to take all the revenue too and at least control the source or amount of the revenue that comes with it and then you have to be able to control any future debt by any of the members because you have taken over and backstopped member debt; so it becomes all-encompassing then, and Rep. Keiser I think is right, then it almost becomes the state entity like Southwest Water at that point. That's where we are going.

Rep. Schmidt: Mr. Zubke referred to the fact that we were stripping all of the protections. I was with the impression that we were going to make sure that the debt to the state was paid, that we would create those protections in order to make sure that the debt is paid. I thought that we were also going to protect the domestic water supply and the commercial water supply. I must be misunderstanding the comments about us stripping those protections.

Denton Zubke: The requirement on construction funding, under section 17 on page 16, it says "Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing

federal debt if 1926(b) protection for oil development industrial water sales is asserted". I can't assert 1926(b) because if I do, you are going to pay off all my federal debt. The next time I receive some funding, I have no 1926(b) protection.

Rep. Schmidt: But ..... with the expectation to ensure that the state got paid that we were going to proceed with a state version of that kind of protection. I think we talked about this before because I asked on this section before, if the next part of that comment regarding domestic water supplies were protected, because obviously I definitely want to make sure that your domestic supplies are protected. I thought that was all covered by this when we first talked about it, that 1926(b) was going to be a state equivalent to that even though it was a federal ....(2:54:37).

Rep. Hofstad: I think we made a distinction that the 1926(b) cannot be asserted for industrial water sales. That's the distinction. There is no assertion that you don't have that territorial protection for the rest of your system or your other issues. It's just the industrial water sales.

Mr. Zubke: I believe that the way that this is worded, you could drive a truck through here.

Rep. Keiser: Bob Harms said this a long time ago, and we're at the point where we really by tomorrow morning have to identify the dollar amounts associated with different items; what the assets are, what those debts are. We keep talking about all these debts; I don't quite understand. I need an itemized list of what we are talking about.

Mr. Zubke: You just removed the overstrike on page 6, and it said that projects receiving, and I realize that this is just intent language again, but still <u>intent</u> language can be used. That basically says that "projects receiving state funds for construction and implementation not assert, claim, or seek to prevent other opportunities, either public or private, to utilize water out of the Missouri River". The way this is written and I'm not an attorney, but I do come from the finance industry and I've been in a few court cases, I think you can drive a truck through this. We have the information on the debts readily available and I will get that to you.

Mr. Harms: The point that Mr. Zubke is making, if Jeff looks at the draft that we were working from yesterday, the Independent Water Providers suggested that framework and I've got the language where we expressly stated what I think Rep. Keiser said the other day, that we are trying to create a 1926(b) state protection for WAWS and the member entities, so that's out there. Mr. McCrury corrected me on the language on page 16, lines 17, where we are talking about the oil and gas exploration and production and he reminds me that it is known as the E&P, Exploration and Production. If you make that change from "development" to the correct term of "production". The only other item that I would ask you to consider, in the handout we offered, we suggested three points with regard to some decision making in the next year or two and I would at least ask you to think about it, essentially what we're suggesting there is we have inventory in place today, leave that inventory in place for industrial sales for the balance of the year, don't build additional buildings that we don't know if they will be used or not. We just came from a hearing in the Senate Appropriations and it looks like WAWS is making about \$20 million in industrial sales for the last year, from what I can gather. There was \$13.2 million from depots and

about \$1.7 million year to date from laterals. That's one thought. The second thought would be to make any decision with regard to other depots and lateral lines and put that decision someplace, and we're suggesting that that be approved by the water commission and third, an overriding statement that the water commission would ultimately make those decisions. It's something for the committee to consider, whether it's today or in the coming days.

Rep. Hofstad: We're going to adjourn. We will meet tomorrow morning (4/4/13) at 10:00 am in the Pioneer Room and we will look at those projections. Hopefully the Bank will be here so we can do some amortization schedules to look at what those payments would be over time.

Rep. Keiser: Can we get a revised draft tomorrow with all the changes that we've done today.

Mr. Olson: Yes. I do have three questions about things that are in or out. The new marked up copy will be ready tomorrow.

Rep. Hofstad: Meeting is adjourned until tomorrow morning at 10:00 am.

## 2013 HOUSE STANDING COMMITTEE MINUTES

## House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 April 4, 2013 20877

Conferen	ice Committee
Imipet	W
To provide a declaration of water policy Present were Rep. Hofstad, Rep. Keise	
Pioneer Room 10:10 a.m. Adjourned @ 11:05	

Other Present: Denton Zubke, Robert Harms, Jennifer Vergeler, Jeff Nelson, Karlene Fine, Cory Chorne

Rep. Hofstad: We will open subcommittee SB2233. We will have council review the changes in 4009. Are there any additional amendments?

Jeff Nelson: We are working from the 04009 version this version incorporates the changes that were discussed and approved dated April 3, 2013 (attachment # 1)1:33-5:54

Karlen Fine: Executive Director for the Industrial Commission; this is information that was gathered yesterday and some changes that were made this morning. This is the first draft there will be changes (attachment # 2) 7:31-11:04

Rep. Hofstad: Do you have information as to the source of these loans whether they are federal or state loans?

Karlene Fine: For the Public Finance Authority that category is a Public Finance Authority SRF Program. The grouping of the participating loans I believe these are USDA. The first two are USDA and then the last one is McKenzie County has made a loan to the McKenzie County Resource Water District.

Rep. Keiser: Under the second group the Public Finance Authority SRF loans that the last one (Williams Rural Water) the current balance is 1.4 million or the original amount?

Karlene Fine: Those are the original loan amounts.

Rep. Keiser: If we are assuming debt don't we need the current balance?

Karlene Fine: That is correct. I am going to have to clarify on the McKenzie County Water District where we dropped to 5.8 I am not sure if that was based on the 8.2 or the 5.8.

Rep. Keiser: If we assume those debts we will then restructure them in a different payment schedule.

Karlene Fine: Not the Public Finance debt. I am not sure that we can restructure those bonds.

Rep. Hofstad: Can we also look at the date of the loan was originated so that we know when that loan was taken out?

Karlene Fine: I have information for the Public Finance as in 2001- 2011-2013 I have to double-check with WAWS to see if they can get me the participating member debt.

Rep. Hofstad: Regarding the additional work load that is being placed on the commission is this something that is going to be onerous?

Karlene Fine: It will depend on how much oversight will end up in here.

Rep. Hofstad: How will you handle that?

Karlene Fine: There will be a lot of consultation with the Water Commission; they have expertise in this area.

Rep. Hofstad: Do we have to be explicit in this legislation and in directing you to the Water Commission.

Karlene Fine: That would be the direction that I would go.

Rep. Keiser: What parts of these debts were being encumbered by the residential sales income?

Denton Zubke: Chairman of WAWSA; 18:17-20:13 (explained the debts assumed)

Rep. Keiser: In that section the second city of Williston; the 3.693 that was based on residential. The RNT supply at 1.52 was based on residential and the McKenzie County rural that 5.8 are those the three that initially were funded with the revenues from residential sales?

Denton Zubke: Not the 5.8 for McKenzie County.

Rep. Hofstad: I am looking at the debt service that you had in your business plan the 2.9 million dollars. That seems to match up with the Public Finance Authority debt are those figures that you have had in that debt service?

Cory Chorne: Under the Public Finance Authority list that Karlene handed out The second Williston note 3.693 million that one is not in our business plan or the RNT one 1.452 million is not in the business plan and dropping down into the participating member other debts the McKenzie debt excluding the first one are included in the business plan.

Rep. Keiser: Do you know the balance debt on the Public Finance SRF loans?

Denton Zubke: I can tell you that the numbers that we have placed there for McKenzie County are highly accurate in relationship to the current debt. The SRF loans these are close to the existing debt also.

Cory The only ones that I am not sure of are the SC Williston debts. The RNT 1.452 the current balance on that is \$455,000.

Rep. Hofstad: As we look at payment are we looking at moving this schedule out? This is a 25 year pay back is that o.k.?

Rep. Schmidt: These residential loans that you have are not in your business plan?

Denton Zubke: At that time we did not contemplate the Industrial Sales picking those items up.

Rep. Hofstad: I have some new language that I would like to offer from the Water Commission. On page 8 it will say "an infrastructure revolving loan fund is established on Jan 1, 2015 with the Resources Trust Fund to provide loans for water supply flood protection or other water development and water management projects." "10% of the oil extraction money in the Resource Trust Fund will be made available on a "continuing bases for making loans in accordance with this section; 10% of the oil extraction money deposited in the Resources Trust Fund."

Rep. Hofstad: Rep. Keiser made a motion to move the amendment seconded by Rep. Schmidt motion carried.

Rep. Keiser: I have presented an amendment #13.0579.04010 (attachment #3) what this amendment would require is that the State Auditor would audit the financial records of the authority to insure that the sweep of commercial funds is occurring and is occurring properly. I move the amendment.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried.

Rep. Schmidt: I have an amendment (attachment 4) .04011 the purpose of the amendment is as stated under section 3 this is in response to ensure that these are properly put forth. I move the amendment.

Rep. Hofstad: We have a motion and a second from Rep. Hunskor motion carried

Rep. Schmidt: I have a second amendment (attachment 5) .04012 that is a new section 12 the title is franchise protection and not withstanding any other provisional law needed authority nor its participating entities may be required to wave the right to assert franchise protection under state or federal law with regard to water use for purposes other than industrial sales to the oil and gas industry. I move this amendment.

Rep. Hofstad: We have a motion and a second from Rep. Hunskor motion carried. Are there any other amendments? (None presented)

Rep. Keiser: On page 14 on this version the language lines 12-15 by putting in August 2015 I don't think this is a problem; what happens after 2015?

Jeff Nelson: I don't believe it is addressed after that.

Rep. Porter: Rather than default to the legislative session maybe the date needs to be stricken out this bill so that unless it is an unforeseen circumstance or hardship that they have to go back to the Industrial Commission and Emergency Commission and if we are in session than they would default back to us.

Rep. Keiser: On page 14 "additional debt that requires repayment through the authority except state guaranteed loans may not be required unless unforeseen circumstance or hardship arises and then only approval by the Industrial Commission and the Emergency Commission." I move that amendment.

Rep. Hofstad: We have a motion and a second form Rep. Schmidt motion carried.

Rep. Keiser: We have had a lot of discussion about this I thought it was corrected but it hasn't been on page 15 on the bottom B&C I thought they were reversed those. I move that we move item C into B.

Rep. Hofstad: We have a motion from Rep. Keiser and a second from Rep. Schmidt motion carried.

Rep. Keiser: On page 16 line7 "any requirements of the state guaranteed loans for establishment of reserved funds for operation and maintenance" I thought this was o.k. but debt service If we took over that there would not be a requirement for a debt service reserve fund. The debt services should be waved but not the operation and maintenance.

Rep. Schmidt: I agree with that.

Rep. Hofstad: Let's wait on this.

Rep. Porter: We need this bill next week.

Rep. Hofstad: We will adjourn and be back on Monday April 8 2013 at 10:00 in the Pioneer Room.

Jeff Nelson: I will incorporate the amendments that have approved to date.

Rep. Hofstad: That would be good.

## 2013 HOUSE STANDING COMMITTEE MINUTES

## House Energy and Natural Resources Pioneer Room, State Capital

SB2233 April 8, 2013 20971

Conference Committee	
	Fried
Subcommittee for SB 2233 Pioneer I	ALC I I
Relating to a declaration of water Poli	icy and goals
Present were Rep. Hofstad. F	Rep. Keiser, Rep. Schmidt and Rep. Hunskor
Others Present were; Michelle Fine	e Klose, Denton Zubke, Jeff Nelson, Karlene
Minutes:	1-4 "attached testimony."
Rep. Hofstad: We will open t	he subcommittee meeting.

Jeff Nelson: We will be working from is 13.0579-0414. This version incorporates all the amendments that have been approved by the subcommittee through our subcommittee meeting on Thursday morning.

Karlene Fine: Executive Director of the Industrial Commission; explained the various loans. (Attachment #1) 2:18-5:20

Rep. Keiser: Is there a time line in which those funds must be allocated?

Karlene Find: The ones under USDA and McKenzie County loans they need to done by June 1, 2013. The other ones are going down as quickly as they can.

Denton Zubke: Chairman of WAWSA; The city of Tioga over sold their permit and so the 3.8 million did not include the city of Tioga. They oversold their water permits and the City Commission told them they could not sell anymore industrial water so we did not reimburse them in 2010 until they can sell again.

Rep. Hofstad: Has that permit been issued?

Denton Zubke: No I think sometime in 2013.

Rep. Hofstad: Is that a contractual agreement that you had in place when you established your authority?

Denton Zubke: That is correct.

Rep. Keiser: It would help if we knew what the amount in 2013 is.

Rep. Hofstad: Why the difference now? Why are we including those in the sweep?

Denton Zubke: Some of those debts are contracted for and some of them weren't.

Rep. Hofstad: Are we paying them for lost water sale and for the debt?

Denton Zubke: If you are referring to the base line sales those are separate political subdivisions from Williams's rural water, McKenzie County Water Resource District; they don't match up.

Rep. Schmidt: If they oversold their water sold water that you had planned to sell where did the money go from those sales?

Denton Zubke: The city of Tioga did that prior to an agreement with WAWSA and the State Water Commission had already told the" you can't sell anymore industrial water until sometime in the future" so we honored that contract.

Rep. Keiser: Going back to the SRF loans and existing debit these are the current balances and when this project came together these water districts made a comment to upgrade, expand and overbuild their systems to support the new structure of WAWS is terms of commercial sales. Isn't a portion of that rebuild on the infrastructure related to domestic sales?

Denton Zubke: Some of those loans have some domestic portions in them and a lot it was relied on in industrial water sales. It was a collative effort that we all came together and said "let's fix this problems."

Michelle Klose: North Dakota State Water Commission; there were specific loans that were planned to be transferred over when the project was formed and those were for infrastructure that WAWS would use. We do have a mix of what you to have included. There is debt here from the systems domestic from this region but they had intended to pay for from domestic sales.

Rep. Keiser: If we take the commercial sales which was part of the plan to pay those domestic or commercial; do we have the responsibility to take the balance of those loans?

Michelle Klose: What you had is you had initial comments between WAWS and the individual things in which debt is going to be tacked on; if you want to honor those original comments that would be a limited number, the plans in the original sales that included certain level of industrial sales. If that is your intention then you should be specific to what was in those initial contracts as the projects were moving forward.

Rep. Keiser: Where do we find the information to be specific?

Michelle Klose: We do have number of what projects were associated form the original business plan but that had the current balance of that point and time and some of those payments have been paid off.

Rep. Keiser: That is what I am seeking could we get a breakdown.

Michelle Klose: What Denton was conveying is that if our water permit exceeded then they are not able to use that amount and deducted from their future use in the next few years.

Rep. Hofstad: Are they any amendments that anyone would like to offer?

Rep. Schmidt: I have an amendment to offer (attachment #3) it is a new section proposing lower Heart River, Morton County enhanced flood control project it would state" the legislative assembly declares its intent to provide state funding for 50% of the non- federal or local cost for construction for the lower Heart River enhanced flood control project." I move the amendment.

Rep. Hofstad: We have a motion from Rep. Schmidt and a second from Rep. Hunksor that we add this intent language to our bill motion carried.

Rep. Keiser: I have about 5 amendments in 13.0579 .04014 they are technical in nature and so I will offer the first one is on page 15 line 29 reimburse the authority after for add" reimburse the authority for industrial water depot capital improvements and the cost for water supply sold" I move that.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried.

Rep. Keiser: On page 15 line 30 we have sold industrial water depots and industrial lines at the participating member and I question whether we shouldn't add "and sub member if applicable" because of the way this thing is structured WAWS can sell it at their rate at their depot but if it goes through Watford, Tioga, Ray or Crosby there is an additional fee that is assessed for their expense to transport that water. "After participating member" I move that we add "and submember, if applicable."

Rep Hofstad: we have a motion seconded by Rep. Schmidt motion carried.

Rep. Keiser: On page 16 line 2 where it reads "in the initial contracts" there are no initial contracts. I move that we strike initial and if it is important put "in the contracts in existence as of" a given date. It would read on line 2 page 16 it would read "2010 industrial sales included in the contracts in existence as of December 31, 2012." I move that.

Rep. Hofstad: We have a motion and a second from Rep. Hunskor motion carried.

Rep. Keiser: It would appear after line 7 it is the policy question whether the state should pay any federal, state or local statuary or regularity requirements that impact the cost that is related to commercial sales.

Rep. Hofstad: What if the Federal Government would change the drinking water standards so that they would have to add more chemicals to the process.

Rep. Keiser: I agree and I'm saying related to commercial sales. If it is domestic it has to be absorbed by the domestic division. We can hold that one. ON page 17 line 3, I don't know that they can hinder or prevent. I suggest striking hinder or prevent and substitute "proposing water permit for" Let's leave it.

On page 17 line 21"upon written notice" that should be overstruck.

On section 21 line 18 I thought we changed oil and gas industry to oil and gas exploration and production.

Jeff Nelson: In another place in the bill.

Rep. Keiser: I move that change and change "for" in the previous line.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried. I offer this amendment "any funds appropriated during the 2013-2015 biennium because of WAWSA supply project must first be used to repay any project Federal Loan or obligations." (Attachment #4)

Rep. Keiser: Can we prepay those loans?

Rep. Hofstad: As far as I know they can be.

Michelle Klose: I think you can have the funds set aside. Revenue bonds do have a date that they have to be paid.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt to add " any funds appropriated during the 2013-2015 biennium because of WAWSA supply project must be first be used to repay any project Federal Loans or obligations" motion carried.

This process as it gets passed to the Industrial Commission is a load; I would like to offer an amendment that "we provide one FTE if the commission so desires to provide additional staff for the commission."

Rep. Keiser: I move that amendment.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried.

I also have an amendment that says" the Independent Water and WAWSA Users shall report to the Water Topics Commission on a regular basis and collate with the committee and the Water Commission to monitor usage, rates, and market share. The Water Topics Committee shall report to the 64<sup>th</sup> legislative assembly with recommendations to assure that the state's ability to maintain its payment schedule".

Rep. Keiser: I move the amendment.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried. We talked about an emergency clause it's a great idea. I am concerned with the continuing buildup of the depots and the laterals we can address that this afternoon.

Rep. Keiser: If this bill is passed is this form there is little incentive for WAWS to start building a lot more depots. We are not going to limit depots or laterals. Do we need to identify

Rep. Hofstad: We will meet this afternoon after session.

#### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB2233 April 8, 2013 20989

Conference Committee

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Subcommittee for SB 2233 Monday aff	ternoon @ 2:40 adjourned at 2:50
Present were Rep. Hofstad, Rep. Keise	er, Rep. Schmidt and Rep. Hunskor
	1 "attached testimony."
Others Present: Denton Zubke, Michelle Klos	se, Karlene Fine, Robert Harms, Jeff Nelson,
Rep. Hofstad: We will call subcommittee for S	SB 2233 to order.
	chment #1) 3:00-9:00 this incorporates the g. Changes are as follows page 7 lines 13-17.
Next change is on page 16 section 18 this ac Line 28 page 16, about reimbursement to t improvements.	dds a new subdivision A. the authority for Industrial Water depot capital

Page 17 lines 2, 3 we included the date December 31, 2012

Page 18 overstrike lines 21-27.

Page 19 section 22 line 4 water use for water other than Industrial sales for oil and gas exploration and production.

Section 24 is an amendment that was approved this morning.

Section 25 is new this call for reports to the 64th legislative management.

Section 26 is the authorization for 1 additional time full time position for the Industrial Commission.

Rep. Keiser: I move to strike section 24 on page 19.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt to strike section 24 on page 19 motion carried.

Rep. Keiser: On page 9 section 11 languages provided by Robert Harms regarding that section and it raises the question whether or not it should be the State Engineer should approve WAWSA water depots. Rather than the State Engineer "the State Water Commission must approve the planning, design location and construction of any WAWSA

House Energy and Natural Resources SB 2233 April 8, 2013 Page 2

of any depots, tabs turnouts laterals or risers for Industrial sales for oil and gas exploration and production after the effect date of this act." I move that amendment.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried.

Rep. Schmidt: Are we referring only to the industrial sales and not residential or commercial sales?

Rep. Keiser: I want to be sure that we are referring to the commercial side of the sales." I move the motion

Rep. Hofstad: Page 8 section9 the flood control project "the 63rd legislative assembly declares its intent to provide state funding for ½ of the nonfederal or local cost of constructing a federally authorized Fargo, Moorhead flood project not to exceed \$450,000.000"

Rep. Schmidt: That amendment that we have there is mine and based on discussions we had this morning with the senate and in the leadership I agree to the new wordage; that is a motion.

Rep. Hofstad: We have a motion and a second from Rep. Keiser motion carried. We will look at Karlene's data this morning and try to separate those out, and then get that information in the morning.

Rep. Keiser: If expenses were incurred that was not their fault as a result of some state, local or federal requirement I can't this as a cost being transferred 100% to domestic sales and that may not be fair that is on page 16 in the old version.

Rep. Hofstad: If there are unforeseen hardships they have the opportunity to go before the Industrial Commission or the Emergency Commission.

Rep. Keiser: Should we put in intent language that we recognize; there may be some unforeseen things that could happen do to regulatory or state, federal or local action might be able to require them to be allowed to go before them and seek funding.

Rep. Hofstad: What happens at the end of this term is when the loans are paid off and there is still a revenue stream from Industrial sales; the way the bill reads now is that it continues to flow into the Resource Trust Fund. Is that the intent of this committee?

Rep. Keiser: If there is a way to provide some general intent language that a discussion will be as to the appropriate allocation of those funds to the area and the state.

Rep. Schmidt: Is the ability to go in front of the Industrial Commission for unseen costs are those in lou of an operations reserve?

Rep. Hofstad: Yes, We will close the subcommittee and reconvene at 10:00 tomorrow morning here in the Pioneer Room

#### 2013 HOUSE STANDING COMMITTEE MINUTES

# House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 April 9, 2013 21021

☐ Conference Committee				
Iminet	tu			
Subcommittee relating to provide a declar	ration for water policy and goals			
Present were: Rep. Hofstad, Rep Keiser, Rep. Schmidt, and Rep. Hunskor				
Others present: Robert Harms, Michelle Klose, Karlene Fine, Denton Zubke, Jeff Neslon, Todd Sando,				
Minutes:	1-2 "attached testimony."			

Rep. Hofstad: We will call to order the subcommittee on SB 2233. The changes that were made yesterday will be reviewed by Jeff Nelson.

Jeff Nelson; (Attachment 1) 13.0579.04017 version

Rep. Keiser: I move a technical amendment the way we want it to read; on line 7 not to exceed the \$450,000.000 and move that new language up to line 5 after "funding" and insert it.

Rep. Hofstad: We have a motion to move that amendment and a second from Rep. Schmidt motion carried.

Jeff Nelson: Changes are as follows Sub section 1, Section 11 on page 9, 2:55-4:06

Rep. Schmidt: There are some concerns with the time frame that may take for that approval to occur. Do we need to identify that?

Rep. Hofstad: Let me call the State Engineer to the podium.

Todd Sando: We do have scheduled meetings every couple months. We also have telephone calls when issues come up.

Rep. Hofstad: If the request was there is that something that the State Water Commission would give you the authority to do?

Todd Sando: We could do that.

Rep. Hofstad: The intent of this body would be that you have those discussions with the State Water Commission so that the process can be implemented on timely bases.

Todd Sando: Especially if the revenues and the extra revenues help pay off the project; I think we should react to it quickly.

Rep. Keiser: If the oil company wants to come in and tab the WAWS line to provide water for its well to their fracking and they pay all of the expense. Do you have the authority to approve this?

Todd Sando: If the Water Commission isn't spending we put money into it.

Rep. Keiser: Our intention is to pay those loans back and we are going to be the market.

Rep. Hofstad: Those discussions are important because the law if passed does say "the State Water Commission must approve the planning design and locations."

Jeff Nelson: Page 18 line 15, another change there was section 24 that was removed and another change on page 19 lines 9.

Rep. Keiser: I move to remove section 25 lines 16&17 on page 19: if the appropriations want to put that in there side I am happy to have them do it providing that fund it the same way we are proposing to do here.

Rep. Hofstad: We have a motion and a second from Rep. Schmidt motion carried. In the title you have "the infrastructure revolving loan fund for WAWSA project"; that is taken care of.

On page 7 section 8 "Garrison diversion unit" in talking with the governor's office when we include the Snake Creek pumping plant, the McClusky Canal, recreation area and other facilities" we have named some of those facilities but we haven't named them all and they also intox with the federal government they would have a higher comfort level if we would exclude the Snake Creek pumping plant, McClusky Canal, and strike that language.

Rep. Schmidt: I move to remove that language.

Rep. Hofstad: We have a motion to remove that language and a second from Rep. Schmidt motion carried. We also need to get that time line into the schedule in this document.

Rep. Keiser: Aug 1<sup>st</sup> is not an unreasonable deadline. I think we need to allow a reasonable time to make the transition.

Rep. Hunskor: I would like to see an earlier date but I understand that it takes a long time to get everything completed. Will it take until August for this to happen?

Rep. Hofstad: In section 18 sub B the language would read " reimburse the authority for industrial water, depot, capital improvements and the delivery of raw or treated water sold to the industrial water depots and lateral lines at a cost no greater than the participating member or sub member if applicable."

Michelle Klose: Assistant State Engineer for the North Dakota State Water Commission; (explains section 18 sub B) 18:43 - 21:09

Rep. Keiser: I move the amendment.

Rep. Schmidt: Would you please repeat that?

Rep. Hofstad: "Reimburse the authority for industrial water, depot, capital improvements and the cost for delivery of potable or non-potable water sold and industrial water depots and lateral lines at a cost no greater than the participating member or sub member if applicable." We have a motion and a second from Rep. Schmidt to move the amendment motion carried.

You have an amendment that will put capture the payment schedule that we have been talking about. It says" regular payments on the participating member entity debt is described in the agreements with the authority as of March 31, 2013 and base line 2010 industrial sales included in the authority and participating member agreements as of March 31, 2013."

Michelle Klose: The agreements had been modified on March 13, 2013 to include Crosby which was the final sale; having this in place it does capture that point in time and it established the debt as well as those industrial sales.

Rep. Keiser: What is in those agreements? This was handed out yesterday. (Attachment #2)

Michelle Klose: explains the loans. 25:21 - 32:40

Rep. Keiser: If there is a reasonable and simple approach to making a correction in 2013 we should take it.

Rep. Schmidt: On base line 2010 are we talking about picking up all 4.79?

Michelle Klose: Yes we are. Those were comments in those existing contracts with those member entities.

Rep. Schmidt: Does that 4.79 include the city of Tioga?

Michelle Klose: Yes it does.

Rep. Hofstad: The amendment to section 18 would read "regular payments on the participating member entity debt as described."

Rep. Keiser: The senate has the Water Commission bill and there is \$79,000.000; that contract is not finalized so we don't know if that funding is there or not and would not fit in this date so how do we deal with the future loans?

Michelle Klose: Those loans fit in under E. It could help cover some of those issues and gives them some flexibility to address issues with this as well.

Rep. Keiser: What is the bottom line of many dollars it is?

Michelle Klose: The 36.5 was my ruff total of the existing debt that was in those contracts.

Rep. Keiser: The 110, 40, everything?

Michelle Klose: 196 and that's with the additional \$40,000.000 that is provided through the Bank of North Dakota.

Rep. Hofstad: The amendment would read "would read the regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013 and baseline 2010 industrial sales included in the authority and participating member agreements as of March 31, 2013." Amendment to 1C. We have a motion and a second from Rep. Schmidt motion carried.

Rep. Hofstad: The base line sales addressing the issue; do we want to address that?

Rep. Keiser: I move that the state except the responsibility for those baseline sales with the correction for the year 2013 to be provided relative to the city of Tioga sales.

Rep. Hofstad: We can get that language perfected is there a second to that? We have a motion and a second from Rep. Schmidt motion carried.

Rep. Keiser: I move that we recommend the bill as recommended to the full committee.

Rep. Hofstad: It is the intent of the 63<sup>rd</sup> legislative assembly that after all loans to the State of North Dakota contractual responsibilities to the participating members are fulfilled: any revenues generated by industrial sales are prioritized for use for industrial development and oil impacted areas.

Rep. Keiser: Can we modify that slightly that there would be developed a plan to implement those sales with some priority being given to the oil impacted areas and some of the water resources trust fund should be getting some portion of those future sells for statewide utilization.

Rep. Hofstad: The intent implies the money does flow into the resource trust fund and is then prioritized. I'm open for suggestions or comments.

Rep. Schmidt: Is that making reference to page 17, line 7, is that in addition to or is that it?

Rep. Hofstad: That is where the money flows to the resource trust fund. It is intent language as we develop this process and it goes forward we give some consideration and prioritization to the oil impacted areas.

Rep. Keiser: I would move that

Rep. Hofstad: It's been moved, is there a second?

Rep. Schmidt: Second

Rep. Hofstad: It's moved and second, further discussion? Voice vote, motion carried.

Rep. Keiser: I now move the bill as amended be referred to the full committee for consideration.

Rep. Hofstad: It's been moved, is there a second? **Moved and seconded by Rep.** Schmidt. Voice vote, motion carried.

#### 2013 HOUSE STANDING COMMITTEE MINUTES

### House Energy and Natural Resources Pioneer Room, State Capital

SB 2233 April 11, 2013 21112

	☐ Conferen	ce Committee	
	Enimer	40	
To provide a ded	laration of water polic		
Minutes:		1-2 3"attached testimony."	
Ren Porter We	will open SR 2233		

Rep. Hofstad: The bill sets out policy explains the amendments to SB 2233 # (13.0579.0418 Attachment 1) 2:50-7:31

Rep. Porter: We will take this section by section if you have questions on any of the previous sections to section 10.

Rep. Froseth: on page 7 section 5 regarding the Mouse River. We have designated a specific dollar amount for the Fargo Moorhead flood control but there is no dollar amount the section 5 for the Mouse River. Was there proposed estimate given in regard to that?

Rep. Hofstad: We did not look at a dollar amount. It is very fluid we don't have that in place yet. I think the intent is to leave that book open so that as we go forward that those dollars and the estimates of the cost of that constructed comes forward we will deal with in further assemblies.

Rep. Porter: Since it is not to the specific dollar amount we added that other language that talks about the National Economic Development Alternative which would be the federally approved plan.

Rep. Schmidt: The National Economic Development Alternative plan is the alternative with the biggest bang for the buck.

Rep. Froseth: I like that but it is quite a commitment for future legislative sessions.

Rep. Porter: That is the intent of the bill. That lays the ground work if something comes back and is out of our price range that the legislative assembly needs to address that.

Rep. Silbernagel: As the language in section 9 is spelled out "the funds would only be released when it is federally authorized"

Rep. Porter: No, there is this is a line item in the budget for the previous couple of biennium's. This change is based on the current plans, construction and how the project is shaping up.

Rep. Keiser: This is an important point, this state is federally authorized; that may or may not be different than appropriated; it is the authorized amount in this piece of legislation.

Rep. Hofstad: Section 10 is the infrastructure of the revolving fund. We still have needs out there that we don't have money in the resource trust fund.

Rep. Silbernagel: Under the area of other water development; would that include potential area projects in section 10 # 1?

Rep. Hofstad: Yes this would be eligible for everyone that comes before the State Water Commission asking for funds. That is from a project like the Fargo Diversion Project to a dike; any projects that have a loan component to the project. The state Water Commission would be in charge of elevating those projects.

Rep. Damschen: Is that 10% going to be set aside for loans?

Rep. Hofstad: Yes the 10% will be dictated to the revolving loan fund.

Rep. Keiser: The 11/2% rate is a fixed rate but the ½% service fee may be assessed.

Rep. Hofstad: Section 12 is the Red River water supply project. It is declared necessary and in the public interest of the state by and through the State Water Commission to provide cost share for constructing cost share for constructing the Red River Valley Water Supply Project. This is one of the highest priority projects in the state.

Rep. Porter: As the Missouri River flows through North Dakota we are fighting our appropriation of our water with every downstream state. It is very important that we try to prefect our rights and use our water the way that we need to use it.

Rep. Hofstad: We are in the part of the WAWSA issues; these are an important part of the project. We are going to separate those industrial sales, sweep the revenue that comes off of those industrial sales and in exchange for doing that we are going to take all of the debt away from WAWS. Page 11 we tried to work out a solution where by the Independence and WAWS depots would have some space. That is a free market system so we have asked the Independent water providers to consider locating their industrial water depots so as to minimize the impact the other independent water providers.

Rep. Kelsh: Can you describe what the difference is between the independent water provider and the private water seller in section 14 lines 22-24?

Rep. Hofstad: We have the independence that are providing water to the industry and us as the WAW that is providing water to that industry so what we are asking is that those independent water providers consider the location of the water depots. The private water seller could be an irrigator and has converted to a commercial industrial sales permit.

Rep, Nathe: What happens if the private water seller and the independent get to close?

Rep. Hofstad: It is more of a statement and a private enterprise, there is no rule of law here.

Rep. Froseth: Section 15 line 29 The WAWS within McKenzie, Williams, Mountrail, and Burke Counties could there be a need for water in other counties. If the NAS system never gets water from the Missouri River there might a time when they are going to have to look for other sources.

Rep. Hofstad: As the authority was set up they have the discretion to service other areas.

Rep. Porter: And then goes through line 30 it starts with "other and then goes through 31 and then on the top of page 12 that's the existing language of how we set up the authority.

Rep. Anderson: Wouldn't the Continental Divide prohibit that from happening?

Rep. Porter: it would depend how the courts rule. I would say it would not because this is treated water and all of the arguments typically go away when you are dealing with potable water.

Rep. Mock: In section 14 lines 22-24 is it the intent that the independent water providers also consider the locations relative to existing WAWS water depots?

Rep, Hofstad: No it is not covered under another section.

Rep. Mock: WAWS considers locations relative to private water sellers. My question is independent water providers to consider location of their processing depots relative to existing WAWS depots?

Rep. Porter: No that is not in here.

Rep. Mock: Is that protected under any indebt nesses?

Rep. Hofstad: No we removed those protections and moved to a free market system and made it clear that the State of N.D. will our own 1926B. We will protect our ability to make those payments to our bank. Section 17 is the language that gives WAWSA; and added some things in section 13 making it clear that any additional debt requires repayment through the authority except state guaranteed loans may not be acquired unless an unforeseen hardship arises and then only approval of the Emergency Commission or the Industrial Commission. We have a payment schedule to meet.

Rep. Damschen: Is there anything in here that identifies the priority of the system being for residential and municipal water supply as compared to industrial?

Rep. Hofstad: There is policy developed from the State Water Commission that does prioritize the potable water to the customers before industrial sales.

Rep. Porter: On page 11 starting on line10 of existing law there is the intent in declarations to accomplish this public purpose it is declared necessary that a water authority to treat stored distributed water to western N. D. be established to provide for the supply and distribution of water to the people of western N.D. for proposes including domestic rural water municipal livestock, industrial oil and gas development and other uses and to provide for future economic welfare and prosperity of the people of this state and particularly the people of western N.D. by the creation and development of the WAWS for beneficial and public uses. That is the existing component of that.

Rep. Damschen: Does that prioritize anything or puts them all in the same level.

Rep. Porter: It gives them the opportunity back to WAW and gives them the ability to operate as an enterprise.

Rep. Keiser: It is the intent and has been the intent that has been followed because of we have not passed the 40 million yet to increase the capacity of the Williston treatment plant.

Rep. Damschen: Is there anything that guarantees the integrity of the intent of this section until the bill goes into effect?

Rep. Hofstad: Could we hold that until the end of the discussion?

Section 18 is the heart of the bill. The priority is A, B, C, D and E. We want to provide some help for the State Water Commission. Any additional funds will go to the Resource Trust Fund

Let's go to section 11 page 9; I am offering an amendment to (attachment 2 13.0579.04018 by Rep. Hofstad)

Rep. Porter: Are you say on page 9 line 7 that we would over strike 61-03 and insert it as 6140 so it falls into the section WAW?

Rep. Hofstad: And then it will be inserted as #3. And then there are some language changes as I offer those amendments.

Rep. Nathe: Section 11 which would be in 18. Are there any depots in the planning and design stage that would fall under this?

Rep. Hofstad: There are nine up and running and there are 3 in the development ready to come on line.

Rep. Nathe: Would they be affected by this section 11?

Rep. Hofstad: Those laterals, tabs and turnouts would be affected. This would fall under the State Engineer.

Rep. Keiser: We are shifting the business model.

Rep. Silbernagel: On page 17 D, E, and F on the additional principal payment is over and above the required monthly payments that they could make additional payments?

Rep. Hofstad: That is correct.

Rep. Porter: On page 16 line 30 we talk about the member entity debt as of March 31, and then the base line of the sales. Does that mean we are including some of the debt that was incurred based on residential and municipal sales? Then are we picking up any of the debt prior to the incorporation of WAWS in 2011?

Rep. Keiser: The reason for March 31 is that we still have 2 bills in the legislature that depending on what happens to them could add to the debt so we have to have a time when those bills are passed and signed and then a date certain for the cutoff. The committee has done everything we can to look at all of the existing financial relationships that exist. We do have a schedule that we can provide of the various forms of debt that have been looked at by the committee.

Rep. Porter: There is language somewhere that has those limits in here?

Rep. Keiser: There is no limiter other than those debts are all packaged debts that have been closed.

Rep. Porter: So there is debt that we going to be making under sub C regular payments on that prior to WAWS being incorporated and prior for residential services that will be part of this package and part of the sweeps?

Rep. Keiser: That is true. We have separated out those which were not included in the original packing of WAWS but there was some funding that

was done during the early stages of WAWS where they were looking at commercial sales combined with residential sales.

Rep. Hofstad: Section 19 is the water rates and how those water rates will be developed.

Section 20 is construction funding; what we are doing now is taking WAWSA and treating them like everyone else.

Section 19 is the default section it does say the Water Commission may Section 22 is franchise protection as we deal with 1926B that leave that protection in place.

Rep. Schmidt: To me it is very important have the ability to receive rural water from a rural water system for all of the people in N.D.

Rep. Hofstad: Section 23 is the repeal section. Section 24 is the intent language.

Rep. Froseth: In the event that the system is paid for and there no more oil and gas impact and the system shows a profit, shouldn't the user rate go down?

Rep. Hofstad: You could write any type of intent; that we want to make sure that the first look is out there.

Rep. Porter: On line 11 after the word "prioritize for use for" Do we need to put the word "water infrastructure" in there? Was it the intent of the subcommittee that is could be roads or any other infrastructure?

Rep. Hofstad: We didn't have that discussion.

Rep. Keiser: This language was added for as an attempt to address the issue of what happens in 25 years with any excess after all debts have been paid.

Rep. Hofstad: Section 25 is important to continue to have this discussion. We need the IWP at the table. We need WAWS at the table; we asked the Water Topics Committee as the form for both of them to come to the table so that we can monitor things as the usage, rates and the market share to report to the 64 legislative assembly.

Rep. Damschen: Any expansion as far as industrial part between now and then would become a revenue generator for the state when this bill goes into effect?

Rep. Keiser: The committee spent a lot of time on this issue. When this bill is signed by the governor we will need a period of time to set up the system to make this work.

The real concern is not the depots but the laterals. Laterals will be built most economically because the further you go the more it costs. What we have attempted to do is create an open competitive system.

Rep. Schmidt: We need to ensure that we have our income that is number 1 and number 2 they are different products. WAWS is selling treated water, and independent providers are selling raw water at a cheaper rate.

Rep. Hunskor: I had a concern in the sub-committee regarding that section I think the date of the bill to become effective is August 1 is that correct? In order to keep the playing field even should that section be moved to any earlier date?

Rep. Porter: We will do it when we get into it.

Rep. Hofstad: I move the amendments 04018.

Rep. Porter: We have a motion and a second from Rep. Keiser to adopt the amendment to SB 2233 04018. Voice vote motion carries.

Rep. Hofstad: We would like to move section 11back to section 18 to item3.

Rep. Porter: Do you propose an amendment to move section 11 to be sub 3 of section 18 after line 14?

Rep. Hofstad: That is correct and I also move that we delete the word "design" and change construction to "water supply contracts."

Rep. Porter: We are looking at page 9 amending section 11 to move it to section 18 make it sub 3 inside of section 6140 and overstrike on line11 of the amendment the word "design" and then after the word "and" overstrike construction and insert "water supply contracts" have a motion and a second from Rep. Keiser. Voice vote motion carries.

Michelle Klose: Assistant Engineer of the State Water Commission; Section 6140-03 on page 12 in-between the other amendments, section 2 and 4. In subsection 1there is mention that "in addition the State Engineer designated a voting member of the authority's board of directors" that would be removed and then in subsection 3 there is also a mention that not rescinding the section except the state engineer or designee and that would also be removed.

Rep. Keiser: We could go to section 23 and add that 614006 we could add 614003?

Michelle Klose: Because it leaves out the other board members it is hard to strike those sections you have to remove that specific language.

Rep. Hofstad: Jeff could you help us with version 19 those changes that we made we have adopted all the changes up to versions up to 18, we are looking at those changes could you go through them with us as a committee.

Jeff Nelson: Staff attorney of the Legislative Council; The changes that were made in .0418 -.0419. Excluding the title the first change is in section 11. (Attachment 3 13.0579.04019)

Rep. Porter: We did move in the marked up version section 11 to be sub 3 on page 17 on the 18 version and made wording changes inside of the old section 11 we crossed out the word design and then we changed construction to water supply contracts. That has been adopted.

Rep. Hofstad: On line 24 pages 17 it appears that section 18 should it read section 17?

Rep. Porter: We have the version that we have adopted to bill 040; it has been adopted in its entirety and then we further amended 04018 to move that from section 11 to section18.

Jeff Nelson: The next change is in section 16 of the bill an amendment to section 614005.

Rep. Keiser: This goes counter to Rep. Schmidt concern.

Rep. Porter: In the language by Rep. Schmidt that appears later in the bill speaks to the continuation of the 1926B language in its relationship to municipal water sales. This is only dealing with the industrial side.

Jeff Nelson: Yes.

Rep. Schmidt: Page 19 the franchise protection lines 1-5 still in this so I am relieved that it is still in there.

Rep. Hofstad: I move the amendment page 15 sub 13.

Rep. Porter: We have a motion and a second from Rep. Keiser for the amendment to page 15 sub- sections 13. Voice vote carries.

Jeff Nelson: subsection 3 under section 17 dealing with water depot and lateral sales.

Section 19 construction funding the change is on page 18 line 3.

Rep. Damschen: Is the intent is that the priority for WAWS be municipal and domestic water suppl. Is that adequately stated is this legislation because that is to be given priority?

Jeff Nelson: That is expressed in the bill.

Rep. Porter: In section 14 of the 19 version there mission and the intent of the legislation there is a component that talks about the industrial part in revolving loan.

In the mix of things with the motions and adopting version 0418 making the changes to 0418 we are looking at version 04019?

Rep. Hofstad: With those amendments adopted you are right.

Rep. Porter: Let get down to the specifics of the State Engineer and the over sight components that have not been addressed yet.

Rep. Hofstad: I move that 61-4003 sub 1 and sub 3 striking the language that puts the State Engineer or designee on the WAWSA authority board. We need to reinsert that.

Rep. Porter: We have a motion and a second from Rep. Keiser voice vote carries.

Rep. Hofstad: We have a problem out there. There is a 5.5 million dollar loan that McKenzie County has that we do not have as part of this sweep and that is a point of consternation with WAWSA we need to lay that on the table and resolve it.

Rep. Porter: Was the item aired during the subcommittee and a decision made by the committee because it is not addressed in any of the amendments?

Rep. Hofstad: I don't think it was listed so there is some confusion as to the dates, the amount of the loan and the project going forward.

Rep. Keiser: We have a print out of all the loans etc. and a lengthy discussion I agree with the chairman this was the one that we were uncertain about.

Rep. Schmidt: Are we referring to McKenzie County water RD 3% loan for 5.795 million dollars?

Denton Zukbe: Chairman of WAWSA: We had 2 projects that were under construction when we wrote the water supply contracts and the infrastructure use agreements. We noted those with an asterisk if they were not completed. We had to get money from McKenzie County to the amount of 4.5 million dollars to complete those projects. Those funds were used for 2 projects that were in the contract with WAWSA but the contract does not reference that loan.

For clarity purposes only if we make certain that we are talking about that \$3490, 000.000 in this agreement and then the 4.5 million dollar loan with McKenzie County.

Rep. Porter: That is how they make money.

Denton Zubke: They are both working for us and are arguing about it.

Rep. Hofstad: We are talking about the system to distribution at 4.5 million dollars which has a component to it of 2.19 million dollars?

Denton Zubke: No the USDA 3.5% loan is referenced in the access use agreement but it a dollar amount of 2 million 191 thousand on it and that loan has grown to 3 million 490 thousand dollars.

Rep. Porter: under the participating members other debt assisted to the distribution to the USDA at 3.5% for 3.49 million closing date of June 1, 2013?

Denton Zubke: On the access and use agreement that loan is noted but it's at a lessor dollar amount and does say that it is not complete.

Rep. Schmidt: That is a USDA loan is it not?

Denton Zubke: That is correct.

Rep. Schmidt: With that loan comes 1926B?

Denton Zubke: The loan was already there.

Rep. Keiser: We placed into the plan the 2.191 million even though it said 3.490 on the print out we placed in 2.190 which was the original amount prior to completion of the construction. So that has now been finalized and is 3.49 where does the other part come from?

Denton Zubke: The 4.5 was to complete the regional transmission line south of Williston and originally it was in that McKenzie County water RD 3% loan under the public finance authority but we had to move a portion of that out of there and to complete the project we had to extend additional funds for that.

Rep. Porter: Is it in there now?

Denton Zubke: It will be at the next board meeting.

Rep. Keiser: I think it is important for this committee to make the determination whether to direct the Water Commission to include these adjusted amounts or not. I so move.

Rep. Porter: We have a motion and a second from Rep. Hofstad voice vote carries.

Rep. Hunksor: In section 18 subsection 3 whether old section 11as it should have later effective date than August 1 then there wouldn't be any discussion on that earlier?

Rep. Porter: Do you want to make a motion?

Rep. Hunskor: I would like to hear whether any members want to discuss that.

Rep. Porter: What Rep. Hunksor would do is add section 25 which would be to ask for the emergency clause for section 17 subs 3.

Rep. Hunskor: I make a motion that the emergency clause be put on section 17 subs 3.

Rep. Porter: We have a motion is there a second Rep. Brabandt

Rep. Nathe: What is the reasoning for it?

Rep. Hunskor: It keeps the playing field even.

Rep. Silbernagel: I think the question is laterals; does the State Water Commission need to issue water permits for laterals?

Rep. Porter: As far as the original intent for WAWSA that is part of the original bill that was passed in 2011 so that is in there.

Rep. Keiser: I stand in strong opposition for this. Laterals are the issue the oil companies doing the drilling should have the freedom to access any source.

Rep. Mock: What is a tab, turnout, and riser in regard to this project and is there is need for the State Water Commission to have to approve those immediately and without the emergency clause beginning August 1.

Rep. Porter: It is for industrial sales for the oil and gas expiration.

Rep. Hofstad: I think it is important to get the State Water Commission involved in this process because they are our agency. We are responsible for that debt. There will be more laterals built so we need to have the State Water Commission's input.

Todd Sando: State Engineer: It is related to domestic turnouts and that. We can evaluate that to take a look at that.

Rep. Mock: What is a tab, turnout and riser?

Todd Sando: That is a way to get the water in the pipeline or to get water out of it industrial or domestic.

Rep. Hofstad: As you evaluate these depots and laterals are you going to be evaluating the ability to put that water into the system and weigh that against the domestic use?

Todd Sando: The Water Commission will elevate that.

Rep. Keiser: Tell us how you are going to elevate commercial sales.

Todd Sando: We will have in part of the operating authority WAWS and not just low work and projection.

Rep. Keiser: If we are short on sales you are going to go domestic?

Todd Sando: Our current policy is domestic policy which can be revaluated.

Rep. Hunskor: It was laid on the table to have a discussion and that purpose is accomplished.

Rep. Mock: If you have any pending plans for taps or turnouts it could be constructed we might be negotiating it now and having them installed in the summer the emergency clause would render all of those negotiation's and contract and put them on hold until approved by the State Water Commission.

Rep. Froseth: As emergency clause goes into effect as soon as the governor signs it.

Rep. Porter: The motion was for a straight out emergency clause on one subsection.

Rep. Hunskor: Did I understand you to say that in order to have an effective date you have to go through the emergency clause first.

Rep. Porter: In order to make anything go active prior to August 1, you need an emergency clause. So you want to change your motion so that the

emergency clause is effective June 1<sup>st</sup> on sub 3 of section 17 voice votes failed.

Rep. Hofstad: I move SB 2233 as amended a do pass.

Rep. Porter: We have a motion and a second from Rep. Keiser for a do pass to the amended version to SB 2233. We will adjourn the meeting.

Yes 13 No 0 Absent 0 Rep. Hofstad

### FISCAL NOTE Requested by Legislative Council 01/18/2013

Bill/Resolution No.: SB 2233

1 A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		
Expenditures						
Appropriations			:			

1 B. County, city, school district and township fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

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	2011-2013 Biennium	9 2013-2015 Biennium	2015-2017 Biennium		
Counties					
Cities					
School Districts					
Townships					

- 2 A. **Bill and fiscal impact summary:** Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).
  - SB 2233 deals with water policy and project goals and development.
  - B. **Fiscal impact sections:** Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 2 of SB 2233 re-allocates a portion of the oil extraction tax to the infrastructure revolving loan fund.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

If enacted, SB 2233 will reduce revenues in the resources trust fund by an estimated \$54.695 million in the 2013-15 biennium. These revenues will be re-allocated to the infrastructure revolving loan fund. (Both of these are "other funds" in 1A, above.)

- B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.
- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

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**Telephone:** 328-3402 **Date Prepared:** 01/30/2013

April 11, 2013



- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "new section to chapter 6-09.4" with "new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits,"
- Page 1, line 5, after "fund" insert ", and franchise protection rights of the western area water supply authority"
- Page 1, line 5, remove "57-51.1-07,"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund," with "relating to"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:



The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis."

Page 5, line 13, replace "long term" with "long-term"

Page 5, line 15, replace "long term" with "long-term"

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 15, replace "state funding for a share" with "one-half"

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, line 16, after "the" insert "federally approved national economic development alternative for the"

Page 6, after line 23, insert:

"SECTION 6.

#### Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project."

Page 7, line 5, remove the underscored comma

Page 7, remove line 6

Page 7, line 7, remove "facilities"

Page 7, line 12, after "The" insert "sixty-third"

Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"

Page 7, line 12, replace "a share" with "one-half"

Page 7, line 13, replace "the" with "a federally authorized"

Page 7, after line 18, insert:

"SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

#### Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance.

with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.

- 2. The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - b. The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- <u>5.</u> Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, remove lines 20 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water

supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 14. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dellar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.

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3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

Sue and be sued in the name of the authority.

- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for

- payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.</u>
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical,

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and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.

- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.

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- e. Additional principal payment on state-guaranteed loans.
  - Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the

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budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 5, insert:

"SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

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## 2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. $\underline{58.223}$

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# 2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. <u>SB2233</u>

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## 2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. SB 2233

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## 2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. 5 6 2233

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# 2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. $\underline{SB} = 2.33$

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#### REPORT OF STANDING COMMITTEE

- SB 2233: 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). SB 2233 was placed on the Sixth order on the calendar.
- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "new section to chapter 6-09.4" with "new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits,"
- Page 1, line 5, after "fund" insert ", and franchise protection rights of the western area water supply authority"
- Page 1, line 5, remove "57-51.1-07,"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund," with "relating to"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

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The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis."

- Page 5, line 13, replace "long term" with "long-term"
- Page 5, line 15, replace "long term" with "long-term"
- Page 5, line 17, remove "diversion and"
- Page 5, line 24, after the second underscored semicolon insert "mill levies;"
- Page 6, line 15, replace "state funding for a share" with "one-half"
- Page 6, line 16, replace "non-federal" with "nonfederal"
- Page 6, line 16, after "the" insert "federally approved national economic development alternative for the"
- Page 6, after line 23, insert:

#### "SECTION 6.

#### Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project."

- Page 7, line 5, remove the underscored comma
- Page 7, remove line 6
- Page 7, line 7, remove "facilities"
- Page 7, line 12, after "The" insert "sixty-third"
- Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"
- Page 7, line 12, replace "a share" with "one-half"
- Page 7, line 13, replace "the" with "a federally authorized"
- Page 7, after line 18, insert:

"SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

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#### Infrastructure revolving loan fund - Continuing appropriation - Rules.

- 1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, remove lines 20 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide

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for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 14. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- A member entity may designate an alternate representative to attend
  meetings and to act on the member's behalf. The board may designate
  associate members who are nonvoting members of the board.
  Notwithstanding this section, except for the state engineer or designee,

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initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

**SECTION 17. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project

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authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area

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water supply authority are authorized to execute are without limitation on

11. Borrow money as provided in this chapter.

the term of years.

- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.</u>
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

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#### Industrial water depot and lateral sales.

- An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - e. Additional principal payment on state-guaranteed loans.
  - f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt

Module ID: h\_stcomrep\_67\_001 Carrier: Hofstad Insert LC: 13.0579.04020 Title: 05000

repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

**SECTION 22.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

Page 9, line 4, remove "and"

Insert LC: 13.0579.04020 Title: 05000

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 5, insert:

"SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

**2013 CONFERENCE COMMITTEE** 

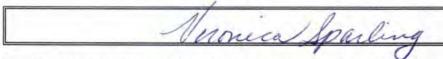
SB 2233

#### 2013 SENATE STANDING COMMITTEE MINUTES

#### **Senate Natural Resources Committee**

Fort Lincoln Room, State Capitol

SB 2233 April 22, 2013 Job Number 21405



#### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project, and relating to an infrastructure revolving loan fund allocation of moneys in the oil extraction tax development fund, the Red River water supply project, and oversight of the western area water supply project, and relating to funding of the Red River valley water supply project; and to provide a continuing appropriation

#### Minutes:

attachments

Chairman Hogue asked a representative from the House to explain the amendments the House added to the bill. The roll was taken and Senators Burckhard and Triplett and Representatives Hofstad, Keiser and Hunskor were also present.

Representative Hofstad explained the amendments. He wanted to leave the intent language aside for the moment. See attachment #1.

He explained Section 10. (02:00 to 04:10) The changes were made primarily to keep that money within the revolving loan fund.

He explained Section 13. (04:25 to 05:25)

He explained Section 14 and Section 15. (05:26 to 06:30)

He explained what they were trying to do as they developed this legislation. They were trying to separate the municipal and rural water sales of the WAWS from the industrial sales. They are also trying to make sure that the industrial sales portion to the oil industry was intact. They are also trying to make sure that there were no impediments against any kind of appropriation out of the river. Those were three of the main goals.

Senator Triplett asked him to clarify what the second one was.

Representative Hofstad said they were trying to make sure that the supply of water to the oil industry was not impeded in any way. The third one was to make sure that the appropriation out of the river was not impeded.

Conference Committee SB 2233 April 22, 2013 Page 2

Representative Hofstad summed up what the amendments did. They separated the industrial sales out of WAWS and they are asking that the Industrial Commission sweep the revenue off of the industrial sales portion of WAWS which now includes nine depots with the intent that there will be three more of those depots. We are going to pay for all of those loans that WAWS has acquired from both the state and from the member entity debt. HB 1206 last legislative session authorized WAWS. We loaned them \$110M with the promise of another \$40M this session, bringing it to \$150M. WAWS as they formed that entity, acquired debt from their member entities of \$40M. They also through that agreement, promised to pay a baseline industrial sales because some of those member entities were selling water to the industry. So we have agreed to pay for the \$150M to remove the default from WAWS. We have agreed to pay for the contractual agreements that they made with those member entities. We have agreed to pay for that baseline industrial water sale. (08:00 to 10:15)

Representative Hofstad explained Section 18 through Section 19. He explained that the loan mentioned in line 28 on page 17 was \$150M: \$25M debt from the general fund, \$35M from the Resource Trust Fund, and the balance from the Bank of ND. (10:17 to 13:10)

Representative Hofstad explained Section 20 and Section 21. (13:12 to 14:15)

Representative Hofstad explained Sections 24 and 25. (14:15 to 15:21)

There was some clarification of the industrial water sales revenue. It will be collected by the authority and it will be passed to the Industrial Commission. The Industrial Commission will provide the method by which all of those different loans are paid.

Senator Triplett questioned whether the 1½ % on page 9, line 3 could be left more fluid so it wouldn't have to be amended in time.

Representative Keiser said they did not want it to be variable. They intended to have the cost of the money minimized within reason so political subdivisions could come in to this loan pool and request a loan and know that the maximum it will cost them is 1½% which is a very good rate. They intended to keep it below market rate but not free. (Ends at 19:37)

Senator Burckhard asked for an explanation of 1926(b) on line 24 of page 18.

Representative Hofstad explained it. (20:20 to 21:36)

Senator Hogue said it really is a necessary grant of monopoly power to protect their investment and their solvency. What you are saying is that will remain in place for sales for municipal uses but not for the oil field.

Representative Keiser said that is right but in Section 20 and 22 the House made reference to this. They have removed the rights for 1926(b) for oil and gas water extraction purposes but not for municipalities. (Ends at 23:04)

Conference Committee SB 2233 April 22, 2013 Page 3

Senator Hogue asked for clarification of the revolving loan fund in Section 10. Representative Hofstad clarified it. He said the revolving loan fund has nothing to do with the WAWS project. (23:05 to 25:42)

Senator Triplett asked about page 11, lines 17 and 18. They use the terms "independent water providers" and "private water sellers". She asked whether those terms are defined in the code somewhere.

Senator Keiser addressed that question. (26:20 to 27:30)

Senator Burckhard asked if the Resource Trust Fund moneys are sometimes used for energy conservation.

Representative Hofstad said they have not been used for conservation to this point. He feels that is what the heritage fund bill will address.

Senator Hogue questioned what the impetus for the changes in Section 5 and 6 was.

Representative Hofstad addressed that question. The best way to explain it is they wanted to fund the Cadillac rather than the Chevette version of the project. (28:30 to 30:30) He also said he had an amendment that addresses the issue of developing some policies for these huge water projects.

Senator Hogue asked about Section 6.

Representative Hofstad explained that he knows it needs funding but he is not familiar with the particulars of the project. (30:40 to 31:15)

Senator Triplett mentioned for clarity and consistency on page 7, line 1 the reference is to ½ and in Section 6 it says 50%. She feels it should be consistent.

Representative Hofstad said this is intent language and there is a need to give a lot more consideration to the water issues in the state.

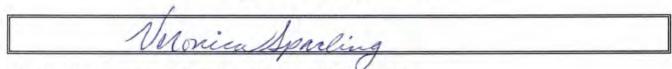
Senator Hogue asked Representative Hofstad to hand out the amendments for the conferees' consideration. The meeting was recessed.

#### 2013 SENATE STANDING COMMITTEE MINUTES

#### **Senate Natural Resources Committee**

Fort Lincoln Room, State Capitol

SB 2233 April 23, 2013 Job Number 21437



#### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project, and relating to an infrastructure revolving loan fund allocation of moneys in the oil extraction tax development fund, the Red River water supply project, and oversight of the western area water supply project, and relating to funding of the Red River valley water supply project; and to provide a continuing appropriation

### Minutes: attachments

Chairman Hogue called the committee to order. The roll was taken, and Senators Burckhard and Triplett and Representatives Hofstad, Keiser, and Hunskor were also present.

Chairman Hogue asked the conferees if they had any further questions for the representatives. There were no more questions.

Representative Hofstad introduced proposed amendment 13.0579.04024. See attachment #1. (Ends at 05:27)

### Representative Hofstad made a motion to accept amendment 13.0579.04024.

Senator Hogue asked whether the amendment affected Section 5 of the bill.

Representative Hofstad said it did not.

There was some discussion about the inconsistency of the ½ and the 50% language on page 7, lines 3 and 15 of attachment #2. (06:35 to 08:04)

### Senator Triplett seconded the motion.

There was some discussion about whether amendment 13.0579.04023 was imbedded in amendment 13.0579.04024. (08:10 to 11:07)

Senate Natural Resources Committee SB 2233 Conference Committee April 23, 2013 Page 2

There was a discussion about whether the other amendments that were also going to be introduced (.04021) would have any bearing on amendment .04024. Senator Hogue said they did not have any bearing on .04024. The amendment .04021 relates solely to the Mouse River project. (Ends at 13:23) He distributed amendment .04021 and the red and green version of 04021. See attachments #3 and #4.

Senator Hogue asked the conferees to turn their attention to .04024 for the time being.

Roll Call Vote: 6, 0 Senate: 3, 0 House: 3, 0 Motion adopted.

There was discussion about why the 50% change would apply only to the Mouse River project. ((15:10 to 16:00)

Senator Burckhard moved to adopt amendment 13.0579.04021.

Representative Hofstad: Second

Senator Hogue referred the committee to section 5 of attachment #4. Section 5 is returned to its original form. (17:05 to 17:30)

There was discussion about why this amendment was necessary. The conferees felt it needs to be left open ended so our hands are not tied, especially in light of the uncertainty over federal involvement. There was further discussion about why they are taking the 50% out of the Mouse River and not the other projects. (17:35 to 27:25)

Roll Call Vote: 6, 0 Senate: 3, 0 House: 3, 0 Motion adopted.

Representative Hofstad explained amendment 13.0579.04023. (28:14 to 30:00)

Representative Keiser moved the adoption of amendment 13.0579.04023.

Representative Hofstad seconded the motion.

Roll Call Vote: 6, 0 Senate: 3, 0 House: 3, 0 Motion adopted.

Senator Triplett made a motion to add an emergency clause to the bill. There was discussion about adding an emergency clause to the bill. This had been discussed and was rejected in the House committee. (31:10 to 39:22)

Representative Keiser explained why he would vote <u>against</u> an emergency clause being added. (Ends at 36:34)

Representative Hunskor explained why he would vote <u>in favor</u> of an emergency clause being added. (36:50 to 38:08)

Representative Hofstad explained why he would vote <u>against</u> an emergency clause being added. (38:10 to 39:22)

Senate Natural Resources Committee SB 2233 Conference Committee April 23, 2013 Page 3

### Senator Triplett withdrew her motion to amend.

Senator Hogue recessed the committee.

(The recording ends at 40:32.)

#### 2013 SENATE STANDING COMMITTEE MINUTES

#### **Senate Natural Resources Committee**

Fort Lincoln Room, State Capitol

SB 2233 April 24, 2013 Job Number 21467

□ Conference Committee

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### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project, and relating to an infrastructure revolving loan fund allocation of moneys in the oil extraction tax development fund, the Red River water supply project, and oversight of the western area water supply project, and relating to funding of the Red River valley water supply project; and to provide a continuing appropriation

Minutes:	attachments

Chairman Hogue called the committee to order. The roll was taken, and Senators Burckhard and Triplett and Representatives Hofstad, Keiser, and Hunskor were also present.

Chairman Hogue said amendment 13.0579.04025 incorporates all of the amendments the committee adopted yesterday. It also involves one more change and he asked Representative Hofstad to explain that change.

Representative Hofstad explained the amendment on page 8, Section 7 of attachment #2. (00:58 to 01:13)

Representative Hofstad made a motion to adopt amendment 13.0579.04025.

Senator Burckhard seconded the motion.

There was a short explanation of why there was a change from yesterday's thinking. (01:35 to 02:35)

Roll Call Vote: 6, 0 Motion Carried.

Representative Hofstad moved that the House Recede from its Amendments as printed on pages 1432-1491 of the Senate Journal and pages 1572-1581 of the House Journal and that Senate Bill No. 2233 be amended as follows:

Senate Natural Resources Committee SB 2233 Conference Committee April 24, 2013 Page 2

Representative Keiser seconded the motion.

Roll Call Vote: 6, 0 Motion Carried.

13.0579.06000

1.

## FISCAL NOTE Requested by Legislative Council 04/25/2013

Amendment to: SB 2233

1 A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$150,000		\$150,000
Expenditures						
Appropriations						

1 B. County, city, school district and township fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

Subulvision.		<u> </u>	
	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

SB 2233 provides a declaration of water policy and goals and objectives. It also restructures the funding model for the Western Area Water Supply project.

B. **Fiscal impact sections:** Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 11 establishes an infrastructure revolving loan fund within the Resources Trust fund; Section 19 provides \$150,000 per biennium to the Industrial Commission; Section 19 also creates a potential revenue stream for the Resources Trust Fund after all State backed debt is paid off; Section 22 obligates the State Water Commission to request funding to repay principal and interest on Western Area Water Supply projects Bank of North Dakota loans if they are unable to make their payments.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The infrastructure revolving loan fund established in Section 11 would earmark an estimated \$16.45 million within the resources trust fund in the 2013-2015 biennium for infrastructure loans. It would also earmark 10 percent of all future oil extraction revenues deposited in the resources trust fund for infrastructure loans. Using the estimated 2013-2015 biennium revenues and applying them to the 2015-2017 biennium would generate an additional \$54.69 million in the 2015-2017 biennium. Although the re-allocation of these funds within the resources trust fund does not increase or decrease the fund, it does require that a portion of the fund be used for infrastructure loans. Section 19 provides \$150,000 per biennium to the Industrial Commission for one additional FTE. Section 19 also creates a potential revenue stream for the Resources Trust Fund after all State backed debt is paid off. This is not likely to occur in either the 2013-2015 or 2015-2017 biennium.

- B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.
- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

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Name: David Laschkewitsch

Agency: ND State Water Commission

**Telephone:** 328-2750 **Date Prepared:** 04/25/2013

13.0579.05000

#### FISCAL NOTE Requested by Legislative Council 04/18/2013

Amendment to: SB 2233

1 A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
•	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			: '	\$150,000		\$150,000
Expenditures						
Appropriations						

1 B. County, city, school district and township fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

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	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

SB 2233 provides a declaration of water policy and goals and objectives. It also restructures the funding model for the Western Area Water Supply project.

B. **Fiscal impact sections:** Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 10 establishes an infrastructure revolving loan fund within the Resources Trust fund; Section 18 provides \$150,000 per biennium to the Industrial Commission; Section 18 also creates a potential revenue stream for the Resources Trust Fund after all State backed debt is paid off; Section 21 obligates the State Water Commission to request funding to repay principal and interest on Western Area Water Supply projects Bank of North Dakota loans if they are unable to make their payments.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The infrastructure revolving loan fund established in Section 10 would earmark an estimated \$16.45 million within the resources trust fund in the 2013-2015 biennium for infrastructure loans. It would also earmark 10 percent of all future oil extraction revenues deposited in the resources trust fund for infrastructure loans. Using the estimated 2013-2015 biennium revenues and applying them to the 2015-2017 biennium would generate an additional \$54.69 million in the 2015-2017 biennium. Although the re-allocation of these funds within the resources trust fund does not increase or decrease the fund, it does require that a portion of the fund be used for infrastructure loans. Section 18 provides \$150,000 per biennium to the Industrial Commission for one additional FTE. Section 18 also creates a potential revenue stream for the Resources Trust Fund after all State backed debt is paid off. This is not likely to occur in either the 2013-2015 or 2015-2017 biennium.

- B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.
- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name: David Laschkewitsch

Agency: ND State Water Commission

**Telephone:** 328-2750 **Date Prepared:** 04/18/2013

## FISCAL NOTE Requested by Legislative Council 01/18/2013

Bill/Resolution No.: SB 2233

1 A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		
Expenditures						
Appropriations			:			

1 B. County, city, school district and township fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

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	2011-2013 Biennium	9 2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. Bill and fiscal impact summary: Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

SB 2233 deals with water policy and project goals and development.

B. **Fiscal impact sections:** Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 2 of SB 2233 re-allocates a portion of the oil extraction tax to the infrastructure revolving loan fund.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
  - A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

If enacted, SB 2233 will reduce revenues in the resources trust fund by an estimated \$54.695 million in the 2013-15 biennium. These revenues will be re-allocated to the infrastructure revolving loan fund. (Both of these are "other funds" in 1A. above.)

- B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.
- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

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**Telephone:** 328-3402 **Date Prepared:** 01/30/2013

### 1-24-13 10fl

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

That the House recede from its amendments as printed on pages 1482-1491 of the Senate Journal and pages 1572-1581 of the House Journal and that Senate Bill No. 2233 be amended as follows:

- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "new section to chapter 6-09.4" with "new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits,"
- Page 1, line 5, after "fund" insert ", and franchise protection rights of the western area water supply authority"
- Page 1, line 5, replace "57-51.1-07" with "54-35-02.7"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund" with "relating to jurisdiction of the water-related topics overview committee"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31

Page 4, replace lines 1 through 17 with:

2011

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

SECTION 3. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. (Effective through November 30, 2013) Water-related topics overview committee - Duties.

The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters, the Garrison diversion project, and for any necessary discussions with adjacent states on water-related topics. During the 2011–12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee shall work collaboratively with the state water commission to develop policies to further define the state role in major flood control projects and in the prioritization of water projects. During the 2013-14 interim, the committee shall review water supply routes and alternatives for the Red River valley water supply project. The committee consists of thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

(Effective after November 30, 2013) Garrison diversion overview. The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water related topics."

Page 5, line 13, replace "long term" with "long-term"

Page 5, line 15, replace "long term" with "long-term"

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, after line 23, insert:

"SECTION 7.

Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost for construction of the lower Heart River, Morton County, flood control project."

Page 7, line 5, remove the underscored comma

Page 7, remove line 6

Page 7, line 7, remove "facilities"

Page 7, line 12, after "The" insert "sixty-third"

Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"

Page 7, line 12, replace "a share" with "one-half"

Page 7, line 13, replace "the" with "a federally authorized"

Page 7, after line 18, insert

"SECTION 11. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

## Infrastructure revolving loan fund - Continuing appropriation - Rules.

- 1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - b. The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.

5. Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, remove lines 20 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million

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dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 17. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six

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days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.

- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 18. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- 1. Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or

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- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project,

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and enter agreements with the agency respecting the loans or grants.

Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.

- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure</u> must be approved in accordance with section 20 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of

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the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:

- One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
- b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
- c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
- <u>d.</u> Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- e. Additional principal payment on state-guaranteed loans.
- Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- 3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the

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exception of the costs identified in section 19 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

# Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 22. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 19 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise

protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

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Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 5, insert:

"SECTION 25. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water-related sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 26. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date	4-2	3-13
Roll Ca	II Vote#	1

# 2013 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BIL	L/RESO	LUTION	NO	20	(33as (re) engr	ossed		
Senate	atur	ral	Res	ou	rces	Com	mittee	
Action Taken	SEN	NATE ac	cede to	Hous	se Amendments			
	SEN	NATE ac	cede to	Hous	se Amendments and furth	ner amend	t	
	HOL	JSE rec	ede froi	m Hoi	use amendments			
	— ног	ISF rec	ede froi	n Hoi	use amendments and am	end as fol	llows	7
		001.00	040 1101	., , , , ,	ass amenaments and am	0114 45 15		
	☐ Una	ble to a	gree, re	ecom	mends that the committee	e be disch	arged a	nd
	a ne	ew comn	nittee b	e app		21/27/	/	
	,				amend. C	1400	1	4
Motion Made by:	Ho	Sta	d		Seconded by:	riple	tt	
Senators		4- 4-	Yes	No	Representatives	4-4	Yes	No
- Hogue		11	V		Hofstad	VV	V	
Burckhard		1	1		Teiser	VV	V	1
Miplett			V		Hunskor		1	
Total Senate Vote	9		3	0	Total Rep. Vote		3	0
Vote Count	Yes	:_6	,		No:	Absent: _	0	
Senate Carrier					House Carrier			
LC Number	13	. 0	57	9	. 04024	of an	nendme	nt
LC Number						of en	grossm	ent

Date	4-23-13				
Roll Ca	II Vote # 2				

# 2013 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RES	JEUTION NO 💆	as (re) engro	ssea
Senate Man	tural Resi	ources	Committee
Action Taken SE	NATE accede to Hous	e Amendments	
□SE	NATE accede to Hous	e Amendments and further	er amend
□но	OUSE recede from Hou	ise amendments	
Пно	USE recede from Hou	ise amendments and ame	end as follows
		nends that the committee	be discharged and
a n	new committee be appo	pinted	01/02/
	5.94 .94	(	14021
Motion Made by: <u>Su</u>	rechard	Seconded by: Holsla	ed
Senators	Yes No	Representatives	Yes No
Hogue		Hofstad	V
Burkhard		Jeiser	
- Super		Mynero C.	
Total Senate Vote	3 0	Total Rep. Vote	30
Vote Count Ye	s:	No:	Absent:
Senate Carrier		House Carrier	
LC Number	3.0579.	04021	of amendment
LC Number			of engrossment

Date	4-23-13
Roll Call Vo	ote# 3

# 2013 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO.	2233	as (re) engrossed	1

Senate	Matu	ral y	les	ources	Comm	nittee	
Action Taken			1	e Amendments			
	SENAT	E accede to	Hous	e Amendments and furth	er amend		
☐ HOUSE recede from House amendments							
☐ HOUSE recede from House amendments and amend as follows							
Motion Made by:	a new c	ommittee be	e appo	nends that the committee pinted Seconded by: Hofa		402	23
Senators		Yes	No	Representatives		Yes	No
Hogue				Hofstad		V	Н
Triplett	red L			Hunskor		~	
Total Senate Vol	te	3	0	Total Rep. Vote		3	0
Vote Count	Yes:	6		No:	Absent:	0	
Senate Carrier	#			House Carrier			
LC Number _	13	, 05 7	9.	04023	of ame	endmer	nt
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Date	4-23-13
Roll Call	Vote #

# 2013 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

ВІ	LL/RESOLUTI	ON NO	do	< <u>○</u> as (re) engro	ssed				
Senate	Ma	tura	07	Resources	Comr	nittee			
Action Taken	SENATE accede to House Amendments								
	SENATE	accede to	Hous	se Amendments and further	er amend				
	HOUSE	recede fro	m Hou	use amendments					
	☐ HOUSE r	ecede fro	m Hou	use amendments and ame	nd as foll	ows			
Motion Made by:	a new co	mmittee b	e app	mends that the committee pointed  add Lo		1000			
Senators		Yes	No	Representatives		Yes	No		
Hogue	,			Hofstad					
Burckhan Triplett	2			Heinskor					
otal Senate Vo	te			Total Rep. Vote					
Vote Count	Yes:			No:	Absent: _				
Senate Carrier				House Carrier					
LC Number _					of am	endme	nt		
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			1	withdrawn	nent				

Date 424	-13
Roll Call Vote #	1

# 2013 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/F	RESOLUTIO	ON NO	20	233as (re) engr	ossed		
Senate <u>Ma</u>	tural	Kes	rou	rces	Com	mittee	
Action Taken	SENATE	accede to	Hous	e Amendments			
	SENATE	accede to	Hous	e Amendments and furth	er amend	be a	
	] HOUSE re	ecede fro	m Hou	se amendments			
	HOUSE re	ecede fro	т Нои	se amendments and a m	end as fol	lows	
Motion Made by:	a new con		an- W	Seconded by: Buki	040 ckhan	125	
Senators	4	Yes	No	Representatives	4	Yes	No
Hogue		~		Hofstad	Ź	~	
Burkhard, Triplett	-	-		Hundkon	V	-	
Total Senate Vote		3	0	Total Rep. Vote		3	0
Vote Count	Yes:	6		No:	Absent: _	0	
Senate Carrier				House Carrier			
LC Number	13.	057	9.	04025	of am	nendme	nt
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Date_	424	-13	
Roll Ca	II Vote #	2	

# 2013 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL	/RESOLUTIO	ON NO	2	233 as (re) engro	ossed			
Senate	atural	Re	2020	rces	Comm	nittee		
	SENATE accede to House Amendments							
[	SENATE :	accede to	Hous	e Amendments and furth	er amend			
]	HOUSE re	ecede fro	m Hou	se amendments				
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Motion Made by: _	a new con			Seconded by:	· ver			
Senators		Yes	No	Representatives	1,5	Yes	No	
Hogue		V		Hofstad		1	-	
Triplett		/		Hunkkor				
Total Senate Vote		N	0	Total Rep. Vote		3	0	
Vote Count	Yes:	6		No:	Absent: _	0		
Senate Carrier _	Hogue	/		House Carrier Hol	stad		_	
LC Number	13.	057	9	04025	of am	endme	nt	
LC Number					of end	rossme	ent	

Insert LC: 13.0579.04025

#### REPORT OF CONFERENCE COMMITTEE

SB 2233: Your conference committee (Sens. Hogue, Burckhard, Triplett and Reps. Hofstad, Keiser, Hunskor) recommends that the HOUSE RECEDE from the House amendments as printed on SJ pages 1482-1491, adopt amendments as follows, and place SB 2233 on the Seventh order:

That the House recede from its amendments as printed on pages 1482-1491 of the Senate Journal and pages 1572-1581 of the House Journal and that Senate Bill No. 2233 be amended as follows:

- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "new section to chapter 6-09.4" with "new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits,"
- Page 1, line 5, after "fund" insert ", and franchise protection rights of the western area water supply authority"
- Page 1, line 5, replace "57-51.1-07" with "54-35-02.7"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund" with "relating to jurisdiction of the water-related topics overview committee"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

Insert LC: 13.0579.04025

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

SECTION 3. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. (Effective through November 30, 2013) Water-related topics overview committee - Duties.

The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters, the Garrison diversion project, and for any necessary discussions with adjacent states on water-related topics. During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee shall work collaboratively with the state water commission to develop policies to further define the state role in major flood control projects and in the prioritization of water projects. During the 2013-14 interim, the committee shall review water supply routes and alternatives for the Red River valley water supply project. The committee consists of thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

(Effective after November 30, 2013) Garrison diversion overview. The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water related topics."

Page 5, line 13, replace "long term" with "long-term"

Page 5, line 15, replace "long term" with "long-term"

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, after line 23, insert:

"SECTION 7.

### Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost for construction of the lower Heart River, Morton County, flood control project."

Page 7, line 5, remove the underscored comma

Insert LC: 13.0579.04025

Page 7, remove line 6

Page 7, line 7, remove "facilities"

Page 7, line 12, after "The" insert "sixty-third"

Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"

Page 7, line 12, replace "a share" with "one-half"

Page 7, line 13, replace "the" with "a federally authorized"

Page 7, after line 18, insert:

"SECTION 11. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

#### Infrastructure revolving Ioan fund - Continuing appropriation - Rules.

- An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- The commission shall consider the following information when evaluating projects:
  - A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, remove lines 20 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

Insert LC: 13.0579.04025

# 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams,-Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

The initial board of directors of the western area water supply authority
consists of two representatives from each of the following entities:
Williams rural water district, McKenzie County water resource district, the
city of Williston, BDW water system association, and R&T water supply
association. The governing body of each member entity shall select two

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representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.

- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 17. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 18. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

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#### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for

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payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.

- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 20 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities,

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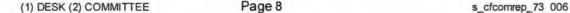
improvements, and property necessary the same without any required public vote before taking action.

- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - e. Additional principal payment on state-guaranteed loans.
  - f. Payment to the resources trust fund.
- If the state-guaranteed loans have not been repaid, without the written
  consent of the industrial commission the authority may not sell, lease,
  abandon, encumber, or otherwise dispose of any part of the property
  used in a water system of the authority if the property is used to provide
  revenue. Any requirements on the state-guaranteed loans for



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establishment of reserve funds for operation and maintenance or debt service are waived.

3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 19 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 22. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 19 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing



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beard from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 5, insert:

"SECTION 25. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water-related sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 26. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

SB 2233 was placed on the Seventh order of business on the calendar.



**2013 TESTIMONY** 

SB 2233

# Water Policy and Water Development/Legislative History

A. 1937: State Water Commission

B. 1981: Resources Trust Fund

C. 1990: Constitutional Resources Trust Fund

D. 1993/95: Increase in Resources Trust Fund

E. 1999: Legislative Policy and Goals/Water Development

**Trust Fund** 

F. 2013: Legislative Policy and Goals/Infrastructure Loan

**Fund** 

# Water Development Plan/Policy SB2233

- 1. Declaration of Policy and Legislative Intent & Goals (Section 3 & 4)
- Souris/Mouse River Flood Control (Section 5)
- 3. Fargo/Moorhead Flood Control (Section 8)
- Red River Valley Water Supply (Section 9 & 10)
   2007 Legislative Plan: Updated
- Southwest Pipeline Project (Section 6) SWC & SWA Prepare Transfer for
- 6. State Water Commission Policies: WAWS Oversight (Section 11)
- 7. Missouri River and Lake Sakakawea (Section 4, Paragraph 7)
  - a. Corps of Engineers
  - b. New Industrial Uses
- 8. Garrison Diversion Unit (Section 7)
  - a. Facilities
- 9. Regional and Rural Water Systems (Section 4, Paragraph 4)
- 10.Local Water Management/Flood Control (Section 4, Paragraph 4)
- 11.Irrigation (Section 4, Paragraph 9)
- 12.Infrastructure Loan Fund (Section 1 & 2)
  - a. 2%
  - b. Water Development: Water Supply and Flood Control
  - c. Bank of North Dakota/Public Finance Authority

13.SB2048: Repayment Consideration

14.SB2274: Transfer of SWPP

61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- 1. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- 2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
- 3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

61-24.7-02. Funding—Red River valley water supply project—Bond issuance amount. The state water commission may provide a portion of the state share of funds necessary to construct the Red River valley water supply project by issuing bonds in an amount not to exceed forty million dollars plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this chapter.

61-24.7-03. Limitation of action. An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this chapter unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of bonds. The state water commission may commence a special proceeding at any time after July 1, 2007, in and by which the constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

## 61-24.7-04. Bonds payable from water development trust fund.

- 1. Principal and interest on bonds issued for the Red River valley water supply project as provided in this chapter are payable from the water development trust fund from funds transferred from the tobacco settlement trust fund.
- Obligations issued as provided in this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the

- state of North Dakota, but are payable solely from the sources as described in this chapter.
- 3. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from the water development trust fund. If the governor does not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

# 61-24.7-05. State funding plan.

- 1. The legislative assembly declares its intent to provide state funding for a share one-third of the total non-federal or local cost of constructing the Red River valley water supply project.
- 2. Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- 3. State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

13.0579.04001 Title. Prepared by the Legislative Council staff for Senator Grindberg January 30, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 4, replace "6-09.4" with "61-02"

Page 1, remove lines 12 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 16

Page 7, after line 18, insert:

"SECTION 8. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

## Infrastructure revolving loan fund - Continuing appropriation - Rules.

- The purpose of the infrastructure revolving loan fund is to provide loans for public water-related infrastructure projects, including those for water supply, flood protection, or other water project development.
- An infrastructure revolving loan fund is established to make loans for the purposes described in subsection 1. Moneys in the fund are appropriated on a continuing basis for making loans in accordance with this section. Accounts may be established in the fund as necessary for its management and administration.
- The commission shall manage and administer the infrastructure revolving loan fund and individual accounts in the fund. For those purposes, the commission may exercise all powers provided in this chapter.
- 4. An applicant for a loan must submit an application to the commission on forms prescribed by the commission. The applicant must provide the following information:
  - a. The estimated cost of the project and the amount of the loan sought:
  - Other possible sources of funding in addition to loans sought from the infrastructure revolving loan fund;
  - The proposed methods and sources of funds to be used for repayment of loans received; and
  - d. Information showing the financial status and ability of the borrower to repay loans.
- The commission shall consider the following information when evaluating projects:
  - A description of the nature and purpose of the proposed infrastructure project, including an explanation of the need for the project and the reasons why it is in the public interest;

- b. The estimated cost of the project and the amount of loan sought:
- c. Proposed sources of funding, in addition to loans sought from the infrastructure revolving loan fund:
- d. The need for the project as part of the overall infrastructure system;
- e. The overall economic impact of the project; and
- f. The extent to which completion of the project will provide a benefit to the state or to political subdivisions within the state.
- 6. The commission shall adopt rules to implement a program to identify and assist with development of projects eligible for loans under this section.
- 7. The commission may request the assistance of other agencies of the state as may be necessary to the development of projects eligible for loans under this section and as may be necessary for the administration of such projects and such agencies of the state are authorized and directed to provide such assistance.
- 8. A loan may be made to a statutory or home rule charter city to finance projects for the purposes described in this section without regard to whether the city is eligible for financing under a federal act or program or state law. The loan must be repayable under the terms and conditions provided in this section and established by the commission and agreed to by the city. The loan must be repaid by the city from the proceeds of special assessments, tax increments, or other local taxes, such as sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food and beverage taxes, authorized to be used for purposes of the project."

Renumber accordingly

13.0579.04001

Sixty-third Legislative Assembly of North Dakota

# **SENATE BILL NO. 2233**

Introduced by

Senators Grindberg, Wardner, Heckaman Representatives Carlson, Hofstad, Onstad

1	A BILL for an Act to provide a declaration of water policy and goals and objectives for water
2	project development, the Mouse River enhanced flood control project, the Southwest pipeline
3	project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and
4	enact a new section to chapter 6-09.461-02 of the North Dakota Century Code, relating to an
5	infrastructure revolving loan fund; to amend and reenact sections 57-51.1-07, 61-24.7-01,
6	61-24.7-05, and 61-40-06 of the North Dakota Century Code, allocation of moneys in the oil
7	extraction tax development fund, the Red River water supply project, and oversight of the
8	western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04 of
9	the North Dakota Century Code, relating to funding of the Red River valley water supply project
10	and to provide a continuing appropriation.

# 11 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

12	SEC	CTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created
13	and ena	acted as follows:
14	— <u>Infr</u>	astructure revolving loan fund - Continuing appropriation - Rules.
15	-1.	The purpose of the infrastructure revolving loan fund is to provide loans for public
16		water-related infrastructure projects, including those for water supply, flood protection
17		or other water project development.
18	- 2.	An infrastructure revolving loan fund is established to make loans for the purposes
19		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
20		for making loans in accordance with this section. Accounts may be established in the
21		fund as necessary for its management and administration.
22	<u> 3.</u>	The public finance authority shall manage and administer the infrastructure revolving
23		loan fund and individual accounts in the fund. For those purposes, the authority may
24		exercise all powers provided in this chapter.

1	<del>4.</del> -	An applicant for a loan must submit an application to the Bank of North Dakota on
2		forms prescribed by the Bank. The applicant must provide the following information:
3		a. The estimated cost of the project and the amount of the loan sought:
4		b. Other possible sources of funding in addition to loans sought from the
5		infrastructure revolving loan fund:
6		c. The proposed methods and sources of funds to be used for repayment of leans
7		<del>received; and</del>
8		d. Information showing the financial status and ability of the borrower to repay
9		<del>loans.</del>
10		Each project must be certified by the industrial commission under subsection 5 before
11		its consideration by the public finance authority.
12	<del>- 5.</del>	The industrial commission shall consider the following information when evaluating
13		projects to certify to the public finance authority:
14		a. A description of the nature and purpose of the proposed infrastructure project
15		including an explanation of the need for the project and the reasons why it is in-
16		the public interest:
17		b. The estimated cost of the project and the amount of loan sought:
18		c. Proposed sources of funding, in addition to loans sought from the infrastructure
19		revolving loan fund:
20		d. The need for the project as part of the overall infrastructure system:
21		e. The overall economic impact of the project; and
22	**************************************	f. The extent to which completion of the project will provide a benefit to the state or
23		to political subdivisions within the state.
24	<u>6.</u> -	A loan made under this section must:
25		a. Bear interest at or below market rates or as otherwise specified in federal law:
26		b. Have a repayment term not longer than fifty years:
27		e. Be fully amortized no later than fifty years after project completion:
28		d. Be subject to repayment of principal and interest beginning not later than five
29		years after the facility financed with a loan has been completed; and
30		e. Be disbursed for specific project elements only after all applicable environmental
31		requirements have been met

- 7. The director of the public finance authority, with the approval of the industrial commission, shall adopt rules to implement a program to identify and assist with development of projects cliqible for loans under this section.
- 8. The director of the public finance authority may request the assistance of other agencies of the state as may be necessary to the development of projects eligible for loans under this section and as may be necessary for the administration of such projects that have been certified by the industrial commission and such agencies of the state are authorized and directed to provide such assistance.
- 9. A loan may be made to a statutory or home rule charter city to finance projects for the purposes described in this section without regard to whether the city is eligible for financing under a federal act or program or state law. The loan must be repayable under the terms and conditions provided in this section and established by the public finance authority and agreed to by the city. The loan must be repaid by the city from the proceeds of special assessments, tax increments, or other local taxes, such as sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food and beverage taxes, authorized to be used for purposes of the project.

**SECTION 1. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

1. TwentyEighteen percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state-treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:

# Sixty-third Legislative Assembly

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1		a. The state water commission for planning for and construction of water-related
2		projects, including rural water systems. These water-related projects must be
3		those which the state water commission has the authority to undertake and
4		construct pursuant to chapter 61-02; and
5		b. The industrial commission for the funding of programs for development of energy
6		conservation and renewable energy sources; for studies for development of
7		cogeneration systems that increase the capacity of a system to produce more
8		than one kind of energy from the same fuel; for studies for development of waste
9		products utilization; and for the making of grants and loans in connection
10		therewith.
11	2.	Two percent must be allocated to the infrastructure revolving loan fund.
12	<u>3.</u>	Twenty percent must be allocated to the common schools trust fund and foundation
13		aid stabilization fund as provided in section 24 of article X of the Constitution of North
14		Dakota.
15	3.4.	Thirty percent must be allocated to the legacy fund as provided in section 26 of
16		article X of the Constitution of North Dakota.
17	4 <u>.5.</u>	Thirty percent must be allocated and credited to the state's general fund.
18	SE	CTION 2.
19	Dec	claration of policy.
20	The	legislative assembly declares that major water development and water management
21	goals m	nust be set forth and implemented in order to protect the long-term interests, economic
22	vitality,	and future benefits of the state and its citizens; that such water development and water
23	manage	ement goals are essential for the economic growth and quality of life across the entire
24	state; th	nat rights to the use and enjoyment of waters of the Missouri River flowing through this
25	state ca	annot be restricted by the federal government; that it is necessary to develop and utilize
26	waters	of the Missouri River for municipal, domestic, rural, and industrial purposes in this state;
27	that floo	od control works are necessary to protect the lives and property of the citizens of this
28	state; th	nat major flood control works in and around major cities and other cities are necessary to
29	address	s the record and damaging floods that have occurred; that regional water supply and

rural water projects must be completed in order to provide a long-term, dependable quality and

adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation

- provides a significant opportunity to further the agricultural opportunities in the state; and that an
- 2 infrastructure loan fund will enable these goals and policies to be achieved and implemented.
- 3 and will provide significant economic and financial benefits to the people of this state.
- 4 SECTION 3.

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5 Legislative intent - Reports to legislative assembly.

implemented.

- 6 The legislative assembly declares and establishes the following goals and objectives:
- 7 That it is necessary for the long-term welfare and economic well-being of the Souris 8 River basin, and the entire state and its citizens, that the planning, design, and 9 construction of the Mouse River enhanced flood control project be completed and
- 11 That the Red River valley water supply project is critical to provide a dependable water 2. 12 supply for current and future generations in eastern North Dakota and is essential to 13 provide for the long term welfare, economic well-being, and quality of life for the entire 14 state.
- 15 That it is necessary for the long term welfare and economic well-being of the Red 3. 16 River basin, and the entire state and its citizens, that the planning, design, and construction of the Fargo-Moorhead diversion and flood control project be completed 18 and implemented.
  - That regional water supply and rural water systems are necessary to provide a 4. dependable and adequate quantity and quality water supply for municipal, domestic, rural, and industrial uses.
- 22 5. That the state water commission and the southwest water authority shall begin the 23 process of reviewing capital repayment and revenues being returned to the resources 24 trust fund; payments necessary to meet obligations of existing bonds and other loans; 25 ownership of land and associated facilities; existing construction documents; liabilities; 26 contracts with cities, bulk users, companies, and other users; and other items, and 27 shall report to the legislative assembly those steps necessary for the transfer of 28 ownership and responsibility of the southwest pipeline project from the state water 29 commission to the southwest water authority.

1	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall	
2		enter discussions with the bureau of reclamation concerning Garrison diversion unit	
3		facilities.	
4	<u>7.</u>	That projects receiving state funds for construction and implementation not assert.	
5		claim, or seek to prevent other opportunities, either public or private, to utilize waters	
6		of the Missouri River for industrial uses in this state.	
7	<u>8.</u>	That local water management and flood control projects are necessary for the	
8		economic well-being and quality of life of citizens in those local areas.	
9	9.	That irrigation development offers significant opportunities for agriculture in this state.	
10	10.	That an infrastructure loan fund for water development and management will provide	
11		significant financial benefits to projects and the citizens of this state, and will provide	
12		new capabilities to implement necessary water infrastructure projects across the state.	
13	SEC	CTION 4.	
14	Mouse River enhanced flood control project.		
15	1.	The legislative assembly declares its intent to provide state funding for a share of the	
16		non-federal or local cost of constructing the Mouse River enhanced flood control	
17		project.	
18	2.	Any funds appropriated for the construction of the Mouse River enhanced flood control	
19		project may be carried over to future bienniums.	
20	3.	State funding for the Mouse River enhanced flood control project may be appropriated	
21		at the time and in the manner determined by the legislative assembly, either	
22		concurrently or separately from federal and local funding for the Mouse River	
23		enhanced flood control project.	
24	SECTION 5.		
25	Southwest pipeline project - Report to legislative assembly.		
26	The state water commission and the southwest water authority shall begin the process of		
27	reviewing capital repayment and revenues being returned to the resources trust fund; payments		
28	necessary to meet obligations of existing bonds and other loans; ownership of land and		
29	associated facilities; existing construction documents; liabilities; contracts with cities, bulk users		
30	companies, and other users; and other items, and shall report to the legislative assembly those		

1	steps n	steps necessary for the transfer of ownership and responsibility of the southwest pipeline		
2	project from the state water commission to the southwest water authority.			
3	SECTION 6.			
4	Gai	rrison diversion unit.		
5	The	Garrison diversion unit has extensive federal facilities that have been constructed,		
6	includin	g the Snake Creek pumping plant, the McClusky canal, recreation areas, and other		
7	facilities	s. It is the intent of the legislative assembly that the state water commission and Garrison		
8	diversio	n conservancy district begin discussions with the bureau of reclamation concerning the		
9	Garriso	n diversion unit facilities.		
10	SE	CTION 7.		
11	Far	go-Moorhead flood control project.		
12	1.	The legislative assembly declares its intent to provide state funding for a share of the		
13		nonfederal or local cost of constructing the Fargo-Moorhead flood control project.		
14	2.	Nothwithstanding any other law, any funds appropriated for the construction of the		
15		Fargo-Moorhead flood control project may be carried over to future bienniums.		
16	3.	State funding for the Fargo-Moorhead flood control project may be appropriated at the		
17		time and in the manner determined by the legislative assembly, either concurrently or		
18		separately from federal and local funding for the Fargo-Moorhead flood control project.		
19	SEC	CTION 8. A new section to chapter 61-02 of the North Dakota Century Code is created		
20	and ena	acted as follows:		
21	Infr	astructure revolving loan fund - Continuing appropriation - Rules.		
22	1,	The purpose of the infrastructure revolving loan fund is to provide loans for public		
23		water-related infrastructure projects, including those for water supply, flood protection,		
24		or other water project development.		
25	2.	An infrastructure revolving loan fund is established to make loans for the purposes		
26		described in subsection 1. Moneys in the fund are appropriated on a continuing basis		
27		for making loans in accordance with this section. Accounts may be established in the		
28		fund as necessary for its management and administration.		
29	3.	The commission shall manage and administer the infrastructure revolving loan fund		
30		and individual accounts in the fund. For those purposes, the commission may exercise		
31		all powers provided in this chapter.		

· 1	4. An applicant for a loan must submit an application to the commission on forms.
2	prescribed by the commission. The applicant must provide the following information:
3	a. The estimated cost of the project and the amount of the loan sought.
4	b. Other possible sources of funding in addition to loans sought from the
5	infrastructure revolving loan fund:
6	c. The proposed methods and sources of funds to be used for repayment of loans
7	received: and
8	d. Information showing the financial status and ability of the borrower to repay
9	s. The contract the second of the contract that the contract the contract that the contract the contract the contract the contract that the contract the contract that the contract the contract the contract that the contract the contract that the
10	5. The commission shall consider the following information when evaluating projects:
11	a. A description of the nature and purpose of the proposed infrastructure project.
12	including an explanation of the need for the project and the reasons why it is in
13	the public interest:
14	b. The estimated cost of the project and the amount of loan sought;
15	c. Proposed sources of funding, in addition to loans sought from the infrastructure
16	revolving loan fund;
17	d. The need for the project as part of the overall infrastructure system:
18	e. The overall economic impact of the project; and
19	f. The extent to which completion of the project will provide a benefit to the state of
20	to political subdivisions within the state:
21	6. The commission shall adopt rules to implement a program to identify and assist with
22	development of projects eligible for loans under this section.
23	7. The commission may request the assistance of other agencies of the state as may be
24	necessary to the development of projects eligible for loans under this section and as
25	may be necessary for the administration of such projects and such agencies of the
26	state are authorized and directed to provide such assistance.
27	8. A loan may be made to a statutory or home rule charter city to finance projects for the
28	purposes described in this section without regard to whether the city is eligible for
29	financing under a federal act or program or state law. The loan must be repayable
30	under the terms and conditions provided in this section and established by the
31	commission and agreed to by the city. The loan must be repaid by the city from the



proceeds of special assessments, tax increments, or other local taxes, such as sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food and beverage taxes, authorized to be used for purposes of the project.

The legislative assembly finds that the provision of water of sufficient quantity and

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**SECTION 9. AMENDMENT.** Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

6 61-24.7-01. Legislative finding

61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- 8 quality to supply homes, businesses, industries, wildlife, and recreation in the Red 9 River valley within this state is necessary for the protection of health, property, and 10 enterprises and for the promotion of prosperity and the general welfare of the people 11 of the Red River valley and that construction of the Red River valley water supply 12 project involves and requires the exercise of the sovereign powers of the state and 13 concerns a public purpose. Therefore, it is declared necessary and in the public 14 interest that the state by and through the state water commission provide a one-third-15 share of the cost of constructing the Red River valley water supply project.
  - 2. In furtherance of the public purpose set forth in subsection 1, the state water-commission may issue bonds under chapter 61-02 and the proceeds are appropriated-for construction of the Red River valley water supply project authorized and funded in-part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
  - 3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 10. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for one-thirda share of the totalnonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.

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Dakota Century Code are repealed.

1	3.	State funding for the Red River valley water supply project may be appropriated at the
2		time and in the manner determined by the legislative assembly, either concurrently or
3		separately from federal and local funding for the Red River valley water supply project
4	SEC	CTION 11. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is
5	amende	ed and reenacted as follows:
6	61-4	40-06. Oversight of authority projects.
7	The	authority shall comply with the policypolicies of the state water commission as the
8	policy re	plates to bidding, planning, and construction of the project. The policypolicies must
9	include	provisions for insurance, including general liability insurance, in adequate amounts. The
10	authority	y shall report to and consult with the state water commission regarding the operation
11	and fina	ncial status of the project, as requested by the state water commission. <del>In relation to</del>
12	initial-ee	<del>nstruction of the system and debt repayment, the <u>The</u> authority shall present the overall</del>
13	plan and	d ongoing contract plans and specifications for the project to the state water commission
14	for appr	oval. The attorney general shall assist the authority at the request of the state water
15	commis	sion. If the twenty-five million dollar zero interest loan from the state water commission
16	has not	been repaid, without the written consent of the state water commission the authority
17	may not	sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a
18	water sy	stem of the authority if the property is used to provide revenue.

SECTION 12. REPEAL. Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04 of the North

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In Support of SB 2233 January 31, 2013

Good Morning my name is Brad Wimmer. I am a Fargo City Commissioner and one of three representatives on the F-M Diversion Authority. I am in support of SB 2233 and encourage the Committee to recommend a Do Pass.

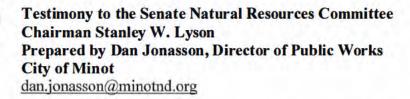
This bill is a comprehensive approach to the water needs of North Dakota. As current President of the North Dakota League of Cities, I am learning all about the various water needs within our state. Minot needs more flood protection, as do Fargo and Cass County. Williston, Watford City and other communities in the oil development country have made great strides in bringing water to their residents and businesses but they are not done yet. The same conditions exist in the areas served by the Southwest Pipeline Authority. Although they have been in business a long time, they still see the need to expand their services in the southwestern part of the state.

Flood protection in the Red River Valley has come a long way since 1997. Grand Forks has permanent flood protection, Wahpeton has permanent flood protection and a diversion, and in Fargo we are working towards higher levee construction that will protect our residents to the new 100 year flood protection levels of 42 ½ feet. Hopefully, with the State's help, we will have this accomplished within the next 4 years. We recognize the diversion portion of our flood protection may take longer and we are prepared to work with both state and federal agencies to accomplish this long term flood protection goal.

A feature of SB 2233 that is exciting to us is the infrastructure revolving loan proposal. We have visited with the author of the bill and agree that low interest loans to cities for infrastructure construction and rehabilitation is key to keeping taxes down for our residents. With the financial capabilities of the state in such a good position we think a permanent infrastructure revolving loan developed to assist in water development would be very beneficial. A perpetual funding source for infrastructure at reasonable interest rates would leave a legacy that would keep the public infrastructure strong for generations to come.

Again, thank you for your time and I will answer any questions you might have on Fargo's flood protection plans.

bwimmers2233



#### **SENATE BILL NO. 2233**

Mr. Chairman, my name is Dan Jonasson and I serve as the Director of Public Works for the City of Minot. I am representing the City of Minot in support of Senate Bill 2233.

Senate Bill 2233 encompasses a number very important water related projects throughout the State of North Dakota, projects specific to the City of Minot in Senate Bill 2233 are the Northwest Area Water Supply (NAWS) a regional water supply project and Mouse River Flood Protection Project. Attached to this testimony, is a one page handout that provides background information on the Mouse River Enhanced flood Protection Project proposed for Minot and the Mouse River Valley.

The legislative commitment to funding the Mouse River Enhanced Flood Protection

Project is extremely important because it enables the City and County the ability to continue

planning for a flood protection project that will provide peace of mind for the residents of Minot

and the Mouse river valley that funding will be available to help them from the catastrophic

disaster we saw in the flood of record in 2011.

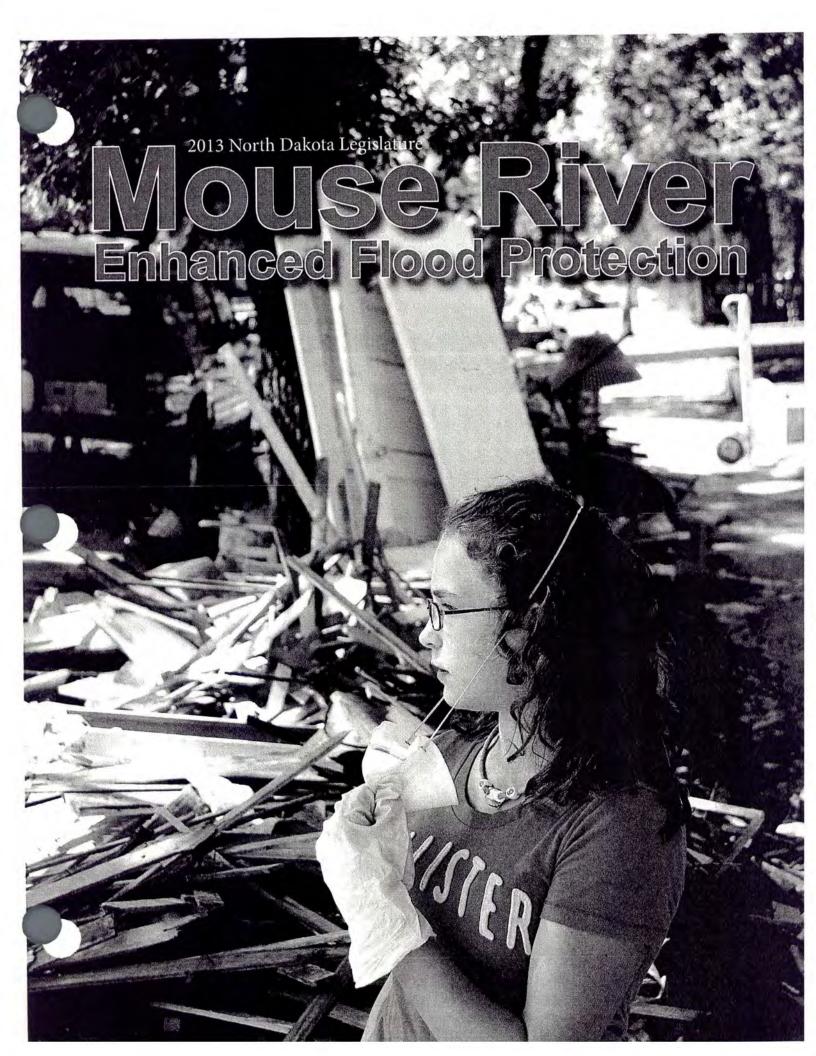
This commitment to funding provides the ability to continue with the next stage of engineering efforts in refining the alignment, completing cultural and environmental assessments, topographic surveys, geotechnical investigations and wetland delineations and laying out a plan to construct and provide the required flood protection the citizens need.



In addition, the support for funding the regional water systems guarantees quality water for many communities throughout North Western North Dakota which are struggling with inadequate drinking quality water through the NAWS system.

Therefore, I encourage you to adopt Senate Bill 2233.

Thank you for allowing me time to detail Minot's support for this bill and the importance of this commitment to funding to the residents of the Northwest Area Water Supply and citizens of Minot for flood protection.



#### Helping the Minot region recover

A disastrous flood in June 2011 swamped the valley of the City of Minot. With record-breaking flows and a crest six feet higher than the 1969 Mouse River flood, this flood will forever be imprinted on the minds of the thousands impacted. Words will never be able to accurately describe the damage, the heartache or the immense challenge that this disaster brought our residents.

Since this time many millions of dollars have poured into our community, along with thousands of volunteers in an on-going effort to bring back the Magle City. Recovering from a disaster that caused well over \$1 billion in damages takes a long time and a resilient people.

In many ways, the 2011 Mouse River flood will take a long-term recovery effort, similar to efforts in the 90s and 2000s to assist Grand Forks. State and local partnerships have teamed up to formulate an enhanced flood protection plan that will increase our permanent flood protection to the level that occurred in 2011. The Minot City Council supports this plan, and as a community we are already in the process of initial steps, like voluntary property acquisitions, planning and engineering, to bring additional protection to the Mouse River valley.

I would urge you to approve the State Water Commission Budget proposed by the Governor which includes funding of \$61 million to support Minot's flood recovery efforts during the 2013-2015 biennium. These funds will go a long way to accomplish the much needed early steps in the first years of this 10+ year long-term recovery. These early tasks include voluntary property acquisitions and the next level of engineering needed to push the plan forward.

-Mayor Curt Zimbelman

#### **Long-Term Enhanced Protection**

- 278 Residential properties with structures to be purchased
- · 21.6 miles of levees
- · 2.8 miles of floodwalls
- 30 Transportation closure structures
- \$565 million for construction costs
- \$154 million for property acquisition
- \$101 million for engineering, planning, program management costs
- 8-12 years before the project, with appropriate funding, is complete

The Souris River Flood Protection plan consists of an overall project from the 49th parallel (Sherwood) to 49th Parallel (Westhope).

The preliminary alignment for protection measures is an area from the Mouse River State park to Velva, and consists of levees, floodwalls, river diversions and closure features, transportation closure structures, interior pump stations, ring dikes and residential and commercial property acquisitions in the flood alignment boundary.

Levees comprise nearly 90 percent of the alignment, totaling 21.6 miles. The remainder of the alignment consists of 2.8 miles of floodwalls and 30 transportation closure structures (19 roadway and 11 railroad). In addition, the project would require 33 stormwater pump stations. The estimated project cost is \$820 million, based on the current level of design based on a 27,400 cfs flood event. Of this estimated cost, \$565 million is related to construction, \$154 million is related to property acquisition, and the remaining \$101 million covers planning, engineering, and program management costs.



#### **Flood Facts**

Flow rate of 27,400 cubic feet per second (normal river flows are between 50 and 200 cfs)

Highest crest in recorded history, 1,561.72 above sea level, 13 feet above flood stage and six feet higher than the 1969 flood

- 4,100 structures in the City of Minot impacted based on elevation maps and surveys
- 2,716 homes in Minot suffered main-floor damage or greater

More than 11,000 residents displaced due to the flood

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## Testimony by Ken Vein, Chairman Garrison Diversion Conservancy District

To the

#### Senate Natural Resources Committee on SB2233

Bismarck, North Dakota January 31, 2013

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

The flows in the Red River and the flows from the Red Lake River, which empties into the Red River, have dropped to alarmingly low levels. These occurrences greatly concern those water systems up and down the valley depending on the Red River for their water supply. History tells us that we have

had more droughts than floods in the Red River Valley. We need to continue to move forward with the Red River Valley Water Supply Project. A \$9 million State Water Commission cost-share will allow the closer examination of an alternate route that has the potential to provide a \$30 million savings for the project and also to exercise options on other areas of the planned pipeline route. It is important to keep moving forward with activities that will shorten the construction time of the project. Construction of the pipeline will take about six years, and the Red River Valley only has a two to three year backup water supply in Lake Ashtabula.

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

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## January 31, 2013 IN SUPPORT OF SENATE BILL 2233 - WITH TWO CRITICAL AMENDMENTS SENATE NATURAL RESOURCES COMMITTEE SENATOR STAN LYSON, CHAIRMAN

- 1. John Olson, Lobbyist, Western Area Water Supply (WAWS) Authority
- 2. Denton Zubke, Chairman, WAWS Authority
- 3. Mayor Ward Koeser, City of Williston
- Richard Cayko, McKenzie County Commissioner and Board Member of the Garrison Diversion Conservancy District
- Mark Owan, Chairman, Williams Rural Water District and Board Member of the WAWS Authority
- 6. Mayor Mike Hynek, City of Stanley
- Dale Patten, former McKenzie County Commissioner and Board Member of the McKenzie County Job Development Authority
- 8. Denton Zubke, Chairman, WAWS Authority

# January 31, 2013 IN SUPPORT OF SENATE BILL 2233 - WITH TWO CRITICAL AMENDMENTS SENATE NATURAL RESOURCES COMMITTEE SENATOR STAN LYSON, CHAIRMAN

## WESTERN AREA WATER SUPPLY AUTHORITY SUGGESTED AMENDMENTS

Delete Section 4, Paragraph 7 or Amend to state "That the State shall maximize the use of the Missouri River to benefit the citizens of the State of North Dakota."

**Delete Section 11** 

#6



# Testimony of Denton Zubke, Chairman, WAWSA IN SUPPORT OF SENATE BILL 2233 - WITH AMENDMENTS Senate Natural Resources Committee, Sen. Stan Lyson, Chairman Bismarck, North Dakota – January 31, 2013

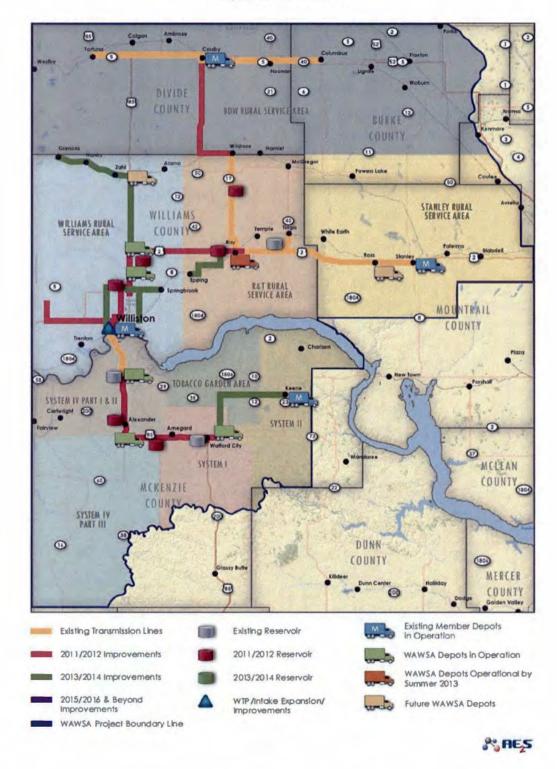
Chairman Lyson and members of the Committee, for the record my name is Denton Zubke, Chairman of the Western Area Water Supply (WAWS) Authority. Thank you for the opportunity to testify today. The WAWS Authority is comprised of the City of Williston, McKenzie County Water Resource District, Williams Rural Water District, R&T Water Supply Commerce Authority, and Burke-Divide-Williams Water System Association. Each of these Members are represented on the WAWS Authority Board of Directors as is the State Water Commission.

I am here, on behalf of the WAWS Authority, to express our appreciation for your strong support for legislation during the 62<sup>nd</sup> Legislative Assembly that created the WAWS Authority and authorized \$110 million in loan funds from the State to begin construction of the project. We have made outstanding progress on the implementation of the WAWS Project since 2011 and will be providing water to ten cities and 200 new rural water users within 24-months of the WAWS Authority creation as highlighted on Project map in Figure 1 on the following page.

The WAWS Authority supports the creation of the infrastructure revolving loan, flood control projects for the City of Fargo and Mouse River area, and statewide water development efforts throughout the State of North Dakota. However, there are two provisions within the bill relative to local territorial control and State Water Commission oversight of the WAWS Project that we do not support. Today, I'm joined by several people from northwestern North Dakota whom share both the support and concerns regarding SB 2233. We've all shown up today to demonstrate the critical nature of the needed amendments to SB 2233.

Figure 1: Major Infrastructure Components 2013-2015 Biennium

### WESTERN AREA WATER SUPPLY PROJECT Major Infrastructure Components



#### Two Critical Amendments Needed

Each of our northwestern North Dakota partners here today concurs on the need to urge two key amendments to SB 2233. While the majority of Section 4 declares and establishes various goals and objectives for the holistic well-being of the State through flood control, regional and rural water supply, local control of the Southwest Pipeline Project, local water management, and irrigation development, we oppose Section 4 Paragraph 7.

Section 4, Paragraph 7 states "that projects receiving state funds for construction and implementation not assert, claim, or seek to prevent other opportunities, either public or private, to utilize waters of the Missouri River for industrial uses in this state." Section 4 attempts to limit local territorial protections of rural water systems. The WAWS Project is a municipal, rural and industrial water supply. Section 4, Paragraph 7 opens the door for potential duplicative water infrastructure to be developed throughout the WAWS Project service area. For example, the West Dakota Pipeline as shown in the attached brochure would basically parallel the WAWS Project in McKenzie County (Exhibit 1). For your reference, I have attached a copy of the West Dakota Pipeline proposed route overlaid with the WAWS Project pipeline which best illustrates the potential for duplicative water infrastructure in the WAWS Project service area (Exhibit 2).

Duplicative water infrastructure has the potential to severely impact the WAWS Authority's ability to repay its debts to the State of North Dakota and is likely to significantly increase the water rates for the citizens in our region.

The WAWS Project 2011 Business Plan, as approved by the 62<sup>nd</sup> Legislative Assembly, included a financial model which included industrial water sales projected to support a significant portion of the WAWS Project debt repayment. Without sufficient industrial water sales within the WAWS area, the debt repayment burden would be shifted to the local users or the taxpayers of the State of North Dakota.

We recommend striking or amending Section 4 Paragraph 7. Should the Committee seek an amendment to this paragraph, we recommend replacing Paragraph 7 as follows: "That

the State shall maximize the use of the Missouri River to benefit the citizens of the State of North Dakota." This proposed amendment is more in line with the other stated goals within Section 4.

Section 11 proposes to amend the State Water Commission's oversight responsibilities of the WAWS Authority. Section 11 removes oversight relating to bidding, planning, and construction of the project and replaces oversight to generally apply to "policies of the State Water Commission." This proposed amendment significantly alters the State Water Commission oversight authority unnecessarily and reinforces Section 4 Paragraph 7.

#### A Brief Look at Our Existing Oversight

For your reference, I've attached the WAWS Authority "Oversight Summary" which we have prepared to outline the oversight of the WAWS Project (Exhibit 3). The Oversight Summary provides an outline of the numerous State, Federal, and local entities which have oversight responsibilities for the WAWS Project and its implementation. The Oversight Summary reviews Project Controls and Oversight, WAWS Authority Oversight, and Financial Oversight and Bank of North Dakota Requirements.

Currently, the State Water Commission is represented on the WAWS Authority Board of Directors and Executive Committee. The Board of Directors meets monthly to review and take necessary actions on project matters, contracts, task orders, amendments, Capital Accounting Statements, Financial Reporting, and Bank of North Dakota pay requests. The Board of Directors has reviewed and taken votes on over 275 entity, project, and financial issues with nearly all decisions rendered unanimously. Within these 275 votes, we have had three split votes - two relating to the legal services selection and one relating to a task order amendment for engineering services for the Williston Regional Water Treatment Plant Expansion. We've had four votes with a single dissenting vote registered by the State Water Commission representative. Finally, we've had four votes from which the State Water Commission representative abstained. Our Board of Directors can attest to a well-run organization as we've concurred in a unanimous fashion 96 percent of the time!

I feel it unnecessary to get into the minutiae of voting at our meetings; however, some are making an issue of it so, for the record, the four "no" votes by the State Water Commission representative centered on liability insurance in the engineering contract, discounted hourly rates in task orders, a concern on a contractor's work history, and not enough time to study a depot location. The four abstentions by the State Water Commission representative involved changes in baseline industrial sales, a pipeline size, a task order, and a Bulk Industrial Water User Agreement. I have the detailed information from our meeting minutes if anyone is specifically interested. In all cases, these votes were judgment calls and the WAWS Authority Board of Directors has conducted research to ensure that we have been in compliance with State laws and State Water Commission polices.

The State Water Commission has approved the projects included in the WAWS Project Phase I and Phase II-Tier I. The State Water Commission staff review and approve the overall plan as well as construction plans and specifications. To date, we've held 11 design review meetings with the State Water Commission staff from which we received approval of 11 sets of plans and specs for the 11 bid lettings held to date as well as 15 contracts.

In addition, we have met with the State Water Commission several times to present the project details. One of the meetings was to specifically deal with the concerns expressed by the Independent Water Providers' comments that WAWS Authority did not make adequate adjustments to the project in response to their concerns. At that meeting, the Independent Water Producers presented their concerns and the WAWS Authority presented the adjustments to the Project that had been made. The State Water Commission actually developed three policies related to the WAWS Project. One policy relates to the construction and operation of water supply depots constructed with State funding. The second policy relates to State Water Commission approval to leasing of facilities. The third policy relates to the insurance requirements for construction documents. WAWS Authority is in compliance with all of these policies.

We believe the State has an appropriate level of oversight through the State Water Commission on the tasks listed and additional oversight is unwarranted. Therefore, we recommend striking Section 11 from SB 2233.

#### We Take Our Responsibilities Very Seriously

The WAWS Authority takes its responsibilities seriously. Our number one goal has been to meet a truly public purpose of initiating a water project with a public resource to meet the ever-growing domestic water needs of the region while capitalizing on industrial water sales to provide a revenue stream to pay for a significant portion of the project. This is a great partnership between a public project and an industry with a large water demand. We can provide industrial water for the industry using the peaking capacity required in a municipal system with minimal increase in cost. This partnership significantly increases the cost effectiveness of the system.

The WAWS Authority fully intends to fulfill its financial obligations. We take very seriously our responsibility of protecting the interests of the State and local tax payers, and maintaining reasonable water rates for our local citizens. As a result, the WAWS Authority needs to and intends to sell sufficient amounts of industrial water to repay the State of North Dakota loans in Figure 2: WAWS Authority Flowchart (on page 7 of my testimony), as well as providing a future revenue stream for expansion if the industry continues to grow and the population expands. The Project is moving along according to our plan and we look forward to moving forward with the next phase.

The recent 2012 North Dakota Statewide Housing Needs Assessment and Population Estimates for the City of Williston (December 2012) conducted by the Center for Social Research at North Dakota State University have reminded us of the urgency of the WAWS Project. Energy development is at a historic high and the population in the WAWS Authority service area is expected to near 100,000 people within the next few years. We estimate our current population is approximately 58,000 people - 10,000 people more than the peak we planned for in the 2011 WAWS Project Business Plan. We simply cannot support this level and pace of growth if the WAWS Project is not able to proceed as quickly as it's needed with the

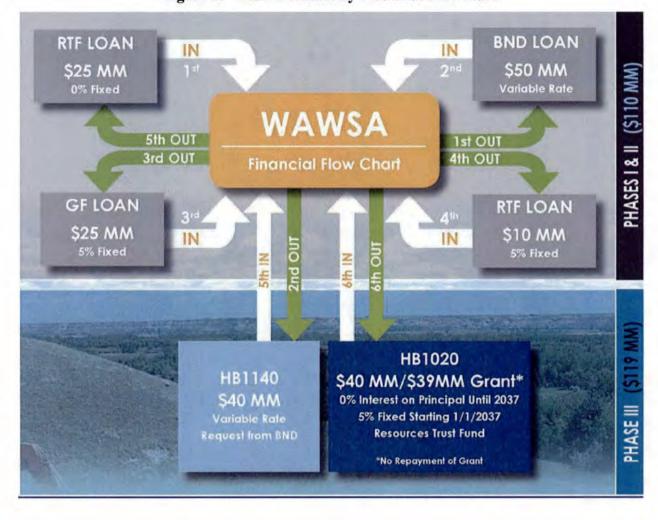


Figure 2: WAWS Authority Financial Flowchart

creative financing package designed to capitalize on industrial water sales to support the majority of the debt service associated with this project.

My true "day job" is Chief Executive Officer of the Dakota West Credit Union in Watford City. I understand credit and debt repayment. I also understand the vital importance of strong record keeping, sound financing practices, and prudent management of financial resources. The WAWS Authority is managed as a business and we've dedicated our time and energy to assuring the success of this project.

The founding legislation protects the public interests of the entire State by creating the project for public use. Because a municipal system has to plan for peak days, the project also has

significant capacity to service industry during non peak times. Therefore, the WAWS Authority has the ability to sell water to private entities such as gas and oil producers to generate revenues to repay the loan funds to the State. Figure 2 demonstrates the availability of water for industrial water sales.

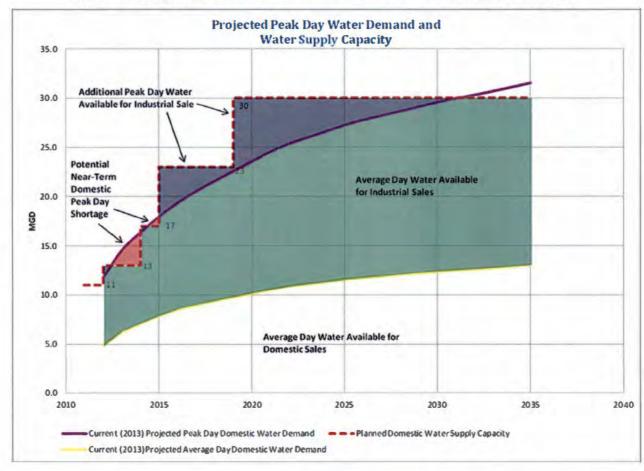


Figure 2: Projected Peak Day Water Demand and Water Supply Capacity

Simply, I have to ask, why wouldn't we want to capture the financial benefit of the industrial water sales to support the development of a domestic water supply system designed to support this population explosion in northwestern North Dakota? It is the responsible thing to do. If we do not, the burden will fall to the state taxpayers, the local tax payers, developers that will need to fund additional water transmission lines, and ultimately our local water rate payers.

#### In Summary - We Urge Your Support for SB 2233 with Critical Amendments

In closing, this bill, as it's currently written, stands to jeopardize the tremendous progress we've had to date. It's unfortunate the WAWS Authority was not consulted on the development of this bill as I'm certain it would not be Legislators' intent to put the WAWS Authority's ability to repay its State loans at risk. I'd like to share that SB 2233 was drafted and introduced without the Authority's knowledge and I want to reiterate our support for SB 2233 with the critical amendments - removing or amending Section 4 Paragraph 7 and removing Section 11. Without these amendments, SB 2233 stands to devastate the outstanding and efficient progress we've made on the construction of the WAWS Project - which is a desperately needed project in northwestern North Dakota to support the projected additional 50,000 people coming to our region to continue this historic development of the State's energy resources.





A partnership of JMAC Resources, LLC and Bartlett & West, Inc.

### WATER FOR OIL

Western North Dakota — As a private enterprise West Dakota Water was med to meet the water needs of the oil and energy industry by creating a large water transmission line and associated distribution lines serving Western North Dakota.

"We will take water from the Missouri River and put it to beneficial use, keeping this resource from leaving the State", said Ken Royse with Bartlett & West, "the transmission and distribution lines will provide the needed infrastructure to allow aggressive oil activity to continue within the State."

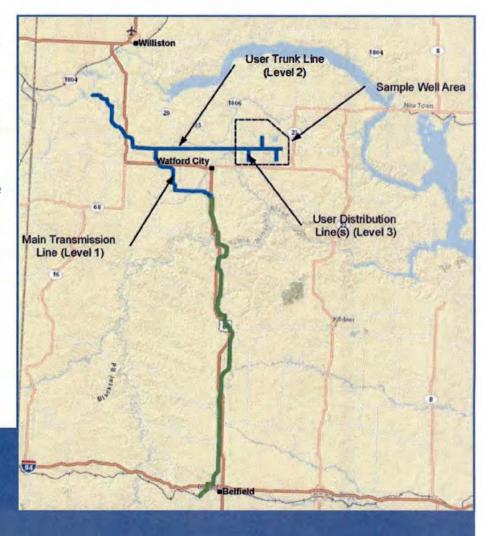
The transmission and distribution lines will provide water for well development and well operations in the target areas south of the Missouri River around Watford City with expansion to the south near the Belfield Area.

### THE PROJECT

The cross-county pipeline has the capability to deliver water direct to the well pads in the target areas. In addition to delivering water to drill sites, the project will take trucks off state roads. "Each well we provide direct water to removes 1,000 conserving existing roadways," said Jon McCreary with JMAC Resources. "Our project has received significant encouragement and support from the State of North Dakota."

#### PROJECT SPECIFICS

- Use of water from the Missouri River near Williston
  - State permit for 10,000 acre feet pending with approval anticipated in 2012
- River intake and treatment of the water
  - · State permits are in process
  - Corps of Engineers intake permits are in process
- Large pipeline transmission (7,000 gpm or 170 bbl per minute) initial capacity from Missouri River to point of delivery south of Watford City
- User trunk lines (14- to 20-inch) to targeted areas for local distribution
- User distribution lines (eight- to 12-inch) to specific drill sites—these lines are above ground and removable



## COST EFFECTIVE ALTERNATIVES FOR ANY LEVEL OF NEED

#### **Level 1 Service**

 We will allow access and availability of our water to you from any mutually convenient point of delivery along our Main Transmission Line. The water will be under pressure.

#### **Level 2 Service**

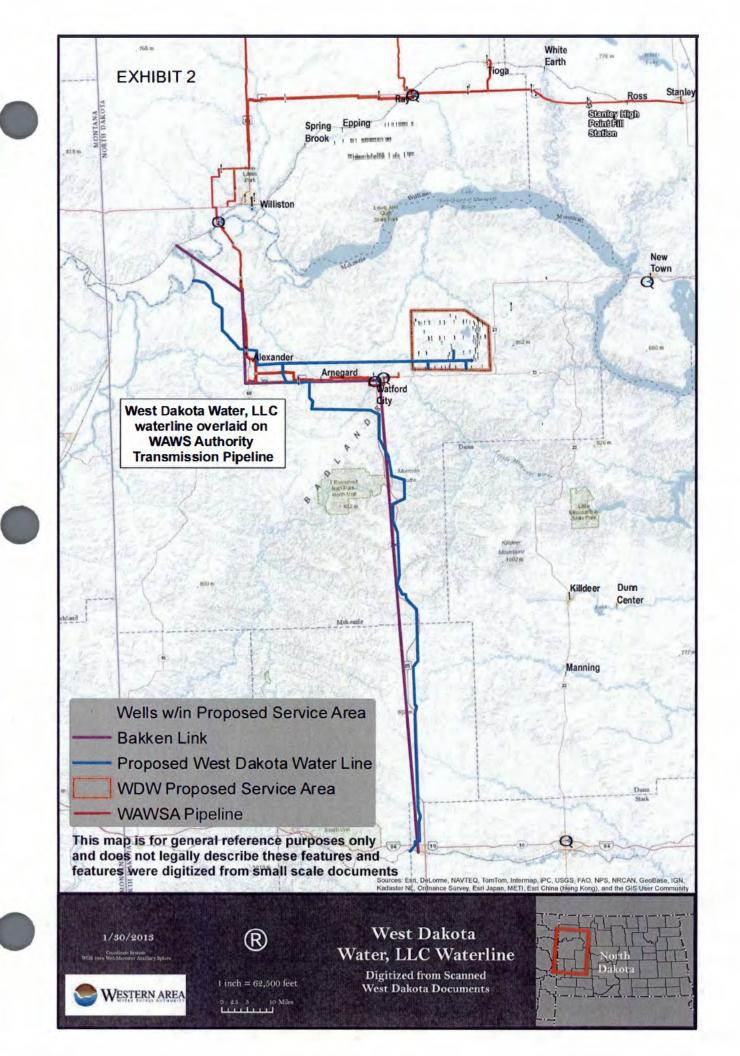
 We will install a user trunk line to a point convenient and close to your core operations and drilling. The line will be sized to provide a rapid delivery of water to your trucks.

#### **Level 3 Service**

We will install a user distribution line to your well pad. This line will be a temporary installation and will allow you to
 significantly decrease your dependence on hauled water and on-site water storage.

#### **Level 4 Service**

 Under special circumstances we will provide a waster water disposal line system to accommodate your flow back and produced water disposal needs.



## Western Area Water Supply (WAWS) Authority Oversight Summary January 31, 2013

The WAWS Authority founding legislation resulted in the establishment of North Dakota Century Code Chapter 61-40 (NDCC 61-40). Project oversight was developed to ensure prudent investment of State resources, regulatory compliance, quality control, and a general system of checks and balances. The following is a summary of how the provisions in the Century Code were implemented.

#### **Project Controls and Oversight**

The WAWS Authority has met, and perhaps exceeded, the State oversight standards outlined in State law relative to project oversight. NDCC 61-40-06 provided for the following oversight:

The Authority shall comply with the policy of the State Water Commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The Authority shall report to and consult with the State Water Commission regarding the operation and financial status of the project, as requested by the State Water Commission.

In relation to initial construction of the system and debt repayment, the Authority shall present the overall plan and contract plans and specifications for the project to the State Water Commission for approval. The Attorney General shall assist the Authority at the request of the State Water Commission. If the twenty-five million dollar zero interest loan from the State Water Commission has not been repaid, without the written consent of the State Water Commission the Authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the Authority if the property is used to provide revenue.

The specific project controls and oversight of the WAWS Authority since its founding include the following:

• On June 21, 2011, the WAWS Authority presented the Phase 1 portion of the project to the State Water Commission (SWC), which included the pipelines around Williston and the pipeline from Wildrose to Crosby. The SWC passed a motion to approve the first portion of WAWS Project Phase I, with costs not to exceed \$25,000,000. The SWC delegated SWC staff to review and approve plans and specifications for that Phase as well as others to follow.

- In order for the WAWS Authority to access the remaining \$85,000,000 of loan dollars, the Bank of North Dakota's (BND) letter of conditions also required the SWC approval of Phase II, Tier I projects. On December 9, 2011, the SWC approved the Phase II - Tier I projects.
- Throughout the planning and design of the Phase I and Phase II projects, SWC staff reviewed plans and specifications during 11 design review meetings and approved the following:
  - Eleven sets of plans and specifications for 11 bid lettings to date.
  - Fifteen contracts (three prime contractors on two different projects).
- The WAWS Authority staff and Board of Directors have provided written and verbal status reports to the SWC (quarterly or as needed to address specific project issues) and other State agencies including the BND (monthly and quarterly reports).
- The North Dakota Department of Health (NDDH) also provided reviews of each of the project plans and specifications for each segment to ensure the project was in compliance with public health and safety regulations.
- The North Dakota State Historic Preservation Office (NDSHPO) requires cultural resource surveys to identify and document any cultural resources with the requirement of avoiding impact on any identified cultural resources. All cultural resources within the WAWS corridors have been avoided.
- Wetland delineation was completed on the project, and the results were presented to the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service for comments.
   The project was constructed in accordance with the Nation Wide 12 404 permit.
- The following local entities have permit requirements. These entities reviewed the plans and issued permits to allow construction of the project:
  - Counties Divide, Williams and McKenzie
  - Cities Crosby, Williston, Ray, Watford City, Alexander, and Arnegard
  - Townships Fredrick, Frazer, Hawkeye, Fillmore, Big Stone, Hazel, Missouri Ridge, Pherrin, East Fork, Marshall Wheelock, Tyrone, Judson, Round Prairie, Hebron, Tri-Township, Alex, and Arnegard Townships
  - North Dakota Department of Transportation

- Williams County Highway Department
- McKenzie County Highway Department
- North Dakota Department of Trust Lands
- Advanced Engineering and Environmental Services (AE2S) also performs engineering Quality Assurance/Quality Control (QA/QC) measures commonly accepted in the engineering industry.

#### **WAWS Authority Oversight**

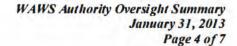
Since the first Board of Directors meeting was held on May 31, 2011, the WAWS Authority has initiated comprehensive oversight including:

- As outlined in NDCC 61-40, the SWC has a voting representative on the WAWS
   Authority Board of Directors. The SWC placed Michelle Klose, Assistant State
   Engineer, as its representative on the Board of Directors of the WAWS Authority. Ms.
   Klose also serves on the WAWSA Executive Committee. Ms. Klose has served in this
   role since the first Board of Directors meeting was held on May 31, 2011. Jeffrey
   Mattern, SWC Water Development staff, serves as the SWC alternate when Ms. Klose is
   unable to attend the Board of Director's meetings in person or by teleconference.
- The Board of Directors implemented organizational Bylaws that were approved by the North Dakota Attorney General's Office, created an Employee Handbook, and implemented Operational Policies for the water system. Additional Operational Policies and Employee Handbook provisions are considered on a regular basis as new issues arise.
- The WAWS Authority hired a full-time Executive Director to manage its day-to-day operations. The Executive Director is responsible to the Board of Directors for carrying out the policies and promoting the goals and mission of the WAWS Authority. This position plans, organizes, directs, implements, and supervises the functions, activities, and finances necessary to achieve efficient design, construction, and operation of the WAWS Project. The Executive Director assures compliance with laws, regulations, codes, and ordinances applicable to the Authority.
- The WAWS Authority hired a full-time business manager to structure and perform entity
  and project business processes and practices. The business manager is responsible for,
  among other things, generating the monthly profit and loss statement, balance sheet, and
  cash flow statement. In addition, the business manager handles all financial transactions
  with the BND, vendors, and developers that pertain to the WAWS Project related matters.

- The Board of Directors meeting agenda and packets for each month are robust and
  contain numerous components for review and approval (an average of approximately 18
  items per meeting). The Board of Directors provides oversight on issues such as staffing
  and Authority policies, task orders and addenda, internal and external agreements, Rightof-Way/easement issues, industrial sales, and other issues as needed.
- The Board of Directors meets monthly to review and take necessary action on project
  matters, task orders and amendments, Capital Accounting Statements, Financial
  Reporting, and BND pay requests. All meetings are open to the public, and meeting
  packets are posted on the WAWS Authority website (www.wawsp.com) prior to the
  meetings.
- The WAWS Authority Board of Directors negotiated and continues to negotiate numerous output, infrastructure use and water supply contracts with its stakeholders, which have included robust discussion, discourse and additional levels of review from stakeholders' Boards, their various attorneys and bond counsel.
- In addition to the bulk water contracts with stakeholder entities, the WAWS Authority
  developed a form Membership Agreement, easement forms, a rate schedule, as well as
  form contracts for industrial, commercial and rural water supply customers.
- The Board of Directors, which includes SWC representation, has reviewed and taken votes on over 275 entity, project, and financial issues with almost all being unanimous decisions. The Board of Directors has had three split votes two relating to the legal services selection and one relating to a task order amendment for engineering services for the Williston Water Treatment Plant Expansion. The SWC representative took exception on four occasions (voted no and was the single dissenting vote) on the following approval decisions: low bid from John T. Jones; engineering services agreement; amendments to engineering tasks orders 11, 12, 14, and the addition of task order 15a; and final WAWS Authority depot locations. The SWC representative registered four abstentions which involved changes in baseline industrial sales, an increased pipeline size, a task order amendment pertaining administrative tasks, and a Bulk Industrial Water User Agreement.

#### Financial Oversight and BND Requirements

The BND is the lender for multiple loans for the WAWS Project. The BND stipulated that the loans were approved under several terms and conditions to which the WAWS Authority must adhere including the following:



- The SWC was required to approve Phase I and Phase II components of the WAWS Project. The SWC must also approve contracts and plans and specifications in each of the project phases to ensure compliance with SWC policy as the policy relates to bidding, planning, and construction of the project. In relation to initial construction of the system and debt repayment, the WAWS Authority must present the overall plan and construction plans and specifications for the project to the SWC for approval. The SWC reviews are documented under the "Project Controls and Oversight" section above.
- In order for the WAWS Authority to access the initial \$25,000,000, the WAWS
   Authority was required to provide the framework for the water purchase agreements,
   infrastructure transfers, and transmission of the WAWS Authority water throughout the
   system network and provide financial projections within a Business Plan Supplement.
   The framework and Business Plan Supplement were provided to BND in June 2011.
- In order for the WAWS Authority to access the remaining \$85,000,000, the agreements
  and supporting documents contemplated under the conceptual framework referred to
  above had to be fully executed consistent with assumptions upon which the financial
  projections in the WAWSA business plan were based. In support of this, the WAWS
  Authority developed and provided BND the following materials:
  - Memoranda summarizing the infrastructure for which the WAWS Authority needed to secure output or access agreements from Members and Sub Members in order to supply, treat, and deliver water to the proposed service area as intended in the business plan. Individual memoranda addressing each of the Members were forwarded to the BND in April 2012, and a comprehensive memo updating the infrastructure for all Members and Sub Members was delivered to the BND on June 18, 2012.
  - Executed agreements have been submitted to the BND as required. These agreements have also been reviewed by the ND Public Finance Authority (NDPFA).
  - A detailed table referencing various requirements in the BND commitment letter to the appropriate sections in the agreements, to document that requirements of the commitment agreement were being met. The WAWS Authority also provided correspondence to the BND on August 27, 2012 documenting the progress to date, anticipated progress through the close of 2012, and the financial outlook for the project.

- WAWS Authority must provide BND quarterly interim financial statements for review.
   Complete financial statements are provided monthly to BND following the Board of Directors' meetings.
- WAWS Authority must provide BND monthly construction budget and progress reports.
  The WAWS Authority submits a monthly Capital Accounting Report to the BND. The
  Capital Accounting Report provides a project budget and construction summary which
  includes: Business Plan Estimate, Baseline Engineering Estimate, Project
  Growth/Expansion, Contracted Amounts To Date, Actual To Date, and Best Estimate To
  Date for each Task Order and Phase of the WAWS Project.
- Each month, the WAWS Authority Board of Directors (which includes a SWC representative) and Executive Director must approve each payment voucher before it is submitted to BND. Each payment voucher is accompanied by the pay estimates and invoices for that month that detail precisely which loan funds are being allocated to which project components as well as project progress. If there were any dissenting votes pertaining to the payment vouchers, the dissenting WAWS Authority Board Member must provide reason(s) for dissention. The result of the vote and the reason for dissention is required to be submitted to the BND. There have been no dissenting votes on payment vouchers to date.
- WAWS Authority procures a financial audit by an independent accountant. The WAWS
   Authority is currently in the process of hiring an independent accountant to perform the
   2012 audit. Due to limited financial activity in 2011, BND concurred to omit a 2011
   audit.

#### **Oversight Summary**

The WAWS Authority takes its oversight responsibilities seriously and has instituted many operational policies to assure the Authority is meeting both its fiscal management obligations and as well as the Legislative oversight intent included in the founding WAWS Authority legislation. As outlined within this summary, the WAWS Authority is subject to appropriate oversight from the NDSWC, NDDH, and BND as well as numerous other Federal, State, and Local entities. The WAWS Authority Board of Directors meets monthly to review and approve all financial statements, capital accounting reports, payment vouchers, contracts, and any other issues that arise. Additionally, the WAWS Authority Members have a vested interest in assuring the overall success of the WAWS Project as Members have selflessly contributed infrastructure and industrial water sales revenues to support the greater good achieved by the WAWS Project.

#### **EXHIBIT 3**

Managed by the local Member entities, the WAWS Authority has prudently invested available resources to meet the ambitious goals outlined in its original 2011 Business Plan and Business Plan Supplement. The WAWS Authority has made outstanding progress on the implementation of the WAWS Project. The WAWS Authority Members have had one goal - to meet a truly public purpose of initiating a water project with a public resource to meet the ever-growing domestic water needs of the region while capitalizing on industrial water sales in the near-term to provide a revenue stream for substantial debt service payments to the State of North Dakota. The WAWS Project progress has been accomplished without any additional employees added to the State's payroll.

Additional oversight of the WAWS Authority and Project is unwarranted. Additional oversight may contribute to increased costs, delayed implementation, and decreased project performance.





P.O. Box 1306 Williston ND 58802-1306 PHONE: 701-577-8100

FAX: 701-577-8880 TDD State Relay: 711

January 31, 2013

Senator Stan Lyson, Chairman Senate Natural Resources Committee

Re: Support for Senate Bill 2233 - With Amendments

Mr. Chairman Lyson and Members of the Committee:

Chairman Lyson and Members of the Committee, thank you for the opportunity to testify before you today. I am Ward Koeser and I serve as the Mayor of the City of Williston and as a Director on the Western Area Water Supply (WAWS) Authority. I would like to start by saying that the City of Williston supports the intent of SB 2233 to create a revolving loan fund and generally agrees with the priorities that are described in the bill. However, there are two sections in the bill that give us great concern, and we would ask that you remove them from the bill. They are Section 4, Paragraph 7, and the amendments to the WAWS Authority oversight language that are included in Section 11.

#### Tearing Down Political Boundaries, Building Consensus to Move Forward

The City of Williston serves as the service center for the oil industry and the region. As I testified last session, Williston was in full support of providing treatment capacity to the WAWS project and subsequently entered into a partnership with the other water supply systems in the area to deliver water to the entire region. The creation of the WAWS Project has provided the organizational structure that provides the necessary flexibility to serve all of the entities involved and tear down local political boundaries to allow the efficient and cost effective delivery of water for the benefit of the region and the State of North Dakota.

Some have said that the WAWS Authority may not be providing the supervision and leadership to properly control and monitor the project. This is far from the reality. I am a

Mayor Ward Koeser, City of Williston SB 2233 - Support - With Amendments January 31, 2013 Page 2 of 3

Director on the WAWS Authority Board and take offense to these comments. The City of Williston continues to have the confidence in this organization's structure and leadership to give up control of its water treatment plant output for the common good of the region. Have the members of the WAWS Authority agreed on every point? No. But we have set up a weighted voting system that is fair to all of the members and we have been able to work through some very tough issues in a very short period of time.

#### Bill Language Detrimental to the Success of the Project

The amendment proposed in Section 11 will reduce our flexibility to respond to the dynamic needs of the people in our region and is an attempt to insert additional State governmental control on the project even after the project's debt is paid in full. The appropriate State oversight was debated heavily last Legislative Session and it is my opinion that the State review processes are more than adequate. The WAWS Authority Board Members take their responsibility to manage and control the project very seriously. We must manage the project effectively to control the rates to our citizens and we are committed to meeting our obligations of repaying the State loans.

Section 4, Paragraph 7 appears to be another direct attack on the WAWS Authority member entities and the WAWS Project. As written, it would provide for unfettered water development in the WAWS Authority service territory. The financial viability of the WAWS Project hinges on the ability of the member entities to deliver water to the industry as a large part of its revenue source. The City of Williston is the largest domestic user and therefore would have to pay the largest share of any revenue shortage. As the major rate payer to the WAWS Authority, the City of Williston is opposed to any action that would jeopardize the financial viability of the WAWS Project.

Mayor Ward Koeser, City of Williston SB 2233 - Support - With Amendments January 31, 2013 Page 3 of 3

#### Williston is Committed to Our WAWS Authority Partners and Our Citizens

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.

The City of Williston has entered into a partnership with the other water systems in our region to develop a locally-controlled drinking water system to serve the exploding population in northwest North Dakota. As we promised last Legislative Session, the City of Williston has given up control and output of our water treatment plant to benefit the region, completed a territory-sharing agreement with our neighboring water system, and provided full support both in terms of time and resources to the WAWS Authority and its mission. The Board Members of the WAWS Authority are experienced and intelligent people, most of whom have been in public service and in the water industry for a long time. I support the long-range vision that this bill has laid out, but respectfully ask that you remove the sections directed at the WAWS Authority that would erode the local control and financial viability of the system in which we take great pride.

# Richard Cayko, McKenzie County Commission and Garrison Diversion Conservancy District Board Member January 31, 2013

# IN SUPPORT OF SENATE BILL 2233 - WITH AMENDMENTS SENATE NATURAL RESOURCES COMMITTEE SENATOR STAN LYSON, CHAIRMAN

Good morning Chairman Lyson and Members of the Committee, my name is Richard Cayko. I am a McKenzie County Commissioner, Board Member on the Garrison Diversion Conservancy District (C-District) representing McKenzie County, a local farmer, and a life-long resident of McKenzie County. I'm here to express both support and concern for SB 2233, specifically to urge you to provide for consistent water policies statewide. I believe that implementation is best and most efficiently achieved at the local level, and am here to voice my concern with Section 4, Paragraph 7, as well as Section 11, of SB 2233 as it's currently proposed.

#### Great Things can be Achieved by Collaboration at the Local Level

As a McKenzie County Commissioner, I have had a front row seat to water development in my County. In 2003, McKenzie County joined the C-District to find a means for bringing rural water into our region. Since that time, we have developed rural water service to portions of our County through the McKenzie County Water Resource District, which is a founding Member of the Western Area Water Supply Authority.

McKenzie County has been engaged in relationship building for some time now, and has committed to providing water service to the entire county. We have taken the following steps to achieve this goal:

- Initially, the McKenzie County Water Resource District worked with Watford City to start the rural water system around Watford City using the City's water supply.
- The eastern part of the county (System II) is supplied by the Three Affiliated Tribes.

- The area south of the Little Missouri River has been turned over to the Southwest Water Authority to serve.
- The area around the City of Alexander (System IV) was planned to be served by the City of Williston.
- As the oil development activities hit, we became fully supportive of creating the regional water system to supply the entire region. This conceptual regional water system has become the Western Area Water Supply Project.

Another indication of my Counties' commitment to the development of the complete water system includes having to contribute financing to our county water system. When the McKenzie County Water Resource District brought water from the City of Williston across the Missouri River, the McKenzie County Water Resource District reached its statutory revenue bond limit of \$10 million. In order to complete the project, McKenzie County lent \$3 million to the McKenzie County Water Resource District to complete the project and bring a new water supply into the County.

You've probably heard of the extensive work and collaboration that the Western Area Water Supply Members have undertaken. This teamwork has played no small part in the success of the Project. We have seen great progress in water development in our region through cooperation and hard work from the WAWS Authority Members and their representatives. I believe the oversight framework currently in place with applicable entities at the State level has been appropriate and productive. I do not believe that shifting implementation of the project away from the local entities would be a good move. This is the basis of my concern with Section 11 of this bill.

The Western Area Water Supply Authority has developed a plan that will quickly address the expanding water needs of our region, and will do that without taking funding away from other areas of the State. The plan to use industrial water demand to generate revenue to help fund this regional water supply is a sound one. I have concerns with changes to the law that would negatively impact the Western Area Water Supply Authority's means for generating revenues from industrial water sales. I encourage you to consider the commitments that have been made by the Western Area Water Supply Members and Sub Members. Further, I assert to

you that Section 4, Paragraph 7 severely impacts the ability to recapture the investment made by the McKenzie County Commission and McKenzie County Water Resource District. Please delete Section 4, Paragraph 7 to prevent this undesirable consequence.

#### Conclusion

To close, I urge the Senate to implement consistent water policies statewide, and to take advantage of efficiencies that come with managing projects at the local level. I ask you to consider the negative impacts of Section 11 and Section 4, Paragraph 7, and work to refine the legislation to support the collaboration that is on-going to successfully provide water to our region. Thank you for your time.

# Testimony of Mark Owan, Chairman, Williams Rural Water District and Western Area Water Supply Authority Board Member IN SUPPORT OF SENATE BILL 2233 - WITH AMENDMENTS Senate Natural Resources Committee, Sen. Stan Lyson, Chairman Bismarck, North Dakota – January 31, 2013

Good morning Chairman Lyson and members of the Committee. My name is Mark
Owan and I am pleased to be here as Chairman of the Williams Rural Water District and my
position as a Member representative of the Western Area Water Supply (WAWS) Authority. As
a bit of background, Williams Rural Water District purchases its drinking water from the City of
Williston and distributes water to its rural customers throughout Williams County. Williams
Rural Water District joined the other entities represented here today to create a united regional
solution to problems plaguing our water systems such as meeting U.S. EPA standards,
addressing aging infrastructure, and simply meeting the unprecedented growth in our area.

We are extremely pleased with the progress the WAWS Authority has made over the past 24 months, but there is much more work to be done in the next 24 months and beyond.

#### Williams County Hits Record Population

According to the 2012 North Dakota Statewide Housing Needs Assessment conducted by the Center for Social Research at North Dakota State University, the current population of Williams County is estimated to be 49,000 to 51,000 people - this does not include workers living in temporary housing. Including those people in temporary housing, the estimated population is currently over 70,000 people countywide. The study estimates that the population for Williams County could increase to over 80,000 people including the temporary population in the next five years, which is nearly four times the 2010 census of 22,398 people.

Our rural water district is experiencing this explosive population first-hand. In 2011, Williams Rural Water District was forced to put a moratorium on new rural water connections in parts of the county. The WAWS Authority worked closely with Williams Rural Water District to create a strategy and plan for serving those folks. In the first part of 2012, the people that

lived in the affected areas had the opportunity to sign-up for water service from the Williams Rural Water District as a result of the WAWS Project's ability to provide increased water supply.

In addition to the traditional rural hookups, Williams Rural Water District has received the following requests for the following water user categories:

• Rural residential: 12,500

• Commercial: 350

Hotel Units: 850

• Temporary housing units: 2,520

Williams Rural Water District is still under a moratorium on the addition of any new users throughout the system mainly due to the fact that the distribution system cannot handle any additional flows. Many areas in our system already experience low pressures during peak demand periods. Currently, water supply has not been a major issue, it is getting the water to the service area through the limited distribution system.

#### A Collaborative Plan to Address Needs While Keeping an Eye on the Bottom Line

The Williams Rural Water District has developed a Growth Plan and is in the process of implementing the plan through expansion and improvements in Phase II and III of the WAWS project. With the completion of the WAWS Project main transmission lines in 2012, Williams Rural Water District will again be able to provide water service to a portion of the requests located north and west of Williston in 2013. The requested funding for the 2013-2015 biennium will allow Williams Rural Water District to further address the rural water distribution issues we are currently facing.

The WAWS Project has the ability to address both the water quality issues that plague our population still on well water, and allow rural development areas to grow. The overall growth of our system is important to us for another reason. As the City of Williston is expanding into some of the existing Williams Rural Water District territory, there is a need to provide fire flow protection in those areas. Although this is a natural progression with growth, it means we either have to increase our capacity in those areas or let the City provide those services which results in the loss of revenue for our system. We feel it is more appropriate for the City of

Williston to provide fire flow protection in their territory. However, the sustainability of our rural water system is extremely important as it provides much needed water to local farmers, ranchers, rural customers, and industry. We will need to balance the loss of revenue with future customers to maintain the system infrastructure. Our system looks towards the WAWS Project as a means to do that.

#### Bill Language Threatens Viability of Project

That is why Section 4, Paragraph 7 of SB 2233 is so disconcerting to us. We have worked very hard and collaborated closely with our partners to create a growth strategy for our service area that meets our critical water needs and is financially responsible. This one paragraph can mean the difference between either achieving a "solution for oil-impacted North Dakota citizens" or creating a "burden for all North Dakota taxpayers".

Additionally, Section 11 proposes to amend the State Water Commission oversight responsibilities over the WAWS Authority. This proposed amendment alters the State Water Commission oversight authority unnecessarily and, quite frankly, non-uniformly with other language contained in this very bill.

#### Working Together, Continuing the Mission

The Williams Rural Water District and the WAWS Authority would like your support in removing or altering language as Denton suggested earlier in order to continue the mission set forth by 62<sup>nd</sup> Legislative Assembly. We are very appreciative of the support we received in creating the WAWS Authority and allowing the local leadership to drive the project forward. I think I can speak for all the Member representatives when I say that we are committed to working together to navigate through the next phases of the project. We look forward to your continued support as we bring good quality, affordable drinking water to communities and rural water citizens in northwest North Dakota.



### **City of Stanley**

221 S Main Box 249 Stanley, ND 58784

Testimony in Support of Senate Bill 2233 - with amendments
Michael Hynek, Mayor of Stanley, ND
Senate Natural Resources Committee
Senator Stan Lyson, Chairman
January 31, 2013

Thank you Chairman Lyson and Committee Members for allowing me to come before you today. The City of Stanley has seen tremendous growth the last 6 years and we anticipate continued growth in the future. We are currently looking forward to WAWSA water which will become available to the city of Stanley this spring. In 2012 we rationed water and had to delay or deny water service along our pipeline from Ray.

I believe future expansion of the WAWSA will likely be needed. Not only because of additional growth of Stanley but also the needs of the rural area surrounding Stanley.

I am strongly in favor of the intent of the bill to complete some very important water infrastructure in the state. However, I am opposed to Paragraph 7 of Section 4. This paragraph takes away long held safeguards and protections that WAWSA and its members currently have. If not removed, this paragraph could financially jeopardize the WAWSA, now and in the future.

Paragraph 7 of Section 4 could adversely affect the very communities which make all the other projects in SB 2233 possible.

### Dale Patten, Former McKenzie County Commissioner, Director McKenzie County Job Development Authority

January 31, 2013

# IN SUPPORT OF SENATE BILL 2233 - WITH AMENDMENTS SENATE NATURAL RESOURCES COMMITTEE SENATOR STAN LYSON, CHAIRMAN

Good morning Chairman Lyson and Members of the Committee, my name is Dale Patten. I am a taxpayer/concerned citizen, a former McKenzie County Commissioner, and Director on the McKenzie County Job Development Authority. I'm here to express both support and concern for SB 2233. Specifically, I support water development state wide which is the intent of SB 2233, but I am opposed to Section 4, Paragraph 7, which I believe would irresponsibly shift financial burden of the Western Area Water Supply (WAWS) Project to domestic users, and potentially the taxpayers of North Dakota.

#### Fiscal Responsibility

As a former County Commissioner, I am keenly aware of the responsibility to control water rates and taxes. Likewise, I am aware of the importance to adequately fund operations and provide water of sufficient quality and quantity to all citizens. The State of North Dakota has long provided financial support to regional systems to best provide water service to rural areas. The WAWS Project has been developed under a unique and non-traditional funding configuration that, given adequate industrial water sales, provides for construction of the entire water system at no cost to taxpayers of this state. It is impressive to think that repayment of the debt acquired to complete construction of the WAWS Project could be largely accomplished using revenues generated by selling water to an industry that needs it to continue to create more jobs for our region and the state of North Dakota.

Section 4, Paragraph 7 threatens the financial viability of this water system. Simply, if WAWS is not allowed to control duplicative infrastructure development, and ensure adequate industrial water sales in the manner that was planned, it stands to reason that the WAWS

Authority will have difficulty repaying its debts. It appears to me that the WAWS Authority is taking its financial responsibility very seriously, by striving to achieve its revenue goals. Section 4, Paragraph 7 would severely limit the WAWS Authority's ability to do that. Why would we intentionally undermine the fiscal well-being of the WAWS Project?

#### Protecting the Taxpayers of North Dakota

As a taxpayer, I firmly believe that eliminating the means for repayment of debt to the State would be an injustice, and would not be in the financial interest of the State. Similarly, I believe that forgiving loans currently in place when there is an ability to pay them back would be a mistake. I assert that Section 4, Paragraph 7, has the potential to shift the burden of paying for the WAWS Project primarily to local domestic users and the State taxpayers rather than on the industrial users currently utilizing the WAWS Authority's water - a complete shift from the WAWS Project's founding business model. Why would we pass up this opportunity to reduce financial burden to the taxpayers of North Dakota?

#### Conclusion

In closing, I would like to thank you for your support of water development in the State of North Dakota. I strongly urge you to consider the potential consequences of Section 4, Paragraph 7, and to eliminate or revise it to allow the WAWS Project to take advantage of industrial water demand in its service area. By not limiting the ability of this water system to control industrial water sales, you will be supporting the system in its plans to repay its debt to the State, providing ample water for the industry to continue to create jobs, and will be protecting the State taxpayers from footing the bill for the system. Thank you for your time.

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## Testimony Glenn McCrory North Dakota Water Resource Districts Association SB 2233

Mr. Chairman and Members of the Committee:

My name is Glenn McCrory, and I am on the board of directors of the North Dakota Water Resource Districts Association. I am a water manager from Emmons County. We strongly support SB 2233, and believe it is appropriate and necessary for the legislature to set forth legislative policy and goals. In our resolutions we support each of the projects and policy areas addressed in SB 2233.

I am particularly supportive of the policy concerning the Missouri River and Lake Sakakawea. North Dakota needs to stand together and united in getting the Corps of Engineers to issue access permits, so that North Dakota can utilize as much Missouri River water as possible. In this manner, we will improve our quality of life, our economy, our opportunities, and we will perfect Missouri River water rights against claims by downstream states. Thank you for your consideration. We urge a positive vote on SB 2233.

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#### Southwest Water Authority Pays Back 47% to the Resources Trust Fund

#### Amount Paid back in the form of Capital Repayment

YEAR	TOTAL	YEAR		TOTAL
1991	\$ 11,166.00			
1992	\$ 212,899.00			
1993	\$ 195,973.00	2004	\$	1,621,239.25
1994	\$ 300,472.00	2005	\$	1,706,958.33
1995	\$ 504,179.00	2006	\$	1,948,480.26
1996	\$ 734,994.15	2007	\$	2,308,065.86
1997	\$ 857,913.00	2008	\$	2,455,506.88
1998	\$ 915,791.37	2009	\$	2,618,988.11
1999	\$ 1,025,997.24	2010	\$	2,776,546.59
2000	\$ 1,146,779.77	2011	\$	3,076,416.44
2001	\$ 1,308,267.93	2012*	\$	4,287,275.86
2002	\$ 1,432,224.68	Total	\$	33,033,598.25
2003	\$ 1,581,284.21	*Through D	ecem	ber 31, 2012

#### SOUTHWEST PIPELINE PROJECT (SWPP) FUNDING SOURCES

Resources Trust Fund	\$ 69.84
Water Development Trust Fund	\$ 8.47
Subtotal	\$ 78.31

#### Grants

Garrison Diversion Conservancy District	
Municipal Rural & Industrial Fund	\$ 100.62
United States Department of Agriculture - Rural Development	\$ 15.09
Natural Resources Conservation Service PL566	\$ 0.93
Subtotal	\$ 116.64

#### State Bonds Repaid by Users

State Funding (in millions of dollars)

Public Revenue Bonds\$	7.04
United States Department of Agriculture - Rural Development\$	15.70
ND Drinking Water Revolving Loan Fund	1.50
Subtotal\$	24.24

Total Funding	\$219,19
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#### MCKENZIE COUNTY, NORTH DAKOTA

Water Resources District Board

205 6th St. NW \* (Malling addr.) 201 5th ST. NW, Suite 1456 Watford City, ND 58854

Tel: 701-842-2821 ext. 7 - Fax: 701-842-2822

Denton Zibke, Chairman PO Box 927 Watford City, ND 5888-4-0927 701-444-848 work 701-942-3081 home dentonz@dakotawestcu.org July 5, 2012

Jo Ellen Darcy, Assistant Secretary of the Army, Civil Works 108 Army Pentagon Washington, DC 20310-0108

Gene Veeder, Vice-Chairman PO 8ax 899 Wations City, ND 58884-0899 701-444-2804 gveeder@co.mckenzie.nd.us

Re: Private Water Permits within McKenzie County

Dear Assistant Secretary Darcy

LeoTjelde,Board Member 14884 HWY 200 Certwright, ND 58838 701-828-3008 glaseyes@yahoo.com The McKenzie County Water Resource District (MCWRD) is informed of various parmit applications and current intentions by private parties who intend to divart water from the Missouri River and create an extravagant pipeline system to sell significant amounts of water to the off industry within McKenzie County. In some instances, this information has been coupled with demands by the independent water provider community for MCWRD and the Western Area Water Sepply Authority to reduce their water sales at water depots so as not to compete with the private water sellers. While MCWRD has historically not objected to the development of isolated private water sellers to meet the demands of the offindustry, the more meent private development plans are simply too extensive to allow to proceed given MCWRD's significant investment in infrestructure and need to generate income to repay its federal loan obligations as well as the state loan obligations authorized in House Bill 1206 during the last legislative session.

Lelf Jellesed, Board Member 10561 HWY 1806 E New Town, ND 68763-9084 701-575-2400 jellesed@restal.net

MCWRD is requesting information from these private water sallors, out of concern that these entities may be encroaching on the MCWRD water financhise area. Federal law is very protective of a rural water system's water sales tentitory if the rural water system is indebted to the Federal government through a federal lose for the water system's infrastructure. See 7 U.S.C.A. 1926(b). MCWRD has outstanding federal Rural Development loses through the USDA and qualifies for the franchise protection of Section 1926(b).

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 68831 701-828-3655 home 408-489-1704 cell

MCWRD believes that the grant of water appropriation permits by the State Engineer's Office or the access permits and easements by the Corps would constitute governmental action that will provide a private water franchise to develop within the MCWRD jurisdiction. The purpose of this letter is to advise you that MCWRD intends to protect its franchise territory from further encroschment by private water sellers, and to request that you forego the issuance of any permits for private water development within McKenzie County without engaging MCWRD in discussion for each permit requested.

Clint Hecker
Assistent Manager
Waterd City, ND 58854
701-842-2821
701-200-6791cell
checker@co.mckerzie.nd.us

Respectfully

Denton Zubke Chairman of MCWRD



### DEPARTMENT OF THE ARMY OFFICE OF THE ASSISTANT SECRETARY CIVIL WORKS 108 ARMY PENTAGON WASHINGTON DC 20310-0108

SEP 27 2012

Mr. Denton Zubke Chairman, McKenzie County Water Resources District 201 5<sup>th</sup> Street, NW, Suite 1456 Watford City, North Dakota 58854

Dear Mr. Zubke:

This is in response to your July 5, 2012, letter concerning private water permits within McKenzie County. I apologize for the delay in responding.

In your letter you requested that the Corps of Engineers (Corps) engage the McKenzie County Water Resources District (MCWRD) in discussions prior to issuing surplus water agreements or easements associated with private water development within McKenzie County. You contend that executing such agreements or easements could facilitate a private franchise within the boundaries of your service area, thereby undermining the protections granted by Section 306(b) of the Consolidated Farm and Rural Development Act, 7 U.S.C. Section 1926(b).

The Corps has completed an extensive public review process in formulating the Final Garrison Dam/Lake Sakakawea Project Surplus Water Report and Environmental Assessment to support the granting of easements and the execution of surplus water agreements for the withdrawal of water for municipal and industrial purposes at Lake Sakakawea. To my knowledge, your letter of July 5 is the first reference made to the potential applicability of 7 U.S.C. 1926(b), and requires further review.

I am requesting the Omaha District of the Corps to review the issues you raise and to respond to your letter. My staff point of contact for coordination of this matter is Mr. Andrew Hagelin, <a href="mailto:andrew.hagelin@us.army.mil">andrew.hagelin@us.army.mil</a> or (703) 697-7084, and the point of contact in the Omaha District is Mr. Larry Janis, <a href="mailto:Larry.D.Janis@usace.army.mil">Larry.D.Janis@usace.army.mil</a> or (402) 995-2440.

Thank you for your interest in the Army's Civil Works program.

Very truly yours,

Assistant Secretary of the Army

(Civil Works)



#### MCKENZIE COUNTY, NORTH DAKOTA

Water Resources District Board 205 6th St. NW • (Mailing addr.) 201 5th ST. NW, Suite 1456 Walford City, ND 58854

Tel: 701-842-2821 • Fax: 701-842-2822

Denton Zubke, Cheirman PO Box 927 Walford Cily, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org January 4, 2013

Dale Behan Lindale Pipeline, LLC 600 N. Carroll Avenue Southlake, TX 76092

Gene Veeder,Vice-Chairmen PO Box 699 Walford City, ND 58854-0699 701-444-2804 gveeder@co.mckenzle.nd.us Re: Request for approval of 3 McKenzie County, North Dakota irrigation ponds

Dear Mr. Behan,

Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-828-3008 glaseyes@yahoo.com At the McKenzie County Water Resource District (MCWRD) meeting on December 18, 2012, your representatives from Epic Engineering presented a request for the approval of the construction of three containment ponds to impound water for irrigation purposes, to provide for irrigation of adjacent farmland.

Lelf Jeliesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 jeliesed@restel.net Given the State's anti-corporate farming law and the fact that we have not previously heard that Lindale Pipeline was in the business of supplying irrigation waters supplies, MCWRD wants to reiterate that these impoundments cannot be used for any industrial water supplies. Be advised that the MCWRD's approval of these three impoundments is specifically contingent upon and conditioned upon the fact that they are solely for storage of irrigation water and to be used for irrigation purposes. As MCWRD has previously advised you, the Lindale Pipeline LLC's plan to sell industrial water within McKenzle County violates the MCWRD franchise territory protection afforded by federal and state law. In addition to the federal franchise protection afforded by 7 USC 1926b, MCWRD's industrial water sales franchise is protected by two state statutes since MCWRD has outstanding loan! financed by the North Dakota Public Finance Authority (NDCC 6-09.4-22) and/or funding through the State Water Commission (NDCC 61-02-68.18).

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-628-3555 home 406 489-1704 ceil

You are hereby advised that, to the extent the ponds are used for any industrial water to be sold in McKenzie County, it will be a violation of the terms and conditions of this permit approval and will subject you to immediate enforcement action in the form of a permanent injunction to prohibit use of the ponds as well as any and all other remedies available pursuant to state and federal law.

Clint Hecker Assistant Manager Walford City,ND 58854 701-842--2821 701-290-6791cell checker@co.mokenzie.nd.us

Very truly, yours,

Denton Zubke MCWRD Chairman

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### TESTIMONY SB2233 HOUSE NATURAL RESOURCES COMMITTEE

January 31, 2013
Jon McCreary, President JMAC Resources, Williston, ND

My name is Jon McCreary. I live in Williston and am the owner of JMAC Resources. JMAC and affiliates employ over 200 people in Williston, Minot, Beulah and Bismarck. We provide a number of construction and oilfield services to the oil industry and the community at large. One of my companies in West Dakota Water, an entity that has plans to deliver industrial water to several counties.

We have obtained an industrial permit to put Missouri River water to beneficial use. We have worked since 2008 to obtain an industrial permit form Lake Sakakawea and then later from the Missouri River.

We have spent over \$2 million on the combination of land, easements, leases, legal and engineering thinking that we were operating within a free market. We have worked closely with all state and federal agencies in obtaining our permit and have asked for no special treatment.

We have plans to have a water pipeline through McKenzie, Dunn and Billings County to supply raw water to the oil industry.

As we were developing our plans, WAWSA came into existence, obtained funding and published its plans to sell water through a network of depots. We intentionally stayed out of the WAWSA controversy, believing in a free market, and understanding that WAWSA was limiting their industrial sales to approximately 12 depots.

We altered our business strategy and potential pipelines and depot locations within McKenzie County to avoid WAWSA depots. This was just common sense on our part. When, after nearly four years, it finally looked like our investment and efforts would be successful, we started receiving threats from the WAWSA and McKenzie County Water Resource District chairman and their attorneys. The threats claimed that they had a monopoly on all water sales within McKenzie County. They claimed protection under both federal and state laws. They claimed these protections over industrial water, and even raw untreated water, and even in areas where they have no plans or no ability to deliver water.

We understand the need for the WAWSA project, and the idea of building depots to help pay for the cost. However, we cannot believe the legislature intended to allow WAWSA to keep private companies in the oil industry out. We cannot believe the legislature intended no others could use Missouri River Water. Certainly nobody was informed last session that WAWSA intended to claim a 100% monopoly. WAWSA did not inform you that not only did they want to build 12 depots; they wanted to prohibit any new competition.

We met with the WAWSA chairman and explained to him that our potential customers wanted water delivered in volumes his system could not accommodate, and in some cases the customers were in need of very large volumes of water at very low prices. In these cases WAWSA would not be able to meet the flow requirements, volume requirements or price requirements. We also discussed the fact that WAWSA does not have enough water in McKenzie County to meet even the residential demands, and that we could fill the void of industrial sales. In the end, legal action was threatened unless we agreed to pay WAWSA \$.67 for every barrel of water we sold. Their attorneys threatened to seek an injunction to stop our sales and also threatened forfeiture of our assets used in water delivery and sales, which would be a multi-million dollar taking of private assets.

They did not stop at threatening us; they sent letters to the Corps of Engineers, the State Water Commission and the Governor attempting to get our permits denied. We have attached a sampling of the letters with our testimony. They did this in spite of the State's long held policy supporting putting Missouri River water to beneficial use.

WAWSA asked for depots to help pay for their project. The WAWSA project is moving forward. It received \$119 million this last biennium. The Governor has included another \$80 million in his budget. Rural residents will receive the water they need. However, WAWSA does not need to shut others out.

As for the part of the bill that requires WAWSA to follow State Water Commission policies. There are a number of reasons why this makes sense. First of all, the State Water Commission has technical policies, operational policies and resources that would have prevented mistakes that have been made on the WAWSA project. Second, the State Water Commission has policies that limit the expense to bring water to rural homes, to keep project costs in line with the benefits received. Finally, it is unnecessary to carry out winter construction of any tank foundations and fragile water lines. A slower pace construction with more oversight will dramatically reduce cost overruns, mistakes, change orders, line failures, pump failures, and tank failures.

My personal experience with WAWSA is that they installed their mainline in McKenzie County across my property. No one ever contacted me for an easement, so I did some title work and discovered that the previous owner's power of attorney had signed an easement a full year after I purchased the property. I have never received a penny for that easement. That same property has a farm house with several of my employees living there legally in the house and in RVs. To this day I continue to spend over \$4,000 per month hauling water to this location even though it is adjacent to the WAWSA mainline. They are selling water out of depots, but they are not hooking up rural customers like me.

Separately, I have a 160 lot subdivision within McKenzie County very near where their mainline crosses the Missouri River where they have ample water supplies. When I took my request to Denton Zubke, he asked my team for a \$41,500 engineering fee to determine if these lots could receive water. Since I had my own engineer at the meeting we were able to get the fee reduced to \$2,000, which is still very high. WAWSA has stated that all the funding from this biennium will go towards the construction of water lines to serve residential customers. In spite of this, we were informed that we would be required to pay a \$500,000 hook up fee, and pay for the construction of all water lines from the mainline to each individual lot and WAWSA would pay for nothing. Our total cost would be \$700,000 - \$800,000, WAWSA's total cost would be \$0, and WAWSA would own and use the four miles of water pipeline that I paid to construct.

From my vantage point, it looks like WAWSA will spend our money for industrial purposes, but not for true residential needs. Certainly, they are putting industrial needs in front of the residential needs they were supposed to hold as priority.

I urge that you pass SB 2233 which requires that the WAWSA project will not attempt to push out private industry with weak legal arguments, and will also require that they follow the state's water policies while using the states money.

Behan

#### POLICY BULLETIN NO.

SUBJECT: Availability of Project Water for Voluntary Acquisition of Right of Way

POLICY:

To meet the Business Plan, WAWSA needs to acquire a significant amount of right of way in a short time period.

For property owners who voluntarily enter into easement agreements or sell property to WAWSA, WAWSA will favorably consider providing water service from the Project if requested by these property owners. If the property owner is served by a WAWSA member, the WAWSA board will recommendation to the member that service be provided to the property owner.

For any property owner who does not voluntarily grant an easement or sell property to WAWSA, where condemnation is initiated, WAWSA will likely not consider any requests for project water from the owner of the condemned property. If water service is instead provided by a WAWSA member system, the WAWSA board will likely recommend that the member deny any requests for service from that property owner.

# Legislative History Water Funding & Water Policy

A. 1937: State Water Commission

B. 1981: Resources Trust Fund

C. 1990: Constitutional Resources Trust Fund

D. 1993/95: Increase in Resources Trust Fund

E. 1999: Water Development Trust Fund/ Legislative

**Policy and Goals** 

F. 2013: Infrastructure Loan Fund/Legislative Policy

and Goals

#### SB 2233: Water Development Goals/Policy

- Declaration of Policy and Legislative Intent & Goals (Section 3 & 4)
- Red River Valley Water Supply (Section 9 & 10) 2007 Legislative Plan: Updated
- Garrison Diversion Unit Facilities (Section 7)Snake Creek, McClusky Canal, Oakes Test Area
- 4. Fargo/Moorhead Flood Control (Section 8)
- 5. Souris/Mouse River Flood Control (Section 5)
- Southwest Pipeline Project (Section 6)SWC & SWA Prepare for Decision Transfer
- Missouri River and Lake Sakakawea (Section 4, Paragraph 7)
   Corps of Engineers/Industrial Uses
- 8. State Water Commission Policies WAWS Oversight (Section 11)
- 9. Regional and Rural Water Systems (Section 4, Paragraph 4)
- 10. Local Water Management/Flood Control (Section 4, Paragraph 4)
- Irrigation (Section 4, Paragraph 9)
- 12. Infrastructure Loan Fund (Section 1 & 2)
  - a. 10% of Resources Trust Fund
  - b. Water Development: Water Supply and Flood Control
  - c. Bank of North Dakota

#### Other Water Bills

Policy	<u>Funding</u>
1. SB 2048: Repayment	1. HB 1020
2. HB 1206: Planning/Priorities	2. HB 1269
3. HB 1440: Territorial-Water Systems	3. HB 1140
4. SB 2049: Interim Water Committee	
Garrison Irrigation Assessme	nts

5. SB 2359: WAWS

### RED RIVER WATER SUPPLY PROJECT 2007 LEGISLATIVE PLAN

61-24.7-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.

2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this

state.

3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

61-24.7-02. Funding Red River valley water supply project – Bond issuance amount. The state water commission may provide a portion of the state share of funds necessary to construct the Red River valley water supply project by issuing bonds in an amount not to exceed forty million dollars plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this chapter.

61-24.7-03. Limitation of action. An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this chapter unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of bonds. The state water commission may commence a special proceeding at any time after July 1, 2007, in and by which the constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

61-24.7-04. Bonds payable from water development trus

Principal and interest on bonds issued for the Red River valley water supply
project as provided in this chapter are payable from the water development trust
fund from funds transferred from the tobacco-settlement trust fund.

Obligations issued as provided in this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the

- state of North Dakota, but are payable solely from the sources as described in this chapter.
- 3. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from the water development trust fund. If the governor does not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

61-24.7-05. State funding plan.

- 1. The legislative assembly declares its intent to provide state funding for a share one-third of the total non-federal or local cost of constructing the Red River valley water supply project.
- 2. Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- 3. State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.



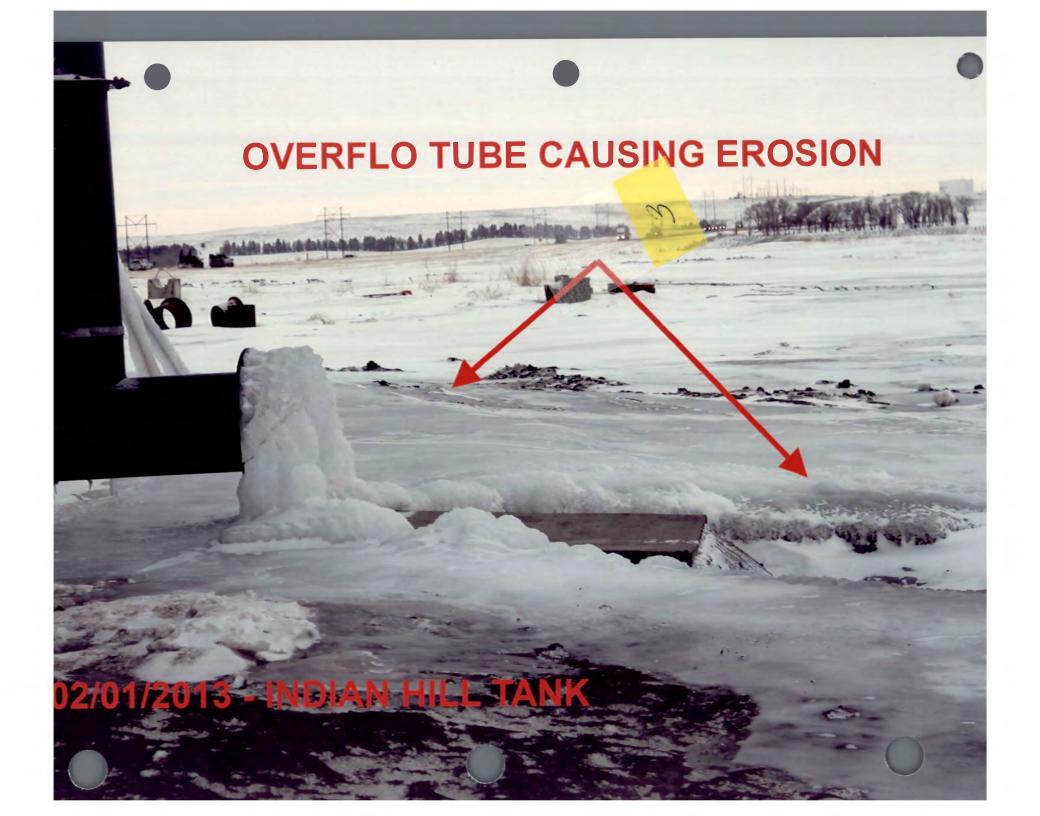
#### **Proposed Amendments to SB 2233**

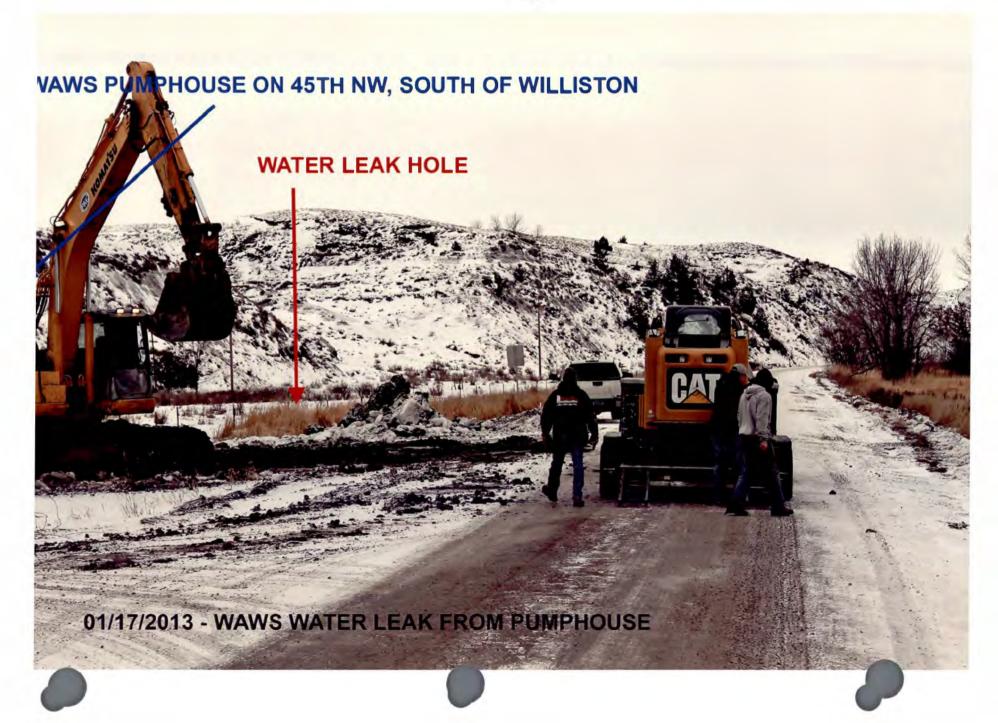
- 1. Page 1, line 4, replace "6-09.4" with "61-02"
- 2. Page 1, line 5, remove "57-51.1-07"
- 3. Page 1, line 6, remove the word "oil"
- 4. Page 1, line 7, remove the words "extraction tax development fund"
- 5. Page 1, remove lines 12 thru 24
- 6. Page 2, remove lines 1 thru 31
- 7. Page 3, remove lines 1 thru 31
- 8. Page 4, remove lines 1-17
- 9. Page 7, after line 18, insert:

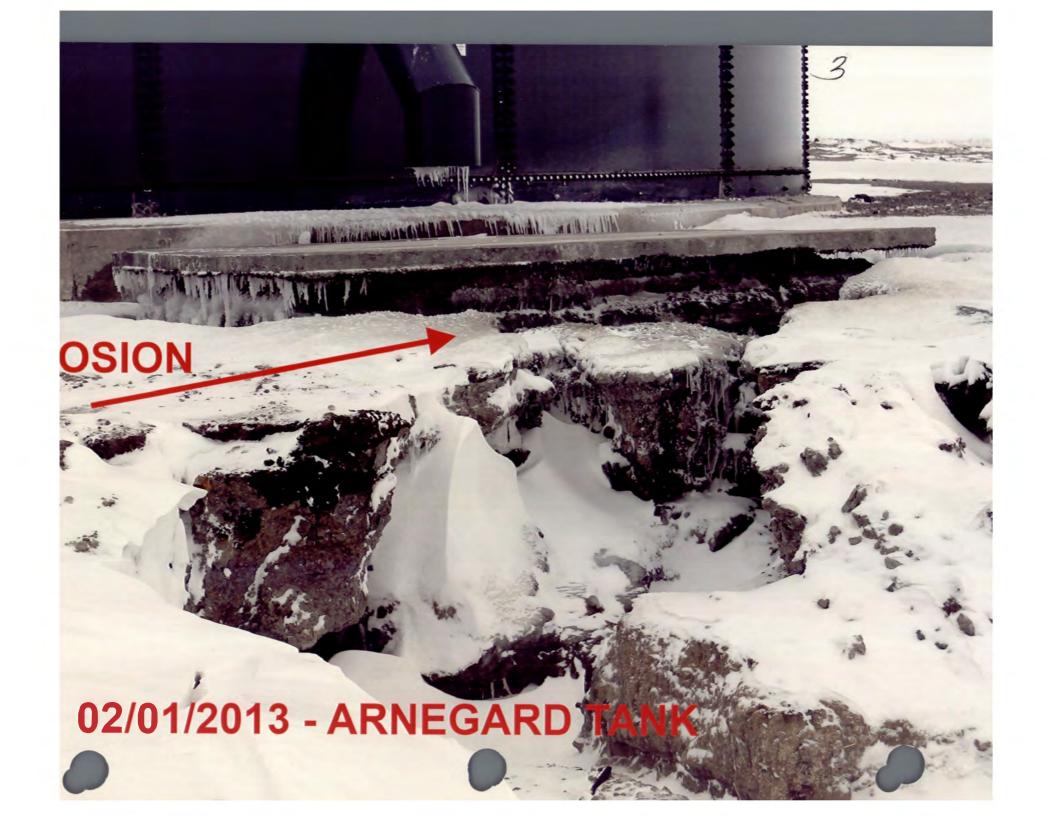
"SECTION 8. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

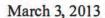
#### Infrastructure revolving loan fund-Continuing appropriation - Rules.

- 1. An infrastructure revolving loan fund is established within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of the moneys in the resources trust fund are appropriated on a continuing basis for making loans in accordance with this section. Accounts may be established in the infrastructure loan fund as necessary for its management and administration.
- 2. The commission shall consider the following information when evaluating projects:
  - A description of the nature and purposes of the proposed infrastructure project, including an
    explanation of the need for the project and the reasons why it is in the public interest;
  - b. The estimated cost of the project and the amount of loan sought and other proposed sources of funding,
  - The need for the project as part of the overall infrastructure system and the overall economic impact of the project; and
  - d. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the bank of north dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt rules for the review and approval of loans under this section.









#### Dear Senators & Representatives:

My name is Russell Rankin, regional manager of Statoil in Williston. Statoil is a Norwegian-company with operations in close to 40 countries. Statoil has significant presence in North America. As part of the company's onshore expansion, Statoil purchased Brigham Oil & Gas in December 2011. Statoil has close to 375,000 leased acres in the Williston Basin and has spent over \$250 million dollars in pipeline infrastructure to significantly decrease the amount of truck traffic, and in-turn, reduce the overall impact of oil and gas activity in the State. This infrastructure makes NW North Dakota a safer place to live and work.

Statoil started installing fresh water pipeline infrastructure to support its oil and gas development efforts before installation of the Western Area Water System (WAWS) commenced. Fresh water sources to supply the Statoil network came from private depots that were also willing to commit capital to support this effort.

Statoil supports the WAWS project. It provides a much needed water infrastructure system for the oil development region of northwest North Dakota. Without this system in place, much of the growth of this region would be stymied. It has been and will continue to be a valuable source of water for oil and gas development in certain areas, but even more so, for municipality and population growth throughout the northwest region.

However, Statoil does not support the efforts of WAWS or any other entity that would restrict the rights of other private companies from accessing the Missouri River or Lake Sakakawea. Private water sources are still greatly needed to meet the demand of our industry and to lessen the burdens of the current road and pipeline infrastructure that exists today. Measures that limit access to other water sources will be harmful to the oil industry, result in additional truck traffic, and have a negative impact to the entire region and state.

Again, Statoil supports the WAWS project and will likely purchase water for oil development from WAWS from the depots and taps which are constructed as part of the project. However, Statoil is also working with private companies, which have water permits and can provide service for oil development that cannot be provided by WAWS. It is very important that the WAWS project not be allowed to exclude the participation of private companies. These private companies can coexist with the WAWS project, and while it may impact the industrial water sales of the WAWS project, it will not change the need for the WAWS project to provide water throughout the region for the municipal, domestic, and rural needs that are so important.

Statoil is in support of free enterprise in water sales throughout the state. Statoil also supports the work that the State Water Commission conducts to ensure the protection of North Dakota's water and the management of this valuable resource. We are confident that the State Water Commission will continue to manage this resource effectively for all interests in the state. Statoil asks that you consider legislation that encourages the continued use of private water sources and their rights to source the Missouri River system. Thank you.

I would be happy to discuss this issue in more detail at your convenience.

Sincerely,

Russell Rankin

Williston Regional Manager Bakken

Development & Production North America

Statoil

#### independent water providers



808 11th St. West Williston, ND 58801 Home Phone (701) 572-5873 Cell Phone (701) 770-0942 smortens@wil.midco.net

To: Energy and Natural Resource Committee

March 7, 2013

My name is Steven Mortenson. I am chairman of the Independent Water Providers. Our group was formed during the 2011 Legislative session to promote the use of the state's water resources for the beneficial use of North Dakota and to provide the Legislature with a private sector perspective while it considered creating WAWS (the western are water supply project). We have approximately 70 members in our organization and are adding more every day, consisting of landowners, private businessmen, farmers and ranchers, some of whom have been in this market since 2007. We risked our own capital to develop this market, and have provided 75-85% of the water to the oil industry---which was a vital component to help the oil industry flourish as it has today.

We support the WAWS project and want it to succeed. But, some oversight and restraint on the project is necessary—IF it is to succeed--- and for that reason we support SB 2233, and specifically support:

SECTION 4 (7) which will prohibit WAWS from interfering with access to the Missouri River, and SECTION 11 which will give the State Water Commission more clear authority over WAWS.

In spite of what some suggest, the State Water Commission, and the state engineer does an excellent job of managing the state's water resources. It permits and allocates a certain amount of water to a person applying for a water permit. Anyone in the state has this opportunity to apply for and use this resource. And in spite of what some have stated, the state's aquifers are <u>not</u> threatened by the oil industry, and private water development (as confirmed in a study in December 2011) ---in fact, even WAWS now contemplates using aquifers as a water source. Our state has large sources of water, the Missouri River, Lake Sakakawea and glacial aquifers and is be able to use these resources to help the oil industry recover million of barrels of oil that has brought enormous wealth to the state and our people.

But, activities of WAWS and some of its members threaten the use of these resources---and the long-standing state policy to access Lake Sakakawea and the Missouri River, which is why SECTION 4 (7) is necessary.

WAWS or some of its members began to object to private water development in our region---either from ground water, or Lake Sakakawea. Some of our members will describe these incidents in detail. Two years ago----if you had been told, that if you pass HB 1206---WAWS will then be able to assert exclusive authority to develop water in northwest North Dakota, you might have thought differently. IF you had been told, that by passing HB 1206---WAWS would later object to access or development of Lake Sakakawea, you might have thought differently. Well, that is what has been happening and that is why SECTION 4 (7) is necessary. We cannot have ONE political subdivision dictate water policy for all of us.

The IWP and WAWS have been in negotiations ever since H.B. 1206 was passed two years ago on where to sell water and how much to sell. We have accepted the fact the WAWS will need to sell water to make their payments to the taxpayers of North Dakota. We have conceded that they sell water from the twelve depots they are building---even though they have the capacity to sell many times, that is necessary to pay their loans. (We still disagree with placement of a number of these depots as contrary to the express terms of HB 1206).

We don't want this project to go back to the State. SECTION 11 is necessary to provide more oversight by the SWC. Here's why. The cost of this project has exploded going from \$150 million two years ago, to \$350 million by 2015. The SWC has no real oversight today. The language in HB 1206 was limited as interpreted by WAWS lawyers. The bill provided: "The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval".

And SWC has <u>one</u> member on a board of 11—she attends by phone regularly, is ignored regularly and is outvoted. More importantly-- WAWS views itself as completely unrestrained in spite of your mandate to them in 2011....that ""The western area water supply authority <u>shall consider</u> in the process of locating industrial water depots the <u>location of private water sellers</u> so as to minimize the impact on private water sellers". For these reasons SECTION 11 is also necessary.

Thank you,

Steven Mortenson
Chairman of the IWP

6

#### March 7th, 2013

#### **House Committee on Energy and Natural Resources**

#### Mike Forman- Attorney for Independent Water Providers

#### Outline of Handouts and Presentation

- A highlight of the language in HB 1206 requiring the minimization of impact on Private Water Sellers;
- Around a 120 mile fresh water pipeline was established by Lindale and Brigham in 2009 to address Brigham's freshwater needs and to help reduce truck traffic;
- Local, State and Congressional Leaders all supported this private innovation and encouraged Mr.
   Behan to build more freshwater pipelines;
- Applications started with the State and Corps of Engineers in 2009 and 2010—the 2010
   McKenzie County application on Mr. Behan's private property is included in the handouts;
- The Corps placed a moratorium on the Missouri River/Lake Sakawaea in 2010;
- Mr. Behan worked with North Dakota Governor(s); Congressional delegation (both sides of the
  political aisle) and funded three trips to the Pentagon to meet with Secretary Darcy and Corps
  leaders—all while keeping the Governor's office involved in the process;
- Sadly- MCWRD/WAWS signed by Denton Zubke- Chairman of both WAWS and MCWRD- sent correspondence to the Corps asking them to consider 1926(b) and delay/stop easements and permits;
- The Corps sent a response letter on September 27<sup>th</sup> 2012;
- Further- MCWRD/WAWS (signed by Denton Zubke) sent numerous letters to the SWC (including some the Governor and State Water Commission Members) seeking denial/delay of permits;
- February 7<sup>th</sup> article on Corps release of first Permit (Select/Dale Behan);
- Legal letters sent by and on behalf of MCWRD with regard to 1926(b);
- Documents- ironically- on Mr. Zubke's private depot just west of Watford City- awarded an
  additional 60 acre feet in Summer of 2012 and an additional 500 acre feet request is pending- to
  date no MCWRD letters or protests have occurred to this permit or supplemental acre feet
  request (it is believed the Zubke/Simonson family depot is contracted exclusively to Continental
  with sells around 500k 800k per year);
- R & T Water supply minutes- Private developer told to drill own water well;
- WAWS Condemnation Policy- don't submit- likely will not service rural water;
- Email/Letter from MLB Consulting

### Language Protecting Private Water Sellers From HB 1206 (2011)

#### Sixty-second Legislative Assembly



private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water, supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues, or water sale income, or bond revenue to the authority as determined by the bylaws and future resolutions of the authority. Participating member entities, may not withdraw from the authority or fail or refuse to pay any water sale income or bond revenue to the authority, if any bonds or refunding bonds issued under this chapter remain outstanding or a grant of up to thirty million dollars the fwenty-five million dollar zero interest ioan from the state water commission has not been repaid.

#### 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district.

  McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. Each The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, that the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- 2-2. Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for

### 2010 McKenzie County Application

Application	No	6182
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### STATE OF NORTH DAKOTA APPLICATION FOR CONDITIONAL WATER PERMIT



NOTE: Use one application for each type of source (ground water, surface water). Check-all appropriate boxes and fill in each blank line. If the question is not applicable to your proposed development, enter NA (not applicable). If more space is necessary, attach additional sheets.

(PLEASE TYPE OF PRINT IN INK)

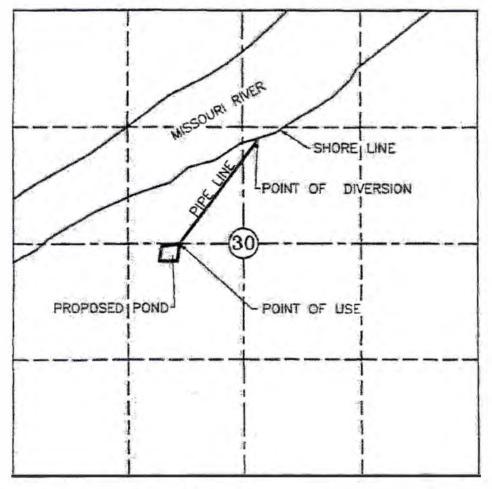
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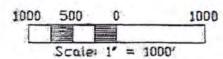
(PLEASE DO NOT SUBMIT A COPY OF THIS APPLICATION FORM.)

State Office Building 900 East Boulevard Bismarck, ND 58505-0850

## SURFACE WATER SOURCE SECTION 30, T.153N. R.101W. MCKENZIE COUNTY, ND



PREPARED BY:
WESTRUM'S LAND SURVEYING
WILLISTON, ND
701-774-8605



To accompany application

No.\_\_\_\_for

BEHAN PROJECT WILLIAMS CO., N. DAK.

DALE & UNDA BEHAN 159 WAGGNER COURT FT. WORTH, TX 76108 APPLICAN

## SURVEYOR'S CERTIFICATE

I. RODNEY A WESTRUM, REGISTERED LAND SURVEYOR WITH WESTRUM'S LAND SURVEYING, DO HEREBY CERTIFY THAT THE ANNEXATION DRAWING AND DESCRIPTION SHOWN HEREON WAS COMPLETED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT THIS DRAWING IS THE CORRECT REPRESENTATION OF THE STATE OF NORTH DAKOTA.

CATH DAY

DNEY A WESTRUM IN SURVEYOR OSTERED LAND SURVEYOR NO. 188

RODNEY A WESTRUM HE REGISTERED LAND SURVEYOR STATE OF NORTH DAKOTA WESTRUM'S LAND SURVEYING

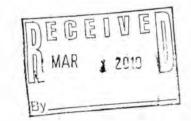
APPROVED:

State Engineer SWC Water Permit No. 6182 720 Western Avenue Minot ND 58701



February 26, 2010

Charles Sorensen Natural Resource Specialist - Oil and Gas Program Lead U.S. Army Corps of Engineers PO Box 527, 201 1st Street Riverdale, North Dakota 58565



Re: International Western Company - "New Town NW" Intake site Proposed Bakken/Three Forks Water Distribution System

Dear Mr. Sorenson:

A completed Corps of Engineers application packet is enclosed requesting Corps approval to construct a Lake Sakakawea screened intake and pumping facility for the purpose of water distribution directly to the Bakken and Three Forks Shale play oil well drilling platforms for the hydraulic fracturing process. The ability to divert and transfer Lake Sakakawea water directly to the oil field plays should relieve the burden on the region's limited groundwater resources and also significantly reduce the current practice of hauling water to the well platform "frac" tanks by truck and thereby resulting in reduced damage to existing roadways.

To briefly summarize, the proposed construction on Corps of Engineers property includes:

- Inclined-tube style screened intake, comprising of:
  - Dual 16 inch diameter tape-wrapped steel casing, each housing a 150 200 HP submersible pump with pump drop pipe and submersible power cable.
  - Stainless steel wire-wound intake screen designed for an intake capacity of 2,100 gallons per minute, and also designed to limit the screen entrance velocity to a maximum of 0.5 feet per second. It is anticipated that the screen slot size will be no greater than 0.125 inch.
  - Concrete intake headwall and work pad to facilitate pump removal and pump installation through casing pitless units. O&M equipment such as an electric winch for pump removal/installation and a small jib crane for pump, motor, and drop pipe handling are also proposed for installation at the headwall work pad.
  - Concrete piping vault below the work pad to house isolation valves, check valves, air release valves, and discharge manifold piping.

The intake line installation will occur using an excavated open trench to allow for the adequate alignment and grade of the steel casings. The underwater trench will be constructed using excavation equipment from a floating barge. Since impacts cannot be avoided, they will be minimized. The surface disturbance on the above water segment will be limited using a trench box. The underwater open trench will be completed with the placement of soils directly adjacent to the trench for immediate restoration following pipe installation. Where fill above the intake casing is required within the Exclusive Flood Pool (EFP), the fill will be obtained from within the EFP at the project site.

701 777 0300



## Sovereign Land Permit #S-1601

International Western Company 3575 Lonestar Circle; Suite 410 Fort Worth, TX 76177

Location:

SW%, NE% Section 35 Township 153 N, Range 93 West, Mountrail County.

C. W. J. C.

### Project Description:

The permittee is hereby authorized to place an intake with screen in the location given above, for the purpose of conveying water for Industrial use.

This authorization is subject to the conditions listed below and the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements". Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and other requirements of state law.

#### General Conditions

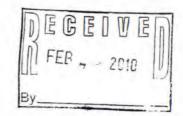
- All construction, maintenance and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the banks or bottom.
- 2. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification at the expense of the Permittee.
- 3. The State Engineer or the State Engineer's representative shall have access to inspect the authorized activity during the construction, and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.
- 4. That by granting this Authorization, no liability for damages of any kind, including but not limited to those caused by improper construction, operation and maintenance, design or failure in design, materials or workmanship is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or their employees, agents, or assigns. The permittee will indemnify and hold harmless the State of North Dakota, its official, employees, agents, boards, commission, and assigns for any and all liability for work performed and action taken under this Authorization.
- Applicant, prior to performing work in the Sovereign Lands, must obtain all
  other necessary permits from other agencies that may apply. Please send
  copies of these permits to the State Engineer for permanent record in this file.
- A conditional water permit must be obtained prior to withdrawal of water from the lake.
- Historical Society Class I and Class III surveys must be completed by the applicant prior to work being performed in this area.

720 Western Avenue Minot ND 58701





Charles Sorensen Natural Resource Specialist - Oil and Gas Program Lead U.S. Army Corps of Engineers PO Box 527, 201 1st Street Riverdale, North Dakota 58565



Re: International Western Company - "Sandstrom" Intake site Proposed Bakken/Three Forks Water Distribution System

#### Dear Mr. Sorenson:

A completed Corps of Engineers application packet is enclosed requesting Corps approval to construct a Lake Sakakawea screened intake and pumping facility for the purpose of water distribution directly to the Bakken and Three Forks Shale play oil well drilling platforms for the hydraulic fracturing process. The ability to divert and transfer Lake Sakakawea water directly to the oil field plays should relieve the burden on the region's limited groundwater resources and also significantly reduce the current practice of hauling water to the well platform "frac" tanks by truck and thereby resulting in reduced damage to existing roadways.

To briefly summarize, the proposed construction on Corps of Engineers property includes:

- Inclined-tube style screened intake, comprising of:
  - Dual 16 inch diameter tape-wrapped steel casing each housing a 150 200 HP submersible pump with pump drop pipe and submersible power cable.
  - Stainless steel wire-wound intake screen designed for an intake capacity of 2,100 gallons per minute, and also designed to limit the screen entrance velocity to a maximum of 0.5 feet per second. It is anticipated that the screen slot size will be no greater than 0.125 inch.
  - Concrete intake headwall and work pad to facilitate pump removal and pump installation through casing pitless units. O&M equipment such as an electric winch for pump removal/installation and a small jib crane for pump, motor, and drop pipe handling are also proposed for installation at the headwall work pad.
  - Concrete piping vault below the work pad to house isolation valves, check valves, air release valves, and discharge manifold piping.

The intake line installation will occur using an excavated open trench to allow for the adequate alignment and grade of the steel casings. The underwater trench will be constructed using excavation equipment from a floating barge. Since impacts cannot be avoided, they will be minimized. The surface disturbance on the above water segment will be limited using a trench box. The underwater open trench will be completed with the placement of soils directly adjacent to the trench for immediate restoration following pipe installation. Where fill above the intake casing is



Bismarck Office



701.323.0200



701.323.0300

3712 Lockport Street Bismarck ND 58503



December 15, 2009

Dale Frink, PE ND State Engineer State Office Building 900 East Boulevard Bismarck, ND 58505-0850

Re: International Western Company Conditional Water Permit Application

Dear Mr. Frink:

A completed Conditional Water Permit Application is enclosed requesting authorization to divert up to 12,000 acre-feet annually from Lake Sakakawea for the purpose of water transfer directly to Bakken/Three Forks Shale play oil well drilling platforms for the hydraulic fracturing process. Also enclosed is a letter from International Western Company designating Houston Engineering, Inc. as their agent for the permit process.

Two separate points of diversion and transmission routes to the proposed main intake water transfer pits are included at this time, and landowner negotiations for pipeline easements are currently on-going. Once a final pipe route has been selected, the required easements will be obtained and copies provided to your office. Concurrent with this conditional water permit application, the U.S. Army Corps of Engineers Section 10/404 permit process has been initiated.

The ability to divert and transfer Lake Sakakawea water directly to the oil field plays should significantly reduce the current practice of hauling water to the well platform frac tanks by truck and thereby resulting in reduced damage to existing roadways. On behalf of International Western Company, we hope you will look favorably upon this request.

Sincerely,

HOUSTON ENGINEERING. INC.

Michael Gunsch, PE

Principal

Enclosure

cc: Dale Behan, President/CEO, International Western Company

Dave O'Shea, HEi-Minot

F 701 237 5101 P 701.237.5065 F 763.493.4522 F 763.493.5572

r 701.852 7931

701 858 5655

Thief River Falls

218.681 2951

Application	No
A LEGISLAND CONTRACT	

# STATE OF NORTH DAKOTA APPLICATION FOR CONDITIONAL WATER PERMIT

NOTE: Use one application for each type of source (ground water, surface water). Check all appropriate boxes and fill in each blank line. If the question is not applicable to your proposed development, enter NA (not applicable). If more space is necessary, attach additional sheets.

1.m/ Lan + 11	worth state Texas Zip 26/22
	Other Phone (6.82) - 831 - 9300
2. Source of water :	supply: □ ground water □ surface water
If surface water:	(a) stream Lake Soleakows tributary of Missouri River
	(b) If new impoundment — 1/4 1/4 Sec, Twp , Rge (c) If existing impoundment, give name
.Point of diversion	
(1) Les 1	1/4 of Section 31 Township   81 N., Range 93 W., Upuntrail Cour
	oints of diversion, if any:
(2) NE 1	1/4 of Section 36 Township 51 N., Range 94 W. Mountail Cour
(3) <u>LL</u> 1	1/4 of Section 31 Township 54 N., Range 94 W., Mc Kenzie Cour
	1/4 of Section_3\ Township_5U_N., Range_94_W.,Mc.KenzieCountries  1/4 of Section Township N., RangeW.,Countries
4 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7	the control of the co
(4) 1	1/4 of Section Township N., RangeW.,Cour
(4) 1.	1/4 of Section Township N., RangeW.,Cour
(4) 1.	1/4 of Section Township N., RangeW.,Coursequested: ,
(4) 1.  4. Amount of water (a) Annual use from 12,000 (AMOUNT)  (b) If Impoundment	requested: .  rom points listed in Item 3 above, rate of diversion, and period of use:  acre-feet at 8 200 cfs from (MONTH-DAY) to Dec. 31 inclusive (MONTH-DAY)
(4) 1.  4. Amount of water (a) Annual use from 12 (200) (AMOUNT)  (b) If Impoundment offset evapore	requested: , rom points listed in Item 3 above, rate of diversion, and period of use:  acre-feet at 8 200 gpm from to Dec. 31 inclusive gpm (MONTH-DAY)  acre-feet storage out of whichacre-feet will be used to prative losses.
(4) 1.  4. Amount of water (a) Annual use from 12 (200) (AMOUNT)  (b) If Impoundment offset evapor (c) Total annual use	requested: .  rom points listed in Item 3 above, rate of diversion, and period of use:  acre-feet at 8 200 cfs from 0 to 0 cfs inclusive (MONTH-DAY) (MONTH-DAY) inclusive ent:acre-feet storage out of whichacre-feet will be used to
(4) 1.  4. Amount of water (a) Annual use from 12 (200) (AMOUNT)  (b) If Impoundment offset evapor (c) Total annual use	requested: , rom points listed in Item 3 above, rate of diversion, and period of use:  acre-feet at 8 200 gpm from to Dec 3 inclusive (MONTH-DAY)  acre-feet storage out of which acre-feet will be used to brative losses.  use requested (sum of annual use from 4a and evaporation from 4b):

Application N	lo
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## STATE OF NORTH DAKOTA APPLICATION FOR CONDITIONAL WATER PERMIT

NOTE: Use one application for each type of source (ground water, surface water). Check all appropriate boxes and fill in each blank line. If the question is not applicable to your proposed development, enter NA (not applicable). If more space is necessary, attach additional sheets.

	(PLEASE TYPE OR PRINT IN INK)
	nt International Western Company (Dale Behan)
Mailing Address	3575 Lonestor Circle Suite 410
City For+	worth State Texas Zip 26172
Home Phone	Other Phone <u>(682) - 831 - 9300</u>
2. Source of water s	supply: ☐ ground water ☐ surface water
If surface water:	(a) stream Labe Sakawea a tributary of Missouri River
	(b) If new impoundment — 1/41/4 Sec , Twp , Rge (c) If existing impoundment, give name
3.Point of diversion	
(1) Dust	/4 of Section_31 Township_15 [ N., Range 93 W., Upun trail County
Additional po	pints of diversion, if any:
(2) NE 1	/4 of Section 36 Township 151 N., Range 94 W., Mountail County
(3) NE 1	/4 of Section 3) Township 154 N., Range 94 W., McKen zie County
(4) <u>UE</u> 1	/4 of Section 35 Township 153 N., Range 93 W., Lountrail County
SE	26 153 93 Mountrail
4. Amount of water	equested: ,
(a) Annual use fro	om points listed in Item 3 above, rate of diversion, and period of use:
18,000 MUDINA)	acre-feet at (2, 1000 gpm) from Jan 1. to Dec 3 inclusive
(b) If Impoundment offset evapor	nt:acre-feet storage out of whichacre-feet will be used to ative losses.
	se requested (sum of annual use from 4a and evaporation from 4b): acre-feet
5. Proposed constru	
	arting date April 1, 2010
Anticipated c	ompletion date December 1,2010

1/spech		
Locati	oN	NOTICE OF APPLICATION RAPPROPRIATION OF WATER
		Application No. 6182
		that Williston Basin Holdings, LLC
		1 to the State Engineer of North Dakota
	tor a permit to dive	rt and appropriate water from: surface water,
	the Missouri	River.
	The application	on is for a permit to divert and appropriate water
	from a point or poin	nts on the land described as follows:
	The NE1/4 of Sec	tion 30, Township 153 N., Range 101 W.
	The applicati	on requests an average approximate rate of
	<b>1,680</b> gallon	s per minute of water during the operating
	season for each yea	r said permit may remain in force, with an
	annual appropriation	on of 1,950.0 acre- feet, for the purpose of:
	Industrial use.	
	Notice of App	lication will be published in the:
	McKenz	ie County Farmer – Watford City, ND
t 1 i	comments regarding the State Engineer, Sta Dakota 58505-0850. Vindividual filing said of comments and prepare applicant and persons	te of Application will give a date by which written is proposed water permit application must be filed with the Office Building, 900 East Boulevard, Bismarck, North Written comments must include the name and address of comments. The State Engineer will consider all written a recommended decision, which will be provided to the submitting written comments. Those persons may mation, request a hearing or both.
	Dated this	day of <u>September</u> , 20 10.
		Market Jul
		Applicant

SWC Notice of Application Form

## **McKenzie County Letters to the Corps of Engineers**



Water Resources District Board 205 6th St. NW - (Melling addr.) 201

205 6th St. NW - (Malling addr.) 201 5th ST.NW, Suite 1456 Watford Clay ND 58854

Tel: 701-842-2821 ext 7 - Fex: 701-842-2822

\* Denton Zukka, Chairmen PO Box 927 Watford City, ND 88854-0927 701-444-6484 work 701-842-3081 home dentonz@ziskobai .org July 5, 2012

Jo Eilen Darcy, Assistant Secretary of the Army, Civil Works 108 Army Pentagon Washington, DC 20316-0108

Gono Vooder/Vies-Ci PO Bax 699 Waterd City, ND 58664-0899 701-444-2804 gueeder@co.meterzia.ad.us

Re: Private Water Permits within McKenzie County

Doer Assistant Socretary Darcy

LeeTjolde,SourdMember \$4584 ISAY 200 Cartwright, ND 58836 701-528-3008 gisesyes@yaboo.com

Leff Jellowod, Boerd Member 1055f HWY 1606 E New Town, ND 56765-8084 701-875-3490 jelmed@reshi.m (

Land Haugen, Bourd Merhbur 14914 hay 68 Alexander, NO 68631 701-528-3665 home 406-486-1704 call

Cast Hotier
Assistant Mereger
Watland City, ND 58884
701-02-2521
701-250-5701-048

CHARLES THE REAL PROPERTY.

The Makenzie County Water Resource District (MCWRD) is informed of various parant spolications and current intentions by private parties who intend to divert water from the Missouri River and create an expression tripolitie system to sell significant smeants of water to the off industry within McKerrie County. In some instances, this information has been coupled with demands by the independent water provider community for MCWRD and the Western Ares Water Supply Ambortly to reduce their water sales at water depots so as not to compete with the private water sellers. While MCWRD has historically not objected to the development of isolated private water sellers to meet the demands of the off industry, the more resent private development plans are simply too extensive to allow to proceed given MCWRD's significant investment in infrastructure and need to generate income to repay its federal lean obligations as well as the state form obligations authorized in House Bill 1206 during the last legislative session.

MCWRD is requesting information from these private water sollors, out of occurry that these capitles may be encrosching on the MCWRD water franchise area. Federal law is very protective of a rural water system's water sales tendory if the rural water system is independ in the Federal government through a fixtural loss for the water system's infrastructure. See 7 U.S.C.A. 1926(b). MCWRD has outstanding foderal Rural Development losus through the UEDA and qualifies for the franchise protection of Section 1926(b).

MCWRD believes that the grane of water appropriation pennits by the State Engineer's Office or the second pennits and casements by the Corps would constitute preventmental action that will provide a private water franchise to develop within the MCWRD jurisdiction. The purpose of this latter is to advise youther McWRD intends to protect its franchise territory from farther unersestment by private water sallows, and to request that you forego the issuance of any primits for polyate water development within McKenzie County without engaging MCWRD in discussion for each permit requested.

Respectfully,

Denton Zubke Chairman of MCWRD



# DEPARTMENT OF THE ARMY OFFICE OF THE ASSISTANT SECRETARY CIVIL WORKS 108 ARMY PENTAGON WASHINGTON DC 20310-0108

SEP 2 7 2012

Mr. Denton Zubke Chairman, McKenzie County Water Resources District 201 5<sup>th</sup> Street, NW, Suite 1456 Watford City, North Dakota 58854

Dear Mr. Zubke:

This is in response to your July 5, 2012, letter concerning private water permits within McKenzie County. I apologize for the delay in responding.

In your letter you requested that the Corps of Engineers (Corps) engage the McKenzie County Water Resources District (MCWRD) in discussions prior to issuing surplus water agreements or easements associated with private water development within McKenzie County. You contend that executing such agreements or easements could facilitate a private franchise within the boundaries of your service area, thereby undermining the protections granted by Section 306(b) of the Consolidated Farm and Rural Development Act, 7 U.S.C. Section 1926(b).

The Corps has completed an extensive public review process in formulating the Final Garrison Dam/Lake Sakakawea Project Surplus Water Report and Environmental Assessment to support the granting of easements and the execution of surplus water agreements for the withdrawal of water for municipal and industrial purposes at Lake Sakakawea. To my knowledge, your letter of July 5 is the first reference made to the potential applicability of 7 U.S.C. 1926(b), and requires further review.

I am requesting the Omaha District of the Corps to review the issues you raise and to respond to your letter. My staff point of contact for coordination of this matter is Mr. Andrew Hagelin, <a href="mailto:andrew.hagelin@us.army.mil">andrew.hagelin@us.army.mil</a> or (703) 697-7084, and the point of contact in the Omaha District is Mr. Larry Janis, <a href="mailto:Larry.D.Janis@usace.army.mil">Larry.D.Janis@usace.army.mil</a> or (402) 995-2440.

Thank you for your interest in the Army's Civil Works program.

Very truly yours,

Assistant Secretary of the Army

(Civil Works)

## McKenzie County/WAWS Letters to SWC Protecting Private Water Permits



August 20, 2012

Norm Haak, President North Dakota Water Users Association PO Box 2254 Bismarck, ND 58502-2254

RE: Clarification of McKenzie County Letter Regarding Permit Issuance

Dear Mr. Haak and NDWUA Board Members:

This letter is to clarify a quote made in a North Dakota Water Users Association (NDWUA) Memo dated July 24, 2012 to Governor Dalrymple, State Engineer Todd Sando, and State Water Commission Members. The Memo references a letter from the McKenzie County Water Resources District (MCWRD) Board requesting that MCWRD be engaged in discussion for each water permit application request that may encroach on the MCWRD water franchise area.

The NDWUA Memo quotes that the MCWRD is asking the State Engineer and the Corp of Engineers to "forego the issuance of any permits for private water development". That quote is only a portion of a larger sentence in the MCWRD letter which states, "The purpose of this letter is to advise you that MCWRD intends to protect its franchise territory from further encroachment by private water sellers, and to request that you forego the issuance of any permits for private water development within McKenzie County without engaging MCWRD in discussion for each permit requested."

The NDWUA Memo goes on to state that "this position (referencing MCWRD's position on 1926(b)) is completely adverse to the long standing water policy and long standing efforts to develop North Dakota's right to the Missouri River." In contrast, MCWRD fully supports putting the Missouri River water to beneficial use for the State of North Dakota. We are disappointed that MCWRD intentions were misrepresented in this manner.

As a member of the NDWUA, MCWRD supports the NDWUA's goals to develop and perfect the Missouri River water and is in support of future economic development initiatives. We also believe these initiatives need to be balanced with the goals and obligations of current projects. MCWRD and every rural water system with Federal Rural Development loans through USDA are protected by Section 1926(b). This Federal law is in place to protect the water sales territory if the rural water system is indebted to the Federal government and has been used several times across North Dakota to ensure the financial viability of rural water systems.



Additionally, MCWRD is part of the larger Western Area Water Supply Project which is obligated to pay back State loans through the sale of industrial water. Given our financial obligations to the State and Federal governments, MCWRD is very interested in being engaged in the water permit application process when it directly affects McKenzie County. We would expect that the NDWUA would be concerned with the financial viability of the many rural water systems in the State as well as ours.

MCWRD believes this issue is vitally important to all NDWUA members. We would appreciate the opportunity to schedule a time at your next board meeting to allow us to fully inform the board of the threats to our system and the intentions of the MCWRD.

Respectfully,

Denton Zubke

Chairman of MCWRD

cc: Governor Jack Dalrymple

State Water Commission Members

Todd Sando, State Engineer

Mike Dwyer, NDWUA Executive Director



Water Resources District Board

205 6th St. NW - Mailing; 201 5th St NW, Suite 1456

Watford City, ND 58854

Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org

Gene Veeder, Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701-444-2804 gveeder@co.mckenzie.nd.us

> Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-828 3008 glaseyes@yahoo.com

Leff Jellesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 jellesed@restel.net

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City, ND 58854 701-842--2821 701-290-6791 cell checker@co.mckenzie.nd.us September 3, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit number ND2012-14330 submitted by Park Construction Co. that is intended to take water from Cherry Creek McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns for domestic and agricultural users. The Board also feels there are other reliable sources to better serve this type of water use in McKenzie County.

Sincerely,

**Denton Zubke** 

Chairman



Water Resources District Board

205 6th St. NW • Mailing; 2015<sup>th</sup> StNW, Suite 1456 Wafford City, ND 58854 Tel:701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444 6484 work 701-842-3081 home dentonz@dakotawestcu.org

Gene Veeder,Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701-444-2804 gveeder@co.mckenzie.nd.us

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Leif Jellesed, Board Member 10561 HWY 1806 F New Town, ND 58763-9084 701-675-2490 jellesed@restel.net

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City, ND 58854 701-842--2821 701-290-6791cell checker@co.mckenzie.nd.us October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14462 submitted by North Star Energy and Construction, LLC that is intended to take water from the Arnegard Dam in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman

McKenzie County Water Resource District

cc. North Star Energy



Water Resources District Board

205 6th St. NW - Mailing; 201 5th St NW, Suite 1456 Watford City, ND 58854

Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org

Gene Veeder,Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701-444-2804 gveeder@co.mckenzie.nd.us

> Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-826 3008 glaseyes@yahoo.com

Leff Jellesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 jellesed@restel.net

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City,ND 58854 701-842-2821 701 290-6791celi checker@co.mckenzie.nd.us October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14470 submitted by Northwest Transfer that is intended to take water from Demmicks Lake in McKenzie County for industrial use. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman



Water Resources District Board

205 6th St. NW - Mailing; 201 5th St NW, Suite 1456 Watford City, ND 58854

Tel:701-842-2821 ext. 7 - Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org

Gene Veeder,Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701-444-2804 gveeder@co.mckenzle.nd. us

> Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-828-3008 glaseyes@yahoo.com

Leif Jellesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 jellesed@restel.net

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City, ND 58854 701-842-2821 701-290-6791cell checker@co.mckenzie.nd.us October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14454 submitted by SM Energy Company that is intended to take water from an un-named pond in McKenzie County for industrial use. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman



Water Resources District Board

205 6th St. NW • Mailing; 201 5<sup>th</sup> St NW, Suite 1456 Watford City, ND 58854

Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org

Gene Veeder, Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701-444-2804 gveeder@co.mckenzie.nd.us

> Lee Tjelde,Board Member 14984 HWY 200 Cartwright, ND 58838 701-828-3008 glaseyes@yahoo.com

Leff Jellesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 jellesed@restel.net

Lane Haugen,Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City,ND 58854 701-842-2821 701-290-6791cell checker@co.mckenzie.nd.us October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14477 submitted by Ronnie and Mavis Berry that is intended to take water from the Yellowstone River for industrial use in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns over bank stabilization, contamination, and infrastructure concerns.

Sincerely,

**Denton Zubke** 

Chairman



Water Resources District Board

205 6th St. NW - Mailing; 201 5th St NW, Suite 1456 Watford City, ND 58854

Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org

Gene Veeder,Vice-Chairman PO Box 699 Watford City, ND 58854 0699 701-444 2804 gveeder@co.mckenzie.nd.us

> Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-828-3008 glaseyes@yahoo.com

Leif Jellesed, Board Member 10561 HWY 1805 E New Town, ND 58763-9084 701-675-2490 jellesed@restel.net

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City,ND 58854 701 842--2821 701-290-6791cell checker@co.mckenzie.nd.us October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14488 submitted by Northwest Water Transfer that is intended to take water from Missouri River for industrial use in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns over bank stabilization, contamination, and infrastructure concerns.

Sincerely,

Denton Zubke

Chairman

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## Corps agrees to release lake water for industry

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Editoraty 97, 2012 2.65 (a) By LAUREN DONOVAN | Bismarck Tribune

A company that plans to sell Lake Sakakawea water for hydraulic fracturing will get a temporary, five-year permit under the first surplus water agreement approved by the U.S. Army Corps of Engineers and signed Wednesday.

elect Energy Services, formerly International Western, can draw 6,000 acre feet annually from a selected site along the lake in Williams County.

That's enough to frack about 1,000 wells at roughly 2 million gallons per well.

For now, the company won't be charged for the water while the corps works to come up with a "storage" fee for holding the surplus water in the Garrison Dam reservoir.

It has proposed an annual fee of \$21.60 per acre foot, which for Select Energy would amount to \$130,000.

The corps is conducting a surplus water study across the country and will suspend fees until it comes up with a rule and national policy for handling the water, according to corps' spokesperson Monique Farmer.

Preach reporter Leaven Donoven at 701 (274-851); or lauren@westriv.com

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## **Cease and Desist Letter**



Water Resources District Board

205 6th St. NW - (Mailing addr.) 201 5th ST. NW, Suite 1456 Watford City, ND 58854 Tel: 701-842-282i - Fax: 701-842-2822

Denton Zubke, Chairman PO Box 827 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotswastcu.org January 4, 2013

Dale Behan Lindale Pipeline, LLC 600 N. Carroll Avenue Southlake, TX 76092

Gene Veeder, Vice-Chairman PO 80x 699 Watford City, ND 58854-0899 701-444-2804 gveeder@co.mckanzia.nd.u.s Re: Request for approval of 3 McKenzie County, North Dakota irrigation ponds

Dear Mr. Behan,

Lee Tjelde,Board Member 14984 H WY 200 Cartwright, ND 58838 701-828-3008 glaseyes@yahoo.com At the McKenzie County Water Resource District (MCWRD) meeting on December 18, 2012, your representatives from Epic Engineering presented a request for the approval of the construction of three containment ponds to impound water for irrigation purposes, to provide for irrigation of adjacent farmland.

Lelf Jaliesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 }eliesed@restel.net Given the State's anti-corporate farming law and the fact that we have not previously heard that Lindale Pipeline was in the business of supplying irrigation waters supplies, MCWRD wants to relterate that these impoundments cannot be used for any industrial water supplies. Be advised that the MCWRD's approval of these three impoundments is specifically contingent upon and conditioned upon the fact that they are solely for storage of irrigation water and to be used for irrigation purposes. As MCWRD has previously advised you, the Lindale Pipeline LLC's plan to sell industrial water within McKenzie County violates the MCWRD franchise territory protection afforded by federal and state law. In addition to the federal franchise protection afforded by 7 USC 1926b, MCWRD's industrial water sales franchise is protected by two state-statutes since MCWRD has outstanding loans financed by the North Dakota Public Finance Authority (NDCC 6-09.4-22) and/or funding through the State Water Commission (NDCC 61-02-68.18).

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-828-3555 home 406-489-1704 cell

You are hereby advised that, to the extent the ponds are used for any industrial water to be sold in McKenzie County, it will be a violation of the terms and conditions of this permit approval and will subject you to immediate enforcement action in the form of a permanent injunction to prohibit use of the ponds as well as any and all other remedies available pursuant to state and federal law.

Clint Hecker
Assistant Manager
Walford City,ND 58854
701-842--2821
701-290-6791 cell
Checker@co.mckenzie.nd.us

Very truly, yours,

Denton Zubke
MCWRD Chairman



#### Water Resources District Board

205 6th St. NW - (Mailing addr.) 201 5th ST. NW, Suite 1456 Wafford City, ND 58854

Tel: 701-842-2821 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org January 15, 2013

Select Energy Services 1551 South Sunset Street, Suite A Longmont, CO 80501 Select Energy Services PO Box 1826 Williston, ND 58802

Re: Proposed Water Project

Dear Select Energy Services,

Gene Veeder,Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701 444-2804 gveeder@co.mckenzie.nd.us

The McKenzie County Water Resource District (MCWRD) understands that you have applied to the State Water Commission for water appropriation Permit Number 6182, requesting 1950 acre feet of water annually in McKenzie County. I write to get more information about your plans to put that significant water supply to use.

Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-826-3008 glaseyes@yahoo.com MCWRD is in the business of selling water to meet McKenzie County water supply needs. MCRWD is a rural water district that supplies water for domestic, commercial, rural and industrial uses throughout the entirety of McKenzie County. In order to meet these public water supply demands, MCWRD has also invested heavily in infrastructure, including a large transmission line from the Williston Treatment Plant throughout McKenzie County and the construction of industrial water depots at Indian Hill and in Keene. Much of MCWRD is infrastructure was constructed using federal USDA Rural Development loans.

Leif Jellesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 iellesed@restel.net

The fact that MCWRD has these federal loans outstanding is significant. Federal law is very protective of a rural water system's water sales territory if the rural water system is indebted to the Federal government through a federal loan for the water system's infrastructure. See 7 U.S.C.A. 1926(b). Pursuant to Section 1926(b), federal law does not allow public or private water systems to develop or expand in a manner that will encroach on an indebted rural water system's territory and take sales from the rural water system.

Clint Hecker Assistant Manager Watford City,ND 58854 701-842-2821 701-290-6791cell checker@co.mckenzie.nd.us

MCWRD has no information about your specific plans to develop this private water system. Please consider this letter as a request for information for your plans to develop a private water system, with specific information about your intended client base, water supply, depot location and pipeline development plans so MCWRD can better assess any 1926(b) franchise encroachment concerns.

In addition, there are two state statutes that provide similar franchise protection to rural water districts that built infrastructure using loans from the State of North Dakota Public Finance Authority (NDCC 6-09.4-22) and/or loans from the State Water Commission (NDCC 61-02-68.18), both of which apply to MCWRD. An example of the protection provided to water districts that have outstanding loans or indebtedness to the State Water Commission is found in the following relevant language:

1. The service provided or made available by owners of water projects through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the owners of water projects from the commission or any other state entity, may not be curtailed or limited by inclusion of all or any part of the area served by the owners of water projects within the boundaries of any other owners of water projects, or by the granting of any private franchise for similar service within the area served by the owners of water projects, during the term of the guarantee or loan. (NDCC 61-02-68.18)

It is noteworthy that the statute defines an "owner" of an encroaching water project as including private companies like yours. As such, state and federal law provide protection of MCWRD's water sales franchise territories from encroachment by private entities who wish to develop competing water sales businesses. Given MCWRD's significant investment in infrastructure and need to generate income to repay its federal obligations, MCWRD needs more information to fully evaluate your project.

MCWRD has recently initiated discussions with another party that similarly planned to develop a private water system within MCWRD's franchise area. I have attached a letter that our legal counsel sent to West Dakota Water's legal counsel, outlining MCWRD's legal rights and obligations to the USDA to protect our collateral for a Rural Development plan. As you can see, the law strongly favors USDA-indebted entities and provides some relatively onerous legal remedies to MCWRD. I am also attaching a legal opinion from September 2012, which very clearly reflects the USDA's position that 1926(b) rights apply to sales of non-potable water within an exclusive franchise area.

MCWRD is meeting with another private water seller in hopes to reach an agreement whereby MCWRD can allow some private water sales within the franchise area. MCWRD would welcome a similar meeting with your office to discuss how you can develop a water supply within our franchise area. Without an agreement with MCWRD, any construction of a private water system could be subject to enforcement action, which has some fairly onerous remedies. We would appreciate hearing from you within two weeks.

Respectfully,

Denton Zubke

Cc:

WAWSA Board Members

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Fed. I.D. 73-1034582

#### Email: johnp@jmacresources.com and Certified U.S. Mail

September 17, 2012

Mr. John Petrik Attorney at Law JMAC Resources 5009 139th Ave NW Williston, ND 58804

Re: Title 7, United States Code, Section 1926(b)

Dear Mr. Petrik:

We have spoken a few times by telephone regarding the prospect of organizing a meeting between our respective clients. I understand your client is West Dakota Water (an entity affiliated with JMAC Resources) ("WDW"). My client is McKenzie County Water Resource District ("McKenzie" or "District").

The McKenzie Board engaged me to review the district's formation documents associated with the origination of McKenzie, McKenzie's federal loans (existing and in process), McKenzie's physical ability to provide water service within its territory and federal statutory rights enjoyed by McKenzie's pursuant to 7 U.S.C. § 1926(b) ("§ 1926(b)").

<sup>&</sup>quot;(b) 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." 7 U.S.C. § 1926(b)

Moongate, the encroacher was a <u>privately owned water company</u> that was selling water in competition with Butterfield. Butterfield was indebted to the USDA. The federal district court enjoined Moongate from selling water in competition with Butterfield pursuant to § 1926(b). This decision by the district court was affirmed on appeal to the 10th Circuit.

It is important to note that § 1926(b) preempts all state and local laws which function to frustrate or deny McKenzie's right of exclusivity under § 1926(b). When North Dakota authorized McKenzie to borrow money from the federal government the State of North Dakota accepted all of the federal statutory and regulatory restrictions associated with such borrowing. § (§ 1926(b) is "Spending Clause" legislation.) This federal preemption serves to functionally nullify the granting of any franchise or permit by local or state government which functions to allow some other entity (public or private) to sell water in competition with McKenzie.

McKenzie has in the past, and continues to provide "industrial" water service in addition to domestic potable water service. McKenzie is in the process of expanding its industrial capacity to satisfy anticipated future demand. You will note that § 1926(b) is intended to protect the "service provided or made available" by the federally indebted entity. Because McKenzie provides both domestic and industrial water service, both aspects of such service would fall within the scope of § 1926(b) protections.

I anticipate that WDW may attempt to draw a distinction under § 1926(b) between sales of raw water and treated water. For purposes of § 1926(b) I see no meaningful distinction between water that has received no treatment whatever, and water that has been treated to some degree. The

<sup>&</sup>lt;sup>5</sup> "We held that "where the federal § 1926 protections have attached, § 1926 preempts local or state law that can be used to justify ... encroachment upon [a] disputed area in which an indebted association is legally providing service under state law." Id. at 715 (emphasis added) (internal quotation marks and brackets omitted). In other words, a state or local government may not act "to take away from an indebted rural water association any territory for which the association is entitled to invoke the protection of § 1926(b)." Id. at 716 (emphasis added)." Moongate Water Co., Inc. v. Dona Ana Mutual Domestic Water Consumers Ass'n 420 F.3d 1082, 1090 (10th Cir.2005).

<sup>&</sup>quot;Application of § 1926 to the facts of this case is similarly consistent with the limits of the Spending Clause. "Congress' spending power enables it to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives." Kansas v. United States, 214 F.3d 1196, 1198 (10th Cir.2000) (quoting Fullilove v. Klutznick, 448 U.S. 448, 474, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980))." Glenpool Utility Services Authority v. Creek County Rural Water Dist. No. 2, 861 F.2d 1211, 1216 (10th Cir.1988)

<sup>&</sup>quot;Oklahoma thus authorized District No. 2 to borrow from the federal government and to enter into any required agreements in connection with those loans. In so borrowing, Oklahoma-through its authorized entity District No. 2-bound itself and all of its subdivisions, including the City of Glenpool, to the conditions it had accepted." Glenpool, 861 F.2d 1211 (10th Cir.1988)

level or extent of treatment is irrelevant in the context of § 1926(b). § 1926(b) has been broadly construed to accomplish its purposes. "Fine line distinctions" or narrow interpretations of § 1926(b) have been uniformly rejected by the Courts. Drawing any distinction between the physical character of water being sold, would simply constitute some effort to create a "loophole" in the statute. In City of Madison, Miss. v. Bear Creek Water Ass'n, Inc. 816 F.2d 1057, 1059 (5th Cir.1987) the 5th Circuit described § 1926(b) as an "absolute prohibition", forbidding any efforts to create a loophole or circumvent the law.

At least one purpose of the statute is to cause McKenzie to expand to obtain the maximum number of customers as is possible so that McKenzie will achieve an economy of scale. See James Island Public Service Dist. v. City of Charleston, South Carolina 249 F.3d 323, 330 (4th Cir.2001). Another purpose (as noted in James Island) is to protect McKenzie's ability to repay its federal loans. § 1926(b) protection has the further indirect beneficial effect of protecting McKenzie's ability to repay it state loans and other contractual obligations.

Lastly on the issue of industrial water sales, I have had prior experience with another § 1926(b) protected water district in North Dakota relative to its § 1926(b) rights associated with the industrial sale/use of non-potable water. There was no scrious dispute that § 1926(b) was applicable to such industrial water sales and the issue was resolved amicably.

#### Settlement Negotiations With Competing Water Providers:

McKenzie is permitted (subject to USDA regulations) to sell or license portions of its facilities or territory to competitors. Any such sale or license, and the amount of compensation to be received by McKenzie from such purchaser(s)/licensee(s) must be approved by the USDA. In City of Madison, Miss. v. Bear Creek Water Ass'n, Inc. 816 F.2d 1057, 1060 (5th Cir.1987) the Court held:

<sup>&</sup>lt;sup>6</sup> "To read a loophole into this absolute prohibition, as Madison would have us do, and allow a city to do via condemnation what it is forbidden by other means, would render nugatory the clear purpose of § 1926(b)." City of Madison, Miss. v. Bear Creek Water Ass'n, Inc. 816 F.2d 1057, 1059 (5th Cir.1987)

<sup>7 &</sup>quot;Section 1926(h) protects from curtailment or limitation not only the ability of James Island to pay its federal debt, but also the "service provided" by the District, 7 U.S.C. § 1926(h) (emphasis added). Thus, § 1926(b) safeguards James Island's "ability to repay its federal loan and to provide low perf Juser cost to its customers." Bell Arthur Water Corp. v. Greenville Utils. Comm'n, 173 F.3d 517, 524 (4th Cir.1999). "[Bloth of these goals depend on economics of scale and maximization of [the district's] entire customer base, and can only be accomplished by treating the protection as applicable to the entire service area rather than merely the increments improved by the loan." Id. See also North Alamo Water Supply Corp. v. City of San Juan, 90 F.3d 910, 915 (5th Cir.1996). James Island Public Service Dist. v. City of Charleston, South Carolina 249 F.3d 323, 330 (4th Cir.2001) (emphasis added)

"Our interpretation of § 1926(b) is also inferentially supported by FmHA regulations regarding the transfer of water facilities subject to FmHA liens. These regulations require that any transfer must be approved by FmHA to insure that services will not be curtailed and that repayment of the FmHA loans is not jeopardized. 7 C.F.R. 1951.209, 1951.214 (1986). The regulations also suggest an alternate means by which the city might acquire the facilities it desires, in the context of a consensual sale."

Nearly all § 1926(b) disputes are eventually settled. Settlements my firm has negotiated in the past, have been varied to meet the needs of the client and the competitive water seller. Most often the settlement has been premised on payment by the competitor of a license fee for permission to sell water within the district's territory. The fee has been calculated in a variety of ways and can be volume based (royalty calculated on a price per thousand gallons basis). USDA has adopted a flexible policy in approving such settlement arrangements. In the past 23 years I have never seen the USDA refuse to approve a settlement that was proposed by a district.

This letter is not intended to suggest or indicate that any firm decision has been made by McKenzic wherein it will grant WDW permission or a license to provide water service inside of McKenzie's protected service area. However, I understand that McKenzie is willing to meet and discuss the matter with representatives of WDW.

#### Evidence Supporting the Four (4) Elements Of § 1926(b):

#### 1. Legal Right Of Mckenzie To Sell Water in McKenzie County

North Dakota statutes grant McKenzie extensive powers which include the legal right and power to sell water. This legal right element of § 1926(b) is rarely challenged in court actions. I find no basis which would support a challenge here.

Some courts include within this first element the requirement that McKenzie demonstrate it is a "qualifying entity". McKenzie was formed in accord with state law for purposes which satisfy § 1926. McKenzie would not have been able to borrow money from the USDA if it was not a "qualifying entity", thus this element is satisfied.

#### 2. McKenzie Is Indebted To The Federal Government (USDA)

I have reviewed USDA loan documentation provided to me by McKenzie. McKenzie satisfies the federal debt requirement of § 1926(b).

#### 3. McKenzie Has Made Water Service Available

Engineering data, including maps, location of water delivery facilities, and expansion of those facilities currently in process provided to me, as well my discussion with McKenzie's engineer, indicate that McKenzie is currently providing industrial water service and has made industrial water service available as those terms have been interpreted by the Courts when construing § 1926(b). The "made service available" element is usually a "customer by customer" analysis.

Therefore as new customers appear in the future, each such customer must be reviewed by McKenzie's engineer.

### 4. Existence Of Or Threatened Competitive Water Sales

McKenzie has provided to me sufficient information for me to conclude that third parties are planning to sell water in competition with McKenzie, namely WDW.

As noted above, these four (4) factual issues are construed in a light most favorable to McKenzie. To the extent a competitor of McKenzie suggests or claims that there is doubt regarding whether McKenzie has or can satisfy the four (4) elements listed above, all such doubts should, as a matter of 8th Circuit law, be resolved in favor of McKenzie.

#### Defenses To Enforcement of § 1926(b) Rights:

§1926(b) allows very few defenses because it is deemed a "public policy" statute. Equitable defenses such as waiver, laches and estoppel are not permitted. The 5th and 7th Circuits have refused to allow equitable defenses to a § 1926(b) suit.

#### Remedies:

McKenzie has available to it extensive remedies under § 1926(b). These remedies include but are not limited to the granting of an injunction preventing/forbidding competitive water sales, damages for any past water sales and forfeiture of infrastructure utilized by the competitor to violate § 1926(b). <sup>10</sup> As noted in North Alamo, federal courts have broad discretion to fashion a suitable remedy. In addition to these remedies, to the extent any competitor is utilizing state powers and is considered a "state actor", McKenzie is entitled, pursuant to 42 U.S.C. § 1983, to an attorney fee award and its costs of litigation against the competitor if suit is filed.

<sup>&</sup>lt;sup>8</sup> Jennings Water, Inc. v. City of North Vernon, Ind. 895 F.2d 311, 317 (7th Cir.1989)

<sup>&</sup>lt;sup>9</sup> "At least one circuit court has refused to apply principles of equity to block application of the statute, arguing that the very strong public interest promoted by § 1926(b) is more important than individual equitable concerns. See Jennings Water, Inc. v. City of North Vernon, 895 F.2d 311, 316-17 (7th Cir.1989) (equitable estoppel). We agree. We have previously refused "[t]o read a loophole into this absolute prohibition" provided by § 1926(b), Bear Creek, 816 F.2d at 1059, and we will not begin now." Post Oak Special Utility Dist. v. City of Coolidge, TX 1996 WL 556992, 4 (5th Cir.1996).

<sup>&</sup>lt;sup>10</sup> "We conclude that in <u>ordering the transfer of the infrastructures to the Utility</u>, the district court did not abuse its discretion. Rule 54(c) vests district courts with broad discretion to fashion a remedy, even if the remedy awarded is not specifically requested in the prayer for relief." *North Alamo Water Supply Corp. v. City of San Juan, Tex.* 90 F.3d 910, 918 -919 (5th Cir.1996) (emphasis added)

#### Conclusion:

This letter is intended to frame the legal issues which may be the topic of discussion between McKenzie and WDW. It may be helpful to speed the negotiation/discussion process between WDW and McKenzie for WDW to provide information regarding where specifically it would like to sell water (inside of McKenzie's federally protected service area). Please note that McKenzie's federally protected service area, is not limited to McKenzie County and not limited to the political boundaries of McKenzie. Its federally recognized service area is that area where McKenzie has the legal right to sell water, and where McKenzie has made water service available or can do so within a reasonable period of time.

I look forward to working with you and your client to achieve an amicable resolution that is advantageous to both McKenzie and WDW.

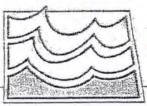
Best regards,

Steven M. Harris

1682-2,Petrikltr:tf

cc: Board of Directors of McKenzie





## North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850 701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET; http://swc.nd.gov

## WATER APPROPRIATION DIVISION (701) 328-2754

February 7, 2011

Ms. Alice Simonson Box 512 Watford City, ND 58854

Dear Ms. Simonson:

Denton Zubke has mailed us the 2010 report of annual water use at your water sales depot, as per Water Permit Nos. 3882 and 6106. On the form for Permit No. 6106, Mr. Zubke asks whether a note on the form will suffice as a request for an increase in pumping rate or if a separate letter is required. A separate letter is required. Section 89-03-02-11 of the North Dakota Administrative Code states, "Requests to increase a permittee's pumping rate must be made in writing to the state engineer." We have received your February 7, 2011 letter requesting the increase in pumping rate and the signed stipulation/waiver for Permit No. 3882.

In your reported 2010 industrial water use, Mr. Zubke included:

130.6 acre-feet as per Permit No. 6106,

20 acre-feet of a permitted 25 acre-feet as per Temporary Permit ND2010-4393.

19.4 acre-feet for industrial use as per Permit 3882, and

45 acre-feet allowed for irrigation as per Water Permit No. 3882.

A lower-rated type of water use, industrial, can be converted to a higher rated type of use, irrigation, but not vice versa. Permit No. 3882, which is part irrigation and part industrial, can be converted to all irrigation, but cannot be converted to all industrial. Therefore, the 45 acre-feet permitted for irrigation in Permit No. 3882 cannot be converted to industrial use. Temporary one-year conversions of ongoing irrigation water use to industrial use are being allowed in 2011. However, since you have not irrigated for the past 17 years, you have no 'ongoing irrigation use' to convert. You are therefore permitted 150 acre-feet for industrial use in 2011, 130.6 acre-feet from Permit No. 6106 and 19.4 acre-feet from Permit No 3882. Later this year, towards fall, we will review the effect the increased pumping is having on water levels in the Tobacco Garden aquifer and consider granting all or part of the remaining 69.4 acre-feet per year, keeping in mind your waiving of the 45 acre-feet for irrigation.

Sincerely,

Alan Wanek, Hydrologist Manager

AW:sc/3882/6106

co:

Denton Zubke PO Box 927

Watford City, ND 58854

#### STATE OF NORTH DAKOTA

## CONDITIONAL WATER PERMIT NO. 6106

# ATTACHMENT "B" Approval of Portion Held in Abeyance

Conditional Water Permit No. 6106 is approved for the annual appropriation of 130.60 acrefeet of ground water, from the point of diversion located in the NE1/4 of Section 22, Township 150 N., Range 099 W., at a maximum pumping rate of 1,000 gallons per minute for industrial use. The remaining 69.40 acre feet of ground water initially requested was held in abeyance.

A comprehensive hydrogeologic analysis of the permit evaluation area was conducted. It is recommended in staff memorandum dated March 15, 2012, that an additional 69.4 acrefeet of water held in abeyance be approved. All parties of record on the permit were notified of the recommendation, and the deadline to submit comments or concerns was 5:00pm, Wednesday, May 16, 2012. The only comment received was from Rodney Johnsrud, who stated he was not requesting a hearing in regard to the application.

Therefore, on Monday, June 11, 2012, the State Engineer approves the following:

An additional 69.4 acre-feet of water, which was previously held in abeyance.

Conditional Water Permit No. 6106 is hereby approved for the following:

200:0 acre-feet of ground water annually, from the point of diversion located in the NE1/4 of Section 22, Township 150 N., Range 099 W., McKenzie County, at a maximum pumping rate of 1,000 gallons per minute for industrial use.

All other provisions and conditios stipulated on the water permit shall remain unchanged.

SEAL



Todd Sando, PE State Engineer

Date: June 11, 2012



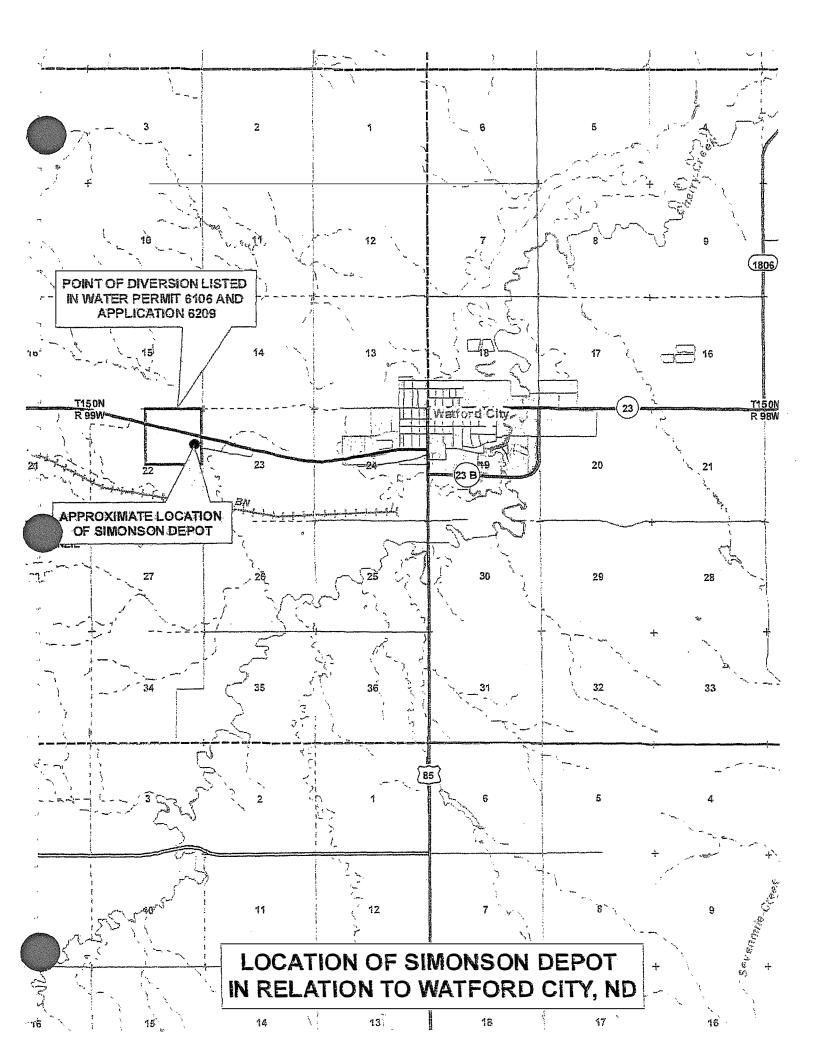
Application	No.	6209		

### STATE OF NORTH DAKOTA APPLICATION FOR CONDITIONAL WATER PERMIT

NOTE: Use one application for each type of source (ground water, surface water). Check all appropriate boxes and fill in each blank line. If the question is not applicable to your proposed development, enter NA (not applicable). If more space is necessary, attach additional sheets.

(PLEASE TYPE OR PRINT IN INK)

1. Name of Applica	ntALICE SIMONSON FAMILY TRUST
	B0X 512
	WATFORD CITY State ND Zip 58854
• •	2-3517 (Home) (Cell) (Work) 701-570-4043 (Other)
Email:dentonz@	dakotawestcu.org
2. Source of water	supply: A ground water  surface water
	(a) streama tributary of
	(b) If new impoundment:1/4, Twp, Rge
	(c) If existing impoundment, give name
•	(d) Existing impoundment:1/41/4 Sec, Twp, Rge
3. Point of diversion (1) <u>NE</u>	n: 1/4 of Section <u>22</u> Township <u>150 N., Range 99 W., MCKENZIE</u> County
Additional p	oints of diversion, if any:
(2)	/4 of SectionTownshipN., RangeW.,County
(3)1	/4 of SectionTownshipN., RangeW.,County
(4)1	/4 of SectionTownshipN., RangeW.,County
4. Amount of water	requested:
(a) Annual use fr	om points listed in Item 3 above, rate of diversion, and period of use:
500 (AMOUN	
(b) If Impoundme offset evapo	ent:acre-feet storage out of whichacre-feet will be used to rative losses.
(c) Total annual t	use requested (sum of annual use from 4a and evaporation from 4b):acre-feet
5. Proposed constr	uction:
Proposed st	arting dateEXISTING FACILITIES
Anticipated :	completion date
	1 of 2



# **R&T Water Supply Minutes**

#### R & T WATER SUPPLY COMMERCE AUTHORITY

REGULAR MEETING August 13, 2012

Call to Order: The meeting was called to order at 6:00 p.m. at the Ray City Hall by Chairman Bob Gannaway, with Nathan Germundson, Judy Heilman, present. Absent: Rick Liesener, Ken Munson. (They arrived at 6:02 pm) Also present: Greg Larson, Dave Bauer, Dustin Schultz, Cory Chorne, Jaret Wirtz, Kent Bickler, Traci Papineau, Doug Knutson, Deon Stockert, Jason Howard, Mark Hatlen, Lonni Fleck, Dan Salzer, Pat Regan, Jack Matasosky, Jim McCoy, John Dombroski, Pat Spaugenberg (?), Gary Dix, Ron (?) Rausch, Matt (?) Posey, Gordon Hamurosc (?) Randy Semingson, Cindy Semingson, Fred Blum, Chris Hovey, Chris Glenn and Liz Suhr. (The ? denotes names signed illegibly on the sign-in sheet).

Minutes of last meeting: Motion by Nathan Germundson to approve the minutes from the July 9, 2012 meeting. Second by Judy Heilman. All voting aye. Motion carried.

Election: The Vice Chairman position previously held by Myron Eide was opened. Motion by Nathan Germundson to nominate Ken Munson as Vice Chairman, Second by Judy Heilman. All voting aye. Motion carried

6:02 pm Ken Munson and Rick Liesener arrived at the meeting.

WAWSA: Dave Bauer of AE2S provided an update on the water depot plans. The plans include 6 loading bays, a 6 ½ grade, there may or may not be heated water offered. It will be over electrical lines, any damages would be WAWSA responsibility. Drainage, dust control and traffic are a concern. Motion by Nathan Germundson to approve location. Motion died for luck of second. David Bauer asked where the board would like the depot located, no one offered a preferred location. Jaret Wirtz of WAWSA said he met with Dennis Nelson, Williams County Road Superintendent. The county does not want the depot on County 17, DOT prefers the Highway 2 access location. Magnesium chloride can be used for dust control. After a lengthy discussion it was noted that WAWSA representatives would meet at a later date with Rick Liesener, Ken Munson, Kent Bickler and Greg Larson to discuss location issues.

Large use purchase requests by developers were discussed. Deon Stockert of AE2S noted that R&T Water is permitted by the State Water Commission to about 1.1 million gallons per day. If the SWC granted the acre feet held in abeyance R&T would be permitted to use about 1.8 MGD. To serve the developments requesting water, at least 7 MGD is needed from the Western Area Water Supply Authority. R&T is under contract for 5 MGD currently. Southern Cactus Star, West Bank/Iron Horse and Dix Development would need to build a pipeline to the WAWSA pipeline, and turn that line over to WAWSA. WAWSA capacity is limited by the Williston water treatment plant. The treatment plant can currently treat 10 MGD, with expansion plans to get to 14 MGD by summer of 2013. to 21 MGD by late 2014. Capacity may be increased someday to 28 MGD. Deon noted that R&T Water Supply's focus has always been on the towns that built the system – Ray, Tioga and Stanley and its current users. The additional water from WAWSA will be allocated as those cities grow. When WAWSA water arrives in Ray, initially there will only be 2 MGD per day, 5 MGD per day will not be reached until 2014 and will be determined by Williston WTP expansion progress.

Nathan Germundson noted that the R&T system has already experienced a summer of water rationing, which some citizens have been highly critical of. He noted that R&T was built to serve the cities that formed the association and that the citizens who paid for the system for 30 years shouldn't have to ration their usage to support the proposed large new developments. Serving the new developments could burden the R&T system and could possibly impact the cities growth. Motion by Nathan Germundson that R&T doesn't look at another water request for a large user for one year. Second by Ken Munson. A member of the audience asked "What is a large development?"

Nathan Germundson amended his motion to be "to limit all line tie-in requests, except for easement requests for one year" Amended motion seconded by Ken Munson, All voting aye. Motion carried.

Some audience members left the meeting at this time.

Jaret reported that he was meeting with Stanley's City Council tomorrow regarding the Sub Agreements. He said Wade Enget had Tioga's and Ray's has been sent to its attorney.

Pat Regan of the West Bank/Iron Horse development stood up and asked that the board consider Highway 2 and County 19 as a solution. He said there will be turning lanes in all 4 directions, a temporary traffic light will be up, he has people lined up for the ambulance and fire departments. He noted that he can help solve the traffic problems and reduce the crew camp traffic. He doesn't like the one year moratorium and wants the board to reconsider. He said West Bank township has approved his plans. Nathan Germundson told Mr. Regan that there are 3 communities that need R&T's water and that he should consider drilling a well. Nathan noted that R&T does not have the water to provide Mr. Regan's development and that the area citizens shouldn't have to sacrifice their ability to use water so that his development can be served.

### AE2S: Deon reported on the following:

- The new water treatment plant has been shipping water to the high point. Bugs are being worked out. The office space will be ready by October 1. Work is being done on the chlorine system. Doug Knutson noted there are 37 days until the substantial completion date.
- Jason Howard of iCS reported that the office will be complete by next month, the main plant is functional, the weirs will be raised up to they won't overflow, the west train will be functional, the Siemen's slakers are running better.
- There are no change orders ready to present to the board at this time.
- Invoices from AE2S and ICS were presented. Motion by Ken Munson to pay invoices and approve reimbursement request No. 6 for \$399,672. Second by Nathan Germundson. All voting aye. Motion carried.
- There is nothing to report regarding the R/O membranes.
- Deon presented a \$58,200 change to the engineering contract to be billed hourly. Motion by Nathan Germundson to approve amendment 3 to contract. Second by Rick Liesener. All voting aye. Motion carried.

Business Manager Reports: The July financial report was reviewed. Motion by Nathan Germundson to approve the financials as presented, and to approve checks 1043-1044, 25175-25227, epay's, ACH's, and payroll direct deposits. Second by Judy Heilman. All voting aye. Motion carried. Liz reported that at the ND Rural Water Leadership there was a workshop on succession planning and that BSC is offering online classes and certification in water treatment and distribution technology. The water usage report was reviewed. Liz will be ordering office and conference room furniture for the new offices. Bob will be gone for the September 10<sup>th</sup> meeting. It was decided to reschedule the next meeting for Tuesday September 18<sup>th</sup> at 6:00 pm. The City of Ray will be purchasing landfill space from the State Land Department. The city will allow R&T to dispose of sludge and will bill for the acreage used. The audit report from Brady Martz & Associates was provided to each board member.

Plant Managers Report: Greg reported that the old plant is running OK. The weirs in the new plant will be changed by this weekend, he hopes to lift water restrictions by next week. There have been several MDU power outages that have caused some programming problems at the new plant. The quality of the water the new plant is producing is good.

Legal: Kent Reierson had asked if his attendance was needed at each meeting. Consensus of the board was that it was not required.

Customer Concerns: No concerns were heard from current customers.

Water Purchase Agreement: Peak Oilfield Service Co.'s WPA has been tabled for several months. Motion by Ken Munson to approve the water purchase agreement provided that water restrictions were followed. Second by Nathan Germundson. All voting aye. Motion carried.

Other Business: None.

The meeting was adjourned at 8:05 pm.	
Liz Suhr, Executive Director	Robert Gannaway, Chairman

# WAWS Condemnation Policy Bulletin

### POLICY BULLETIN NO.

SUBJECT: Availability of Project Water for Voluntary Acquisition of Right of Way

#### POLICY:

To meet the Business Plan, WAWSA needs to acquire a significant amount of right of way in a short time period.

For property owners who voluntarily enter into easement agreements or sell property to WAWSA, WAWSA will favorably consider providing water service from the Project if requested by these property owners. If the property owner is served by a WAWSA member, the WAWSA board will recommendation to the member that service be provided to the property owner.

For any property owner who does not voluntarily grant an easement or sell property to WAWSA, where condemnation is initiated, WAWSA will likely not consider any requests for project water from the owner of the condemned property. If water service is instead provided by a WAWSA member system, the WAWSA board will likely recommend that the member deny any requests for service from that property owner.

# MLB Consulting, Inc. Email

Mr. Mayor,

My name is Mitchel Brown. Perhaps you have heard of me, perhaps not. I am the completion consultant that worked on the Brigham Exploration wells in North Dakota. And, yes, I am the one that began the large multistage frac work that is now the dominant practice in the Bakken. I now am the owner of a consulting firm in North Dakota that employs a 180 employees in and around the Williston area. My companies name is MLB Consulting. The majority of my work is with StatOil. I am also the one that brought Mr. Behand and his company to Williston. When the Bakken play began, there was no one that could help us in North Dakota with the water issues we faced and no one was even interested in attempting to move water for us at sub zero temperatures. But with a little bit of country ingenuity, we learned how to do it very proficiently. And that is how the water permits and pipelines were born. It bothers me to see the WAWSA project trying to "bully" the common man out of business for the benefit of an already corrupt government system that will inevitably fail due to the corruption. I say this because I have built a house south of 1804 and west of county rd 9, about 1 mile south and west of the Stoney Creek Township hall. I have been patiently awaiting the rural water to be brought close enough for me to afford to get it tied into my house. My patience has allowed me to witness the delivery of water to Continental wells thru the system that would deliver the water to my house, but I assume it has been hore profitable to deliver it to a major operator than to the common man. The idea of forcing the common man out is being taken to new levels by catering to the industry instead of the people that need it the most.

Sincerely, Mitchel L. Brown President MLB Consulting, Inc. 940-389-4252 # 7 5162230



# North Dakota 2013

WAWS Information Packets

Subject: Re: Williston Herald: News/Koser Editorial

Mike & Mayor Koser,

I write this response not as an expert on all of the water issues discussed below, but as a member of the community that is growing increasingly concerned with the implied or outright stated attitude of many towards those referred to as "out of state" people.

Before I get to my concerns, I should note that the fundamental free enterprise of the USA is part of what attracted myself and my family here. Before becoming a pastor I did operated my own businesses and as such I am not completely ignorant of the details and practices I see playing out regarding the water issue. In this regard, I will simply say that a monopoly of any kind is never good for the people in the long run...that is unless you subscribe to a more socialist perspective, rather than the entrepreneurial spirit that has made the USA a great nation.

My concerns though go far beyond the details of water agreements and fights over who gets to put depots and pipelines in, or who operates them. For it seems to me that some who consider themselves "locals" want all the benefits of the influx of dollars, jobs, shopping, etc., but would like to keep control of it all themselves. They want the modern conveniences of shopping, restaurants, industry, etc., but do not want anyone from the "outside" to encroach upon them, or to change their way of living. I completely understand the challenges that change brings...but couching some form of "protectionism" in all areas of life in and around Williston is not the answer.

I deal - on a daily basis - with people from "out of state" who are made to feel as though they are not good enough to be considered residents. Such things cause a host of social issues, and frankly not the message I want sent by the Mayor of the town I now call home. Yes, I am from "out of state", in fact I am from "out of country", but at what point does such a designation stop? I own property, have a mortgage at a local bank, my children go to school here, I have ND license plates, I pay taxes here, etc., etc.

Specifically dealing with Mr. and Mrs. Behan, again, I cannot argue specifics of their water dealings, but I take great offense at the inclusion and insinuation that they are somehow not a part of our community, or have some "evil" motives because they are from "out of state". Again I would say regardless of the details - such is not the message I want sent by our community leaders. Were it not for the outside investment and foresight of those such as Mr. Behan, Williston would not be the economic bright spot of the nation!

Here is what I do know for certain: Mr. and Mrs. Behan have invested a great deal of time, heart, and money, at great personal financial risk to be a part of what is taking place here, and nowhere have I seen a more generous and community minded couple. I know personally some of their employees - and a better employer cannot be found. I have met one of their partners (long time local residents), and a better partner cannot be found, for Mr. and Mrs. Behan are concerned about the people they deal with, not just the financial benefit they might bring. They have invested not only in business interests, but in many community projects as well, not the least of which is our new church facility. As a part of

our local church, they have supported benevolence needs, equipment needs, outreach to oil field workers, and most importantly they have demonstrated a genuine heart for people...no matter where they may be originally from.

In short, Mr. and Mrs. Behan are exactly the kind of people we want to help build this great community! How much money and how many jobs does a person have to invest and create in a local area - or how many homes does he need to own or build before he is considered by our community leaders as a valuable part of our community? I believe that they deserve far better treatment than callously referring to them as "out of staters".

I too would respectfully request that you help seek a solution, without the inclusion of the emotional connotations of being "out of state", for if we are going to embrace the great future in store for Williston and area, we need more people like Dale Behan...not less! Surely we are not actively trying to chase away such good people...

Together we can make this the greatest place to live!

Yours Truly,

Ashley

Dr. Ashley Olinger

Senior Pastor

Cornerstone FBC

Williston, ND

58801

Office: 701-572-2724

Cell: 701-580-4377

Web: CornerstoneFBC.us

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Sixty-second Legislative Assembly 1 private users, such as oil and gas producers, for the sale of water for use within or outside the 2 authority boundaries or the state. The western area water supply authority shall consider in the 3 process of locating industrial water depots the location of private water sellers so as to minimize 4 the impact on private water sellers. 5 61-40-02. Western area water supply authority. 6 The western area water supply authority consists of participating political subdivisions 7 located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water 8 supply contract with the authority. Other cities and water systems, within or outside the authority 9 counties' boundaries, including cities or water systems in Montana, may contract with the 10 authority for a bulk water supply. The authority is a political subdivision of the state, a 11 governmental agency, body politic and corporate, with the authority to exercise the powers 12 specified in this chapter, or which may be reasonably implied. Participating member entities 13 may be required to pay dues; or water sale income, or bond revenue to the authority, as 14 determined by the bylaws and future resolutions of the authority. Participating member entities 15 may not withdraw from the authority or fail or refuse to pay any water sale income or bond 16 revenue to the authority, if any bonds or refunding bonds issued under this chapter remain-17 outstanding or a grant of up to thirty million dollars the twenty-five million dollar zero interest loan 18 from the state water commission has not been repaid. 19

### 61-40-03. Western area water supply authority - Board of directors.

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- The initial board of directors of the western area water supply authority consists of two 1. representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. Each The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, that the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- 2.2. Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for



Water Resources District Board 205 6th St. NW . (Mailingaddr.) 201 5th ST. NW, Suite 1456

Watford City ND 58854 Tel: 701-842-2821 ext.7 - Fex: 701-842-2822

Denton Zubla, Chalmen PO Box 927 Walford City, ND 56854-0927 701-444-6484 work 701-842-3081 home gro. was at a de la contrata del la contrata de la

Gone Vooder, Vice-C1 almust PO Box 699 Watford City, ND 8865 4-0599 701-444-2804 enthermoundend.us

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Leff Jellesed, Board Member 10581 HWY 1808 E Town, ND 68763-8084 701-875-2490 mad@restat.net

Lans Haugen, Board Member 14914 Hwy 88 der, ND 58831 701-828-3666 home 408-489-1704 cell

Clint Healow Assistant Manager and City, ND 58854 701-002-2021 701-200-6781cm July 5, 2012

Jo Ellen Darcy, Assistant Secretary of the Army, Civil Works 108 Army Pentagon Washington, DC 20310-0108

Private Water Permits within McKenzie County

Doar Assistant Secretary Darcy

The McKenzie County Water Resource District (MCWRD) is informed of various parmit applications . and ourcest intostions by private parties who intend to divert water from the Missouri River and create an extravagant pipeline system to sell significant amounts of water to the oil industry within McKenzie County. In some instances, this information has been coupled with demands by the independent water provider community for MCWRD and the Western Area Water Supply Authority to reduce their water sales at water depote so as not to compete with the private water sellers. While MCWRD has historically not objected to the development of isolated privace water sellers to meet the demands of the oil industry, the more recent private development plans are simply too extensive to allow to proceed given MCWRD's significant investment in infrastructure and need to generate income to repay its federal lost chligations as well as the state loan chligations authorized in House Bill 1206 during the last legislative scenion.

MCWRD is requesting information from these private water sollors, out of concern that these solitics may be encrosolting on the MCWRD water franchise area. Federal law is very protective of a rural water system's water sales territory if the rural water system is indebted to the Federal government through a federal loan for the water system's infrastructure, See 7 U.S.C.A. 1926(b), MCWRD has outstanding federal Rural Development loans through the USDA and qualifies for the franchise protection of Section 1926(b),

MCWRD believes that the great of water appropriation pennits by the State Engineer's Office or the access permits and casements by the Corps would constitute governmental action that will provide a private water franchise to develop within the MCWRD jurisdiction. The purpose of this letter is to advise you that MCWRD intends to protect its franchise territory from fixther encroschment by private water sellers, and to request that you forego the issuance of any permits for private water development within McKenzie County without engaging MCWRD in discussion for each permit requested.

Respectfully.

Denton Zubke Chairman of MCWRD



# DEPARTMENT OF THE ARMY OFFICE OF THE ASSISTANT SECRETARY CIVIL WORKS 108 ARMY PENTAGON WASHINGTON DC 20310-0108

SEP 27 2012

Mr. Denton Zubke Chairman, McKenzie County Water Resources District 201 5<sup>th</sup> Street, NW, Suite 1456 Watford City, North Dakota 58854

Dear Mr. Zubke:

This is in response to your July 5, 2012, letter concerning private water permits within McKenzie County. I apologize for the delay in responding.

In your letter you requested that the Corps of Engineers (Corps) engage the McKenzie County Water Resources District (MCWRD) in discussions prior to issuing surplus water agreements or easements associated with private water development within McKenzie County. You contend that executing such agreements or easements could facilitate a private franchise within the boundaries of your service area, thereby undermining the protections granted by Section 306(b) of the Consolidated Farm and Rural Development Act, 7 U.S.C. Section 1926(b).

The Corps has completed an extensive public review process in formulating the Final Garrison Dam/Lake Sakakawea Project Surplus Water Report and Environmental Assessment to support the granting of easements and the execution of surplus water agreements for the withdrawal of water for municipal and industrial purposes at Lake Sakakawea. To my knowledge, your letter of July 5 is the first reference made to the potential applicability of 7 U.S.C. 1926(b), and requires further review.

I am requesting the Omaha District of the Corps to review the issues you raise and to respond to your letter. My staff point of contact for coordination of this matter is Mr. Andrew Hagelin, <a href="mailto:andrew.hagelin@us.army.mil">andrew.hagelin@us.army.mil</a> or (703) 697-7084, and the point of contact in the Omaha District is Mr. Larry Janis, <a href="mailto:Larry.D.Janis@usace.army.mil">Larry.D.Janis@usace.army.mil</a> or (402) 995-2440.

Thank you for your interest in the Army's Civil Works program.

Very truly yours,

Assistant Secretary of the Army

(Civil Works)



August 20, 2012

Norm Haak, President North Dakota Water Users Association PO Box 2254 Bismardk, ND 58502-2254

RE: Clarification of McKenzie County Letter Regarding Permit Issuance

Dear Mr. Haak and NDWUA Board Members:

This letter is to clarify a quote made in a North Dakota Water Users Association (NDWUA) Memo dated July 24, 2012 to Governor Dalrymple, State Engineer Todd Sando, and State Water Commission Members. The Memo references a letter from the McKenzie County Water Resources District (MCWRD) Board requesting that MCWRD be engaged in discussion for each water permit application request that may encroach on the MCWRD water franchise area.

The NDWUA Memo quotes that the MCWRD is asking the State Engineer and the Corp of Engineers to "forego the issuance of any permits for private water development". That quote is only a portion of a larger sentence in the MCWRD letter which states, "The purpose of this letter is to advise you that MCWRD intends to protect its franchise territory from further encroachment by private water sellers, and to request that you forego the issuance of any permits for private water development within McKenzie County without engaging MCWRD in discussion for each permit requested."

The NDWUA Memo goes on to state that "this position (referencing MCWRD's position on 1926(b)) is completely adverse to the long standing water policy and long standing efforts to develop North Dakota's right to the Missouri River." In contrast, MCWRD fully supports putting the Missouri River water to beneficial use for the State of North Dakota. We are disappointed that MCWRD intentions were misrepresented in this manner.

As a member of the NDWUA, MCWRD supports the NDWUA's goals to develop and perfect the Missouri River water and is in support of future economic development initiatives. We also believe these initiatives need to be balanced with the goals and obligations of current projects. MCWRD and every rural water system with Federal Rural Development loans through USDA are protected by Section 1926(b). This Federal law is in place to protect the water sales territory if the rural water system is indebted to the Federal government and has been used several times across North Dakota to ensure the financial viability of rural water systems.



Additionally, MCWRD is part of the larger Western Area Water Supply Project which is obligated to pay back State loans through the sale of industrial water. Given our financial obligations to the State and Federal governments, MCWRD is very interested in being engaged in the water permit application process when it directly affects McKenzie County. We would expect that the NDWUA would be concerned with the financial viability of the many rural water systems in the State as well as ours.

MCWRD believes this issue is vitally important to all NDWUA members. We would appreciate the opportunity to schedule a time at your next board meeting to allow us to fully inform the board of the threats to our system and the intentions of the MCWRD.

Respectfully,

Denton Zubke

Chairman of MCWRD

cc: Governor Jack Dalrymple

**State Water Commission Members** 

Todd Sando, State Engineer

Mike Dwyer, NDWUA Executive Director



Water Resources District Board

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Watford City, ND 58854

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Clint Hecker Assistant Manager Watford City, ND 58854 701-842--2821 701-290-6791cell checker@co.mckenzie.nd.us September 3, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit number ND 2012-14330 submitted by Park Construction Co. that is intended to take water from Cherry Creek McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns for domestic and agricultural users. The Board also feels there are other reliable sources to better serve this type of water use in McKenzie County.

Sincerely,

**Denton Zubke** 

Chairman



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checker@co.m

October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850



Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14462 submitted by North Star Energy and Construction, LLC that is intended to take water from the Arnegard Dam in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

**Denton Zubke** 

Chairman

McKenzie County Water Resource District

cc. North Star Energy



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checker@co.mckenzie.nd.us

October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14470 submitted by Northwest Transfer that is intended to take water from Demmicks Lake in McKenzie County for industrial use. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman



Water Resources District Board

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Clint Hecker Assistant Manager Watford City, ND 58854 701 842-2821 701-290-6791cell

checker@co.mckenzie.nd.us

October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND 2012-14454 submitted by SM Energy Company that is intended to take water from an un-named pond in McKenzie County for industrial use. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman



Water Resources District Board

205 6th St. NW • Mailing; 201 5<sup>th</sup> St NW, Suite 1456 Watford City, ND 58854

Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org

Gene Veeder, Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701-444-2804 gveeder@co.mckenzie.nd.us

> Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-828-3008 glaseyes@yahoo.com

Leif Jellesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490 jellesed@restel.net

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City, ND 58854 701-842--2821 701-290-6791cell

checker@co.mckenzie.nd.us

October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14477 submitted by Ronnie and Mavis Berry that is intended to take water from the Yellowstone River for industrial use in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns over bank stabilization, contamination, and infrastructure concerns.

Sincerely,

Denton Zubke

Chairman



Water Resources District Board

205 6th St. NW • Mailing; 201 5th St NW, Suite 1456 Watford City, ND 58854

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Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-489-1704 cell 701-828-3555 home

Clint Hecker Assistant Manager Watford City, ND 58854 701-842--2821 701-290-6791cell checker@co.mckenzie.nd.us October 8, 2012

Todd Sando, P.E. North Dakota State Engineer ND State Water Commission 900 East Boulevard Bismarck, ND 58505-0850



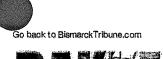
Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14488 submitted by Northwest Water Transfer that is intended to take water from Missouri River for industrial use in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns over bank stabilization, contamination, and infrastructure concerns.

Sincerely,

**Denton Zubke** 

Chairman





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# Corps agrees to release lake water for industry

Recommend 0

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By LAUREN DONOVAN | Bismarck Tribune

A company that plans to sell Lake Sakakawea water for hydraulic fracturing will get a temporary, five-year permit under the first surplus water agreement approved by the U.S. Army Corps of Engineers and signed Wednesday.

Select Energy Services, formerly International Western, can draw 6,000 acre feet annually from a ected site along the lake in Williams County.

That's enough to frack about 1,000 wells at roughly 2 million gallons per well.

For now, the company won't be charged for the water while the corps works to come up with a "storage" fee for holding the surplus water in the Garrison Dam reservoir.

It has proposed an annual fee of \$21.60 per acre foot, which for Select Energy would amount to \$130,000.

The corps is conducting a surplus water study across the country and will suspend fees until it comes up with a rule and national policy for handling the water, according to corps' spokesperson Monique Farmer.

is as to real year colored. During weather in which is 800,8 on lauren@westriv.com

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### Water Resources District Board

205 6th St. NW • (Mailing addr.) 201 5th ST. NW, Suite 1456

Watford City, ND 58854

Tel: 701-842-2821 • Fax: 701-842-2822

Denton Zubke, Chairman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawestcu.org January 15, 2013

Re:

Select Energy Services 1551 South Sunset Street, Suite A Longmont, CO 80501 Select Energy Services PO Box 1826 Williston, ND 58802

Gene Veeder, Vice-Chairman PO Box 699 Watford City, ND 58854-0699 701-444-2804

gveeder@co.mckenzie.nd.us

Proposed Water Project

Dear Select Energy Services,

Lee Tjelde, Board Member 14984 HWY 200 Cartwright, ND 58838 701-828-3008 glase yes@yahoo.com The McKenzie County Water Resource District (MCWRD) understands that you have applied to the State Water Commission for water appropriation Permit Number 6182, requesting 1950 acre feet of water annually in McKenzie County. I write to get more information about your plans to put that significant water supply to use.

Leif Jellesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675-2490

jellesed@restel.net

MCWRD is in the business of selling water to meet McKenzie County water supply needs. MCRWD is a rural water district that supplies water for domestic, commercial, rural and industrial uses throughout the entirety of McKenzie County. In order to meet these public water supply demands, MCWRD has also invested heavily in infrastructure, including a large transmission line from the Williston Treatment Plant throughout McKenzie County and the construction of industrial water depots at Indian Hill and in Keene. Much of MCWRD's infrastructure was constructed using federal USDA Rural Development loans.

Clint Hecker Assistant Manager Watford City, ND 58854 701-842--2821 701-290-6791cell checker@co.mckenzie.nd.us The fact that MCWRD has these federal loans outstanding is significant. Federal law is very protective of a rural water system's water sales territory if the rural water system is indebted to the Federal government through a federal loan for the water system's infrastructure. See 7 U.S.C.A. 1926(b). Pursuant to Section 1926(b), federal law does not allow public or private water systems to develop or expand in a manner that will encroach on an indebted rural water system's territory and take sales from the rural water system.

MCWRD has no information about your specific plans to develop this private water system. Please consider this letter as a request for information for your plans to develop a private water system, with specific information about your intended client base, water supply, depot location and pipeline development plans so MCWRD can better assess any 1926(b) franchise encroachment concerns.

In addition, there are two state statutes that provide similar franchise protection to rural water districts that built infrastructure using loans from the State of North Dakota Public Finance Authority (NDCC 6-09.4-22) and/or loans from the State Water Commission (NDCC 61-02-68.18), both of which apply to MCWRD. An example of the protection provided to water districts that have outstanding loans or indebtedness to the State Water Commission is found in the following relevant language:

1. The service provided or made available by owners of water projects through the construction or acquisition of an improvement, or the improvement revenues, fmanced in whole or in part with a guarantee or loan to the owners of water projects from the commission or any other state entity, may not be curtailed or limited by inclusion of all or any part of the area served by the owners of water projects within the boundaries of any other owners of water projects, or by the granting of any private franchise for similar service within the area served by the owners of water projects, during the term of the guarantee or loan. (NDCC 61-02-68.18)

It is noteworthy that the statute defines an "owner" of an encroaching water project as including private companies like yours. As such, state and federal law provide protection of MCWRD's water sales franchise territories from encroachment by private entities who wish to develop competing water sales businesses. Given MCWRD's significant investment in infrastructure and need to generate income to repay its federal obligations, MCWRD needs more information to fully evaluate your project.

MCWRD has recently initiated discussions with another party that similarly planned to develop a private water system within MCWRD's franchise area. I have attached a letter that our legal counsel sent to West Dakota Water's legal counsel, outlining MCWRD's legal rights and obligations to the USDA to protect our collateral for a Rural Development plan. As you can see, the law strongly favors USDA-indebted entities and provides some relatively onerous legal remedies to MCWRD. I am also attaching a legal opinion from September 2012, which very clearly reflects the USDA's position that 1926(b) rights apply to sales of non-potable water within an exclusive franchise area.

MCWRD is meeting with another private water seller in hopes to reach an agreement whereby MCWRD can allow some private water sales within the franchise area. MCWRD would welcome a similar meeting with your office to discuss how you can develop a water supply within our franchise area. Without an agreement with MCWRD, any construction of a private water system could be subject to enforcement action, which has some fairly onerous remedies. We would appreciate hearing from you within two weeks.

Respectfully,

Denton Zubke

Cc:

WAWSA Board Members

Slip Copy, 2012 WL 4434736 (S.D.Miss.) (Cite as: 2012 WL 4434736 (S.D.Miss.))

Only the Westlaw citation is currently available.

United States District Court,
S.D. Mississippi,
Western Division.
ADAMS COUNTY WATER ASSOCIATION, INC.,
Plaintiff

CITY OF NATCHEZ, MISSISSIPPI, et al, Defendants.

Civil Action No. 5:10C V199-DCB-RHW. Sept. 24, 2012.

<u>.lames H. Herring</u>, Herring, Long & Joiner, Canton, MS, for Plaintiff.

John Walter Brown, Jr., Walter Brown Law Office, Edgar Hyde Carby, Carby And Carby, PC, Everett T. Sanders. Sanders Law Firm, Natchez, MS, John L. Maxey, JI, William Holcomb Hussey, Maxey Wann, Pl.LC, Jackson, MS, for Defendants.

ORDER GRANTING LEAVE TO INTERVENE
ROBERT H. WALKER, United States Magistrate
Judge.

\*1 Before the Court is a[91] Motion to Intervene filed by the United States of America. The United States argues that it is a direct and interested party in the outcome of the present litigation based on two loans issued to Plaintiff Adams County Water Association, Inc. (ACWAI) by Rural Development, United States Department of Agriculture (Rural Development). Rural Development is a secured party-in-interest and mortgage lien holder with respect to Adams County's water system. The United States argues that ACWAl's revenues and income are pledged to Rural Development by deeds of trust; therefore, any decline in revenue caused by Defendants fragmentation of ACWAI's exclusive service area would affect its ability to repay loans to Rural Development. The United States further argues that Defendants' "dirty water" argument would violate 7 U.S.C. § 1926(b), which provides in relevant part that:

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 ...

In its reply, the United States elaborates that if Defendants prevail on their "dirty water" just ACWAI's certificated area.

The "dirty water" argument was initially raised in ACWAI's [24] Motion to Strike, in which ACWAI moved for the Court to strike from Defendants' answer the claim that ACWAI's exclusive service rights are limited only to the service of drinking water and not other types of water service. ACWAI argued that such an interpretation, among other things, is in violation of 7 U.S.C. § 1926(b). ACWAI further argued that if Defendants are allowed to expand non-potable water services into ACWAI's certificated area, it would "cripple ACWAI's ability to gain financing for its future projects and seriously compromise the collateral currently held by USDA Rural Development against the assets of ACWAI exchange for its existing loans to ACWAI." Dkt. entry [25] at 16. In its response to the motion to strike, Defendants did not disavow an interest in providing non-potable water services within ACW Al's exclusive service area. Rather, Defendants simply argued that ACWAI's assertion that it has the exclusive right to provide non-potable or industrial water is without legal basis. The Court denied ACWAI's motion to strike finding that aruling would be premature. See dkt. entry [67] at 4-5. Hence, the issue regarding Defendants' right to provide non-potable water services within ACWAI's exclusive service area remains unresolved.

In its response to the motion to intervene, De fendants assert that the United States does not have an intervention of right because (1) the motion is untimely; (2) the United States' interest in being repaid its loan would not be affected by the disposition of the case; and (3) ACWAI adequately represents any interest the United States might have in the outcome of this litigation. Defendants further argue that permissive intervention of the United States is not warranted.

Slip Copy, 2012 WL 4434736 (S.D.Miss.) (Cite as: 2012 WL 4434736 (S.D.Miss.))

\*2 The Court finds that the motion to intervene is not untimely. On February 13, 2012, United States District Judge David C. Bramlette, III entered an order denying ACW Al's motion to strike the dirty water argument. The United States argues that at that moment it became aware of the dirty water argument and its potential impact; it gathered facts on the issue through Rural Development; and it prepared the motion to intervene. The Court agrees that the motion to strike and Judge Bramlette's order denying the motion to strike placed the issue in a posture such that the Court finds that the motion is not untimely. The Court further finds that Defendants have failed to demonstrate how they would be prejudiced by the intervention. The Court recognizes that there is potential for some delay, but otherwise there has been no argument of potential prejudice in allowing the intervention.

The Court also finds that the United States' interest in the litigation does not directly coincide with that of ACWAI and therefore it may not be adequately represented by ACWAI. The United States asserts that if as a matter of law Defendants are permitted to provide non-potable (dirty) water to customers in ACWAI's certificated area, this would result in a reduction in ACWAI's revenue stream and would thus affect its ability to re-pay its loans. Moreover, the United States argues that such an outcome may be a violation of 7 U.S.C. § 1926. If Defendants prevail on their dirty water argument, the United States asserts that there could be a wide-ranging effect on provision of water to rural areas throughout the country. Hence, the United States is not merely protecting common interests with ACWAI, but is protecting the interests of a wider range of United States citizens. See Sierra Club v. Glickman, 82 F.3d 106, 110 (5th Cir.1996); Southeast Winston Rural WaterAss'n v. City of Louisville, 303 F.Supp. 974 (N.D.Miss. 1969).

The Court finds precedent for allowing intervention. In Southeast Winston Rural Water Ass'n., cited above, a United States District Court allowed the United States to intervene in a dispute regarding exclusive water service and § 1926. The court at least implicitly found that the interests of the United States and the interests of the rural water association were distinct. Specifically, the court cited to the government's brief in which it argued that the water association sought to protect its "commercial integrity", while the United States sought to protect the congressionally

declared policy of making water service available to rural residents. See 303 F.Supp. at 979. The court ultimately allowed the intervention and found that "the disposition of the controversy may impair or impede the ability of the United States to protect its interest." Id.

The United States was also allowed to intervene in a 1980 chancery court proceeding, which was later removed to federal court, involving the City of Natchez and ACWAI. See City of Natchez, Mississippi v. Adams County Water Association, Civil Action No. W80-7 (W.D.Miss.). The parties disputed the possible acquisition by the City of Natchez of a portion of the water system built and operated by ACWAI. As in the instant case, the United States argued that a fragmentation of the water service would affect ACWAI's ability to repay federal loans. Based on the foregoing, the Court finds that the intervention should be allowed.

\*3 IT IS THEREFORE ORDERED AND AD-JUDGED that the [91] Motion to Intervene is GRANTED and that the United States is given leave to intervene as a Plaintiff in this matter.

SO ORDERED.

S.D.Miss., 2012. Adams County Water Ass'n, Inc. v. City of Natchez, Miss. Slip Copy, 2012 WL 4434736 (S.D.Miss.)

END OF DOCUMENT

LAW OFFICES

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Fed. I.D. 73-1034582

Email: johnp@jmacresources.com and Certified U.S. Mail

September 17, 2012

Mr. John Petrik Attorney at Law JMAC Resources 5009 139th Ave NW Williston, ND 58801

Re: Title 7, United States Code, Section 1926(b)

Dear Mr. Petrik:

We have spoken a few times by telephone regarding the prospect of organizing a meeting between our respective clients. I understand your client is West Dakota Water (an entity affiliated with JMAC Resources) ("WDW"). My client is McKenzie County Water Resource District ("McKenzie" or "District").

The McKenzie Board engaged me to review the district's formation documents associated with the origination of McKenzie, McKenzie's federal loans (existing and in process), McKenzie's physical ability to provide water service within its territory and federal statutory rights enjoyed by McKenzie's pursuant to 7 U.S.C. § 1926(b) ("§ 1926(b)").

<sup>&</sup>quot;(b) 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." 7 U.S.C. § 1926(b)

#### Introduction - Federal Law:

As I know you are aware, § 1926(b) is a federal statute passed by the U.S. Congress in 1961. Congress intended to grant federally indebted water resource districts such as McKenzie, the exclusive right to provide water service within those areas where McKenzie has the legal right to provide water service and where McKenzie has the physical ability to provide water service or can do so within a *reasonable* period of time following a request for water service.

The 8th Circuit Court of Appeals has previously ruled that any doubts about whether a water district is entitled to the protections of § 1926(b) should be resolved in favor of the federally indebted association (McKenzie here).<sup>2</sup>

There are only four elements associated with the enforcement of § 1926(b) rights. McKenzie must show: (1) McKenzie has the legal right to provide water service under state law to the customers/area in controversy, (2) McKenzie is indebted to the federal government (during the relevant time periods), (3) McKenzie has made water service available to the water customers/areas in dispute or can do so within a reasonable period of time, and (4) other entities are selling water in competition with McKenzie or threatening to do so (to customers which McKenzie has made service available or can do so within a reasonable period of time). I view your client WDW as being an entity which is threatening to provide competitive water service within McKenzie's federally recognized service area.

All evidentiary uncertainties as to whether McKenzie can prove/show these four (4) elements should be resolved in favor of McKenzie.<sup>3</sup> This means that there is a presumption that McKenzie is entitled to § 1926(b) protection. All courts that have considered § 1926(b) acknowledge that its provisions should be given a liberal interpretation that protects water districts/associations indebted to the USDA from encroachment/competition.<sup>4</sup>

§ 1926(b) protection is not limited to municipal encroachment but rather is broad in scope to preclude competition from any entity whether public or private. See for example *Moongate Water Co., Inc. v. Butterfield Park Mut. Domestic Water Ass'n* 291 F.3d 1262 (10th Cir.2002). In

<sup>&</sup>lt;sup>2</sup> "Finally, any "[d]oubts about whether a water association is entitled to protection from competition under § 1926(b) should be resolved in favor of the FmHA-indebted party seeking protection for its territory." Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow, 191 F.3d 1192, 1197 (10th Cir.1999) (citations omitted). Congress enacted section 1926(b) to encourage rural water development and to provide greater security for FmHA loans. See id. at 1196. Therefore, our holding is supported by the policy underlying the federal statute." Rural Water System No. 1 v. City of Sioux Center 202 F.3d 1035, 1038 (8th Cir.2000)

<sup>&</sup>lt;sup>3</sup> "As noted above, <u>evidentiary uncertainties</u> should be resolved in favor of Plaintiff, the party seeking to protect its territory, on remand." Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow 191 F.3d 1192, 1206 (10th Cir.1999) (emphasis added)

<sup>&</sup>lt;sup>4</sup> Bluefield Water Ass'n, Inc. v. City of Starkville, Miss. 577 F.3d 250, 252 (5th Cir.2009).

Moongate, the encroacher was a <u>privately owned water company</u> that was selling water in competition with Butterfield. Butterfield was indebted to the USDA. The federal district court enjoined Moongate from selling water in competition with Butterfield pursuant to § 1926(b). This decision by the district court was affirmed on appeal to the 10th Circuit.

It is important to note that § 1926(b) preempts all state and local laws which function to frustrate or deny McKenzie's right of exclusivity under § 1926(b). When North Dakota authorized McKenzie to borrow money from the federal government the State of North Dakota accepted all of the federal statutory and regulatory restrictions associated with such borrowing.<sup>5</sup> (§ 1926(b) is "Spending Clause" legislation.) This federal preemption serves to functionally nullify the granting of any franchise or permit by local or state government which functions to allow some other entity (public or private) to sell water in competition with McKenzie.

McKenzie has in the past, and continues to provide "industrial" water service in addition to domestic potable water service. McKenzie is in the process of expanding its industrial capacity to satisfy anticipated future demand. You will note that § 1926(b) is intended to protect the "service provided or made available" by the federally indebted entity. Because McKenzie provides both domestic and industrial water service, both aspects of such service would fall within the scope of § 1926(b) protections.

I anticipate that WDW may attempt to draw a distinction under § 1926(b) between sales of raw water and treated water. For purposes of § 1926(b) I see no meaningful distinction between water that has received no treatment whatever, and water that has been treated to some degree. The

<sup>&</sup>lt;sup>5</sup> "We held that "where the federal § 1926 protections have attached, § 1926 preempts local or state law that can be used to justify ... encroachment upon [a] disputed area in which an indebted association is legally providing service under state law." *Id.* at 715 (emphasis added) (internal quotation marks and brackets omitted). In other words, a state or local government may not act "to take away from an indebted rural water association any territory for which the association is entitled to invoke the protection of § 1926(b)." *Id.* at 716 (emphasis added)." *Moongate Water Co., Inc. v. Dona Ana Mutual Domestic Water Consumers Ass'n* 420 F.3d 1082, 1090 (10th Cir.2005).

<sup>&</sup>quot;Application of § 1926 to the facts of this case is similarly consistent with the limits of the Spending Clause. "Congress' spending power enables it to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives." Kansas v. United States, 214 F.3d 1196, 1198 (10th Cir.2000) (quoting Fullilove v. Klutznick, 448 U.S. 448, 474, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980))." Glenpool Utility Services Authority v. Creek County Rural Water Dist. No. 2, 861 F.2d 1211, 1216 (10th Cir.1988)

<sup>&</sup>quot;Oklahoma thus authorized District No. 2 to borrow from the federal government and to enter into any required agreements in connection with those loans. In so borrowing, Oklahomathrough its authorized entity District No. 2-bound itself and all of its subdivisions, including the City of Glenpool, to the conditions it had accepted." *Glenpool*, 861 F.2d 1211 (10th Cir.1988)

level or extent of treatment is irrelevant in the context of § 1926(b). § 1926(b) has been broadly construed to accomplish its purposes. "Fine line distinctions" or narrow interpretations of § 1926(b) have been uniformly rejected by the Courts. Drawing any distinction between the physical character of water being sold, would simply constitute some effort to create a "loophole" in the statute. In City of Madison, Miss. v. Bear Creek Water Ass'n, Inc. 816 F.2d 1057, 1059 (5th Cir.1987) the 5th Circuit described § 1926(b) as an "absolute prohibition", forbidding any efforts to create a loophole or circumvent the law.

At least one purpose of the statute is to cause McKenzie to expand to obtain the maximum number of customers as is possible so that McKenzie will achieve an economy of scale. See James Island Public Service Dist. v. City of Charleston, South Carolina 249 F.3d 323, 330 (4th Cir.2001). Another purpose (as noted in James Island) is to protect McKenzie's ability to repay its federal loans. § 1926(b) protection has the further indirect beneficial effect of protecting McKenzie's ability to repay it state loans and other contractual obligations.

Lastly on the issue of industrial water sales, I have had prior experience with another § 1926(b) protected water district in North Dakota relative to its § 1926(b) rights associated with the industrial sale/use of non-potable water. There was no serious dispute that § 1926(b) was applicable to such industrial water sales and the issue was resolved amicably.

### **Settlement Negotiations With Competing Water Providers:**

McKenzie is permitted (subject to USDA regulations) to sell or license portions of its facilities or territory to competitors. Any such sale or license, and the amount of compensation to be received by McKenzie from such purchaser(s)/licensee(s) <u>must be approved by the USDA</u>. In *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.* 816 F.2d 1057, 1060 (5th Cir.1987) the Court held:

<sup>&</sup>lt;sup>6</sup> "To read a loophole into this absolute prohibition, as Madison would have us do, and allow a city to do via condemnation what it is forbidden by other means, would render nugatory the clear purpose of § 1926(b)." City of Madison, Miss. v. Bear Creek Water Ass'n, Inc. 816 F.2d 1057, 1059 (5th Cir.1987)

<sup>&</sup>lt;sup>7</sup> "Section 1926(b) protects from curtailment or limitation not only the ability of James Island to pay its federal debt, but also the "service provided" by the District. 7 U.S.C. § 1926(b) (emphasis added). Thus, § 1926(b) safeguards James Island's "ability to repay its federal loan and to provide low per [luser cost to its customers." Bell Arthur Water Corp. v. Greenville Utils. Comm'n, 173 F.3d 517, 524 (4th Cir.1999). "[B]oth of these goals depend on economies of scale and maximization of [the district's] entire customer base, and can only be accomplished by treating the protection as applicable to the entire service area rather than merely the increments improved by the loan." Id. See also North Alamo Water Supply Corp. v. City of San Juan, 90 F.3d 910, 915 (5th Cir.1996). James Island Public Service Dist. v. City of Charleston, South Carolina 249 F.3d 323, 330 (4th Cir.2001) (emphasis added)

"Our interpretation of § 1926(b) is also inferentially supported by FmHA regulations regarding the transfer of water facilities subject to FmHA liens. These regulations require that any transfer must be approved by FmHA to insure that services will not be curtailed and that repayment of the FmHA loans is not jeopardized. 7 C.F.R. 1951.209, 1951.214 (1986). The regulations also suggest an alternate means by which the city might acquire the facilities it desires, in the context of a consensual sale."

Nearly all § 1926(b) disputes are eventually settled. Settlements my firm has negotiated in the past, have been varied to meet the needs of the client and the competitive water seller. Most often the settlement has been premised on payment by the competitor of a license fee for permission to sell water within the district's territory. The fee has been calculated in a variety of ways and can be volume based (royalty calculated on a price per thousand gallons basis). USDA has adopted a flexible policy in approving such settlement arrangements. In the past 23 years I have never seen the USDA refuse to approve a settlement that was proposed by a district.

This letter is not intended to suggest or indicate that any firm decision has been made by McKenzie wherein it will grant WDW permission or a license to provide water service inside of McKenzie's protected service area. However, I understand that McKenzie is willing to meet and discuss the matter with representatives of WDW.

### Evidence Supporting the Four (4) Elements Of § 1926(b):

### 1. Legal Right Of Mckenzie To Sell Water in McKenzie County

North Dakota statutes grant McKenzie extensive powers which include the legal right and power to sell water. This legal right element of § 1926(b) is rarely challenged in court actions. I find no basis which would support a challenge here.

Some courts include within this first element the requirement that McKenzie demonstrate it is a "qualifying entity". McKenzie was formed in accord with state law for purposes which satisfy § 1926. McKenzie would not have been able to borrow money from the USDA if it was not a "qualifying entity", thus this element is satisfied.

### 2. McKenzie Is Indebted To The Federal Government (USDA)

I have reviewed USDA loan documentation provided to me by McKenzie. McKenzie satisfies the federal debt requirement of § 1926(b).

### 3. McKenzie Has Made Water Service Available

Engineering data, including maps, location of water delivery facilities, and expansion of those facilities currently in process provided to me, as well my discussion with McKenzie's engineer, indicate that McKenzie is currently providing industrial water service and has made industrial water service available as those terms have been interpreted by the Courts when construing § 1926(b). The "made service available" element is usually a "customer by customer" analysis.

Therefore as new customers appear in the future, each such customer must be reviewed by McKenzie's engineer.

### 4. Existence Of Or Threatened Competitive Water Sales

McKenzie has provided to me sufficient information for me to conclude that third parties are planning to sell water in competition with McKenzie, namely WDW.

As noted above, these four (4) factual issues are construed in a light most favorable to McKenzie. To the extent a competitor of McKenzie suggests or claims that there is doubt regarding whether McKenzie has or can satisfy the four (4) elements listed above, all such doubts should, as a matter of 8th Circuit law, be resolved in favor of McKenzie.

### Defenses To Enforcement of § 1926(b) Rights:

§1926(b) allows very few defenses because it is deemed a "public policy" statute. Equitable defenses such as waiver, laches and estoppel are not permitted. The 5th and 7th Circuits have refused to allow equitable defenses to a § 1926(b) suit. 9

#### Remedies:

McKenzie has available to it extensive remedies under § 1926(b). These remedies include but are not limited to the granting of an injunction preventing/forbidding competitive water sales, damages for any past water sales and forfeiture of infrastructure utilized by the competitor to violate § 1926(b). As noted in *North Alamo*, federal courts have broad discretion to fashion a suitable remedy. In addition to these remedies, to the extent any competitor is utilizing state powers and is considered a "state actor", McKenzie is entitled, pursuant to 42 U.S.C. § 1983, to an attorney fee award and its costs of litigation against the competitor if suit is filed.

<sup>&</sup>lt;sup>8</sup> Jennings Water, Inc. v. City of North Vernon, Ind. 895 F.2d 311, 317 (7th Cir.1989)

<sup>&</sup>lt;sup>9</sup> "At least one circuit court has refused to apply principles of equity to block application of the statute, arguing that the very strong public interest promoted by § 1926(b) is more important than individual equitable concerns. See Jennings Water, Inc. v. City of North Vernon, 895 F.2d 311, 316-17 (7th Cir.1989) (equitable estoppel). We agree. We have previously refused "[t]o read a loophole into this absolute prohibition" provided by § 1926(b), Bear Creek, 816 F.2d at 1059, and we will not begin now." Post Oak Special Utility Dist. v. City of Coolidge, TX 1996 WL 556992, 4 (5th Cir.1996).

<sup>&</sup>lt;sup>10</sup> "We conclude that in <u>ordering the transfer of the infrastructures to the Utility</u>, the district court did not abuse its discretion. Rule 54(c) vests district courts with broad discretion to fashion a remedy, even if the remedy awarded is not specifically requested in the prayer for relief." *North Alamo Water Supply Corp. v. City of San Juan, Tex.* 90 F.3d 910, 918 -919 (5th Cir.1996) (emphasis added)

#### Conclusion:

This letter is intended to frame the legal issues which may be the topic of discussion between McKenzie and WDW. It may be helpful to speed the negotiation/discussion process between WDW and McKenzie for WDW to provide information regarding where specifically it would like to sell water (inside of McKenzie's federally protected service area). Please note that McKenzie's federally protected service area, is not limited to McKenzie County and not limited to the political boundaries of McKenzie. Its federally recognized service area is that area where McKenzie has the legal right to sell water, and where McKenzie has made water service available or can do so within a reasonable period of time.

I look forward to working with you and your client to achieve an amicable resolution that is advantageous to both McKenzie and WDW.

Best regards,

Steven M. Harris

1682-2.Petrikltr:tf

cc: Board of Directors of McKenzie



#### MCKENZIE COUNTY, NORTH DAKOTA

Water Resources District Board

205 6th St. NW - (Mailing addr.) 201 5th ST. NW, Suite 1456 Watford City, ND 58854

Tel: 701-842-2821 • Fax: 701-842-2822

Denton Zubke, Cheirman PO Box 927 Watford City, ND 58854-0927 701-444-6484 work 701-842-3081 home dentonz@dakotawest.cu.org January 4, 2013

Dale Behan Lindale Pipeline, LLC 600 N. Carroll Avenue Southlake, TX 76092

Gene Veeder,Vice-Chairman PO 8ox 699 Watford City, ND 58854-0699 701-444-2804 gyeeder@co.mckenzie.nd.us Re: Request for approval of 3 McKenzie County, North Dakota irrigation ponds

Dear Mr. Behan,

Lee Tjelde,Board Member 14984 HWY 200 Cartwright, ND 58838 701-828-3008 glaseyes@yahoc.com At the McKenzie County Water Resource District (MCWRD) meeting on December 18, 2012, your representatives from Epic Engineering presented a request for the approval of the construction of three containment ponds to impound water for irrigation purposes, to provide for irrigation of adjacent farmland.

Lelf Jeliesed, Board Member 10561 HWY 1806 E New Town, ND 58763-9084 701-675 2490 jeliesed@restel.net Given the State's anti-corporate farming law and the fact that we have not previously heard that Lindale Pipeline was in the business of supplying irrigation waters supplies, MCWRD wants to reiterate that these impoundments cannot be used for any industrial water supplies. Be advised that the MCWRD's approval of these three impoundments is specifically contingent upon and conditioned upon the fact that they are solely for storage of irrigation water and to be used for irrigation purposes. As MCWRD has previously advised you, the Lindale Pipeline LLC's plan to sell industrial water within McKenzie County violates the MCWRD franchise territory protection afforded by federal and state law. In addition to the federal franchise protection afforded by 7 USC 1926b, MCWRD's industrial water sales franchise is protected by two state statutes since MCWRD has outstanding loan: financed by the North Dakota Public Finance Authority (NDCC 6-09.4-22) and/or funding through the State Water Commission (NDCC 61-02-68.18).

Lane Haugen, Board Member 14914 Hwy 68 Alexander, ND 58831 701-828-3555 home 406 489-1704 cell

You are hereby advised that, to the extent the ponds are used for any industrial water to be sold in McKenzie County, it will be a violation of the terms and conditions of this permit approval and will subject you to immediate enforcement action in the form of a permanent injunction to prohibit use of the ponds as well as any and all other remedies available pursuant to state and federal law.

Clint Hacker Assistant Manager Walford City, ND 58854 701-842--2821 701-290-6791 cell checker @co.mckenzie.nd.us

Very truly, yours,

Denton Zubke
MCWRD Chairman

LAW OFFICES

#### DOYLE HARRIS DAVIS & HAUGHEY

A PROFESSIONAL CORPORATION
INTERNATIONAL PLAZA

1350 SOUTH BOULDER, SUITE 700 TULSA, OKLAHOMA 74119

STEVEN M. HARRIS

steve.harris@1926blaw.com

MAILING ADDRESS P.O. BOX 1679 TULSA, OK 74101-1679

> TELEPHONE (918) 592-1276

> FAX (918) 592-4389

www.1926blaw.com

Fed. 1.D. 73-1034582

#### E-Mail (mmoore@bppw.com) and U.S. Mail

January 29, 2013

Michael J. Moore Brown, Pruitt, Peterson, and Wambsganss P.C. Attorneys and Counselors at Law 801 Wells Fargo Tower 201 Main Street Fort Worth, Texas 76102

Dear Mr. Moore:

For some reason I did not receive the attached email message directly from you. It was forwarded to me by others.

As I explained in my letter to you (attached with exhibits) McKenzie County Water Resource District's (MCWRD) cancellation/retraction of its approval of the three (3) ponds at issue was premised on the failure of the condition precedent for the original approval.

This action by the Board does not preclude the land owner or others from submitting a new application which will be independently considered by the Board.

Best regards,

1682-2.mooreltr2:tf

Steven M. Harris

cc: Denton Zubke, Chairman

From: Michael Moore [mailto:mmoore@bppw.com]

Sent: Monday, January 28, 2013 3:27 PM

To: steve.harris@1926blaw.com; dentonz@dakotawestcu.org; Tami L Norgard

Cc: Dale Behan; kwalker@epiceng.net; bill@premiernwe.com

Subject: FW: Message from KMBT 601

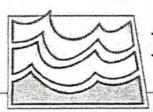
Steve-thank you for this attached package with regard to McKenzie. The Lindale name will be changed on our end for a variety of reasons-but that is not what I am emailing about.

Specifically-I did say and these pits that our located on Mr. Behan's private property will be used for industrial purpose. That is correct. With regard to your email "Mr. Zubke, chairman of MCWRD explained in his letter of January 4, 2013 (Exhibit 1) that MCWRD's approval of the three ponds was contingent and conditional. The condition/contingency was that the ponds must not be used for industrial purposes. As a result, the condition/contingency has failed. MCWRD intends to proceed to cancel/retract its prior approval of the ponds at its next regular meeting of the Board of Directors of MCWRD."

Obviously- with the letter included in this packet- these SWC was notified/worked with on their construction. My question is what is the denial above going to be based on? (code, statute, rule, etc. or is it just 1926(b)?

Thanks-

Mike



## North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850 701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: http://swc.nd.gov

#### WATER APPROPRIATION DIVISION (701) 328-2754

February 7, 2011

Ms. Alice Simonson Box 512 Watford City, ND 58854

Dear Ms. Simonson:

Denton Zubke has mailed us the 2010 report of annual water use at your water sales depot, as per Water Permit Nos. 3882 and 6106. On the form for Permit No. 6106, Mr. Zubke asks whether a note on the form will suffice as a request for an increase in pumping rate or if a separate letter is required. A separate letter is required. Section 89-03-02-11 of the North Dakota Administrative Code states, "Requests to increase a permittee's pumping rate must be made in writing to the state engineer." We have received your February 7, 2011 letter requesting the increase in pumping rate and the signed stipulation/waiver for Permit No. 3882.

In your reported 2010 industrial water use, Mr. Zubke included:

130.6 acre-feet as per Permit No. 6106,

20 acre-feet of a permitted 25 acre-feet as per Temporary Permit ND2010-4393,

19.4 acre-feet for industrial use as per Permit 3882, and

45 acre-feet allowed for irrigation as per Water Permit No. 3882.

A lower-rated type of water use, industrial, can be converted to a higher rated type of use, irrigation, but not vice versa. Permit No. 3882, which is part irrigation and part industrial, can be converted to all irrigation, but cannot be converted to all industrial. Therefore, the 45 acre-feet permitted for irrigation in Permit No. 3882 cannot be converted to industrial use. Temporary one-year conversions of ongoing irrigation water use to industrial use are being allowed in 2011. However, since you have not irrigated for the past 17 years, you have no 'ongoing irrigation use' to convert. You are therefore permitted 150 acre-feet for industrial use in 2011, 130.6 acre-feet from Permit No. 6106 and 19.4 acre-feet from Permit No 3882. Later this year, towards fall, we will review the effect the increased pumping is having on water levels in the Tobacco Garden aquifer and consider granting all or part of the remaining 69.4 acre-feet per year, keeping in mind your waiving of the 45 acre-feet for irrigation.

Sincerely,

Alan Wanek, Hydrologist Manager

AW:sc/3882/6106

cc:

Denton Zubke

PO Box 927

Watford City, ND 58854

#### STATE OF NORTH DAKOTA

#### CONDITIONAL WATER PERMIT NO. 6106

## ATTACHMENT "B" Approval of Portion Held in Abeyance

Conditional Water Permit No. 6106 is approved for the annual appropriation of 130.60 acrefeet of ground water, from the point of diversion located in the NE1/4 of Section 22, Township 150 N., Range 099 W., at a maximum pumping rate of 1,000 gallons per minute for industrial use. The remaining 69.40 acre-feet of ground water initially requested was held in abeyance.

A comprehensive hydrogeologic analysis of the permit evaluation area was conducted. It is recommended in staff memorandum dated March 15, 2012, that an additional 69.4 acrefeet of water held in abeyance be approved. All parties of record on the permit were notified of the recommendation, and the deadline to submit comments or concerns was 5:00pm, Wednesday, May 16, 2012. The only comment received was from Rodney Johnsrud, who stated he was not requesting a hearing in regard to the application.

Therefore, on Monday, June 11, 2012, the State Engineer approves the following:

An additional 69.4 acre-feet of water, which was previously held in abeyance.

Conditional Water Permit No. 6106 is hereby approved for the following:

200.0 acre-feet of ground water annually, from the point of diversion located in the NE1/4 of Section 22, Township 150 N., Range 099 W., McKenzie County, at a maximum pumping rate of 1,000 gallons per minute for industrial use.

All other provisions and conditios stipulated on the water permit shall remain unchanged,

SEAL



Todd Sando, PE State Engineer

Date: June 11, 2012

Application No. 6209

## STATE OF NORTH DAKOTA APPLICATION FOR CONDITIONAL WATER PERMIT

DEC

NOTE: Use one application for each type of source (ground water, surface water). Check all appropriate boxes and fill in each blank line. If the question is not applicable to your proposed development, enter NA (not applicable). If more space is necessary, attach additional sheets.

(PLEASE TYPE OR PRINT IN INK)

1. Name of A	pplicant	A	LICE SIMON	SON FAMI	LY TRUST	100	552572
	dress						
	WATFORD CIT						
Phone:7	701-842-3517 (Home)		(Cell)		(Work)	701-570-404	3 (Other)
Email; dent	tonz@dakotawestcu.or	g					
2. Source of	water supply: 💢 grou	nd water 🗆 s	surface wate	r			
If surface v	water: (a) stream		a tr	ibutary of			
	(b) If new impo	undment: _	1/4	1/4 Se	ec , Tw	p, F	Rge
	(c) If existing in	mpoundment,	give name				
	(d) Existing im	poundment: _	1/4	1/4 S	ec, Tv	vp	Rge.
3. Point of div	version: NE_1/4 of Section2	2_Township_	150 N., R	ange 99	_W.,	CKENZIE	County
	onal points of diversion						
(2)	1/4 of Section	Township_	N., R	ange	_W.,		County
(3)	1/4 of Section	Township_	N., R	ange	_W.,	1-24-	County
(4)	1/4 of Section	Township_	N., R	ange	_W.,		County
4. Amount of	water requested:						
(a) Annual	use from points listed i	n Item 3 above		ersion, and	d period of use	1:	
$\in$	acre-feet a	(RATE)	cfs gpm	from	01-01 to	12-31 (MONTH-DAY)	_inclusive
(b) If Import	undment:evaporative losses.	acre-feet st	orage out of	which	ac	cre-feet will	be used to
(c) Total an	nnual use requested (su	um of annual u	ise from 4a	and evapor	ation from 4b)		acre-feet
5. Proposed of	construction:						
Propos	sed starting date		EXI	STING FAC	ILITIES		
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### INDUSTRIAL USE PERMIT GROUND WATER SOURCE

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I, Todd W. Norton of Bismarck, ND do hereby certify that this map was prepared from information obtained from a topographic map and that it represents the points of diversion for the accompanying water permittapplication.

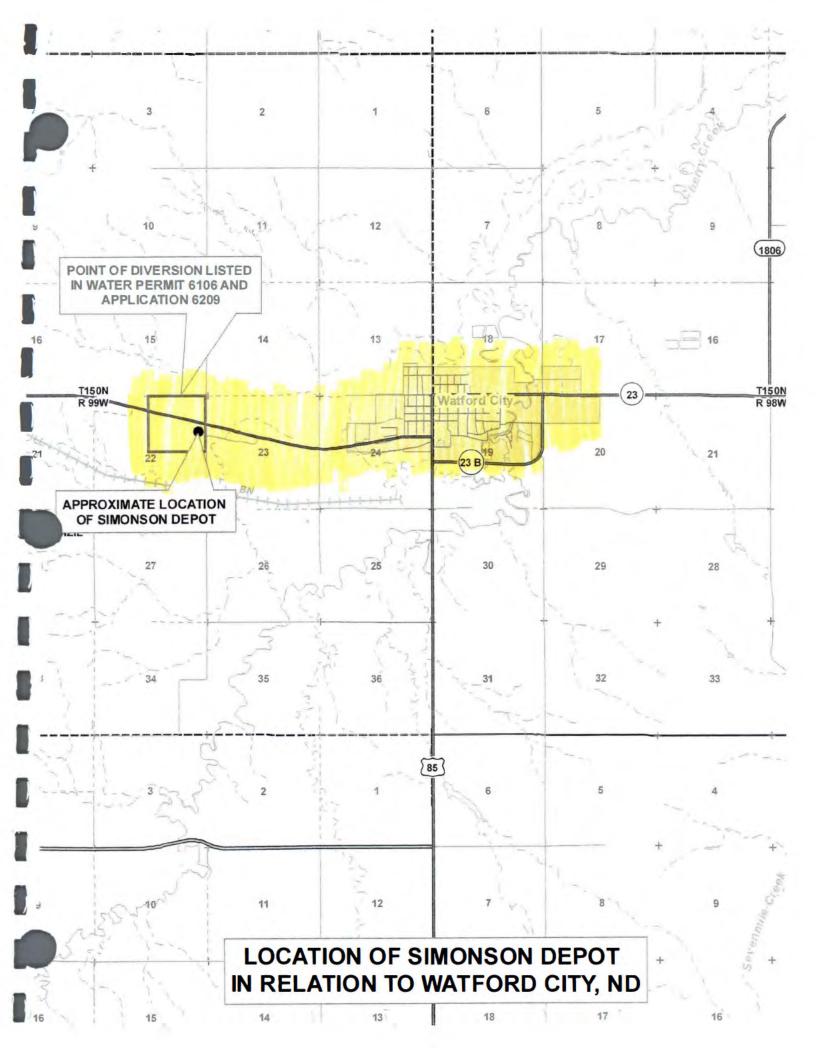
Todd W Norton PLS - Surveyor

Simonson Water Depot McKenzie County, ND

> Alice Simonson Watford Cit, ND

> > APPLICANT

TO THE REAL PROPERTY.



#### POLICY BULLETIN NO.

SUBJECT: Availability of Project Water for Voluntary Acquisition of Right of Way

POLICY:

To meet the Business Plan, WAWSA needs to acquire a significant amount of right of way in a short time period.

For property owners who voluntarily enter into easement agreements or sell property to WAWSA, WAWSA will favorably consider providing water service from the Project if requested by these property owners. If the property owner is served by a WAWSA member, the WAWSA board will recommendation to the member that service be provided to the property owner.

For any property owner who does not voluntarily grant an easement or sell property to WAWSA, where condemnation is initiated, WAWSA will likely not consider any requests for project water from the owner of the condemned property. If water service is instead provided by a WAWSA member system, the WAWSA board will likely recommend that the member deny any requests for service from that property owner.

Adopted April 18, 2012

Western Area Water Supply Project (WAWSP)
Informational/Signup Meetings Documentation (McKenzie Area)

Potential Member/User:

As stated and shown in the attached documentation WAWSP is a large regional domestic water supply project being designed and built in your area. Additional information can be obtained by going to the WAWSP web site at <a href="https://www.wawsp.com">www.wawsp.com</a>.

As part of the regional water system that will deliver water to area communities in McKenzie, Williams, Divide, Burke, and Mountrail Counties, it is also the goal of the regional system to meet all of the rural residential needs located within the overall project area. In an effort to meet that goal we have sent a meeting notification to any potential resident located within the proposed project area. Based on that mailing you have responded and requested that you receive the additional information and requirements to become a part of the regional water system.

The initial \$1,000 dollar hook up fee that we are requesting is to show that you are sincerely interested in obtaining water from the system and allow for the start of the preliminary design to determine feasibility of the project in your area. If it is determined that your location cannot be served by the system these funds will be return to you and you will have no further obligations to the system.

PLEASE NOTE THAT IF YOU ARE DETERMINED THAT YOU CAN BE SERVED BY THE SYSTEM AND YOU DECIDE NOT TO PROVIDE CONTINUE WITH YOUR MEMBERSHIP YOUR \$1,000 WILL BE FORFEIT (these funds are being used for the preliminary feasibility study).

The deadline for getting the membership/hookup fee submitted is May 15, 2012. The membership fee will increase to \$3,000 if paid after May 15, 2012.

It is **ESTIMATED** that the individual costs for participation in the regional water system will be as follows:

1. Membership/Hook-up Fee:

\$1,000 (if paid prior to May 15, 2012)

2. Membership/Hook-up Fee:

\$3,000 (If paid after May 15, 2012)

3. Estimated Water Rates Upon Water Service Availability:

a. Monthly Minimum Fee:

\$45-\$55 per month. (Does not include water)

b. Water Costs:

\$5.00-\$7.00 per 1,000 gallons.

If you still have a specific question that has not been answered you can contact us with your question at <a href="mailto:laret.Wirtz@wawsp.com">laret.Wirtz@wawsp.com</a> or <a href="mailto:Cal.Thelen@ae2s.com">Cal.Thelen@ae2s.com</a> and we will get a response to you as soon as possible.

If upon review of the enclosed documentation you have decided you wish to participate in the regional water projects, please complete the following:

- 1. Complete "Water Users Survey" (the quantity and location of water service is very important).
- 2. Execute with Notary "Water Users Agreement".
- 3. Provide \$1,000 check payable to "McKenzie County Water Resource District".
- 4. Return documents in preaddressed envelope (AE2S, 4050 Grand View Drive, Suite 200, Grand Forks, ND 58201).

Michael Moore <mmoore@bppw.com> 

√ Candace Vanwade <cvanwade@brownpruitt.com> Emailing: 2013-01-20\_13-47-47 145 (2)

1 Attachment, 117 KB

Your message is ready to be sent with the following file or link attachments:

2013-01-20 13-47-47\_145 (2)

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Michael Moore <mmoore@bppw.com>

To Candace Vanwade <cvanwade@brownpruitt.com>

Emailing: Behan\_Land WAWS Pumphouse MARKED-UP 017

1 Attachment, 123 KB

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Michael Moore <mmoore@bppw.com> 
To Candace Vanwade <cvanwade@brownpruitt.com>
Emailing: Behan Land WAWS\_Pumphouse\_MARKED-UP\_050

1 Attachment, 132 KB

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FACT: Passed in 2011; HB 1206 represented a compromise in public policy:

- 1. Create a public entity (WAWS) to enter private market to sell industrial water through depots
- 2. WAWS -was mandated to "minimize impacts" on private water sellers in placement of water depots

3.

Market was fully served; 80% by private sector; 20,000 ac.ft. of new competitive permits were pending in 2011.

FACT: Concept was to build trunk line from Williston to other communities; strategically place water depots along trunk line for water sales and reduce truck traffic. A super-structure (of lateral pipelines to oil wells, turn outs, private truck ports) across northwest ND was NOT part of the deal approved by the Legislature in 2011.

FACT: Project cost has grown from \$150 million to \$350 million in 2 years. Current debt: \$110 million + \$35 million assumed from participating entities. (Pending: \$40 million HB 1140, ½ of \$79 million in HB 1020).

FACT: Project was to be paid over 20 years; HB 1206-lays-out 23 year pay-back. (See #2,3,4 of HB 1206).

**FACT:** WAWS (or its members) has threatened private water development with lawsuits, confiscation of property, threatened landowners with eminent domain, and written letters to Corps of Engineers, the Governor and State Engineer interfering with private water development and threatening ND access to Lake Sakakawea.

FACT: After all the debts are paid---financed by ND taxpayers- -WAWS gets to keep all the money (less 5%).

<u>THE WAWS PROBLEM</u>: WAWS needs sufficient industrial water to pay its loans from the people of ND. WE AGREE. WAWS does not need to dominate the market—was not created to do so, but views itselffree to compete for as much water, as quickly as it chooses—impacting the private sector. THAT is the problem.

#### HOW DO WE SOLVETHIS?

KEY principles to solve THE WAWS PROBLEM:

- Slow down (get it right)---trunk line to cities is in. (Growth—well underway before 2011—not a surprise)
- 2. Limit the amount of additional debt it acquires
- 3. Caution on population projections. (We needn't build today, for people who might arrive in 2025).
- 4. Reasonable water rates to northwest ND (comparable to rest of state)
- Sufficient industrial water sales to provide debt service (approximately 20 30%)
- 6. Meaningful SWC approval/oversight of rural build out (current oversight is a fiction-and impotent)
- Resolve 1926 (b) –state and federal version
- 8. Value engineering; independent assessment of rural water demand and a financial Audit on the project

#### SPECIFIC REQUESTS:

- 1. Support SB 2359 with amendments to remove 10 mile barrier around WAWS depots
  - a. Industrial sales by 12 depots approved by SWC
  - b. May not restrict other water development for industrial use
  - c. Attempts to make clear---project is subject to SWC approval
  - d. Imposes 30% cap on WAWS for industrial sales; (SHOULD BE 25%)
  - e. But, imposes unworkable 10 mile barrier around WAWS depots, (REMOVE)
  - f. grandfather exemption to permit holders selling by 7/01/2013 (REMOVE)
- Amend HB 1020 (SWC appropriations) as follows:

For new funds authorized to western area water supply authority in 2013-2015:

 Prior to any expenditure or commitment of funds for rural and domestic water supply the State Water Commission shall obtain independent verification of the local domestic or rural water

- demands and the design and specifications of the system required to meet the demand, in a schedule and manner as determined by the Commission.
- b. All funds must be used exclusively to meet municipal and rural water needs. Funds and infrastructure resulting from said funds may not be used for industrial water supply.

Mr. Mayor,

My name is Mitchel Brown. Perhaps you have heard of me, perhaps not. I am the completion consultant that worked on the Brigham Exploration wells in North Dakota. And, yes, I am the one that began the large multistage frac work that is now the dominant practice in the Bakken. I now am the owner of a consulting firm in North Dakota that employs a 180 employees in and around the Williston area. My companies name is MLB Consulting. The majority of my work is with StatOil. I am also the one that brought Mr. Behand and his company to Williston. When the Bakken play began, there was no one that could help us in North Dakota with the water issues we faced and no one was even interested in attempting to move water for us at sub zero temperatures. But with a little bit of country ingenuity, we learned how to do it very proficiently. And that is how the water permits and pipelines were born. It bothers me to see the WAWSA project trying to "bully" the common man out of business for the benefit of an already corrupt government system that will inevitably fail due to the corruption. I say this because I have built a house south of 1804 and west of county rd 9, about 1 mile south and west of the Stoney Creek Township hall. I have been patiently awaiting the rural water to be brought close enough for me to afford to get it tied into my house. My patience has allowed me to witness the delivery of water to Continental wells thru the system that would deliver the water to my house, but I assume it has been ore profitable to deliver it to a major operator than to the common man. The idea of forcing the common man out is being taken to new levels by catering to the industry instead of the people that need it the most.

Sincerely, Mitchel L. Brown President MLB Consulting, Inc. 940-389-4252



Testimony of Jon McCreary, President of West Dakota Water LLC

In Support of Senate Bill 2233

House Natural Resources Committee

Bismarck, North Dakota, March 7, 2013

#### INTORDUCTION

My name is Jon McCreary and I am a general contractor and developer in Williston.
 Being a Williston resident, I want the best for Williston, WAWSA and Northwestern North Dakota. I believe that the longtime residents and oilfield workers deserve clean drinking water. The oilfield and its workers have created huge surpluses for the state, clearly some of this money can be used to provide those workers and our residents with water.

#### **EXECUTIVE SUMMARY**

- North Dakota has been attempting to put the Missouri River water to beneficial use for decades. The oil industry has presented the state with an incredible opportunity to put these waters to beneficial use now. There has never been, nor may never be again, an opportunity like this for the state. The Missouri River still has a great deal of unallocated water and if North Dakota allows downstream states to claim it, the water will never be available for use in this state. The western United States is out of water. These states are evaluating how to divert the Missouri River for their own benefit. North Dakota must support private parties willing to invest their own capital to claim these waters on behalf of the state.
- WAWSA is attempting to thwart the efforts of farmers, private individuals, and businesses that are putting Missouri River waters to beneficial use for the good of North Dakota. The Natural Resources Committee must support a policy that puts the states interests ahead of the interests of local politics and/or projects.

#### WATER DEPOT PROJECT

- I have a permit to sell industrial water from the Missouri River in McKenzie County near Williston.
- I engaged an engineer to design an intake, pump station, and a series of three depots in April of 2009, years before WAWSA was conceived. I have not stopped working on developing an ability to sell water since and have had many hurdles to overcome including permitting, easements, and the corps of engineers. However, the most recent hurdle is the most outrageous and disappointing. Now that I have spent a significant amount of my own money, WAWSA representatives are attempting to stop me from selling water.

1926B

- I received a letter from a Tulsa attorney named Steve Harris representing McKenzie County Rural Water District (MCRWD) on September 17, 2012. The letter claimed that MCRWD had a monopoly in McKenzie County as well as outside the boundaries of McKenzie County. The letter also threatened the forfeiture of my company's assets. We informed Mr Harris, that MRWRD had signed away all its industrial sales to WAWSA and did not have 1926b protection for that and other reasons. Days later WAWSA amended all their member contracts to state that industrial sales would be in the name of the member (not WAWSA as was previously stated, yet the money still ends up in WAWSA's bank account), in my view, a clear attempt to create a 1926b case that did not exist. Making matters worse WAWSA amended these agreements in executive session, in my opinion, in violation of North Dakota open records and meetings laws. (see attachments A and B).
- Separately WAWSA does not have capacity to sell water to industrial customers. Several towns are still waiting for water (while WAWSA sells forty percent of their water for industrial use), and WAWSA testified recently before the State Water Commission that they will not have water to meet their peak residential demand until 2015. Our industrial customers need a reliable water source not a "off peak" water source. Even during non-peak times WAWSA cannot meet the multiple 800 gallon per minute needs of the industry. Their system is not designed for those extreme loads.
- WAWSA can, however, sell off peak water out of their twelve depots. WAWSA cannot support additional debt through additional industrial sales that their system cannot accommodate. It is wrong to increase their encroachment into the industrial water service business.

#### MISSOURI RIVER WATER

The state has a great resource in the Missouri River and without private investment this
resource will be claimed by downstream states. That is why the state's policies have
always supported private business putting the rivers water to beneficial use. Don't let
local politics and projects dictate statewide policy.

#### LEGISLATIVE INTENT

 No one told you last session that WAWSA would try to block and restrict private business. No one told you that WAWSA members would try to claim a franchised monopoly that extends beyond their borders.

#### **OVERSIGHT**

• I have a WAWSA mainline running through my property in McKenzie County. I have not been paid for the easement. And I continue to spend \$4,000 per month to haul water to my business and employees residing on the property. Meanwhile, the water bypasses me and is sold in WAWSA industrial depots. I thought the priority was to bring the water to people first and use the excess for industry. I also have a planned 160 lot subdivision in McKenzie County. Apparently, none of the \$120 million WAWSA is seeking can be used to bring water to my subdivision, even though it is only a couple miles from the

mainline where there is ample water. Instead, I would need to make close to a \$1 million investment to hook these lots up to water. That confuses me, because I thought WAWSA was seeking these funds to bring water to the rural areas. WAWSA needs oversight.

- WAWSA leaders have testified that their project carries the burden of selling unprofitable
  water to people for domestic use. They have clearly lost their way. It is not their burden;
  it should be their privilege and mission to bring water to people. WAWSA needs
  oversight.
- WAWSA attempts to claim a monopoly on industrial waters sales goes beyond their mission. WAWSA needs oversight.
- WAWSA chairman testified that the WAWSA project would not cashflow better if it received grants instead of loans. That does not make sense. WAWSA needs oversight.
- WAWSA elected to minimize the capital repayment component for the residential customers, making the water much cheaper than other similar water system. Adjusting these rates would go a long way to making their project cash flow. WAWSA needs oversight.
- WAWSA can't articulate one valid reason why more oversight by water system experts at the State Water Commission would hinder their project.

#### CONCLUSION

- WAWSA's mission is to bring water to people. Their actions are not consistent with this
  mission and they need oversight.
- WAWSA should not oppose putting Missouri River water to beneficial use while using state funds. This is not in the best interest of the state.

I urge that you support SB2233 which will align WAWSA with the interests and policies of the state of North Dakota.

#### ATTACHMENT A

NOTE: The Changes made below have the effect of changing the name on the invoice to the member's names, but WAWSA still gets the money. Substance over form.

## (2) Billing and Collection.

To the request of WAWSA, extent Access Infrastructure includes infrastructure at which Industrial Water Sales are made; the Member shall provide such-market and promote industrial water sales and shall make industrial water sales through such infrastructure in the Member's own name. All such industrial water sales made by the Member, and all rates and other terms and conditions contained within industrial water sale contracts shall be subject to the approval of WAWSA, which such approval shall not be unreasonably withheld; The Member shall be responsible for all billing and collection assistance as reasonably may be required by WAWSA from time to time with respect to water sales for Industrial Water Sales made at or through the Owned Access Infrastructure. - All such billing shall be in the name of the Member; All Industrial Water Sales revenue collected by the Member shall be escrowed into a separate account and not comingled with the Member's other funds/revenue. The Member shall remit/pay to WAWSA from said escrow account, monies for which WAWSA and the Member shall immediately remit all amounts collected on WAWSA's behalf to an account in WAWSA's name designated by is entitled under the terms of the contract or contracts made between the Member and WAWSA-and shall segregate such funds. While funds remain in said escrow account, WAWSA shall have and is granted a security interest in said funds to secure any indebtedness due WAWSA from the Member's other funds and hold them in trust for the benefit of WAWSA until so remitted Member. The Member shall indemnify WAWSA from and against any claim made by any Industrial Water Sale customer under contract with the Member which arises from the sale of Industrial Water to said customer.

#### ATTACHMENT B

NOTE: The Changes made below have the effect of changing the name on the invoice to the member's names, but WAWSA still gets the money. Substance over form.

Section 2.03(c) of the MCWRD Access and Use Agreement

(c) <u>Operation of the Access Infrastructure</u>. The Member shall operate the Access Infrastructure in compliance with all applicable legal requirements and industry standards...

... To the extent Access Infrastructure includes infrastructure at which Industrial Water Sales are made, the Member shall market and promote industrial water sales "and shall make .industrial water sales through -such infrastructure on WAWSA 's behalf.in the Member's own name. All such industrial water sales shall be atmade by the Member, and all rates, and on other terms and conditions, approved by WAWSA and pursuant to contained within industrial water sale contracts approved and signed by WAWSA. At the requestshall be subject to the approval of WAWSA, the Member which such approval shall provide such not be unreasonably withheld. The Member shall be responsible for all billing and collection assistance as reasonably may be required by WAWSA from time to time with respect to water sales for Industrial Water Sales made at or through the Access infrastructure. Infrastructure. All such billing shall be in the name of WAWSA and the Member shall immediately remit all amounts. All Industrial Water Sales revenue collected on WAWSA's behalf to anby the Member shall be escrowed into a separate account in WAWSA's name designated by WAWSA and shall segregate such funds from not comingled with the Member's other funds and hold them in trust for the benefit of W A WSA until so remitted. Provided, if the Member has had to /revenue. The Member shall remit/pay to WAWSA from said escrow account, monies for the water soldwhich WAWSA is entitled under this Section, the Member may retain terms of the amount so paid to WAWSA for contract or contracts made between the watermember and WAWSA. While funds remain in said escrow account, WAWSA shall have and is granted a security interest in said funds to secure any indebtedness due WAWSA from the Member. The Member shall indemnify WAWSA from and against any claim made by any Industrial Water Sale customer under contract with the Member which arises from the sale of industrial Water to said customer.



Testimony to the House Energy and Natural Resources Committee Chairman Representative Todd Porter Prepared by Dan Jonasson, Director of Public Works City of Minot dan.jonasson@minotnd.org

#### SENATE BILL NO. 2233

Mr. Chairman, my name is Dan Jonasson and I serve as the Director of Public Works for the City of Minot. I am representing the City of Minot in support of Senate Bill 2233.

Senate Bill 2233 encompasses a number very important water related projects throughout the State of North Dakota, projects specific to the City of Minot in Senate Bill 2233 are the Northwest Area Water Supply (NAWS) a regional water supply project and Mouse River Flood Protection Project. Attached to this testimony, is a one page handout that provides background information on the Mouse River Enhanced flood Protection Project proposed for Minot and the Mouse River Valley.

The legislative commitment to funding the Mouse River Enhanced Flood Protection

Project is extremely important because it enables the City and County the ability to continue

planning for a flood protection project that will provide peace of mind for the residents of Minot

and the Mouse river valley that funding will be available to help them from the catastrophic

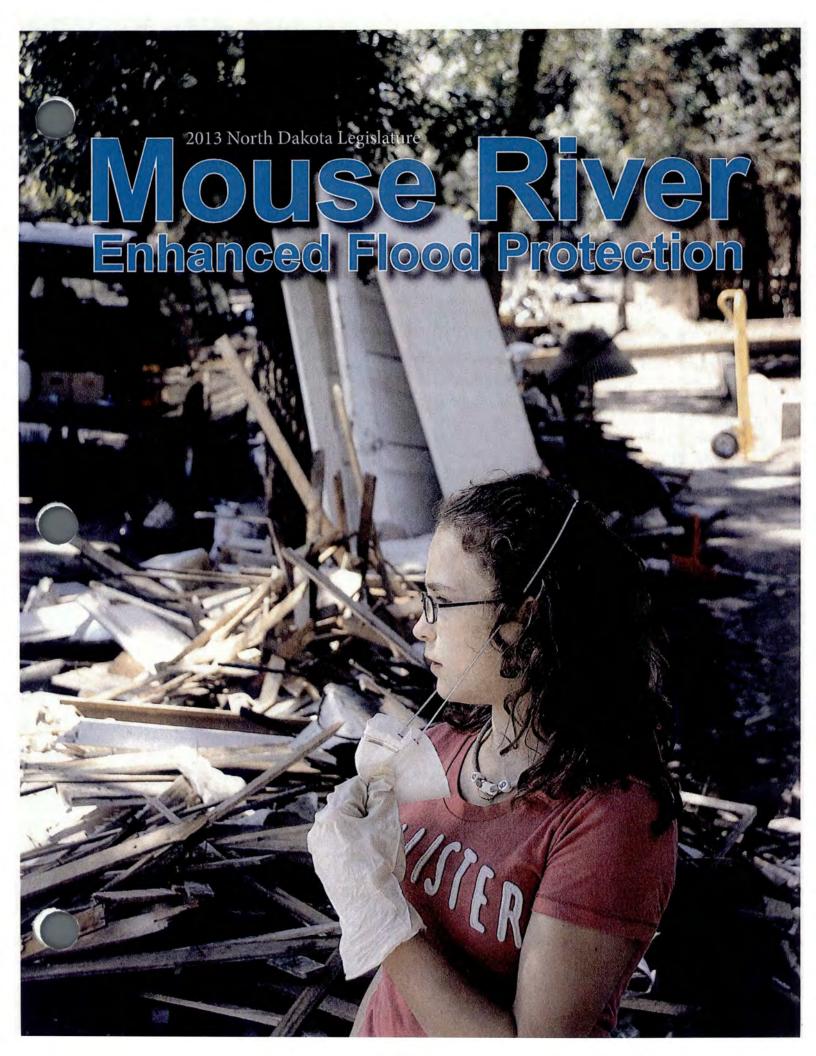
disaster we saw in the flood of record in 2011.

This commitment to funding provides the ability to continue with the next stage of engineering efforts in refining the alignment, completing cultural and environmental assessments, topographic surveys, geotechnical investigations and wetland delineations and laying out a plan to construct and provide the required flood protection the citizens need.

In addition, the support for funding the regional water systems guarantees quality water for many communities throughout North Western North Dakota which are struggling with inadequate drinking quality water through the NAWS system.

Therefore, I encourage you to adopt Senate Bill 2233.

Thank you for allowing me time to detail Minot's support for this bill and the importance of this commitment to funding to the residents of the Northwest Area Water Supply and citizens of Minot for flood protection.



#### **Helping the Minot region recover**

A disastrous flood in June 2011 swamped the valley of the City of Minot. With record-breaking flows and a crest six feet higher than the 1969 Mouse River flood, this flood will forever be imprinted on the minds of the thousands impacted. Words will never be able to accurately describe the damage, the heartache or the immense challenge that this disaster brought our residents.

Since this time many millions of dollars have poured into our community, along with thousands of volunteers in an on-going effort to bring back the Magic City. Recovering from a disaster that caused well over \$1 billion in damages takes a long time and a resilient people.

In many ways, the 2011 Mouse River flood will take a long-term recovery effort, similar to efforts in the 90s and 2000s to assist Grand Forks. State and local partnerships have teamed up to formulate an enhanced flood protection plan that will increase our permanent flood protection to the level that occurred in 2011. The Minot City Council supports this plan, and as a community we are already in the process of initial steps, like voluntary property acquisitions, planning and engineering, to bring additional protection to the Mouse River valley.

I would urge you to approve the State Water Commission Budget proposed by the Governor which includes funding of \$61 million to support Minot's flood recovery efforts during the 2013-2015 biennium. These funds will go a long way to accomplish the much needed early steps in the first years of this 10+ year long-term recovery. These early tasks include voluntary property acquisitions and the next level of engineering needed to push the plan forward.

-Mayor Curt Zimbelman

#### **Long-Term Enhanced Protection**

- 278 Residential properties with structures to be purchased
- 21.6 miles of levees
- · 2.8 miles of floodwalls
- 30 Transportation closure structures
- \$565 million for construction costs
- \$154 million for property acquisition
- \$101 million for engineering, planning, program management costs
- 8-12 years before the project, with appropriate funding, is complete

The Souris River Flood Protection plan consists of an overall project from the 49th parallel (Sherwood) to 49th Parallel (Westhope).

The preliminary alignment for protection measures is an area from the Mouse River State park to Velva, and consists of levees, floodwalls, river diversions and closure features, transportation closure structures, interior pump stations, ring dikes and residential and commercial property acquisitions in the flood alignment boundary.

Levees comprise nearly 90 percent of the alignment, totaling 21.6 miles. The remainder of the alignment consists of 2.8 miles of floodwalls and 30 transportation closure structures (19 roadway and 11 railroad). In addition, the project would require 33 stormwater pump stations. The estimated project cost is \$820 million, based on the current level of design based on a 27,400 cfs flood event. Of this estimated cost, \$565 million is related to construction, \$154 million is related to property acquisition, and the remaining \$101 million covers planning, engineering, and program management costs.



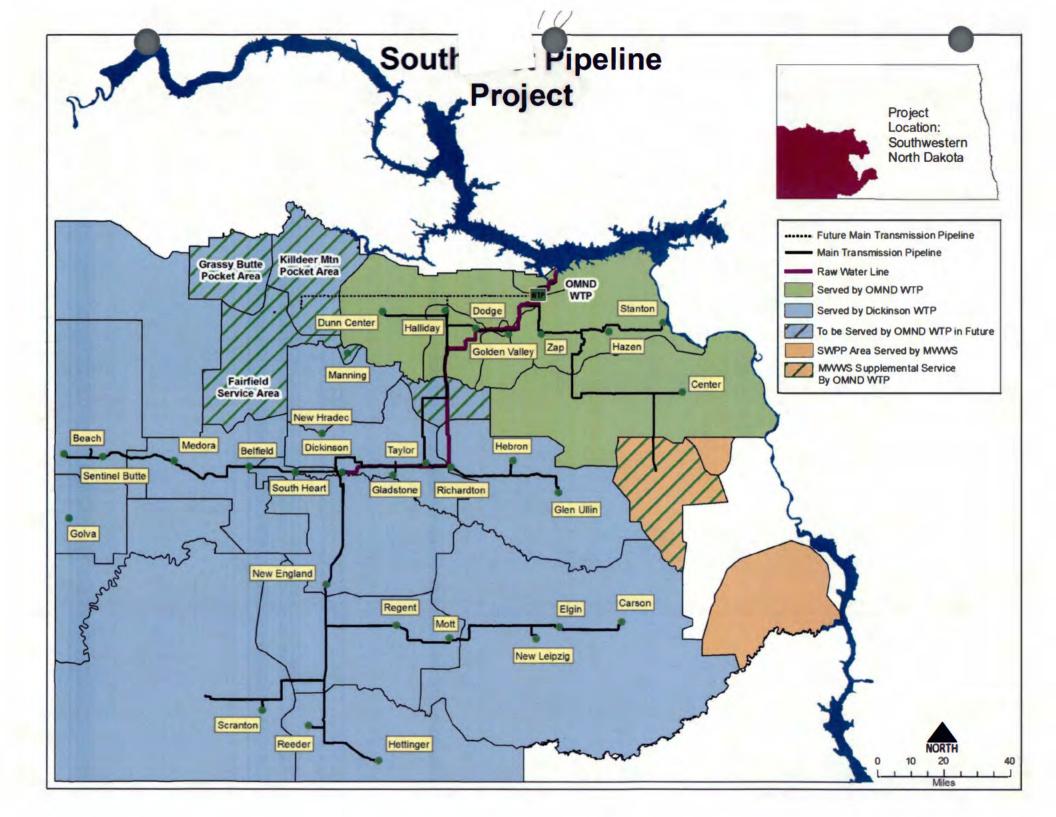
#### **Flood Facts**

Flow rate of 27,400 cubic feet per second (normal river flows are between 50 and 200 cfs)

Highest crest in recorded history, 1,561.72 above sea level, 13 feet above flood stage and six feet higher than the 1969 flood

- 4,100 structures in the City of Minot impacted based on elevation maps and surveys
- 2,716 homes in Minot suffered main-floor damage or greater

More than 11,000 residents displaced due to the flood





## Mission Statement for Southwest Water Authority

Quality Water for Southwest North Dakota

## Vision Statement for Southwest Water Authority

People and Business Succeeding with Quality Water



Learn More by Visiting www.SWwater.com

## Southwest Water Authority









#### What is the Southwest Pipeline Project (SWPP)?

The SWPP is the first large multi-county regional rural water project developed in the State of North Dakota. The SWPP is to provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system. While the SWPP is State owned and administered by the North Dakota State Water Commission (SWC), it has been managed by SWA since 1996.

#### What is the primary focus of the Southwest Pipeline Project?

The SWPP was designed to allow for the transportation of raw water from Lake Sakakawea (the third largest man-made lake in the United States) to the OMND WTP and the Dickinson WTP where it is treated and delivered to the Project's customers in southwest North Dakota and Perkins County, South Dakota.

#### Why did the State Water Commission (SWC) create the Southwest Pipeline Project (SWPP)?

With an annual rainfall of less than 15 inches in southwest North Dakota, there was not enough water to keep wells in the area from running dry and streams and reservoirs from emptying out. Also, the groundwater was, and remains, extremely poor quality.



#### When did the SWA take over management of the SWPP?

SWA took over the management, operations and maintenance on January 1, 1996 from the State Water Commission. SWA also managing the City of Dickinson's water treatment plant on April 1, 2000.



#### What does the Southwest Pipeline Project provide to North Dakota?

The Southwest Pipeline Project brings water from Lake Sakakawea to provide clean, safe, quality water supply for residents of the southwestern portion of the State. Without access to the Southwest Pipeline Project, many residents of this region would otherwise have to carry drinking water from elsewhere because their drinking water is unsafe. Currently (2012) 31 communities, more than 4,600 rural-service locations, 22 contract customers, 21 raw water customers, and two rural water systems are served quality water by the Pipeline. Two raw water depots also serve the oil industry, an ethanol plant and drinking water for two energy-related crew camps.

#### Where would North Dakota be today without the vision of leaders who believed in the SWPP?

It would have remained a rural, barren land. Farmers and ranchers were moving out due to lack of quality water. Drought was encompassing this part of the State. Mayors could not get people or businesses to move in. Oil and gas companies couldn't get raw water. Thanks to the vision of the North Dakota Legislature, state and local leaders, the Southwest Pipeline Project became a reality.

#### Who manages the Southwest Pipeline Project?

The SWPP is managed by the Southwest Water Authority 15-member Board of Directors representing the following counties: Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Slope and Stark, as well as the cities of Dickinson and Mandan.



#### What construction for expansion of the SWPP is currently underway?

A second intake, raw water upgrades, and expanded treatment capacity at both water treatment plants are necessary to meet the exponential growth in our region. The OMND (Oliver, Mercer, North Dunn) Regional Service Area is under construction and is essential to meet the growing demand for quality water. A there are more than 1,000 rural customers and all energy sector users, including the power plants, coar plants and the oil industry, waiting for water in this region.

#### Does the SWPP generate a revenue stream sufficient to repay the revenue bonds issued for construction?

Yes. To date, more than \$33 million in capital repayment has been paid back to the state of North Dakota. The 2013 budget includes nearly \$5 million in repayment fees, an increase of 63% from the 2012 budget.

# Southwest Pipeline Project Investment Repayment to North Dakota

The Southwest Pipeline Project (SWPP) is not only paying great dividends to the state of North Dakota in the form of **ECONOMIC GROWTH** and increased tax revenues, it is **REPAYING** significant dollars to the state treasury.

#### Return On Investment/Repayment

- 1. State funding through 2012: 78.9 million
  - a. State funding: RTF 61.9 million; WDTF 8.47 million; State bonds 8.54 million
  - b. Federal funding: (Garrison Diversion, ARRA, USDA, NRCS, SRF)
- 2. State funding repaid to date: 32 million
- 3. All operation, maintenance and replacement costs paid by users
- 4. Repayment to the state of North Dakota (estimated 7 million per year)
  - a. To date: 32 million
  - b. 10 years: 70 million (102 m)
  - c. 20 years: 140 million (172 m)
  - d. 30 years: 210 million (242 m)
  - e. 40 years: 280 million (312 m)
- 5. Payments continue permanently
- Estimated revenues could exceed 7 million per year, depending on population growth and oil development

#### **Economic Growth**

Water is a key component of economic development. With economic growth comes new businesses, new jobs, and increased local and state tax revenues. If we are going to continue to meet the growing needs of southwestern North Dakota, investing in water development is essential.



## requently Asked Questions

## s there a waiting list for water from SWPP to other service areas?

res! The southwest region of North Dakota is seeing unprecedented growth with the oil and energy industries. Communities and ural areas being served are in need of much more water. A second intake for the Project is now a bigger need than ever. Expansion of treatment at the water treatment plant in Dickinson is needed for the growth in Dickinson and the region. Upgrades to the Project are needed to meet this fast growth and high demand. There are people today who cannot drink the water from their tap because they are not yet connected to the SWPP. In some cases, people signed up for water and paid their fees more than 20 years ago. There are also people on waiting lists in the areas currently served as the Project is at capacity.

#### With the energy industry having a big economic impact on all of ND, how does SWPP help?

Quality water is essential to keep the State's economic engines growing and moving forward. That's why the SWPP continues to stay rue to its vision to help the people and business of southwest North Dakota succeed with quality water.

#### Who funds the Southwest Pipeline Project?

As a State owned project, we are 100% funded by State and federal loan programs. With our customers paying capital repayment, here is no local cost share. The Garrison Diversion Conservancy District's, Municipal, Rural and Industrial (MR&I) Water Supply Grant 'rogram, provides up to 75% of the cost for development of water supply projects. The legislation that created the program gives cost-sharing credit for the funds the State had previously expended on the project. Through November 2012, \$69.84 million from North Dakota's Resources Trust Fund, \$8.47 million from the Water Development Trust Fund and \$100.62 million in MR&I funding has been spent on the SWPP.

#### What funds are needed in the next biennium for the SWPP to continue its mission?

'he Southwest Pipeline Project is requesting \$79 million in the next (2013-2015) biennium.

#### bes the needed funding mean to the people and businesses of Southwest ND?

short, it means building more than 462 miles of pipeline, increasing SWA's pumping capacity of water by the end of 2015, economic levelopment for all of ND, water for the workers coming to ND, and allowing for the ability to serve the citizens who are continuing to repay the State of North Dakota.

#### What happens if Southwest Water Authority does NOT receive all of its needed funding?

Drinking water will need to be rationed to the detriment of existing southwest North Dakota residents. The people already signed up and waiting for quality drinking water will continue to wait. Temporary workers will not want to become permanent residents. Cities will not be able to build the homes needed for incoming workers.

#### What has been accomplished by the Southwest Pipeline Project to date (2012)?

Currently (2013) 31 communities, over 4,600 rural service locations, 22 contract customers, 21 raw water customers in North Dakota, nd two rural water systems, are served by this pipeline. Two raw water depots also serve the oil industry, an ethanol plant and drinking water for two energy-related crew camps. The current population exceeds 50,000 in North Dakota, up from 35,000 a little more han a year ago.

#### Vhat is Southwest Water Authority?

he North Dakota State Legislature established Southwest Water Authority (SWA), a political subdivision in 1991. SWA was created to upply and distribute water to the people of southwestern North Dakota through a pipeline transmission and delivery system for puroses including domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, ural water, and municipal uses. SWA is also to provide for the future economic welfare and prosperity of the people of ND, particularly ne people of southwestern North Dakota.

#### Vha Southwest Water Authority accomplished since its inception?

or over 27 years, the SWC has been constructing an efficient network of pipelines, pump stations, reservoirs and treatment facilities to ring southwest North Dakota an adequate supply of quality water. To date, (2012), 31 communities and more than 4,600 rural-serice locations are being served by the Pipeline. The SWPP also serves 22 contract customers, 21 raw water customers, as well as two ural water systems. The Pipeline also has two raw water depots serving the oil industry, an ethanol plant and serves potable water to wo crew camps.

#### What services does Southwest Water Authority provide southwest North Dakota?

Currently, SWA provides drinking water to 31 communities, more than 4,600 rural-service locations, 22 contract customers, two camps, 21 raw water customers, and two rural water are served by this pipeline. The Project serves an ethanol plant and two raw water depots.

#### What is the water quality that SWA is providing to its customers?

Since the inception of SWA, they have not only met, but also exceeded, all of the Environmental Protection Agency and North Dakota Department of Health's stringent water quality laws. Visit SWA's website to view the Consumer Confidence Reports (CCR) and to learn more at: www.SWwater.com.

#### What infrastructure does SWA manage?

SWA manages, operates and maintains more than 4,000 miles of pipeline as of December 31, 2012; two water treatment plants (12 MGD and 3.5 MGD) capacity, 21 water storage reservoirs varying in size from 197,000 – 6,000,000 gallons.

#### Where is SWA's water treated?

Water for the SWPP is treated at the OMND and at the Dickinson water treatment plants. Both water treatment plants are managed by SWA.

#### How many gallons of water is SWA projecting to be sold in 2013?

It is projected that SWA will sell over 2.6 billion gallons of water in 2013, which is an increase of 67% from 2010.

#### How many communities and people does Southwest Water Authority currently serve?

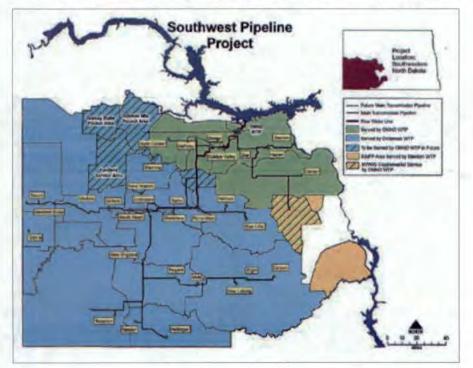
Currently, (2013), 31 communities, over 4,600 rural-service locations, 22 contract customers, 21 raw water customers in North Dakota, and two rural water systems, are served by this pipeline. Two raw water depots also serve the oil industry, an ethanol plant and drinking water for two energy-related crew camps. The current population exceeds 50,000 in North Dakota, up from 35,000 eigen months ago.

#### What are SWA's major expenses for 2013?

In addition to capital repayment fees of nearly \$5 million, power costs of \$1.345 million, an increase of 50% from the 2012 budget, plus salaries and benefits.

#### How many people does Southwest Water Authority employ?

Currently, SWA has a staff of 34 and will be hiring an additional 13 employees in 2013.







# **Southwest Water Authority Pays Back 47% of Resources Trust Fund Repaid**

#### Amount Paid back in the form of Capital Repayment

YEAR	TOTAL	YEAR		TOTAL
1991	\$ 11,166.00			
1992	\$ 212,899.00			
1993	\$ 195,973.00	2004	\$	1,621,239.25
1994	\$ 300,472.00	2005	\$	1,706,958.33
1995	\$ 504,179.00	2006	\$	1,948,480.26
1996	\$ 734,994.15	2007	\$	2,308,065.86
1997	\$ 857,913.00	2008	\$	2,455,506.88
1998	\$ 915,791.37	2009	\$	2,618,988.11
1999	\$ 1,025,997.24	2010	\$	2,776,546.59
2000	\$ 1,146,779.77	2011	\$	3,076,416.44
2001	\$ 1,308,267.93	2012*	\$	4,287,275.86
2002	\$ 1,432,224.68	Total	\$	33,033,598.25
2003	\$ 1,581,284.21	*Through D	ecem	ber 31, 2012

#### SOUTHWEST PIPELINE PROJECT (SWPP) FUNDING SOURCES

S	tat	e	Fund	ing (	(in	milli	ions	of	dol	lars)	
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Resources Trust Fund\$	69.84
Water Development Trust Fund	8.47
Subtotal	78.31

#### Grants

Garrison	Diversion	Conservancy	District
	1- 1		

Municipal Rural & Industrial Fund	\$	100.62
United States Department of Agriculture	Rural Development\$	15.09
Natural Resources Conservation Service	PL566\$	0.93
0.11	Φ.	11//1

#### State Bonds Repaid by Users

Public Revenue Bonds\$	7.04
United States Department of Agriculture - Rural Development\$	15.70
ND Drinking Water Revolving Loan Fund\$	1.50
Subtotal\$	24.24

Total Funding\$	219.19
I otal Funding	417.17





## It's More Than a Pipeline... It's a Lifeline

The Southwest Pipeline Project (SWPP) is North Dakota's largest multi-county regional rural water project. Today, the SWPP brings quality water to over 50,000 people which includes 31 communities, more than 4,600 rural locations, 22 contract customers, 21 raw-water customers, and two rural water systems. In the energy sector, the SWPP provides raw water for two depots, an ethanol plant and two crew camps. The OMND (online 2012) water treatment plant currently serves the communities of Zap, Hazen, Stanton, and Center. Construction is now underway for the Oliver, Mercer, North Dunn (OMND) counties.

The need for quality water in southwest North Dakota is greater than ever. Given 1,417 rural customers continue waiting for water, southwest North Dakota's population is growing at an unprecedented rate, the raw-water needs of the energy industry, and it's easy to see why the continued funding for the SWPP is so important to the economic development of ALL of North Dakota. To date, SWPP has paid back to the state of North Dakota over \$33 million.

**ECONOMIC VIABILITY**. The communities and rural areas currently being served by the Southwest Pipeline Project (SWPP) are basing their current and future growth on the availability of quality water. That's a fact!

**UNPRECEDENTED GROWTH.** Here we are experiencing doubling populations due to the oil and energy industries. The communities receiving quality water from the Southwest Water Authority are literally doubling their populations with no sign of slowing down. All of the projections are for continued population growth and incoming businesses.

FUNDING OF THE SWPP IS VITAL. The requested funding for 2013-2015 will not only help ensure water quality for southwest North Dakota, but will strengthen the economic viability of the entire State. With \$79 million in funding over the next two years, the SWPP can continue to meet the water quality needs of existing customers and the growing needs of communities it serves. Together with the funding support of the SWPP, North Dakota will remain a State people want to do business with and a place they want to raise their children.

WATER QUALITY. With a mission of quality water for southwest North Dakota, the Southwest Pipeline Project continues to meet and/or exceed all of the Environmental Protection Agency (EPA) and North Dakota Department of Health's stringent water quality laws and requirements.

PAYING BACK TO NORTH DAKOTA. Through 2012, over \$33 million has been paid back from the Southwest Pipeline Project to the State of North Dakota.

**Quality Water for Southwest North Dakota** 





## **CURRENTLY SERVING QUALITY WATER TO:**

- More than 50,000 Southwest ND Residents
- 31 Southwest ND Communities
- Over 4,600 farms, ranches & small businesses
- 22 contract customers
- 21 Raw Water customers
- Missouri West Water Rural Water System
- Perkins County Rural Water System
- Red Trail Energy Ethanol Plant
- Two Oil & Gas Crew Camps
- Two Raw Water Depots for Oil & Gas Industry

#### WATER SALES GROWTH:

- 698,867,870 gallons (1995)
- 2,373,063,380 gallons in 2012
- 2013 Projection: 2,622,595,000 gallons 67% INCREASE from 2010

"Your efforts are critical towards providing water for residential, agricultural, and industrial use during this time of rapid growth in western North Dakota. Thank you for your hard work and best wishes as you continue to expand the Southwest Pipeline Project."

Jack Dalrymple,
 Governor of North Dakota

#### **EMPLOYMENT:**

Current staff - 34 Hiring - additional 13 in 2013

#### CURRENT POPULATION:

50,208 Southwest North Dakota

#### POPULATION GROWTH:

Unprecedented population projected growth over the next 10 years

#### REPAYMENT TO NORTH DAKOTA:

Through 2012 over \$33 million has been paid back to the State In 2013, nearly \$5 million in capital repayment budgeted

#### **TOTAL WATER REVENUES:**

2013 Projected Revenue: \$15 million (60% increase over 2012 budget)
Revenue generated through November 2012 is over \$12 million (\$9.9 million budget)

## **OPERATIONS & MAINTENANCE:**

Two Water Treatment Plants
12 MGD and 3.5 MGD capacities
21 Water Storage Reservoirs, vary in size from 197,000 - 6,000,000 gallons

## People and Business Succeeding with Quality Water

Southwest Water Authority does not discriminate on the basis of race, color, national origin, sex, religion, age, marital status or disability in employment or the provision of services.

"As a member of the State Water Commission, I have followed the progress of this project, and consider it a landmark in the development of the Southwest Pipeline Project that will bring fresh, treated water to thousands of people."

– Doug Gochring, North Dakota Agriculture Commissioner

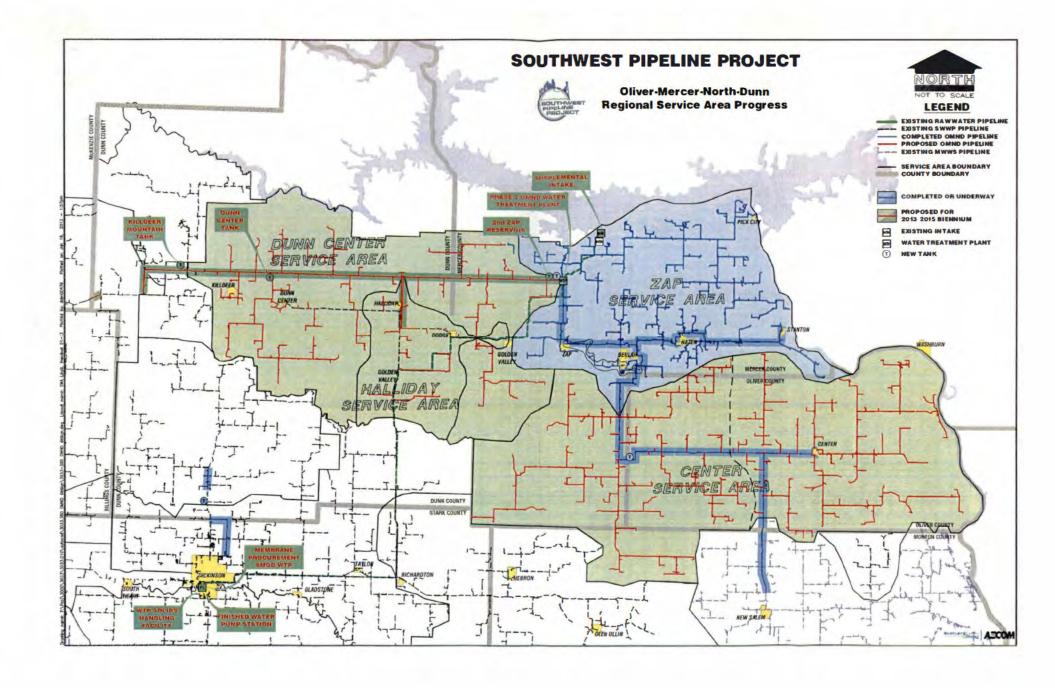


Western Area Water Supply Authority Positions 2013 Legislative Negotiations SB 2233 and SB 2359 March 22, 2013

- Western Area Water Supply Authority (WAWSA) needs \$119 million of funding this biennium from HB 1140 and HB 1020 for priority projects, including an emergency clause for HB 1140 for immediate expansion of the Williston Regional Water Treatment Plant (WTP) from 14 MGD to 21 MGD and associated projects to avoid impending water shortages.
- 2. WAWSA notes that the Western Area Water Supply Project (WAWSP) is critical to provide a dependable water supply for current and future generations in northwestern North Dakota and is essential to provide for the long term welfare, economic well-being, and quality of life for the entire state. WAWSA desires legislative intent recognizing the criticality of the project and recognizing the future project build out requirements beyond 2013 to 2015, currently estimated to cost \$120 million.
- 3. WAWSA has six categories of annual revenue requirements plus other existing Member water system debt that must be covered through domestic and industrial water sales revenues, including:
  - WAWSA operation and maintenance costs;
  - Member operation and maintenance costs for WAWSA or contracted infrastructure;
  - Payments that WAWSA is contractually obligated to pay to its Members, generally
    referred to as "2010 Baseline Industrial Water Sales", whereby WAWSA agreed to
    pay the Member the value of each Member's 2010 industrial water sales in exchange
    for the ability of WAWSA to build out and obtain the financial benefit of all industrial
    water sales revenue within the Member's jurisdiction;
  - WAWSA contractual obligations to pay off existing Member debt for infrastructure contracted to WAWSA;
  - WAWSA debt;
  - · Operating and capital reserves; and
  - Other existing Member water system debt.

Domestic revenues are anticipated to be adequate to cover WAWSA operation and maintenance costs, Member operation and maintenance costs, and operating and capital reserves, leaving the remainder to be covered by industrial water sales. The legislative proposal would be acceptable so long as there is a long-term binding commitment by the State to meet these WAWSA annual revenue requirements.

- WAWSA understands industrial water sales benefitting WAWSA will continue beyond the debt service retirement period.
- 5. WAWSA supports removal of the default language from Chapter 61-40.
- WAWSA supports removal of the North Dakota State Water Commission (NDSWC) policy language from Chapter 61-40.
- WAWSA supports removal of the NDSWC representative from its Board of Directors.
- WAWSA supports limiting its number of water depots to 12 unless additional depots are authorized by the Industrial Commission.
- 9. WAWSA has existing temporary and permanent direct pipeline connections paid for completely by contracted private entities, and additional direct pipeline connections are planned and anticipated. WAWSA strongly encourages the State to continue to allow additional direct pipeline connections, given the route and capacity limitations of the WAWSA water system, the industry trend away from depots to pipelines, and the increased efficiency and elimination of truck traffic associated with pipelines.
- 10. Under the terms of this proposal, WAWSA believes it can convince its Member entities to agree not to enforce their 1926b rights so long as the private water sellers are limited to sales of untreated ground water and untreated surface water sources used for fracking purposes.
- WAWSA will be legislatively granted all legal rights provided to North Dakota water districts.
- 12. WAWSA understands the Industrial Commission will preserve all excess WAWSA industrial water sales within the Resources Trust Fund for future expansion and improvements to the WAWSP. WAWSA must be able to apply to the Industrial Commission/NDSWC to access these additional funds from the Resource Trust Fund as the domestic water supply demands increase within the WAWSA service area.





March 7, 2013

Mayor Brent Sanford

Appearing in Opposition to SB 2233

House Energy and Natural Resources Committee

Rep. Todd Porter, Chairman

Chairman Porter and Committee Members, thank you for the opportunity address SB 2233. I'm here to talk about three key issues as they related to water in western North Dakota: growth, public vs. private water sellers, and protection of our local water ratepayers.

#### We Never Dreamt Growth Would Look Like This

- Growth in western North Dakota is more than our wildest dreams just a short time ago.
  - McKenzie County quickly became a hotbed of activity in 2010 and beyond.
  - Watford City's population has hovered between 1,000 and 2,000 people for the
    past sixty years and we are now planning for a population of 15,000 to the likes
    of Williston, Dickinson, and Jamestown.
- Through the main water and sewer trunk line extensions and other infrastructure investments funded from the Energy Impact Fund program last biennium, our small town, (2010 census population of 1,744 people) now has a planning area covering five square miles with active developments occurring throughout.
  - For the year 2012, we approved \$92 million in building permits and collected \$382,007 of permit fees.
  - We have seven active developments in various stages along the trunk line projects. EACH of these major developments show plans for between 1,000 and 3,000 people. That is like building SEVEN more Watford Cities!
  - Watford City needs to make \$192 million in local infrastructure investments alone to accommodate our new projected population level.

Mayor Brent Sanford, City of Watford City SB 2233 - In Opposition March 7, 2013

#### We Know We Can't Grow Without an Affordable, Plentiful Water Supply

- Without industrial water sales, the WAWS Authority would not have been constructed and each and every community in northwestern North Dakota would be before you seeking appropriations to support individual systems. WAWSA affords the State the opportunity to have water become a legacy of this oil play with the benefitting industry helping to financially support the legacy. Quality water that we've been seeking for the past fifty years.
  - Our communities have always struggled with a quality water supply and now struggle with a sufficient quantity of water to serve our explosive population growth. The City of Stanley rationed water in 2012 and previous years.
  - Our rural residents have been hauling water for decades or taking water from their own wells that is not of the highest quality. We could not afford to construct a rural water system of this magnitude without industrial water sales. Rural water systems are often built with 75 percent grant funding. Our rural water systems have seen their requests for service increase from 400 to over 17,000.
  - The Independent Water Producers have advocated slowing down the construction of the WAWS Project. Have you seen the latest population projections? There is not slowing down in sight. In 2011, Lynn Helms referred to this industry as a thirsty freight train. From what we can see on the ground, this freight train has only gained speed since then.
- These few big private industrial water sellers (most of them from out of state) are motivated by the fact that the industrial water sales market is currently almost a \$100 million a year industry. One of the WAWS Authority detractors wants to develop a pipeline to deliver 3.26 billion gallons per year of water in and around the WAWS Authority service area, which could generate up to \$65.2 million of revenue per year for the owner(s). Perhaps this explains the heavy push to limit or rid the territory of WAWS Authority industrial water sales. We're not talking pocket change here.

# Public vs private water sellers. Should the WAWS Authority Sell Water in Competition with Private Water Sellers? Yes.

- The WAWS Authority plan satisfies more needs and constraints than any other water plan.
- Unmitigated private use of our water does not have the public interest in mind.
- North Dakota has a 100-year tradition of operating businesses for the public good through the Bank of North Dakota and the State Mill and Elevator.

Mayor Brent Sanford, City of Watford City SB 2233 - In Opposition March 7, 2013

#### Why are we fighting so hard?

- The WAWS Authority has been in mediation with the Independent Water Producers for many months. The WAWS Authority settlement offers have been rejected. The IWP is hopeful that they can convince this committee and the Legislature as a whole that Option #3 as outlined earlier by Denton Zubke would be the solution. Hoping that an argument about public sector providing a service provided by the private sector will resonate legislatively. Apparently, it has as this debate has only intensified the past couple of months.
  - The WAWS Authority has been fighting hard to protect its service area from unmitigated competitive water sales as we take our debt obligations to the State of North Dakota very seriously. Community leaders in western North Dakota also take the updated population projections released just two months ago by North Dakota State University very seriously. We've seen unrelenting population growth and a forecast that says it's going to continue. We know we can't serve this growth without adequate quality water.
  - Clean, plentiful water is a public health and safety concern. We are not going to dilly dally with our most basic human need.
  - We also recognize that the State of North Dakota is our lender and you have the ability to shift WAWS Authority debt repayment from industrial water sales to the taxpayers of North Dakota. So, we put before you a rather simple, direct question. Who do you want to pay for the WAWS Project?

### We Can't Increase Local Water Rates Again

- In January 2013, the City of Watford City doubled its local water rates and we can't afford further increases.
  - Our residents are currently facing rents of \$2,200 per month for an apartment.
  - Without industrial water sales, we expect residential water rates to increase drastically and impact our ability to attract employees to our area.
  - Industrial water sales are the key to keeping our residential water rates at a reasonable level.

## WAWS Authority Needs the Ability to Exercise Prudent Franchise Protection

 We are very concerned about the potential loss of territorial protections that would result in heavy competition in our area for industrial water sales. The plans that we've seen from the mega-water developers indicate intentions to duplicate the WAWS Authority routes and compete head-on for water sales. Mayor Brent Sanford, City of Watford City SB 2233 - In Opposition March 7, 2013

- We are simply seeking the ability to insure repayment of the WAWS Authority debts and prevent these debts from slipping to an obligation of North Dakotan taxpayers.
- Please amend SB 2233 to support positive water development utilizing Missouri River and Lake Sakakawea sources without negatively impacting the rights of the WAWS Authority.

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# Testimony of Denton Zubke, Chairman, WAWS Authority IN OPPOSITION TO SENATE BILL 2233

## House Energy and Natural Resources Committee, Rep. Todd Porter, Chairman Bismarck, North Dakota – March 7, 2013

- Good morning Chairman Porter and members of the House Energy and Natural Resources Committee.
- Thank you for your efforts during the 2011 Legislative Session as well as your recent support of HB 1140 which provides critical funding for continued construction of the WAWS Project.
- The WAWS Authority project status and business plan update have been previously presented to this Committee so my testimony today will focus on the concerns with SB 2233.
- SB 2233 is primarily a declaration of support for water projects in North Dakota. Yet within this
  otherwise positive water policy bill, there are two pointed statements that go far beyond policy,
  Section 4, Paragraph 7 and Section 11, would completely change the financial plan that supports
  the WAWS Authority loans to the State and compromises its ability to perform and execute its
  mission to serve northwest North Dakota.
- My testimony today is focused on Section 4, Paragraph 7 which jeopardizes the WAWS Authority industrial water sales by completely eliminating any franchise territorial jurisdictions afforded to the WAWS Authority and its members under long-standing state and federal laws. While it may be appropriate to suggest, as a matter of policy, a goal to maximize the beneficial uses of the Missouri River, SB2233 Section 4, Paragraph 7 reaches far beyond policy and strips local entities from protecting their water systems and the collateral for state and federal loans. We support the State's goal to access the Missouri River and Lake Sakakawea and, in fact, the WAWS Authority is using Missouri River water to support growth throughout northwestern North Dakota. We are requesting you amend SB 2233 to a policy supportive of maximizing the beneficial use of these plentiful water resources, but without the negative impact on the WAWS Authority and other local water systems as it is currently written.
- The clever way in which Section 4, Paragraph 7 is written speaks directly to franchise protection for the WAWS Authority (and other publicly-funded systems using Missouri River water). The

WAWS Authority and various members are covered by state and/or federal water franchise protection due to outstanding loan obligations pursuant to NDCC 6-09.4-22 and 7 USCA 1926(b). Franchise protection safeguards sales within our service area to assist in assuring our territory will not be usurped by new competitors dominating in our market area.

## Understanding Federal 1926(b) and the State Equivalent NDCC 6-09.4-22 Franchise Protection

- Franchise protection has been demonized this Session; so I'd like to take a step back to review the
  purpose of these federal and state laws.
- These laws are not new. The State franchise protection law has been in effect for over 13 years (since 1999) and the Federal franchise protection law has been in effect for 52 years (since 1961).
  - o The laws were developed to protect municipal water and wastewater systems and rural water systems that were indebted to the state and federal government. In essence, the state and federal government agencies investing in these infrastructure systems wanted to assure these systems would be able to serve the area defined in their loan application and be able to repay their loans.
  - An overarching principal of these laws is to encourage rural water development by expanding the number of potential users, thereby decreasing the cost per user.
- There are similar franchise protection laws for electric and other utilities as well. This is widely
  accepted as the mode of operation for wholesale utilities across the U.S. and is regularly used
  and negotiated throughout North Dakota.
- We have peacefully co-existed with small independent water sellers since the start of the project without any action adverse to small water sellers.
- What is new is the size of our proposed competitors that threaten the revenue stream expected by WAWSA to make good on their loans from the State of North Dakota and Federal government. We're not talking about small and medium private water sellers. We're now talking about water sellers with permits totaling more than the City of Williston's water permit allocation utilized by WAWS Authority mega water sellers. These mega water sellers threaten our ability to repay our state loans through conflicting routes that overlap the WAWS routes.

#### Understanding the Actions Taken Thus Far

 Currently, the WAWS Authority and its Members have several outstanding State and Federal loans.

- o The WAWS Authority is indebted to the State for loans totaling \$110 million as per the passage of HB1206 in the 2011 Legislative Session and is asking for an additional \$119 million in State loans and grants this Session.
- O Another WAWS Authority Member, McKenzie County Water Resource District (MCWRD), for which I am also the Chairman, is indebted for approximately \$10 million in State and Federal loans. Additionally, when MCWRD realized it would reach its \$10 million debt ceiling while constructing water supply projects, it requested \$3 million last fall and another \$1.5 million last month from McKenzie County so it could continue to meet the water needs of the region.
- Other WAWS Authority systems have additional debts of their own.
- The WAWS Authority Board has not taken a position on franchise protection in its service area. It has not really been necessary or risen to the WAWS Authority's attention. We have co-existed with over 70 independent water provider depots and small pipelines in our service area, many of which existed before the creation of the WAWS Authority. The independent water providers lobbying you today are the mega water providers not the mom and pops. Speaking of mom and pops, my own family (my mother-in-law) owns a depot and is a small water seller with which the WAWS Authority is a direct competitor. But my family also understands the importance of the WAWS Project. As long-time residents of the area, we know that high quality water in sufficient quantities meets a decades-long goal of our communities.
- HOWEVER, today, there are key variables at work that threaten our ability to compete in the marketplace and pay back our loans.
  - When HB1206 was approved in the 2011 Legislature, we didn't anticipate huge, competing pipelines being laid in the WAWS Authority area.
  - There are new, mega water developers coming into the State that have secured permits totaling more than the water permit used for the WAWS Authority for its entire system.
  - O This handful of mega developers plans to build massive pipelines in the WAWS Authority's service area. For example, if West Dakota Water System sold its 10,000 acre feet per year permit utilizing the going rate of \$20 per thousand gallons (WAWS Authority rate), this permit would generate approximately \$65.2 million PER YEAR. By comparison, WAWS Authority sold approximately \$9 million this past year. Hopefully, you can now see what the WAWS Authority and Independent Water Producers debate is all about - money.
  - Because of this impending pipeline, MCWRD, McKenzie County, and the WAWS Authority as a whole are extremely concerned.
  - Roger Chin, Commissioner, McKenzie County, is here in the audience today, along with Mayor Ward Koeser, City of Williston and WAWS Authority Board Member, and Mayor Brent Sanford, City of Watford City, because they are insistent we continue to try to relay this message.

- So yes, there have been some actions taken to alert these mega developers to the issues of franchise territory protection. I am sure you have seen the letters in the IWP packets, and heard stories that I and others are bullying them. On the contrary, we are trying to prevent this issue from going too far down the road and we are trying to engage them in negotiations regarding how we can co-exist.
  - MCWRD has sent letters to five mega developers requesting information about their plans and alerting them to franchise territory protection and what it means.
  - MCWRD has sent one letter to the U.S. Army Corps of Engineers asking that the Corps engage MCWRD prior to granting any permits since there may be U.S. Department of Agriculture franchise protections that could be violated if the Corps permits are issued.
  - o It would have been irresponsible of MCWRD <u>not</u> to send these letters. Under the law, protected entities can go as far as seizing private infrastructure if it competes in their franchise area. This is an extreme example and one that we want to avoid. Again, MCWRD has tried to engage these private water providers in negotiations so the parties can make accommodations in order to co-exist.
  - o It is important to alert these entities that threaten our financial viability before it gets too far so they have a chance to adjust their business plan accordingly. Rather than negotiate with MCWRD, it appears these mega-water sellers want to approach the legislature to cement a 'settlement' of sorts without the WAWS Authority, MCWRD, State, or Federal lenders at the table. Most of 1926(b) franchise arguments get settled between the parties with some type of agreement. We hope the legislature will allow that process to be worked through by the parties rather than by legislative mandate. MCWRD started initiating those discussions, which were abruptly cut short by the water sellers who opted to lobby for a legislative pass to allow them to construct anything they want, free of any franchise or state payment back to the public coffers.

#### If SB 2233 is Approved as Written, We Fear Default

If SB 2233 is approved as it's currently written, we fear the WAWS Authority may slip into default on its loans with the State of North Dakota due to unfettered competition in our service area. Default provisions were considered and approved in the WAWS Authority founding legislation in 2011. These provisions dictate that should the Budget Section determine the WAWS Authority is unable to meet its loan obligations; the State may take possession and ownership of the system.

NDCC 61-40-09 outlines default as follows:

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the

authority is in default in the payment of the principal of or interest on the funds obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due.

#### Where Do We Go From Here? There Appears to be Three Options

• From our view point, there are three options in order to "keep the water flowing", as we have heard legislators comment.

Option #1: Continue operating as planned and prescribed by the 2011 Legislature

and allow the individual water systems to negotiate with any private water sellers within various jurisdictions. This is what current law contemplates and is a system that appears to work well across the State and across the country with various water, sewer, electric, gas, and other

utility franchises.

Option #2: The Legislature could pass a law establishing a set franchise fee to be

paid to indebted water systems as an accommodation to the state franchise protection. While rarely legislatively established, franchise fees are the most typical option negotiated between parties to resolve

territorial disputes.

Option #3: The Legislature passed the business plan and financing for WAWS

Authority last Session. If this Legislature chooses to undercut the financial plan by eliminating any franchise protection, the State could provide a financial back-stop to the WAWS Authority in exchange for WAWS Authority Members' not exercising their territorial protections.

• The WAWS Authority prefers Option #1. This option would continue to support the mission outlined in the WAWS Authority original business plan to develop a drinking water system that would be funded primarily through industrial water sales which eliminates a tax burden for all North Dakotans. Option #1 is based on our status as a public body endowed with the public trust that has operated with a successful track record to promote the public good while at the same time fulfilling our local, state, and federal debt obligations through using our existing franchise protections in a prudent and appropriate manner.

We have developed a link between the private and public needs for water through this innovative, entrepreneurial solution through a regional system. Option #1 reduces the financial demands on the North Dakota taxpayers and also reduces the waiting line for other important water projects in the queue as listed in SB 2233.

- Option #2, the franchise fee option, deviates from our original business plan and puts some uncertainty to our financial future. Option #2 has already been offered in discussions with the mega water developers as a compromise. They've declined and preferred to approach legislators to resolve this issue with the argument that the private sector should not be competing with the public sector and apparently should not be subjected to franchise fees either. Although Option #2 is not our preferred option, many franchise disputes are resolved in this manner. This is true in a number of instances in North Dakota and around the country.
  - The first time a franchise fee was suggested to JMAC West Dakota Water pipeline as
    one of the possible solutions to find a middle ground and they declined to discuss it
    further.
  - A franchise fee was again raised during the WAWS Authority mediation before and during the 2013 Legislative Session. The WAWS Authority suggests a franchise fee of 36 cents per barrel. The WAWS Authority sells its industrial water for 84 cents per barrel.
  - The IWP rebuffed any discussion of a franchise fee, instead hoping it could sway legislation before you to completely eliminate long-held franchise territorial protections.
- With Option #3, the State would provide annual revenue guarantees to the WAWS Authority in exchange for WAWS Authority Members' not exercising their territorial protections. Option #3 would eliminate the WAWS Authority's and its Members' ability to assert franchise protection to preclude competing mega industrial water sales. Option #3 requires the State provide guarantees and make annual payments to the WAWS Authority in the amount of \$30 million less the actual annual revenues from industrial water sales, which would cover the WAWS Authority's obligations outlined in its business plan, in its commitment letters with the Bank of North Dakota, and debts on Member water systems.
  - Option #3 puts the fiscal responsibility back on the State and its taxpayers.
  - WAWS Authority has many financial obligations which include:
    - current State and Federal loans;
    - 2010 baseline industrial revenue reimbursements to Members systems;
    - existing member debt service on infrastructure committed to the Authority; and
    - operating, debt service, and capital reserves.
- This strategy would reduce funding available for other water projects around the State including
  those declared as important within SB 2233. Option #3 would obligate North Dakota taxpayers
  through future appropriations or through linking this financial obligation to an existing Fund to
  support any financial shortfalls the WAWS Authority may have.

The question before you is to decide - who do you want to pay for this vital water system in northwestern North Dakota? The industry (which needs water, is currently paying for it, and is driving the increased domestic water demands) or the taxpayers of North Dakota?

#### Call to Action

- For these reasons, we ask that you amend Section 4, Paragraph 7 from SB 2233.
- Keep SB 2233 as a state water policy bill rather than an attack on the WAWS Authority.
- This same issue will come up again in SB 2359 and we can address further there instead.
- Thank you for your continued support and if you would like to read into this issue further, we
  have a more comprehensive summary of franchise protection laws in the testimony handout
  packet.



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## Mayor Ward Koeser, City of Williston - Appearing in Opposition to Portions of SB 2233

Thank you for the opportunity to discuss SB 2233. SB2233 is an important water policy bill that the City of Williston generally supports. However, there are a couple of areas that need to be addressed. The key issues that I will address are water policies related to local control and oversight.

#### Local Control Has Always Been a Foundational Principle

- The City of Williston serves as the epicenter for the oil industry and region. We recognized immediately the importance of providing the water infrastructure needed to support this economic engine for the State. Without water, the region could not approve any more building permits which means no more workers able to fill the thousands of oil development jobs in our area. We also recognize that to truly be successful, a regional solution was the answer.
- The City came together with partners in the region to propose a creative water solution to the 2011 Legislative Assembly - the Western Area Water Supply Project. We worked tirelessly, attended 35 committee and subcommittee meetings, and crafted something that works!
- The opportunity to develop this system through a marriage of local needs and revenue generated by industrial water sales is an unbelievable historic opportunity. We believe this project will be a tremendous success story a network of drinking water infrastructure to last far beyond the "oil boom", without burdening the taxpayers of North Dakota or the rate payers of the region. A local solution to a local problem.
- We all believe that the WAWS Authority's success to date is attributed to committed
  local leaders coming together for countless hours each and every month with the shared
  mission of implementing the WAWS Project. We were able to tear down political
  boundaries and build consensus quickly because we knew we were in this together we
  had to find a solution that worked for everyone, and time was and is of the essence.
- The WAWS Authority is governed by locally elected officials and the State Water Commission staff representative appointed to serve on the Board of Directors. Maintaining this local control and flexibility is critical to future project success.
- I am on the Board of Directors for the WAWS Authority and I can tell you that I am so very proud of what our team of local leaders has accomplished. I have, as does the City of Williston, the confidence in this organizational structure and local leadership to follow

Mayor Ward Koeser, City of Williston SB 2233 - Appearing in Opposition March 7, 2013 Page 2 of 2

through, get the job done, and reach our goal of serving nearly 100,000 people in northwest North Dakota.

#### Expansion of SWC Oversight is an Unnecessary "Fix"

- After a very rigorous Legislative debate in 2011, we walked away knowing the State
  made a commitment to the WAWS Project and all of its sponsors. Today, we are back
  looking at legislation that may greatly expand SWC oversight into unknown areas.
- Section 11 calls for, what we believe to be, an unnecessary expansion of the State Water Commission (SWC) oversight of the WAWS Authority.
  - The existing oversight relates specifically to the overall plan and to bidding, planning, and construction of the project. This oversight is appropriate for a locally owned and managed regional water system with State funding. In general, the SWC board is not organized for intensive management and oversight of large scale infrastructure projects.
  - o We feel the WAWS Authority's existing oversight is adequate. The local officials in northwestern North Dakota that have worked diligently and quite successfully towards implementing an entrepreneurial solution and have done so with appropriate oversight. I have attached an Oversight Summary document (7-pages long) to my testimony packet outlining all of the local, state, and federal oversight of the WAWS Authority.
  - WAWS Authority has had a strong working relationship with all of our State oversight agencies - the State Water Commission, ND Department of Health, and Bank of North Dakota.
    - A State Water Commission staff representative serves on Board.
    - The State Water Commission approves overall plan.
    - Regular updates are provided to the State Water Commission.
    - The State Water Commission staff has participated in 11 design review meetings and has approved 11 sets of plans and specifications and 15 construction contracts.
    - The ND Department of Health has reviewed and approved 11 sets of plans and specifications.
    - The Bank of North Dakota has outlined and enforced rigorous lending controls associated with the four loans from last Session.
    - We have received permit approval by 30 different authorities.
    - We have met all State and Federal requirements.

Mayor Ward Koeser, City of Williston SB 2233 - Appearing in Opposition March 7, 2013 Page 3 of 2

- Based on the extensive oversight that currently exists and our solid performance, it is difficult to grasp what additional oversight is possibly necessary.
- The proposed oversight expands the SWC legal directives to all current and any future water policies the SWC may elect to implement. Oddly enough, this same bill also contains guidance to begin shifting the Southwest Water Authority AWAY from the SWC while at the same time expanding the SWC's involvement in the WAWS Authority. We just don't understand this perspective and contrary thinking.

We firmly believe that the WAWS Authority and the project itself do not need expanded oversight. This does not mean, however, that we do not respect and appreciate the incredible work that the SWC board and staff perform. We recognize the importance of the SWC mission and its commitment to the State of North Dakota.

#### Changes to SB 2233

- The City of Williston is fully committed to the success of the WAWS project. We are all
  in. We stand side by side with our local partners to continue to work within the structure
  and policies set up in HB 1206 in the 2011 Legislature. It has worked amazingly well
  thus far, and we see no reason to change course now.
- I support the long-range vision that this bill has laid out for general water policy across
  the state, but I respectfully ask that you remove Section 11 directed at the WAWS
  Authority that erodes local control and creates nebulous oversight. I also support the
  testimony presented earlier by Mr. Zubke and ask that you consider amending Section 4,
  Paragraph 7 which undercuts the financial plan for the WAWS Authority.

# Western Area Water Supply (WAWS) Authority Oversight Summary March 7, 2013

The WAWS Authority founding legislation resulted in the establishment of North Dakota Century Code Chapter 61-40 (NDCC 61-40). Project oversight was developed to ensure prudent investment of State resources, regulatory compliance, quality control, and a general system of checks and balances. The following is a summary of how the provisions in the Century Code were implemented.

#### **Project Controls and Oversight**

The WAWS Authority has met, and perhaps exceeded, the State oversight standards outlined in State law relative to project oversight. NDCC 61-40-06 provided for the following oversight:

The Authority shall comply with the policy of the State Water Commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The Authority shall report to and consult with the State Water Commission regarding the operation and financial status of the project, as requested by the State Water Commission.

In relation to initial construction of the system and debt repayment, the Authority shall present the overall plan and contract plans and specifications for the project to the State Water Commission for approval. The Attorney General shall assist the Authority at the request of the State Water Commission. If the twenty-five million dollar zero interest loan from the State Water Commission has not been repaid, without the written consent of the State Water Commission the Authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the Authority if the property is used to provide revenue.

The specific project controls and oversight of the WAWS Authority since its founding include the following:

On June 21, 2011, the WAWS Authority presented the Phase 1 portion of the project to
the State Water Commission (SWC), which included the pipelines around Williston and
the pipeline from Wildrose to Crosby. The SWC passed a motion to approve the first
portion of WAWS Project Phase I, with costs not to exceed \$25,000,000. The SWC
delegated SWC staff to review and approve plans and specifications for that Phase as
well as others to follow.

- In order for the WAWS Authority to access the remaining \$85,000,000 of loan dollars, the Bank of North Dakota's (BND) letter of conditions also required the SWC approval of Phase II, Tier I projects. On December 9, 2011, the SWC approved the Phase II - Tier I projects.
- Throughout the planning and design of the Phase I and Phase II projects, SWC staff reviewed plans and specifications during 11 design review meetings and approved the following:
  - Eleven sets of plans and specifications for 11 bid lettings to date.
  - o Fifteen contracts (three prime contractors on two different projects).
- The WAWS Authority staff and Board of Directors have provided written and verbal status reports to the SWC (quarterly or as needed to address specific project issues) and other State agencies including the BND (monthly and quarterly reports).
- The North Dakota Department of Health (NDDH) also provided reviews of each of the project plans and specifications for each segment to ensure the project was in compliance with public health and safety regulations.
- The North Dakota State Historic Preservation Office (NDSHPO) requires cultural resource surveys to identify and document any cultural resources with the requirement of avoiding impact on any identified cultural resources. All cultural resources within the WAWS corridors have been avoided.
- Wetland delineation was completed on the project, and the results were presented to the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service for comments.
   The project was constructed in accordance with the Nation Wide 12 404 permit.
- The following local entities have permit requirements. These entities reviewed the plans and issued permits to allow construction of the project:
  - o Counties Divide, Williams and McKenzie
  - o Cities Crosby, Williston, Ray, Watford City, Alexander, and Arnegard
  - Townships Fredrick, Frazer, Hawkeye, Fillmore, Big Stone, Hazel, Missouri Ridge, Pherrin, East Fork, Marshall Wheelock, Tyrone, Judson, Round Prairie, Hebron, Tri-Township, Alex, and Arnegard Townships
  - o North Dakota Department of Transportation

- o Williams County Highway Department
- o McKenzie County Highway Department
- North Dakota Department of Trust Lands
- Advanced Engineering and Environmental Services (AE2S) also performs engineering Quality Assurance/Quality Control (QA/QC) measures commonly accepted in the engineering industry.

#### **WAWS Authority Oversight**

Since the first Board of Directors meeting was held on May 31, 2011, the WAWS Authority has initiated comprehensive oversight including:

- As outlined in NDCC 61-40, the SWC has a voting representative on the WAWS
   Authority Board of Directors. The SWC placed Michelle Klose, Assistant State
   Engineer, as its representative on the Board of Directors of the WAWS Authority. Ms.
   Klose also serves on the WAWSA Executive Committee. Ms. Klose has served in this
   role since the first Board of Directors meeting was held on May 31, 2011. Jeffrey
   Mattern, SWC Water Development staff, serves as the SWC alternate when Ms. Klose is
   unable to attend the Board of Director's meetings in person or by teleconference.
- The Board of Directors implemented organizational Bylaws that were approved by the North Dakota Attorney General's Office, created an Employee Handbook, and implemented Operational Policies for the water system. Additional Operational Policies and Employee Handbook provisions are considered on a regular basis as new issues arise.
- The WAWS Authority hired a full-time Executive Director to manage its day-to-day operations. The Executive Director is responsible to the Board of Directors for carrying out the policies and promoting the goals and mission of the WAWS Authority. This position plans, organizes, directs, implements, and supervises the functions, activities, and finances necessary to achieve efficient design, construction, and operation of the WAWS Project. The Executive Director assures compliance with laws, regulations, codes, and ordinances applicable to the Authority.
- The WAWS Authority hired a full-time business manager to structure and perform entity and project business processes and practices. The business manager is responsible for, among other things, generating the monthly profit and loss statement, balance sheet, and cash flow statement. In addition, the business manager handles all financial transactions with the BND, vendors, and developers that pertain to the WAWS Project related matters.

- The Board of Directors meeting agenda and packets for each month are robust and
  contain numerous components for review and approval (an average of approximately 18
  items per meeting). The Board of Directors provides oversight on issues such as staffing
  and Authority policies, task orders and addenda, internal and external agreements, Rightof-Way/easement issues, industrial sales, and other issues as needed.
- The Board of Directors meets monthly to review and take necessary action on project
  matters, task orders and amendments, Capital Accounting Statements, Financial
  Reporting, and BND pay requests. All meetings are open to the public, and meeting
  packets are posted on the WAWS Authority website (www.wawsp.com) prior to the
  meetings.
- The WAWS Authority Board of Directors negotiated and continues to negotiate numerous output, infrastructure use and water supply contracts with its stakeholders, which have included robust discussion, discourse and additional levels of review from stakeholders' Boards, their various attorneys and bond counsel.
- In addition to the bulk water contracts with stakeholder entities, the WAWS Authority
  developed a form Membership Agreement, easement forms, a rate schedule, as well as
  form contracts for industrial, commercial and rural water supply customers.

The Board of Directors, which includes SWC representation, has reviewed and taken votes on over 275 entity, project, and financial issues with almost all being unanimous decisions. The Board of Directors has had three split votes - two relating to the legal services selection and one relating to a task order amendment for engineering services for the Williston Water Treatment Plant Expansion. The SWC representative took exception on four occasions (voted no – and was the single dissenting vote) on the following approval decisions: low bid from John T. Jones; engineering services agreement; amendments to engineering tasks orders 11, 12, 14, and the addition of task order 15a as the representative recommended a different fee structure; and final WAWS Authority depot locations because the representative had not enough time to review the depot plan.

#### Financial Oversight and BND Requirements

The BND is the lender for multiple loans for the WAWS Project. The BND stipulated that the loans were approved under several terms and conditions to which the WAWS Authority must adhere including the following:

The SWC was required to approve Phase I and Phase II components of the WAWS
 Project. The SWC must also approve contracts and plans and specifications in each of

the project phases to ensure compliance with SWC policy as the policy relates to bidding, planning, and construction of the project. In relation to initial construction of the system and debt repayment, the WAWS Authority must present the overall plan and construction plans and specifications for the project to the SWC for approval. The SWC reviews are documented under the "Project Controls and Oversight" section above.

- In order for the WAWS Authority to access the initial \$25,000,000, the WAWS
   Authority was required to provide the framework for the water purchase agreements,
   infrastructure transfers, and transmission of the WAWS Authority water throughout the
   system network and provide financial projections within a Business Plan Supplement.
   The framework and Business Plan Supplement were provided to BND in June 2011.
- In order for the WAWS Authority to access the remaining \$85,000,000, the agreements
  and supporting documents contemplated under the conceptual framework referred to
  above had to be fully executed consistent with assumptions upon which the financial
  projections in the WAWSA business plan were based. In support of this, the WAWS
  Authority developed and provided BND the following materials:
  - Memoranda summarizing the infrastructure for which the WAWS Authority needed to secure output or access agreements from Members and Sub Members in order to supply, treat, and deliver water to the proposed service area as intended in the business plan. Individual memoranda addressing each of the Members were forwarded to the BND in April 2012, and a comprehensive memo updating the infrastructure for all Members and Sub Members was delivered to the BND on June 18, 2012.
  - Executed agreements have been submitted to the BND as required. These
    agreements have also been reviewed by the ND Public Finance Authority
    (NDPFA).
  - A detailed table referencing various requirements in the BND commitment letter to the appropriate sections in the agreements, to document that requirements of the commitment agreement were being met. The WAWS Authority also provided correspondence to the BND on August 27, 2012 documenting the progress to date, anticipated progress through the close of 2012, and the financial outlook for the project.
- WAWS Authority must provide BND quarterly interim financial statements for review.
   Complete financial statements are provided monthly to BND following the Board of Directors' meetings.

- WAWS Authority must provide BND monthly construction budget and progress reports.
  The WAWS Authority submits a monthly Capital Accounting Report to the BND. The
  Capital Accounting Report provides a project budget and construction summary which
  includes: Business Plan Estimate, Baseline Engineering Estimate, Project
  Growth/Expansion, Contracted Amounts To Date, Actual To Date, and Best Estimate To
  Date for each Task Order and Phase of the WAWS Project.
- Each month, the WAWS Authority Board of Directors (which includes a SWC representative) and Executive Director must approve each payment voucher before it is submitted to BND. Each payment voucher is accompanied by the pay estimates and invoices for that month that detail precisely which loan funds are being allocated to which project components as well as project progress. If there were any dissenting votes pertaining to the payment vouchers, the dissenting WAWS Authority Board Member must provide reason(s) for dissention. The result of the vote and the reason for dissention is required to be submitted to the BND. There have been no dissenting votes on payment vouchers to date.
- WAWS Authority procures a financial audit by an independent accountant. The WAWS
   Authority is currently in the process of hiring an independent accountant to perform the
   2012 audit. Due to limited financial activity in 2011, BND concurred to omit a 2011
   audit.

#### **Oversight Summary**

The WAWS Authority takes its oversight responsibilities seriously and has instituted many operational policies to assure the Authority is meeting both its fiscal management obligations and as well as the Legislative oversight intent included in the founding WAWS Authority legislation. As outlined within this summary, the WAWS Authority is subject to appropriate oversight from the NDSWC, NDDH, and BND as well as numerous other Federal, State, and Local entities. The WAWS Authority Board of Directors meets monthly to review and approve all financial statements, capital accounting reports, payment vouchers, contracts, and any other issues that arise. Additionally, the WAWS Authority Members have a vested interest in assuring the overall success of the WAWS Project as Members have selflessly contributed infrastructure and industrial water sales revenues to support the greater good achieved by the WAWS Project.

Managed by the local Member entities, the WAWS Authority has prudently invested available resources to meet the ambitious goals outlined in its original 2011 Business Plan and Business Plan Supplement. The WAWS Authority has made outstanding progress on the implementation of the WAWS Project. The WAWS Authority Members have had one goal - to meet a truly public purpose of initiating a water project with a public resource to meet the ever-growing

domestic water needs of the region while capitalizing on industrial water sales in the near-term to provide a revenue stream for substantial debt service payments to the State of North Dakota. The WAWS Project progress has been accomplished without any additional employees added to the State's payroll.

Additional oversight of the WAWS Authority and Project is unwarranted, and appears to be sought largely by WAWS Authority project opponents and competitiors with a goal of slowing this successful project down. Additional oversight may contribute to increased costs, delayed implementation, and decreased project performance.

# Independent Water Providers

Shared responsibility: Capital and Policy

March 15, 2013

THE PROBLEM: WAWS needs sufficient industrial water to pay its loans from the people of ND. WE AGREE. .

Concepts below provide a blend of capital, cost savings, financial management, and necessary industrial sales coupled with policies to provide cash flow in keeping with the WAWS mission.

Current Debt: \$110 million (HB 1206)

\$ 40 million (HB 1140 or ½ of HB 1020)

\$ 35 million (assumed from locals)

Total: \$185 million (potential)

#### Capital tools/concepts:

#### State:

Forgive portion (75%) of existing \$110 loan; similar to other projects

Locals (WAWS) pay remainder through industrial sales, etc. OR

\$82.5 million

All new funds for 2013 to be grant rather than debt. \$40 million OR combination of new equity and loan forgiveness (\$40 million +\$40 million) \$80 million

#### WAWS:

Cost savings/better financial controls. E.g. Williston treatment plant/premature \$26 million

New users connection fee e.g. \$2,000 x 15,000 "requests" \$30 million

New user capital repayment fee. E.g. \$5 @ mo. x ½ 15,000 x 12 months

Flatten/smooth amortization period for life of loans \$5 million\*

\*amortization savings vary but offer significant cash flow savings

IWP: Agrees to sufficient industrial sales to help pay loans. 25% top is more than necessary. Industrial sales to be one of several factors to meet WAWS debt requirement.

13,400 acre feet X 7758 bbls =104 million bbls X \$.84 = \$87 million X 25% \$21.8 million \*

#### Policy requirements:

State, WAWS, private sector share in meeting capital requirements of project.

Slow down (get it right)---trunk line to cities is in. Urgency is largely met

Limit additional debt. (All 2013 funding—should be grants). (Leaving \$145 million debt)

Resolve 1926 (b) -state and federal version

Meaningful SWC approval/oversight of rural build out

WAWS sells up to 25% of previous year sales for new debt service;

Value engineering; independent assessment of rural water demand

Caution on population projections. (We needn't build today, for people who might arrive in 2025)

Governance; retain local control, provide daily stipend; add 3 at large members appointed by Governor Industrial sales through 12 depots approved by SWC

<sup>\*</sup>Once other financial tools are applied annual debt service is well below current estimate.

## CHAPTER 61-40 WESTERN AREA WATER SUPPLY AUTHORITY

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaid until the state guaranteed loans have been repaid. If the authority's board of directors unanimously vote to convert to a water district, the provision in section 61-35-02.1(1)-(5) apply. (Would any of the sections in this legislation apply if they were a water district? Would you only keep sections 61-40-06.1, 61-40-06.2, 61-40-06.3, 61-40-09?)

#### 61-40-03. Western area water supply authority - Board of directors.

The initial board of directors of the western area water supply authority consists
of two representatives from each of the following entities: Williams rural water
district, McKenzie County water resource district, the city of Williston, BDW water
system association, and R&T water supply association. The governing body of
each member entity shall select two representatives to the authority board who

are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.

- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

#### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as
  described in this chapter for the purpose of acquiring and securing any right, title,
  interest, estate, or easement necessary or proper to carry out the duties imposed
  by this chapter, and particularly to acquire the necessary rights in land for the

construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.

 Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the

establishment, construction, development, or operation of the authority.

Appoint and fix the compensation and reimbursement of expenses of employees
as the board determines necessary to conduct the business and affairs of the
authority and to procure the services of engineers and other technical experts,
and to retain attorneys to assist, advise, and act for the authority in its
proceedings.

 Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.

- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.

 Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.

10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the

- western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. No additional debt, with the exception of the state guaranteed loans, may be acquired during the 2013-2015 biennium.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with 61-40.06.2.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

61-40-06. Oversight of authority projects. (May need to keep if Bank of ND loan is approved outside of SWC project funding, as BND may need this review?)

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial

construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

61-40-06.1 Industrial Water Depot and Lateral Sales

Accounting of industrial water depot and lateral sales collected and distributed by the authority will be reported to the industrial commission on a monthly basis. Participating entities must transfer industrial water depot and lateral sales to the authority within 30 days of receipt to the revenues. The boards of the authority and participating entities will be notified of the sweep of revenues, however no board approval is required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order.

- 1. Required monthly payments on state guaranteed loans
- Reimburse authority costs for water treatment and proportional pumping power costs for water supply sold at industrial water depots and lateral lines, at a rate established by the authority that reflects the actual costs of treatment and pumping power for the water sold at the depots and lateral locations.
- 3. Regular payments on both the participating entity debt and 2010 industrial sales included in the initial contracts between the authority and the participating entities.
- 4. Additional principal payment on state guaranteed loans
- 5. Payment to resources trust fund

If the state guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

#### 61-40-06.2 Water Rates

The authority will develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission. Any industrial water depot and lateral rate adjustment must have prior approval of the industrial commission prior to going into effect. The authority will develop domestic water rates which will include all costs for operation, maintenance, and replacement, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in 61-40-06.1 that are paid for by industrial water depot and lateral sales.

61-40-06.3 Construction Funding

The authority will follow the state water commission requirements for funding through the resources trust fund and shall present the overall plan and project components to the state water commission for funding consideration. Priority on project funding is (1) reserve for state guaranteed loan payments if not met by industrial water depot and lateral sales, (2) full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial

water sales is asserted, and (3) expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and member entities agree not to hinder or prevent access by other industrial water suppliers.

## 61-40-07. Easement granted for pipelines and appurtenant facilities on any public lands.

In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation an the state engineer must approve the plans of the authority with respect to the use of right of way of roads before the grant becomes effective.

#### 61-40-08. Proceedings to judicially confirm contracts and other acts.

The authority, before making any contract or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

#### 61-40-09. Default.

If the industrial commission has any concern with the industrial water depot and lateral sales being able to meet the expenses in section 61-40-06.1(1)-(3), the industrial commission will (1) provide written notification to the state water commission and (2) consider revision of the terms of the loan repayments. If notified of concern the state water commission within 30 days will complete a review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment, and provide a determination to the industrial commission and the authority. It is mandatory for the authority to implement any rate adjustment in the determination within 60 days. If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

If revision of the terms of loan payments and any rate adjustment do not meet the expenses in section 61-40-06.1, the state water commission is authorized to impose a fee of three cents per barrel for any fresh water dispensed to an oil and gas industry user at a water depot or water dispensing point. The operator of a water depot or water dispensing point in this state which dispenses fresh water to an oil and gas industry user shall collect and remit the fee imposed by the state water commission to the state water commission, which shall transfer such funds to the industrial commission to supplement revenues to meet the expenses in section 61-40-06.1. Any excess revenues shall be deposited in the resources trust fund.

#### WAWSA Proposed Amendments March 29, 2013

We are in receipt of a few different versions of the amendments of the WAWSA legislation being discussed by Representative Hofstad yesterday. WAWSA and member entities find the amendments unacceptable as presently written, and enclose the following amendments for consideration.

#### 61-40-05, Subdivision 13: Edit last sentence to read:

No additional debt that requires repayment through industrial water depot and lateral sales, with the exception of the state guaranteed loans, may be acquired during the 2013-2015 biennium.

#### 61-40-05, add the following subdivisions:

- "21. Issue and sell revenue bonds for its own benefit or for the benefit of its members, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
- 22. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
- 23. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
- 24. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
- 25. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
- 26. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.

- 27. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
- 28. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the authority to secure payment of the authority's obligations created by the contracts.
- 29. Pledge all or any part of any assessment levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter."

# 61-40-06.1 Industrial Water Depot and Lateral Sales, *Edit as follows:*

Accounting of industrial water depot and lateral sales collected and distributed by authority will be reported to the industrial commission on a monthly basis. Participating entities must transfer industrial water depot and lateral sales to the authority within 30 days of receipt of the revenue. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues as follows in the following order:

- Reimburse authority for the costs associated with water depot and lateral sales, operation and maintenance cost, calculated as (1) the cost of the water sold, using the applicable member's domestic rate, plus the cost of depot and lateral sales operations and maintenance, plus 15% for administration and overhead.
- 2. Required scheduled monthly-payments on state guaranteed loans.
- 3. Regular payments on both the member entity debt and <u>Baseline</u> 2010 industrial sales included in the <u>current initial</u> contracts between the authority and the participating entities as of the date of this section.
- 4. Funding for operation and maintenance reserve account and capital reserves.
- 5. Some additional principal payment on state guaranteed loans.
- 6. After fully funding items (1) through (5) on an annual basis, any excess revenue generated from industrial water depot and lateral sales will be distributed as follows:
  - a. Twenty-five percent of the remaining net industrial revenue will be deposited into the resources trust fund.
  - b. Seventy-five percent of the remaining net industrial revenue will be retained by the authority for the purpose of expanding domestic water supply and for the payment of other member system debt.

If there is insufficient industrial water depot and lateral sales to make the annual payments outlined in sections (1)-(5) above, the Industrial Commission will request funding from the state to make payments to the authority to make up any insufficiency in that amount.

In exchange for the commitments made herein by the state, authority and members will enter agreements with private water sellers that allow private water sales from the Missouri River for oilfield hydraulic fracturing purposes.

If the state guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority may not sell, lease, abandon, encumber or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

#### 61-40-06.2 Water Rates, edit selected sentence as indicated:

The authority will develop domestic water rates which will include all costs for operation <u>and</u> maintenance, as well as appropriate operating and capital reserves and \_\_\_\_\_ and debt repayment

#### 61-40-06.3 Construction Funding, Edit to read as follows:

The authority will follow the state water commission requirements for funding through the resources trust fund and shall present the overall plan and project components to the state water commission for funding consideration. [eliminate the rest of the section]

#### 61-40-09 Default, Edit to read as follows:

If the industrial commission has any concern with the industrial water depot and lateral sales being able to meet the expenses in section 61-40-06.1 (1)-(5), the industrial commission will provide written notification to the state water commission and (2) consider revision of the terms of the loan repayment. [eliminate all between] If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of north Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due.

#### Add the following provisions to the NDCC:

#### 61-40-10. Revenue Bonds

- (a) The authority may issue revenue bonds, not exceeding an aggregate total outstanding of one hundred fifty million dollars<sup>1</sup>, to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by twothirds of the authority board. The authority shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.
- (b) The bond authorities and procedures found in 61-35 apply to the authority in the same manner as if these provisions were stated herein.

## 61-40-11. Financing projects through improvement bonds or special assessments

- (a) The authority may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The authority may issue improvement bonds in anticipation of the levy and collection of special assessments. If the authority decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to benefits accruing to lands or premises benefited by the project. The authority shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.
- (b) The special assessment authorities and procedures found in 61-35 apply to the authority in the same manner as if these provisions were stated herein.

<sup>&</sup>lt;sup>1</sup> This legislation follows the authorities of a North Dakota water district, with one exception. North Dakota water districts revenue bond cap is \$50 million. WAWSA should have a larger cap since WAWSA encompasses water projects in five counties, including many systems. Given the level of population growth and water demands, a higher debt cap seems appropriate.

## **CHAPTER 61-40** WESTERN AREA WATER SUPPLY AUTHORITY

IWP/3/29/2013

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

## 61-40-01.1 Audit and value engineering.

1. Prior to the expenditure of any new funding during the 2013-2015 biennium, the authority shall conduct an audit for 2011 and 2012 and shall submit the audit report to the state water commission and the industrial commission.

2. The industrial commission shall have performed from revenues received from Industrial water sales value engineering on all phases of the project constructed in the 2011-

2013 biennium and proposed for the 2013-2015 biennium.

3. The authority and its participating members shall provide to the industrial commission an inventory of all assets for the sale of industrial water to the oil industry and contracts associated with those assets to assist in the transfer of management and control of industrial water sales authorized in this chapter.

Comment: a more moderate pace of build-out and the use of audits, value engineering and legislative direction could be invaluable, and will not harm the project.

## 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaid until the state guaranteed loans have been repaid. If the authority's board of directors unanimously vote to convert to a water district, the provision in section 61-35-02.1(1)-(5) apply.

## 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. In addition, three members of the public appointed by the Governor. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined

by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.

 Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

Sue and be sued in the name of the authority.

- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15. Eminent domain power may not be used in any manner, for purposes of providing industrial water to the oil and gas industry.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.

 Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.

 Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.

Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.

7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.

 Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.

9. Acquire, construct, improve, and own water supply infrastructure, office and

maintenance space in phases, in any location, and at any time.

10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.

Borrow money as provided in this chapter.

- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. No additional debt, with the exception of the state guaranteed loans, may be acquired during the 2013-2015 biennium by the authority or its participating entities.

14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.

 Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.

Accept, apply for, and hold water allocation permits.

Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with 61-40.06.2.

18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works,

facilities, improvements, and property necessary the same without any required public vote before taking action.

- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

61-40-06. Oversight of authority projects. (May need to keep if Bank of ND loan needs this review?) remove overstrike except as noted.

1. The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the state guaranteed loans have twenty five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the industrial commission state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

2. A moratorium for the 2013-2015 biennium shall apply regarding the construction of any lateral lines for the purpose of providing industrial water to the oil industry. Regardless of who pays for the cost, no lateral lines may be constructed by the authority or any other person, from or to authority pipelines, depots and other assets for industrial water during the moratorium.

3. Any lateral line constructed to or from authority pipelines, depots, or other assets, for the purpose of providing industrial water to the oil industry must first be approved by the industrial commission (or water commission).

61-40-06.1 Industrial Water Depot and Lateral Sales

The industrial commission shall manage and control all industrial water sales to the oil industry by the authority or its participating entities, and shall have discretion to contract for the management, maintenance and operation of those assets from which sales occur. The industrial commission may contract for the performance of its responsibilities under this chapter.

Accounting of industrial water depot and lateral sales collected and distributed by the authority will be reported to the industrial commission on a monthly basis. Participating entities must transfer industrial water depot and lateral sales to the authority within 30 days of the receipt of the revenues. The boards of the authority and participating entities will be notified of the sweep of revenues, however no board approval is required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order.

- 1. Required monthly payments on state guaranteed loans
- Reimburse authority costs for water treatment and proportional pumping costs for water supply sold at the depots and lateral lines, at a rate established by the water commission (or industrial commission)authority that reflects the actual cost of treatment and pumping power for the water sold at depots and lateral locations but not more than the lowest rate sold to a participating member.
- Regular payments on both the participating entity debt and 2010 industrial sales
  included in the initial contracts between the authority and participating entities.
- 4. Additional principal payment on state guaranteed loans
- 5. Payment to resources trust fund

If the state guaranteed loans have not been repaid, without the written consent of the industrial commission the authority or participating entities may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

## 61-40-06.261-40-06.2 Industrial Water Depot and Lateral Rate

- 1. The authority will develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission for approval. Any subsequent industrial water depot and lateral rate adjustment must have prior approval of the industrial commission prior to going into effect.
- 2. The authority will develop domestic water rates, which will include all costs for operation, maintenance, and replacement, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs indentified in 61-40-06.1 that are paid for by industrial water depot and lateral sales.
- Industrial sales shall be limited to 19% of industrial water sales to the oil industry for the
  previous year in the authority service area, up to 2,000 acre feet. Once the limit has
  been reached, industrial sales by shall be suspended for the remained of the year.

61-40-06.3 Construction Funding

The authority shall present the overall plan and contract plans and specifications for project components to the state water commission for funding approval. State guaranteed loan funds will be considered as local cost share on these construction funds. Priority on project funding is (1) full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, (2) expanding domestic water supply to areas currently not served, (3) state guaranteed loan payments if not met by industrial sales. In accepting construction funding, the authority and member entities agree not to hinder or prevent access by other industrial water suppliers. The authority and member entities retain their rights under 61-04-05.1. (Option to add - in exchange for Industrial water providers receiving water from the Missouri River not selling water within 10 miles of WAWS depots.)

# 61-40-07. Easement granted for pipelines and appurtenant facilities on any public lands.

In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation an the state engineer must approve the plans of the authority with respect to the use of right of way of roads before the grant becomes effective.

### 61-40-08. Proceedings to judicially confirm contracts and other acts.

The authority, before making any contract or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

#### 61-40-09. Default.

If the industrial commission has any concern with the industrial water depot and lateral sales being able to meet the expenses in section 61-40-06.1(1)-(3), the industrial commission will (1) provide written notification of the state water commission and (2) consider revisions of terms of the loan repayments. If notified of the concern the state water commission within 30 days will complete a review of the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment, and provide a determination to the industrial commission and the authority. It is mandatory for the authority to implement any rate adjustment in the determination within 60 days. If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

In the event of a shortfall in revenue, the shortfall shall be divided amongst the state, the authority and the private water providers. The private water providers share shall be paid by assessing a fee up to three cents per barrel for any water sold to the oil industry.

#### 61-40-10 Final disposition.

Once all debt is paid the industrial commission shall have the discretion to continue to manage and operate industrial water sales assets, dispose of all or some of the assets upon public sale, and all revenue received from such sale or operations shall be paid to the resources trust fund.

#### 61-40-11 Grant funds

All funds provided to the authority during the 2013-2015 biennium shall be grants funds.

(Comment: Additional debt only creates additional uncertainty, and challenges for WAWS, the NDIC, BND, and private sector—placing more pressure towards industrial water sales—away from providing water to domestic/rural uses.

Debt: \$110 million (HB 1206

\$ 36 million (assumed from local jurisdictions)

Total \$146 million (funding from HB 1020 should be all grant funding).

## 61-40-12 Franchise protection-waiver

The authority and it participating entities shall waive the right to assert franchise protection under 7 USC 1926(b) or state law for any existing or subsequently acquired debt with regard to industrial water sales to the oil and gas industry, or against any person attempting to sell industrial water to the oil and gas industry.

Neither the authority nor its participating entities waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales to the oil and gas industry.

#1 april 1, 2013

## WAWSA Proposed Amendments March 29, 2013

We are in receipt of a few different versions of the amendments of the WAWSA legislation being discussed by Representative Hofstad yesterday. WAWSA and member entities find the amendments unacceptable as presently written, and enclose the following amendments for consideration.

## 61-40-05, Subdivision 13: Edit last sentence to read:

No additional debt that requires repayment through industrial water depot and lateral sales, with the exception of the state guaranteed loans, may be acquired during the 2013-2015 biennium.

## 61-40-05, add the following subdivisions:

- "21. Issue and sell revenue bonds for its own benefit or for the benefit of its members, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
- 22. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
- 23. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
- 24. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
- 25. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
- 26. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.

- 27. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
- 28. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the authority to secure payment of the authority's obligations created by the contracts.
- 29. Pledge all or any part of any assessment levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter."

# 61-40-06.1 Industrial Water Depot and Lateral Sales,

Edit as follows:

Accounting of industrial water depot and lateral sales collected and distributed by authority will be reported to the industrial commission on a monthly basis. Participating entities must transfer industrial water depot and lateral sales to the authority within 30 days of receipt of the revenue. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues as follows in the following order:

- Reimburse authority for the costs associated with water depot and lateral sales, operation and maintenance cost, calculated as (1) the cost of the water sold, using the applicable member's domestic rate, plus the cost of depot and lateral sales operations and maintenance, plus 15% for administration and overhead.
- 2. Required scheduled monthly payments on state guaranteed loans.
- Regular payments on both the member entity debt and <u>Baseline</u> 2010 industrial sales included in the <u>current initial</u> contracts between the authority and the participating entities as of the date of this section.
- Funding for operation and maintenance reserve account and capital reserves.
- 5. 10 percent of available cash after items 1-4 for have been met as additional principal payment on state guaranteed loans.
- 6. After fully funding items (1) through (5) on an annual basis, any excess revenue generated from industrial water depot and lateral sales will be distributed as follows:
  - a. Twenty-five percent of the remaining net industrial revenue will be deposited into the resources trust fund.

b. Seventy-five percent of the remaining net industrial revenue will be retained by the authority for the purpose of expanding domestic water supply and for the payment of other member system debt.

If there is insufficient industrial water depot and lateral sales to make the annual payments outlined in sections (1)-(5) above, the Industrial Commission will request funding from the state to make payments to the authority to make up any insufficiency in that amount.

In exchange for the commitments made herein by the state, authority and members will enter agreements with private water sellers that allow private water sales from the Missouri River for oilfield hydraulic fracturing purposes.

If the state guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority may not sell, lease, abandon, encumber or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

## 61-40-06.2 Water Rates, edit selected sentence as indicated:

The authority will develop domestic water rates which will include all costs for operation <u>and</u> maintenance, <u>as well as appropriate operating and capital reserves and \_\_\_\_\_ and debt repayment</u>

#### 61-40-06.3 Construction Funding, Edit to read as follows:

The authority will follow the state water commission requirements for funding through the resources trust fund and shall present the overall plan and project components to the state water commission for funding consideration. [eliminate the rest of the section]

## 61-40-09 Default, Edit to read as follows:

If the industrial commission has any concern with the industrial water depot and lateral sales being able to meet the expenses in section 61-40-06.1 (1)-(5), the industrial commission will provide written notification to the state water commission and (2) consider revision of the terms of the loan repayment. [eliminate all between] If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of north Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due.

## Add the following provisions to the NDCC:

#### 61-40-10. Revenue Bonds

(a) The authority may issue revenue bonds, not exceeding an aggregate total outstanding of one hundred fifty million dollars<sup>1</sup>, to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of the authority board. The authority shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.

(b) The bond authorities and procedures found in 61-35 apply to the authority in the same manner as if these provisions were stated herein.

## 61-40-11. Financing projects through improvement bonds or special assessments

- (a) The authority may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The authority may issue improvement bonds in anticipation of the levy and collection of special assessments. If the authority decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to benefits accruing to lands or premises benefited by the project. The authority shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.
- (b) The special assessment authorities and procedures found in 61-35 apply to the authority in the same manner as if these provisions were stated herein.

<sup>&</sup>lt;sup>1</sup> This legislation follows the authorities of a North Dakota water district, with one exception. North Dakota water districts revenue bond cap is \$50 million. WAWSA should have a larger cap since WAWSA encompasses water projects in five counties, including many systems. Given the level of population growth and water demands, a higher debt cap seems appropriate.

13.0579.04006 Title. #2 4-1-13

Prepared by the Legislative Council staff for Representative Hofstad April 1, 2013

### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 2, replace "Southwest" with "southwest"

Page 1, line 4, replace "a new section to chapter 6-09.4" with "a new section to chapter 61-02 and nine new sections to chapter 61-40"

Page 1, line 5, after "fund" insert "and an infrastructure revolving loan fund for the western area water supply project"

Page 1, line 5, remove "57-51.1-07,"

Page 1, line 6, after the first comma insert "61-40-02, 61-40-03, 61-40-04, 61-40-05,"

Page 1, line 6, remove "and"

Page 1, line 6, after "61-40-06" insert ", and 61-40-09"

Page 1, line 6, remove "allocation of moneys in the oil"

Page 1, line 7, replace "extraction tax development fund," with "relating to"

Page 1, line 7, remove the second comma

Page 1, line 7, remove "oversight of"

Page 1, line 8, remove "and"

Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"

Page 1, remove lines 12 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 17

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 28, after "loans" insert "; mill levies"

Page 7, after line 18, insert:

"SECTION 7. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

## Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of the moneys in the resources trust fund is appropriated on a continuing basis for making loans in accordance with this section. Accounts may be established in the

- infrastructure loan fund as necessary for its management and administration.
- The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - <u>b.</u> The estimated cost of the project and the amount of loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section.
- Annually the Bank of North Dakota may deduct a service fee for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, after line 19, insert:

"SECTION 10. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Audit and value engineering.

- Before the expenditure of any new funding during the 2013-15 biennium, the authority shall conduct an audit for 2011 and 2012 and shall submit the audit report to the state water commission and the industrial commission.
- The industrial commission must have performed from revenues received from industrial water sales, value engineering on all phases of the project constructed in the 2011-13 biennium and proposed for the 2013-15 biennium.
- 3. The authority and participating member entities shall provide to the industrial commission an inventory of all assets for the sale of industrial water to the oil industry and shall provide contracts associated with those assets to assist in the transfer of management and control of industrial water sales authorized in this chapter.

NOTE: Proposed by the independent water providers.

SECTION 11. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district

NOTE: Proposed by the State Water Commission.

SECTION 12. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

NOTE: Proposed by the State Water Commission.

SECTION 12. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. In addition, the governing body must contain three members of the public appointed by the governor. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

NOTE: Proposed by the independent water providers.

SECTION 13. AMENDMENT. Section 61-40-04 of the North Dakota Century

Code is amended and reenacted as follows:

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must

- be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

NOTE: Proposed by the State Water Commission.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- 1. Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.

- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of
  infrastructure, bulk water sale or lease, which contracts may provide for
  payments to fund some or all of the authority's costs of acquiring,
  constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt, except state-guaranteed loans, may not be acquired before August 1, 2015.

- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 17 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

NOTE: Proposed by the State Water Commission.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32
  or as described in this chapter for the purpose of acquiring and securing
  any right, title, interest, estate, or easement necessary or proper to carry
  out the duties imposed by this chapter, and particularly to acquire the

necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15. Eminent domain may not be used for the purpose of providing industrial water to the oil and gas industry.

- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.

- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt, except state-guaranteed loans, may not be acquired before August 1, 2015, by the authority or participating member entities.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure must be approved in accordance with section 17 of this Act.</u>
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,

- and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

NOTE: Proposed by the independent water providers.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century

Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local

- cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of
  infrastructure, bulk water sale or lease, which contracts may provide for
  payments to fund some or all of the authority's costs of acquiring,
  constructing, or reconstructing one or more water supply or infrastructure.
- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through industrial water depot and

- lateral sales, except state-guaranteed loans, may not be acquired before August 1, 2015.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.
- 21. Issue and sell revenue bonds for its own benefit or for the benefit of participating member entities, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
- 22. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
- 23. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.

- 24. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
- 25. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
- 26. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
- 27. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
- 28. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the authority to secure payment of the authority's obligations created by the contracts.
- 29. Pledge all or any part of any assessment levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.

**NOTE:** Proposed by the Western Area Water Supply Authority. Additional proposed language in this section was added to Section 61-40-09.

SECTION 15. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-06. Oversight of authority projects.

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty-five million dellar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease,

abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

**NOTE:** Proposed by the State Water Commission. If adopted this section will be repealed, not amended.

SECTION 15. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-06. Oversight of authority projects.

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission.

- 1. If the twenty-five million dollar zero interest loan from the state water commission has state-guaranteed loans have not been repaid, without the written consent of the state waterindustrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.
- 2. A moratorium for the 2013-15 biennium applies regarding the construction of any lateral lines for the purpose of providing industrial water to the oil or gas industry. Regardless of who pays for the cost, lateral lines may not be constructed by the authority or any other person to or from authority pipelines, depots, and other assets for industrial water during the moratorium.
- 3. Any lateral line constructed to or from authority pipelines, depots, or other assets, for the purpose of providing industrial water to the oil industry must first be approved by the industrial commission or state water commission.

NOTE: Proposed by the independent water providers.

SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:

- Required monthly payments on state-guaranteed loans.
- b. Reimbursement authority for the costs for water treatment and proportional pumping of power costs for water supply sold at industrial water depots and for lateral lines, at a rate established by the authority that reflects the actual costs of treatment and pumping power for the water sold at the depots and lateral locations.
- c. Regular payments on both the participating member entity debt and baseline 2010 industrial sales included in the initial contracts between the authority and the member participating entities.
- d. Additional principal payment on state-guaranteed loans.
- e. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

NOTE: Proposed by the State Water Commission.

SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Industrial water depot and lateral sales.

- The industrial commission shall manage and control all industrial water sales to the oil industry by the authority or participating member entities, and may contract for the management, maintenance, and operation of those assets from which sales occur. The industrial commission may contract for the performance of its responsibilities under this chapter.
- An accounting of industrial sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.

  Participating member entities must transfer industrial water to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - a. Required monthly payments on state-guaranteed loans.
  - b. Reimbursement of authority for the costs for water treatment and proportional pumping costs for water supply sold at the depots and lateral lines, at a rate established by the state water commission that reflects the actual cost of treatment and pumping power for the water sold at depots and lateral locations, but not more than the lowest rate sold to a participating member entity.
  - c. Regular payments on the participating member entity debt.

- d. Additional principal payment on state-guaranteed loans.
- e. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority and a participating member entity may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

NOTE: Proposed by the independent water providers.

SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues as follows:
  - a. Reimburse authority for costs associated with water depot and lateral sales, operation and maintenance cost, calculated as the cost of the water sold, using the applicable participating member entity's domestic rate, plus the cost of depot and lateral sales operations and maintenance, plus fifteen percent for administration and overhead.
  - b. Required scheduled payments on state-guaranteed loans.
  - c. Regular payments on the participating member entity debt and baseline 2010 industrial sales included in the current contracts between the authority and the participating member entities as of August 1, 2013.
  - <u>d.</u> Funding for operation and maintenance reserve account and capital reserves.
  - e. The state shall pay any federal, state, or local statutory or regulatory requirements that impose additional monetary costs upon the project.
- 2. If there are insufficient industrial water depot and lateral sales to make the annual payments outlined in subdivisions a through f of subsection 2, the industrial commission shall request funding from the state to make payments to the authority to make up any insufficiency in that amount.
- 3. In exchange for the commitments made herein by the state, authority and members shall enter agreements with private water sellers that allow private water sales from the Missouri River for oilfield hydraulic fracturing purposes.

4. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority and a participating member entity may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century

Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and replacement, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 16 of this Act which are paid for by industrial water depot and lateral sales.

NOTE: Proposed by the State Water Commission.

**SECTION 17.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

- The authority shall develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission for approval. Any subsequent industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect.
- The authority shall develop domestic water rates that must include all costs for operation, maintenance, and appropriate operating and capital resources of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 16 of this Act which are paid for by industrial water depot and lateral sales.
- The authority may not sell more than nineteen percent of industrial water sales to the oil industry for the previous year in the authority service area or more than two thousand acre-feet.

**NOTE:** Proposed by the independent water providers.

**SECTION 17.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must

include all costs for operation and maintenance, and appropriate operating and capital reserves.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent access by other industrial water suppliers.

NOTE: Proposed by the State Water Commission.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Construction funding.

The authority shall present the overall plan and contract plans and specifications for project components to the state water commission for funding approval. Priority on project funding is first for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, second for expanding domestic water supply to areas currently not served, and third to state-guaranteed loan payments if not met by industrial sales. State-guaranteed loan funds must be considered as local cost-share on these construction funds. In accepting construction funding, the authority and member entities agree not to hinder or prevent access by other industrial water suppliers. The authority and member entities retain the rights under section 61-04-05.1.

NOTE: Proposed by the independent water providers.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

# Construction funding.

The authority shall present the overall plan and contract plans and specifications for project components to the state water commission for funding consideration.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century

Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section

determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through c of subsection 1 of section 16 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified. within thirty days the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment and notify the industrial commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority. subject to approval of the plan by the budget section.

NOTE: Proposed by the State Water Commission.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century

Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through c of subsection 1 of section 16 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified, within thirty days the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment and notify the industrial commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and

ewnership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

In the event of a shortfall in revenue, the shortfall must be divided among the state, the authority, and the private water providers, the private water providers' share must be paid by assessing a fee up to three cents per barrel for any water sold to the the oil or gas industry.

NOTE: Proposed by the independent water providers.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century

Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section. Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century

Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state

assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

In the event of a shortfall in revenue, the shortfall must be divided among the state, the authority, and the private water providers, the private water providers' share must be paid by assessing a fee up to three cents per barrel for any water sold to the the oil or gas industry.

**SECTION 20.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Revenue bonds.

- 1. The authority may issue revenue bonds, not exceeding an aggregate total outstanding of one hundred fifty million dollars to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of the authority board. The authority shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of these facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.
- The bond authorities and procedures found in chapter 61-35 apply to the authority in the same manner as to revenue bonds issued under this chapter.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Financing projects through improvement bonds or special assessments.

1. The authority may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The authority may issue improvement bonds in anticipation of the levy and collection of special assessments. If the authority decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds

raised in whole or in part through special assessments, the assessments must be apportioned to and allocated in proportion to benefits accruing to lands or premises benefited by the project. The authority shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.

 The special assessment authorities and procedures found in chapter 61-35 apply to the authority.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Final disposition.

Once all debt is paid, the industrial commission shall have the discretion to continue to manage and operate industrial water sales assets, dispose of all or some of the assets upon public sales, and all revenue received from these sales or operations shall be paid to the resources trust fund.

NOTE: Proposed by the independent water providers.

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Grant funds.

All funds provided to the authority during the 2013-15 biennium must be grant funds.

NOTE: Proposed by the independent water providers.

SECTION 24. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Franchise protection waiver.

The authority and participating member entities shall waive the right to assert franchise protection under 7 U.S.C. 1926(b) or state law for any existing or subsequently acquired debt with regard to industrial water sales to the oil and gas industry, or against any person attempting to sell industrial water to the oil and gas industry."

**NOTE:** Proposed by the independent water providers. Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Renumber accordingly

13.0579.04006 Title. #14-2-13

Prepared by the Legislative Council staff for Representative Hofstad April 1, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 2, replace "Southwest" with "southwest"

Page 1, line 4, replace "a new section to chapter 6-09.4" with "a new section to chapter 61-02 and nine new sections to chapter 61-40"

Page 1, line 5, after "fund" insert "and an infrastructure revolving loan fund for the western area water supply project"

Page 1, line 5, remove "57-51.1-07,"

Page 1, line 6, after the first comma insert "61-40-02, 61-40-03, 61-40-04, 61-40-05,"

Page 1, line 6, remove "and"

Page 1, line 6, after "61-40-06" insert ", and 61-40-09"

Page 1, line 6, remove "allocation of moneys in the oil"

Page 1, line 7, replace "extraction tax development fund," with "relating to"

Page 1, line 7, remove the second comma

Page 1, line 7, remove "oversight of"

Page 1, line 8, remove "and"

Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"

Page 1, remove lines 12 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 17

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 28, after "loans" insert "; mill levies"

Page 7, after line 18, insert:

"SECTION 7. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

## Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of the moneys in the resources trust fund is appropriated on a continuing basis for making loans in accordance with this section. Accounts may be established in the

- infrastructure loan fund as necessary for its management and administration.
- 2. The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - <u>b.</u> The estimated cost of the project and the amount of loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section.
- 4. Annually the Bank of North Dakota may deduct a service fee for administering the infrastructure loan fund.
- 5. Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, after line 19, insert:

"SECTION 10. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Audit and value engineering.

- Before the expenditure of any new funding during the 2013-15 biennium, the authority shall conduct an audit for 2011 and 2012 and shall submit the audit report to the state water commission and the industrial commission.
- The industrial commission must have performed from revenues received from industrial water sales, value engineering on all phases of the project constructed in the 2011-13 biennium and proposed for the 2013-15 biennium.
- 3. The authority and participating member entities shall provide to the industrial commission an inventory of all assets for the sale of industrial water to the oil industry and shall provide contracts associated with those assets to assist in the transfer of management and control of industrial water sales authorized in this chapter.

NOTE: Proposed by the independent water providers.

SECTION 11. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

NOTE: Proposed by the State Water Commission.

SECTION 12. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

NOTE: Proposed by the State Water Commission.

SECTION 12. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. In addition, the governing body must contain three members of the public appointed by the governor. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

NOTE: Proposed by the independent water providers.

SECTION 13. AMENDMENT. Section 61-40-04 of the North Dakota Century

Code is amended and reenacted as follows:

## 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must

- be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

NOTE: Proposed by the State Water Commission.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century

Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32. or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.

- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt, except state-guaranteed loans, may not be acquired before August 1, 2015.

- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 17 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

NOTE: Proposed by the State Water Commission.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32
  or as described in this chapter for the purpose of acquiring and securing
  any right, title, interest, estate, or easement necessary or proper to carry
  out the duties imposed by this chapter, and particularly to acquire the

necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15. Eminent domain may not be used for the purpose of providing industrial water to the oil and gas industry.

- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.

- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt, except state-guaranteed loans, may not be acquired before August 1, 2015, by the authority or participating member entities.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 17 of this Act.
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,

- and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

NOTE: Proposed by the independent water providers.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century

Code is amended and reenacted as follows:

# 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- 1. Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local

- cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through industrial water depot and

- lateral sales, except state-guaranteed loans, may not be acquired before August 1, 2015.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.
- 21. Issue and sell revenue bonds for its own benefit or for the benefit of participating member entities, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
- 22. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
- 23. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.

- 24. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
- 25. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
- 26. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
- 27. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
- 28. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the authority to secure payment of the authority's obligations created by the contracts.
- 29. Pledge all or any part of any assessment levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.

**NOTE:** Proposed by the Western Area Water Supply Authority. Additional proposed language in this section was added to Section 61-40-09.

SECTION 15. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-06. Oversight of authority projects.

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty-five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease,

abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

**NOTE:** Proposed by the State Water Commission. If adopted this section will be repealed, not amended.

SECTION 15. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-06. Oversight of authority projects.

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission.

- 1. If the twenty five million dollar zero interest loan from the state water commission has state-guaranteed loans have not been repaid, without the written consent of the state waterindustrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.
- A moratorium for the 2013-15 biennium applies regarding the construction of any lateral lines for the purpose of providing industrial water to the oil or gas industry. Regardless of who pays for the cost, lateral lines may not be constructed by the authority or any other person to or from authority pipelines, depots, and other assets for industrial water during the moratorium.
- Any lateral line constructed to or from authority pipelines, depots, or other assets, for the purpose of providing industrial water to the oil industry must first be approved by the industrial commission or state water commission.

NOTE: Proposed by the independent water providers.

SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Industrial water depot and lateral sales.

1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:

- a. Required monthly payments on state-guaranteed loans.
- b. Reimbursement authority for the costs for water treatment and proportional pumping of power costs for water supply sold at industrial water depots and for lateral lines, at a rate established by the authority that reflects the actual costs of treatment and pumping power for the water sold at the depots and lateral locations.
- c. Regular payments on both the participating member entity debt and baseline 2010 industrial sales included in the initial contracts between the authority and the member participating entities.
- <u>Additional principal payment on state-guaranteed loans.</u>
- e. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

NOTE: Proposed by the State Water Commission.

SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Industrial water depot and lateral sales.

- 1. The industrial commission shall manage and control all industrial water sales to the oil industry by the authority or participating member entities, and may contract for the management, maintenance, and operation of those assets from which sales occur. The industrial commission may contract for the performance of its responsibilities under this chapter.
- 2. An accounting of industrial sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - Required monthly payments on state-guaranteed loans.
  - b. Reimbursement of authority for the costs for water treatment and proportional pumping costs for water supply sold at the depots and lateral lines, at a rate established by the state water commission that reflects the actual cost of treatment and pumping power for the water sold at depots and lateral locations, but not more than the lowest rate sold to a participating member entity.
  - Regular payments on the participating member entity debt.

- d. Additional principal payment on state-guaranteed loans.
- e. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority and a participating member entity may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

NOTE: Proposed by the independent water providers.

**SECTION 16.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

# Industrial water depot and lateral sales.

- An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues as follows:
  - a. Reimburse authority for costs associated with water depot and lateral sales, operation and maintenance cost, calculated as the cost of the water sold, using the applicable participating member entity's domestic rate, plus the cost of depot and lateral sales operations and maintenance, plus fifteen percent for administration and overhead.
  - Required scheduled payments on state-guaranteed loans.
  - c. Regular payments on the participating member entity debt and baseline 2010 industrial sales included in the current contracts between the authority and the participating member entities as of August 1, 2013.
  - <u>Funding for operation and maintenance reserve account and capital reserves.</u>
  - e. The state shall pay any federal, state, or local statutory or regulatory requirements that impose additional monetary costs upon the project.
- If there are insufficient industrial water depot and lateral sales to make the annual payments outlined in subdivisions a through f of subsection 2, the industrial commission shall request funding from the state to make payments to the authority to make up any insufficiency in that amount.
- 3. In exchange for the commitments made herein by the state, authority and members shall enter agreements with private water sellers that allow private water sales from the Missouri River for oilfield hydraulic fracturing purposes.

4. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority and a participating member entity may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century

Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and replacement, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 16 of this Act which are paid for by industrial water depot and lateral sales.

NOTE: Proposed by the State Water Commission.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

- The authority shall develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission for approval. Any subsequent industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect.
- 2. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and appropriate operating and capital resources of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 16 of this Act which are paid for by industrial water depot and lateral sales.
- 3. The authority may not sell more than nineteen percent of industrial water sales to the oil industry for the previous year in the authority service area or more than two thousand acre-feet.

**NOTE:** Proposed by the independent water providers.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral rate on an annual basis and present the rate to the industrial commission. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must

include all costs for operation and maintenance, and appropriate operating and capital reserves.

NOTE: Proposed by the Western Area Water Supply Authority.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent access by other industrial water suppliers.

NOTE: Proposed by the State Water Commission.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Construction funding.

The authority shall present the overall plan and contract plans and specifications for project components to the state water commission for funding approval. Priority on project funding is first for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, second for expanding domestic water supply to areas currently not served, and third to state-guaranteed loan payments if not met by industrial sales. State-guaranteed loan funds must be considered as local cost-share on these construction funds. In accepting construction funding, the authority and member entities agree not to hinder or prevent access by other industrial water suppliers. The authority and member entities retain the rights under section 61-04-05.1.

NOTE: Proposed by the independent water providers.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall present the overall plan and contract plans and specifications for project components to the state water commission for funding consideration.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section

determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through c of subsection 1 of section 16 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified, within thirty days the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment and notify the industrial commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority. subject to approval of the plan by the budget section.

NOTE: Proposed by the State Water Commission.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century

Code is amended and reenacted as follows:

### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through c of subsection 1 of section 16 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified, within thirty days the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment and notify the industrial commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and

ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

In the event of a shortfall in revenue, the shortfall must be divided among the state, the authority, and the private water providers, the private water providers' share must be paid by assessing a fee up to three cents per barrel for any water sold to the the oil or gas industry.

NOTE: Proposed by the independent water providers.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section. Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century

Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state

assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

In the event of a shortfall in revenue, the shortfall must be divided among the state, the authority, and the private water providers, the private water providers' share must be paid by assessing a fee up to three cents per barrel for any water sold to the the oil or gas industry.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Revenue bonds.

- 1. The authority may issue revenue bonds, not exceeding an aggregate total outstanding of one hundred fifty million dollars to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two thirds of the authority board. The authority shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of these facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.
- The bond authorities and procedures found in chapter 61-35 apply to the authority in the same manner as to revenue bonds issued under this chapter.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Financing projects through improvement bonds or special assessments.

The authority may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The authority may issue improvement bonds in anticipation of the levy and collection of special assessments. If the authority decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds

raised in whole or in part through special assessments, the assessments must be apportioned to and allocated in proportion to benefits accruing to lands or premises benefited by the project. The authority shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.

The special assessment authorities and procedures found in chapter 61-35
apply to the authority.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Final disposition.

Once all debt is paid, the industrial commission shall have the discretion to continue to manage and operate industrial water sales assets, dispose of all or some of the assets upon public sales, and all revenue received from these sales or operations shall be paid to the resources trust fund.

NOTE: Proposed by the independent water providers.

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Grant funds.

All funds provided to the authority during the 2013-15 biennium must be grant funds.

NOTE: Proposed by the independent water providers.

SECTION 24. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

# Franchise protection waiver.

The authority and participating member entities shall waive the right to assert franchise protection under 7 U.S.C. 1926(b) or state law for any existing or subsequently acquired debt with regard to industrial water sales to the oil and gas industry, or against any person attempting to sell industrial water to the oil and gas industry."

**NOTE:** Proposed by the independent water providers. Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Renumber accordingly

#2 04/02/13

# WAWSA Proposed Amendments March 29, 2013

We are in receipt of a few different versions of the amendments of the WAWSA legislation being discussed by Representative Hofstad yesterday. WAWSA and member entities find the amendments unacceptable as presently written, and enclose the following amendments for consideration.

## 61-40-05, Subdivision 13: Edit last sentence to read:

No additional debt <u>that requires repayment through industrial water depot and lateral sales</u>, with the exception of the state guaranteed loans, may be acquired during the 2013-2015 biennium.

## 61-40-05, add the following subdivisions:

- "21. Issue and sell revenue bonds for its own benefit or for the benefit of its members, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
- 22. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
- 23. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
- 24. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
- 25. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
- 26. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.

- 27. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
- 28. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the authority to secure payment of the authority's obligations created by the contracts.
- 29. Pledge all or any part of any assessment levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter."

# 61-40-06.1 Industrial Water Depot and Lateral Sales,

Edit as follows:

Accounting of industrial water depot and lateral sales collected and distributed by authority will be reported to the industrial commission on a monthly basis. Participating entities must transfer industrial water depot and lateral sales to the authority within 30 days of receipt of the revenue. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues as follows in the following order:

- Reimburse authority for the costs associated with water depot and lateral sales, operation and maintenance cost, calculated as (1) the cost of the water sold, using the applicable member's domestic rate, plus the cost of depot and lateral sales operations and maintenance, plus 15% for administration and overhead.
- 2. Required scheduled monthly payments on state guaranteed loans.
- Regular payments on both the member entity debt and <u>Baseline</u> 2010 industrial sales included in the <u>current initial</u> contracts between the authority and the participating entities as of the date of this section.
- 4. Funding for operation and maintenance reserve account and capital reserves.
- 10 percent of available cash after items 1-4 for have been met as additional principal payment on state guaranteed loans.
- 6. After fully funding items (1) through (5) on an annual basis, any excess revenue generated from industrial water depot and lateral sales will be distributed as follows:
  - a. Twenty-five percent of the remaining net industrial revenue will be deposited into the resources trust fund.

b. Seventy-five percent of the remaining net industrial revenue will be retained by the authority for the purpose of expanding domestic water supply and for the payment of other member system debt.

If there is insufficient industrial water depot and lateral sales to make the annual payments outlined in sections (1)-(5) above, the Industrial Commission will request funding from the state to make payments to the authority to make up any insufficiency in that amount.

In exchange for the commitments made herein by the state, authority and members will enter agreements with private water sellers that allow private water sales from the Missouri River for oilfield hydraulic fracturing purposes.

If the state guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority may not sell, lease, abandon, encumber or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

## 61-40-06.2 Water Rates, edit selected sentence as indicated:

The authority will develop domestic water rates which will include all costs for operation and maintenance, as well as appropriate operating and capital reserves and \_\_\_\_\_ and debt repayment

### 61-40-06.3 Construction Funding, Edit to read as follows:

The authority will follow the state water commission requirements for funding through the resources trust fund and shall present the overall plan and project components to the state water commission for funding consideration. [eliminate the rest of the section]

#### 61-40-09 Default, Edit to read as follows:

If the industrial commission has any concern with the industrial water depot and lateral sales being able to meet the expenses in section 61-40-06.1 (1)-(5), the industrial commission will provide written notification to the state water commission and (2) consider revision of the terms of the loan repayment. [eliminate all between] If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of north Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due.

## Add the following provisions to the NDCC:

### 61-40-10. Revenue Bonds

- (a) The authority may issue revenue bonds, not exceeding an aggregate total outstanding of one hundred fifty million dollars<sup>1</sup>, to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by twothirds of the authority board. The authority shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.
- (b) The bond authorities and procedures found in 61-35 apply to the authority in the same manner as if these provisions were stated herein.

# 61-40-11. Financing projects through improvement bonds or special assessments

- (a) The authority may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The authority may issue improvement bonds in anticipation of the levy and collection of special assessments. If the authority decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to benefits accruing to lands or premises benefited by the project. The authority shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.
- (b) The special assessment authorities and procedures found in 61-35 apply to the authority in the same manner as if these provisions were stated herein.

<sup>&</sup>lt;sup>1</sup> This legislation follows the authorities of a North Dakota water district, with one exception. North Dakota water districts revenue bond cap is \$50 million. WAWSA should have a larger cap since WAWSA encompasses water projects in five counties, including many systems. Given the level of population growth and water demands, a higher debt cap seems appropriate.

Sixty-third Legislative Assembly of North Dakota

## SENATE BILL NO. 2233

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the Southwestsouthwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new section to chapter 6-09.4a new section to chapter 61-02 and nine new sections to chapter 61-40 of the North Dakota Century Code, relating to an infrastructure revolving loan fund and an infrastructure revolving loan fund for the western area water supply project; to amend and reenact sections 57-51.1-07, 61-24.7-01, 61-24.7-05, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-06, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River water supply project; and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and-61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project; and to provide a continuing appropriation.

#### 14 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

15 SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created
16 and enacted as follows:

## Infrastructure revolving loan fund - Continuing appropriation - Rules.

- The purpose of the infrastructure revolving loan fund is to provide loans for public water-related infrastructure projects, including those for water supply, flood protection, or other water project development.
- 2. An infrastructure revolving loan fund is established to make loans for the purposes described in subsection 1. Moneys in the fund are appropriated on a continuing basis for making loans in accordance with this section. Accounts may be established in the fund as necessary for its management and administration.



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# Sixty-third Legislative Assembly

1	<u>3.</u>	The public finance authority shall manage and administer the infrastructure revolving
2		loan fund and individual accounts in the fund. For those purposes, the authority may
3		exercise all powers provided in this chapter.
4	<u>4.</u>	An applicant for a loan must submit an application to the Bank of North Dakota on
5		forms prescribed by the Bank. The applicant must provide the following information:
6	-	a. The estimated cost of the project and the amount of the loan sought;
7		b. Other possible sources of funding in addition to loans sought from the
8		infrastructure revolving loan fund;
9		c. The proposed methods and sources of funds to be used for repayment of loans
10		received; and
11		d. Information showing the financial status and ability of the borrower to repay
12		loans.
13		Each project must be certified by the industrial commission under subsection 5 before
14		its consideration by the public finance authority.
15	<u>5.</u>	The industrial commission shall consider the following information when evaluating
16		projects to certify to the public finance authority:
17		a. A description of the nature and purpose of the proposed infrastructure project
18		including an explanation of the need for the project and the reasons why it is in
19		the public interest;
20	_	b. The estimated cost of the project and the amount of loan sought:
21 -		c. Proposed sources of funding, in addition to loans sought from the infrastructure
22		revolving loan fund;
23 -		d. The need for the project as part of the overall infrastructure system;
24 -		e. The overall economic impact of the project; and
25		f. The extent to which completion of the project will provide a benefit to the state or
26		to political subdivisions within the state.
27 -	6.	A loan made under this section must:
28 -		a. Bear interest at or below market rates or as otherwise specified in federal law;
29 -		b. Have a repayment term not longer than fifty years;
30 -		c. Be fully amortized no later than fifty years after project completion:



1		d. Be subject to repayment of principal and interest beginning not later than five
2		years after the facility financed with a loan has been completed; and
3	-	e. Be disbursed for specific project elements only after all applicable environmental
4		requirements have been met.
5		The director of the public finance authority, with the approval of the industrial
6		commission, shall adopt rules to implement a program to identify and assist with
7		development of projects eligible for loans under this section.
8	<u>8.</u>	The director of the public finance authority may request the assistance of other
9		agencies of the state as may be necessary to the development of projects eligible for
10		loans under this section and as may be necessary for the administration of such
11		projects that have been certified by the industrial commission and such agencies of
12		the state are authorized and directed to provide such assistance.
13	<u>9.</u>	A lean may be made to a statutory or home rule charter city to finance projects for the
14		purposes described in this section without regard to whether the city is eligible for
15		financing under a federal act or program or state law. The loan must be repayable
16		under the terms and conditions provided in this section and established by the public
17		finance authority and agreed to by the city. The loan must be repaid by the city from
18		the proceeds of special assessments, tax increments, or other local taxes, such as
19		sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
20		and beverage taxes, authorized to be used for purposes of the project.
21	—SEC	CTION 1. AMENDMENT, Section 57-51.1-07 of the North Dakota Century Code is
22	amended and reenacted as follows:	
23	57-51.1-07. Allocation of moneys in oil extraction tax development fund.	
24	Mor	neys deposited in the oil extraction tax development fund must be transferred monthly by
25	the state treasurer as follows:	
26	-1.	TwentyEighteen percent must be allocated and credited to the sinking fund
27		established for payment of the state of North Dakota water development bonds,
28		southwest pipeline series, and any moneys in excess of the sum necessary to
29		maintain the accounts within the sinking fund and for the payment of principal and
30		interest on the bonds must be credited to a special trust fund, to be known as the
31		resources trust fund. The resources trust fund must be established in the state

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treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:

- a. The state water commission for planning for and construction of water related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- 2. Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
  - 4.5. Thirty percent must be allocated and credited to the state's general fund.

#### SECTION 1.

## Declaration of policy.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this

state: that major flood control works in and around major cities and other cities are necessary to 1 2 address the record and damaging floods that have occurred; that regional water supply and 3 rural water projects must be completed in order to provide a long-term, dependable quality and 4 adequate guantity water supply for municipal, domestic, rural, and industrial uses; that irrigation 5 provides a significant opportunity to further the agricultural opportunities in the state; and that an 6 infrastructure loan fund will enable these goals and policies to be achieved and implemented. 7 and will provide significant economic and financial benefits to the people of this state. 8 SECTION 2. 9 Legislative intent - Reports to legislative assembly. 10 The legislative assembly declares and establishes the following goals and objectives: 11 That it is necessary for the long-term welfare and economic well-being of the Souris 12 River basin, and the entire state and its citizens, that the planning, design, and 13 construction of the Mouse River enhanced flood control project be completed and 14 implemented. 15 That the Red River valley water supply project is critical to provide a dependable water 2. 16 supply for current and future generations in eastern North Dakota and is essential to 17 provide for the long term welfare, economic well-being, and quality of life for the entire 18 state. 19 That it is necessary for the long term welfare and economic well-being of the Red 3. 20 River basin, and the entire state and its citizens, that the planning, design, and 21 construction of the Fargo-Moorhead diversion and flood control project be completed 22 and implemented. 23 4. That regional water supply and rural water systems are necessary to provide a 24 dependable and adequate quantity and quality water supply for municipal, domestic. 25 rural, and industrial uses. 26 5. That the state water commission and the southwest water authority shall begin the 27 process of reviewing capital repayment and revenues being returned to the resources 28 trust fund; payments necessary to meet obligations of existing bonds and other loans; 29 mill levies; ownership of land and associated facilities; existing construction 30 documents; liabilities; contracts with cities, bulk users, companies, and other users;

and other items, and shall report to the legislative assembly those steps necessary for

1		the transfer of ownership and responsibility of the southwest pipeline project from the
2		state water commission to the southwest water authority.
3	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall
4		enter discussions with the bureau of reclamation concerning Garrison diversion unit
5		facilities.
6	<u>7.</u>	That projects receiving state funds for construction and implementation not assert,
7		claim, or seek to prevent other opportunities, either public or private, to utilize waters
8		of the Missouri River for industrial uses in this state.
9	<u>8.</u>	That local water management and flood control projects are necessary for the
10		economic well-being and quality of life of citizens in those local areas.
11	<u>9.</u>	That irrigation development offers significant opportunities for agriculture in this state.
12	<u>10.</u>	That an infrastructure loan fund for water development and management will provide
13		significant financial benefits to projects and the citizens of this state, and will provide
14		new capabilities to implement necessary water infrastructure projects across the state.
15	SEC	CTION 3.
16	Mo	use River enhanced flood control project.
17	1.	The legislative assembly declares its intent to provide state funding for a share of the
8		non-federal or local cost of constructing the Mouse River enhanced flood control
19		project.
20	<u>2.</u>	Any funds appropriated for the construction of the Mouse River enhanced flood control
21		project may be carried over to future bienniums.
22	<u>3.</u>	State funding for the Mouse River enhanced flood control project may be appropriated
23		at the time and in the manner determined by the legislative assembly, either
24		concurrently or separately from federal and local funding for the Mouse River
25		enhanced flood control project.
26	SEC	CTION 4.
27	Sou	thwest pipeline project - Report to legislative assembly.
28	The	state water commission and the southwest water authority shall begin the process of
9	reviewin	g capital repayment and revenues being returned to the resources trust fund; payments
0	necessa	ry to meet obligations of existing bonds and other loans; mill levies; ownership of land
31	and ass	ociated facilities; existing construction documents; liabilities; contracts with cities, bulk

# Sixty-third Legislative Assembly

1	users, o	companies, and other users; and other items, and shall report to the legislative assembly		
2	those steps necessary for the transfer of ownership and responsibility of the southwest pipeline			
3	project from the state water commission to the southwest water authority.			
4	SE	SECTION 5.		
5	Ga	Garrison diversion unit.		
6	The Garrison diversion unit has extensive federal facilities that have been constructed,			
7	including the Snake Creek pumping plant, the McClusky canal, recreation areas, and other			
8	facilities. It is the intent of the legislative assembly that the state water commission and Garrison			
9	diversion conservancy district begin discussions with the bureau of reclamation concerning the			
10	Garrison diversion unit facilities.			
11	SECTION 6.			
12	Fargo-Moorhead flood control project.			
13	<u>1.</u>	The legislative assembly declares its intent to provide state funding for a share of the		
14		nonfederal or local cost of constructing the Fargo-Moorhead flood control project.		
15	2.	Nothwithstanding any other law, any funds appropriated for the construction of the		
16		Fargo-Moorhead flood control project may be carried over to future bienniums.		
17	<u>3.</u>	State funding for the Fargo-Moorhead flood control project may be appropriated at the		
18		time and in the manner determined by the legislative assembly, either concurrently or		
19		separately from federal and local funding for the Fargo-Moorhead flood control project.		
20	SEC	CTION 7. A new section to chapter 61-02 of the North Dakota Century Code is created		
21	and ena	cted as follows:		
22	Infr	astructure revolving loan fund - Continuing appropriation - Rules.		
23	1	An infrastructure revolving loan fund is established within the resources trust fund to		
24	4.0	provide loans for water supply, flood protection, or other water development and water		
25	100	management projects. Ten percent of the moneys in the resources trust fund is		
26	/	appropriated on a continuing basis for making loans in accordance with this section.		
27	- 27/4	Accounts may be established in the infrastructure loan fund as necessary for its		
28	10-12	management and administration.		
29	2.	The commission shall consider the following information when evaluating projects:		

- a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
- b. The estimated cost of the project and the amount of loan sought and other proposed sources of funding.
- c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section.
- 4. Annually the Bank of North Dakota may deduct a service fee for administering the infrastructure loan fund.
- 5. Projects not eligible for the state revolving fund will be given priority for these funds.

**SECTION 8. AMENDMENT.** Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

# 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- 2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of

amended and reenacted as follows:

1		sufficient quantity and quality to supply homes, businesses, industries, wildlife, and
2		recreation in the Red River valley within this state.
3	3.	This chapter does not affect the state water commission's authority to otherwise issue
4		bonds pursuant to chapter 61-02 or section 61-24.3-01.
5	SE	CTION 9. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is
6	amende	ed and reenacted as follows:
7	61-	24.7-05. State funding plan .
8	1,	The legislative assembly declares its intent to provide state funding for one-thirda
9		share of the totalnonfederal or local cost of constructing the Red River valley water
10		supply project.
11	2.	Any general funds appropriated for the construction of the Red River valley water
12		supply project may be carried over to future bienniums.
13	3.	State funding for the Red River valley water supply project may be appropriated at the
14		time and in the manner determined by the legislative assembly, either concurrently or
15	41-11-11	separately from federal and local funding for the Red River valley water supply project.
16	SE	CTION 10. A new section to chapter 61-40 of the North Dakota Century Code is created
17	and ena	octed as follows:
18	Aud	dit and value engineering.
19	1.	Before the expenditure of any new funding during the 2013-15 biennium, the authority
20		shall conduct an audit for 2011 and 2012 and shall submit the audit report to the state
21		water commission and the industrial commission.
22	2.	The industrial commission must have performed from revenues received from
23		industrial water sales, value engineering on all phases of the project constructed in the
24		2011-13 biennium and proposed for the 2013-15 biennium.
25	3.	The authority and participating member entities shall provide to the industrial
26		commission an inventory of all assets for the sale of industrial water to the oil industry
27		and shall provide contracts associated with those assets to assist in the transfer of
28		management and control of industrial water sales authorized in this chapter.
	NO	TE: Proposed by the independent water providers.
29	SEC	CTION 11. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is

## 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero-interest loan from the state water commission has not been repaiduntif the state-guaranteed loans have been repaid. The provisions of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

NOTE: Proposed by the State Water Commission.

**SECTION 12. AMENDMENT.** Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for

- membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

NOTE: Proposed by the State Water Commission.

**SECTION 12. AMENDMENT.** Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. In addition, the governing body must contain three members of the public appointed by the governor. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered.

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a contract with the authority, before August 1, 2013, for financial participation in the project.

NOTE: Proposed by the independent water providers.

**SECTION 13. AMENDMENT.** Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the
  business affairs of the authority as it determines necessary, including the time and
  place of regular meetings of the board, financial participation structure for membership
  in the authority, and membership appointment and changes. Bylaws need to be
  approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

NOTE: Proposed by the State Water Commission.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

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# 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.

- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order

- to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt, except state-guaranteed loans, may not be acquired before August 1, 2015.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 17 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.

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20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system. infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

NOTE: Proposed by the State Water Commission.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may.

- 1. Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate; or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be walved, in the manner. prescribed for trials under chapter 32-15. Eminent domain may not be used for the purpose of providing industrial water to the oil and gas industry.

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- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or

- reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt, except state-guaranteed loans, may not be acquired before August 1, 2015, by the authority or participating member entities.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 17 of this Act.
- 18. Develop water supply systems; store and transport water, and provide; contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs; ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements,

- and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

NOTE: Proposed by the independent water providers.

**SECTION 14. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- 1. Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district

- court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.

- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through industrial water depot and lateral sales, except state-guaranteed loans, may not be acquired before August 1, 2015.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users.
- Develop water supply systems; store and transport water; and provide, contract for,
   and furnish water service for domestic, municipal, and rural water purposes; milling,

- manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.
- 21. Issue and sell revenue bonds for its own benefit or for the benefit of participating member entities, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
- 22. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
- 23. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
- 24. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.

25.	Pledge revenues of the authority to the punctual payment of principal and interest on
	bonds or water purchase contract obligations. A pledge under this subsection applies
	to the revenues of improvements, betterments, or extensions of the authority which
	may be constructed or acquired after the issuance of bonds, the revenues of existing
1	systems, plants, works, instrumentalities, and properties of any part of the authority
	improved, bettered, or extended, and the revenues received from payments made
	under water sale contracts between the authority and persons that contract to
	purchase water from the authority.

- 26. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
- 27. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
- 28. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the authority to secure payment of the authority's obligations created by the contracts.
- 29. Pledge all or any part of any assessment levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.

**NOTE:** Proposed by the Western Area Water Supply Authority. Additional proposed language in this section was added to Section 61-40-09.

SECTION 15. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-06. Oversight of authority projects.

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and

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contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

NOTE: Proposed by the State Water Commission. If adopted this section will be repealed, not amended.

SECTION 15. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-06. Oversight of authority projects.

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission.

- If the twenty-five million dollar zero interest loan from the state water commission has state-guaranteed loans have not been repaid, without the written consent of the state waterindustrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.
- A moratorium for the 2013-15 biennium applies regarding the construction of any lateral lines for the purpose of providing industrial water to the oil or gas industry. Regardless of who pays for the cost, lateral lines may not be constructed by the authority or any other person to or from authority pipelines, depots, and other assets for industrial water during the moratorium.
- Any lateral line constructed to or from authority pipelines, depots, or other assets, for the purpose of providing industrial water to the oil industry must first be approved by the industrial commission or state water commission.

**NOTE:** Proposed by the independent water providers.

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SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

An accounting of industrial water depot and lateral sales collected and distributed by

Participating member entities must transfer industrial water depot and lateral sales to

the authority within thirty days of receipt of the revenues. The boards of the authority

and participating member entities must be notified of the sweep of revenues; however,

board approval is not required. Upon the receipt of industrial water depot and lateral

Reimbursement authority for the costs for water treatment and proportional

treatment and pumping power for the water sold at the depots and lateral

Regular payments on both the participating member entity debt and baseline

2010 industrial sales included in the initial contracts between the authority and

If the state-quaranteed loans have not been repaid, without the written consent of the

otherwise dispose of any part of the property used in a water system of the authority if

the property is used to provide revenue. Any requirements on the state-guaranteed

loans for establishment of reserve funds for operation and maintenance or debt

industrial commission, the authority may not sell, lease, abandon, encumber, or

pumping of power costs for water supply sold at industrial water depots and for

lateral lines, at a rate established by the authority that reflects the actual costs of

revenues by the authority, the authority must immediately apply all revenues each

Required monthly payments on state-guaranteed loans.

Additional principal payment on state-guaranteed loans.

the authority must be reported to the industrial commission on a monthly basis.

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## Industrial water depot and lateral sales.

month in the following order:

locations.

service are waived.

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**NOTE:** Proposed by the State Water Commission.

the member participating entities:

Payment to the resources trust fund

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SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Industrial water depot and lateral sales.

- The industrial commission shall manage and control all industrial water sales to the oil industry by the authority or participating member entities, and may contract for the management, maintenance, and operation of those assets from which sales occur.
  The industrial commission may contract for the performance of its responsibilities under this chapter.
- 2. An accounting of industrial sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order.
  - a. Required monthly payments on state-guaranteed loans.
  - b. Reimbursement of authority for the costs for water treatment and proportional pumping costs for water supply sold at the depots and lateral lines, at a rate established by the state water commission that reflects the actual cost of treatment and pumping power for the water sold at depots and lateral locations, but not more than the lowest rate sold to a participating member entity.
  - Regular payments on the participating member entity debt.
  - d. Additional principal payment on state-quaranteed loans.
  - e. Payment to the resources trust fund:
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority and a participating member entity may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt services are waived.

NOTE: Proposed by the independent water providers.

SECTION 16. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Industrial water depot and lateral sales.

- An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.

  Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues as follows:
  - a. Reimburse authority for costs associated with water depot and lateral sales, operation and maintenance cost, calculated as the cost of the water sold, using the applicable participating member entity's domestic rate, plus the cost of depot and lateral sales operations and maintenance, plus fifteen percent for administration and overhead.
  - b. Required scheduled payments on state-guaranteed loans.
  - c. Regular payments on the participating member entity debt and baseline 2010 industrial sales included in the current contracts between the authority and the participating member entities as of August 1, 2013.
  - d. Funding for operation and maintenance reserve account and capital reserves.
  - e. The state shall pay any federal, state, or local statutory or regulatory requirements that impose additional monetary costs upon the project.
- 2. If there are insufficient industrial water depot and lateral sales to make the annual payments outlined in subdivisions a through f of subsection 2, the industrial commission shall request funding from the state to make payments to the authority to make up any insufficiency in that amount.
- 3. In exchange for the commitments made herein by the state, authority and members shall enter agreements with private water sellers that allow private water sales from the Missouri River for oilfield hydraulic fracturing purposes.
- 4. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority and a participating member entity may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue.

**NOTE:** Proposed by the Western Area Water Supply Authority.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created 1 2 and enacted as follows: 3 Water rates. 4 The authority shall develop an industrial water depot and lateral rate on an annual basis 5 and present the rate to the industrial commission. Any industrial water depot and lateral rate 6 adjustment must have approval of the industrial commission before going into effect. The 7 authority shall develop domestic water rates that must include all costs for operation, 8 maintenance, and replacement, and debt repayment of all infrastructure managed or 9 constructed by the authority, with the exception of the costs identified in section 16 of this Act 10 which are paid for by industrial water depot and lateral sales. NOTE: Proposed by the State Water Commission. 11 SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows: 12 13 Water rates. 14 The authority shall develop an industrial water depot and lateral rate on an annual 15 basis and present the rate to the industrial commission for approval. Any subsequent 16 industrial water depot and lateral rate adjustment must have approval of the industrial 17 commission before going into effect. The authority shall develop domestic water rates that must include all costs for 18 19 operation, maintenance, and appropriate operating and capital resources of all 20 Infrastructure managed or constructed by the authority, with the exception of the costs 21 identified in section 16 of this Act which are paid for by industrial water depot and 22 lateral sales. 23 The authority may not sell more than nineteen percent of industrial water sales to the 24 oil industry for the previous year in the authority service area or more than two 25 thousand acre-feet. **NOTE:** Proposed by the independent water providers. 26 SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created 27 and enacted as follows: 28 Water rates. 29 The authority shall develop an industrial water depot and lateral rate on an annual basis 30 and present the rate to the industrial commission. Any industrial water depot and lateral rate

adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation and maintenance, and appropriate operating and capital reserves.

NOTE: Proposed by the Western Area Water Supply Authority.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent access by other industrial water suppliers.

NOTE: Proposed by the State Water Commission.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall present the overall plan and contract plans and specifications for project components to the state water commission for funding approval. Priority on project funding is first for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, second for expanding domestic water supply to areas currently not served, and third to state-guaranteed loan payments if not met by industrial sales. State-guaranteed loan funds must be considered as local cost-share on these construction funds. In accepting construction funding, the authority and member entities agree not to hinder or prevent access by other industrial water suppliers. The authority and member entities retain the rights under section 61-04-05.1.

NOTE: Proposed by the independent water providers.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

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Construction funding.

The authority shall present the overall plan and contract plans and specifications for project components to the state water commission for funding consideration.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through c of subsection 1 of section 16 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified, within thirty days the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment and notify the industrial commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

NOTE: Proposed by the State Water Commission.

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SECTION 19. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through c of subsection 1 of section 16 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified, within thirty days the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment and notify the industrial commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

In the event of a shortfall in revenue, the shortfall must be divided among the state, the authority, and the private water providers, the private water providers' share must be paid by assessing a fee up to three cents per barrel for any water sold to the the oil or gas industry.

**NOTE:** Proposed by the independent water providers.

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**SECTION 19. AMENDMENT.** Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section. Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

NOTE: Proposed by the Western Area Water Supply Authority.

**SECTION 19. AMENDMENT.** Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the

budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under this chapter.

In the event of a shortfall in revenue, the shortfall must be divided among the state, the authority, and the private water providers, the private water providers' share must be paid by assessing a fee up to three cents per barrel for any water sold to the the oil or gas industry.

**SECTION 20.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Revenue bonds.

1. The authority may issue revenue bonds, not exceeding an aggregate total outstanding of one hundred fifty million dollars to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of the authority board. The authority shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of these facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.

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The bond authorities and procedures found in chapter 61-35 apply to the authority in the same manner as to revenue bonds issued under this chapter.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Financing projects through improvement bonds or special assessments.

- The authority may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The authority may issue improvement bonds in anticipation of the levy and collection of special assessments. If the authority decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and allocated in proportion to benefits accruing to lands or premises benefited by the project. The authority shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.
  - The special assessment authorities and procedures found in chapter 61-35 apply to the authority.

NOTE: Proposed by the Western Area Water Supply Authority.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

# Final disposition.

Once all debt is paid, the industrial commission shall have the discretion to continue to manage and operate industrial water sales assets, dispose of all or some of the assets upon public sales, and all revenue received from these sales or operations shall be paid to the resources trust fund.

NOTE: Proposed by the independent water providers.

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

1	Grant funds.
2	All funds provided to the authority during the 2013-15 blennium must be grant funds.
	NOTE: Proposed by the independent water providers.
3	SECTION 24. A new section to chapter 61-40 of the North Dakota Century Code is created.
4	and enacted as follows:
5	Franchise protection waiver.
6	The authority and participating member entities shall waive the right to assert franchise
7	protection under 7 U.S.C. 1926(b) or state law for any existing or subsequently acquired debt
8	with regard to industrial water sales to the oil and gas industry, or against any person attempting
9	to sell industrial water to the oil and gas industry.
	NOTE: Proposed by the independent water providers.
10	SECTION 25. REPEAL. Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of
11	the North Dakota Century Code are repealed.

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "a new section to chapter 6-09.4" with "a new subdivision to subsection 1 of section 28-32-01, a new section to chapter 61 02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act,"
- Page 1, line 5, after "fund" insert ", and an infrastructure revolving loan fund for the western area water supply project"
- Page 1, line 5, remove "57 51.1-07,"
- Page 1, line 6, replace "and 61 40-06" with "61-40 02, 61 40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund," with "relating to"
- Page 1, line 7, remove the second comma
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61 40 06"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

"SECTION 1. A new subdivision to subsection 1 of section 28-32 01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40."

- Page 5, line 13, replace "long term" with "long-term"
- Page 5, line 15, replace "long term" with "long-term"
- Page 5, line 17, remove "diversion and"
- Page 5, line 24, after the second underscored semicolon insert "mill levies;"
- Page 6, remove lines 4 through 6
- Page 6, line 7, replace "8." with "7."

Page 6, line 9, replace "9." with "8."

Page 6, line 10, replace "10." with "9."

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, line 28, after "loans" insert "; mill levies"

Page 7, after line 18, insert:

"SECTION 8. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

## Infrastructure revolving Ioan fund - Continuing appropriation - Rules.

- An infrastructure revolving loan fund is established within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of the moneys in the resources trust fund is appropriated on a continuing basis for making loans in accordance with this section. Accounts may be established in the infrastructure loan fund as necessary for its management and administration.
- 2. The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- Annually the Bank of North Dakota may deduct a service fee for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, after line 19, insert:

"SECTION 11. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 12. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 13. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate

possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually

is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.

- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through authority or member entity water sales, except state-guaranteed loans, may not be acquired before August 1, 2015, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission or budget section.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure</u> must be approved in accordance with section 16 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.

SECTION 15. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - a. Reimburse authority for the costs for water supply sold at industrial water depots and lateral lines, at the participating member entity rate at the location of the depot or lateral line.
  - Required monthly payments on state-guaranteed loans.
  - c. Regular payments on both the participating member entity debt and baseline 2010 industrial sales included in the initial contracts between the authority and the participating member entities.
  - d. Additional principal payment on state-guaranteed loans.
  - e. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

**SECTION 16.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral rate pursuant to section 61-40-09 and present the rate to the industrial commission. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and replacement, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 15 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales to the oil and gas industry.

SECTION 18. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through e of subsection 1 of section 15 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified, within thirty days the state water commission shall review the domestic water rates of the authority to determine if there is additional ability to pay for the debt repayment and notify the industrial commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ewnership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority. subject to approval of the plan by the budget section.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Prepared by the Legislative Council staff for Representative Keiser April 2, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 6, after the first comma insert "61-40-01,"

Page 1, line 7, after the second comma insert "the location of industrial water depots"

Page 8, after line 19, insert:

"SECTION 11. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers."

Renumber accordingly

13.0579.04007

Sixty-third Legislative Assembly of North Dakota

#### **SENATE BILL NO. 2233**

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water 2 project development, the Mouse River enhanced flood control project, the Southwestsouthwest 3 pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to 4 create and enact a new section to chapter 6-09.4a new subdivision to subsection 1 of section 5 28-32-01, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, an infrastructure revolving loan fund, and an infrastructure revolving loan fund for the western area water supply project; to amend and reenact sections <del>57-51.1-07, 61-24.7-01, 61-24.7-05, and 61-40-0661-40-02, 61-40-03, and 61-40-0661-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61-40-02, 61</del> 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River water supply project, and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, 13 and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red 14 River valley water supply project; and to provide a continuing appropriation.

#### 15 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

16	SECTION 1. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
17	amended and reenacted as follows:
18	— 57-51.1-07. Allocation of moneys in oil extraction tax development fund.
19	Moneys deposited in the oil extraction tax development fund must be transferred monthly by
20	the state treasurer as follows:
21	1. Twenty <u>Eighteen percent must be allocated and credited to the sinking fund</u>
22	established for payment of the state of North Dakota water development bonds,

southwest pipeline series, and any moneys in excess of the sum necessary to

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1	maintain the accounts within the sinking fund and for the payment of principal and
2	interest on the bonds must be credited to a special trust fund, to be known as the
3	resources trust fund. The resources trust fund must be established in the state
4	treasury and the funds therein must be deposited and invested as are other state
5	funds to earn the maximum amount permitted by law which income must be deposited
6	in the resources trust fund. The principal and income of the resources trust fund may
7	be expended only pursuant to legislative appropriation and are available to:
8	a. The state water commission for planning for and construction of water-related
9	projects, including rural water systems. These water related projects must be
10	these which the state water commission has the authority to undertake and
11	<del>construct pursuant to chapter 61-02; and</del>
12	b. The industrial commission for the funding of programs for development of energy
13	conservation and renewable energy sources; for studies for development of
14	cogeneration systems that increase the capacity of a system to produce more
15	than one kind of energy from the same fuel; for studies for development of waste
16	products utilization; and for the making of grants and loans in connection
17	therewith.
18	2. Two percent must be allocated to the infrastructure revolving loan fund.
19	<u>3.</u> Twenty percent must be allocated to the common schools trust fund and foundation
20	aid-stabilization fund as provided in section 24 of article X of the Constitution of North
21	<del>Dakota.</del>
22	-3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of
23	article X of the Constitution of North Dakota.
24	- 4.5. Thirty percent must be allocated and credited to the state's general fund SECTION 1.
25	A new section to chapter 6-09.4 of the North Daketa Century Code is created and
26	enacted as follows:
27	Infrastructure revolving loan fund Continuing appropriation - Rules.
28	1. The purpose of the infrastructure revolving loan fund is to provide loans for public
29	water-related infrastructure projects, including these for water supply, flood protection,
30	or ether water project development.

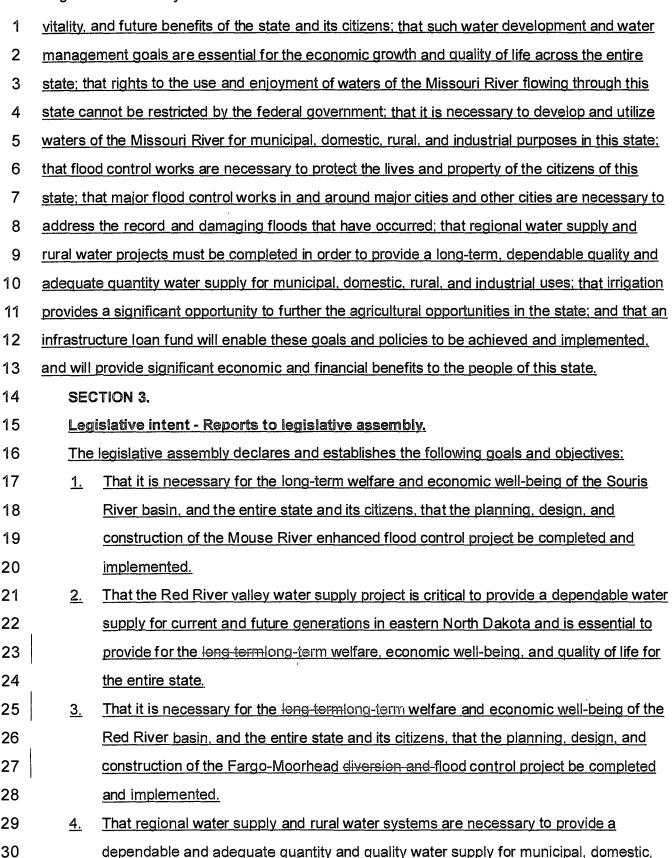


# Sixty-third Legislative Assembly

1		An infrastructure revolving lean fund is established to make leans for the purposes
2		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
3		for making loans in accordance with this section. Accounts may be established in the
4		fund as necessary for its management and administration.
5	<u>3.</u>	The public finance authority shall manage and administer the infrastructure revolving
6		lean fund and individual accounts in the fund. For those purposes, the authority may
7		exercise all powers provided in this chapter.
8	<u>4.</u>	An applicant for a lean must submit an application to the Bank of North Dakota on
9		forms prescribed by the Bank. The applicant must provide the following information:
10		a. The estimated cost of the project and the amount of the loan sought:
11		b. Other possible sources of funding in addition to loans sought from the
12		infrastructure revolving loan fund;
13		c. The proposed methods and sources of funds to be used for repayment of loans
14		received; and
15		d. Information showing the financial status and ability of the borrower to repay
16		<del>loans.</del>
17		Each project must be certified by the industrial commission under subsection 5 before
18		its consideration by the public finance authority.
19	<del></del>	The industrial commission shall consider the following information when evaluating
20		projects to certify to the public finance authority:
21		a. A description of the nature and purpose of the proposed infrastructure project
22		including an explanation of the need for the project and the reasons why it is in
23		the public interest:
24		b. The estimated cost of the project and the amount of loan sought:
25		c. Proposed sources of funding, in addition to loans sought from the infrastructure
26		revelving-lean-fund;
27		d. The need for the project as part of the overall infrastructure system:
28		e. The overall economic impact of the project; and
29		f. The extent to which completion of the project will provide a benefit to the state or
30		to political subdivisions within the state.
24	_	A large consists consists and their and their security

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1	a. Bear interest at or below market rates or as otherwise specified in federal law;
2	<u>b.</u> Have a repayment term not longer than fifty years;
3	<u>c.</u> Be fully amertized no later than fifty years after project completion:
4	d. Be subject to repayment of principal and interest beginning not later than five
5	years after the facility financed with a loan has been completed; and
6	e. Be disbursed for specific project elements only after all applicable environmental
7	reguirements have been met.
8	7. The director of the public finance authority, with the approval of the industrial
9	commission, shall adopt rules to implement a program to identify and assist with
10	development of projects eligible for loans under this section.
11	8. The director of the public finance authority may request the assistance of other
12	agencies of the state as may be necessary to the development of projects eligible for
13	loans under this section and as may be necessary for the administration of such
14	projects that have been certified by the industrial commission and such agencies of
15	the state are authorized and directed to provide such assistance.
16	9. A loan may be made to a statutory or home rule charter city to finance projects for the
17	purposes described in this section without regard to whether the city is eligible for
18	financing under a federal act or program or state law. The loan must be repayable
19	under the terms and conditions provided in this section and established by the public
20	finance authority and agreed to by the city. The loan must be repaid by the city from
21	the proceeds of special assessments, tax increments, or other local taxes, such as
22	sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
23	and beverage taxes, authorized to be used for purposes of the project. SECTION 1.
24	A new subdivision to subsection 1 of section 28-32-01 of the North Dakota Century
25	Code is created and enacted as follows:
26	The industrial commission with respect to approving or setting water rates under
27	chapter 61-40.
28	SECTION 2.
29	Declaration of policy.
30	The legislative assembly declares that major water development and water management
31	goals must be set forth and implemented in order to protect the long-term interests, economic



rural, and industrial uses.

1	<u>5.</u>	That the state water commission and the southwest water authority shall begin the
2	1	process of reviewing capital repayment and revenues being returned to the resources
3		trust fund; payments necessary to meet obligations of existing bonds and other loans;
4		mill levies; ownership of land and associated facilities; existing construction
5		documents; liabilities; contracts with cities, bulk users, companies, and other users;
6		and other items, and shall report to the legislative assembly those steps necessary for
7		the transfer of ownership and responsibility of the southwest pipeline project from the
8		state water commission to the southwest water authority.
9	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall
10		enter discussions with the bureau of reclamation concerning Garrison diversion unit
11		facilities.
12	<del>7.</del>	That projects receiving state funds for construction and implementation not assert.
13		claim, or seek to prevent other opportunities, either public or private, to utilize waters
14		of the Missouri River for industrial uses in this state.
15	<u>8.7.</u>	That local water management and flood control projects are necessary for the
16		economic well-being and quality of life of citizens in those local areas.
17	<del>9.</del> 8.	That irrigation development offers significant opportunities for agriculture in this state.
18	<u> 10.9.</u>	That an infrastructure loan fund for water development and management will provide
19		significant financial benefits to projects and the citizens of this state, and will provide
20		new capabilities to implement necessary water infrastructure projects across the state.
21	SEC	CTION 4.
22	Mou	use River enhanced flood control project.
23	<u>1.</u>	The legislative assembly declares its intent to provide state funding for a share of the
24		nen-federalnonfederal or local cost of constructing the Mouse River enhanced flood
25		control project.
26	<u>2.</u>	Any funds appropriated for the construction of the Mouse River enhanced flood control
27		project may be carried over to future bienniums.
28	<u>3.</u>	State funding for the Mouse River enhanced flood control project may be appropriated
29		at the time and in the manner determined by the legislative assembly, either
30		concurrently or separately from federal and local funding for the Mouse River
31		enhanced flood control project.

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1	SEC	CTION 5.
2	Sou	thwest pipeline project - Report to legislative assembly.
3	The	state water commission and the southwest water authority shall begin the process of
4	reviewin	g capital repayment and revenues being returned to the resources trust fund; payments
5	necessa	ary to meet obligations of existing bonds and other loans; mill levies; ownership of land
6	and ass	ociated facilities; existing construction documents; liabilities; contracts with cities, bulk
7	users, c	ompanies, and other users; and other items, and shall report to the legislative assembly
8	those st	eps necessary for the transfer of ownership and responsibility of the southwest pipeline
9	project f	from the state water commission to the southwest water authority.
10	SEC	CTION 6.
11	Gar	rison diversion unit.
12	The	Garrison diversion unit has extensive federal facilities that have been constructed,
13	including	g the Snake Creek pumping plant, the McClusky canal, recreation areas, and other
14	facilities	. It is the intent of the legislative assembly that the state water commission and Garrison
15	diversio	n conservancy district begin discussions with the bureau of reclamation concerning the
16	<u>Garrisor</u>	n diversion unit facilities.
17	SEC	CTION 7.
18	Far	go-Moorhead flood control project.
19	<u>1.</u>	The legislative assembly declares its intent to provide state funding for a share of the
20		nonfederal or local cost of constructing the Fargo-Moorhead flood control project.
21	<u>2.</u>	Nothwithstanding any other law, any funds appropriated for the construction of the
22		Fargo-Moorhead flood control project may be carried over to future bienniums.
23	<u>3.</u>	State funding for the Fargo-Moorhead flood control project may be appropriated at the
24		time and in the manner determined by the legislative assembly, either concurrently or
25		separately from federal and local funding for the Fargo-Moorhead flood control project.
26	SEC	CTION 8. A new section to chapter 61-02 of the North Dakota Century Code is created
27	and ena	cted as follows:
28	Infr	astructure revolving loan fund - Continuing appropriation - Rules:
29	1	An infrastructure revolving loan fund is established within the resources trust fund to
30		provide loans for water supply, flood protection, or other water development and water
31		management projects. Ten percent of the moneys in the resources trust fund is

- appropriated on a continuing basis for making loans in accordance with this section.

  Accounts may be established in the infrastructure loan fund as necessary for its

  management and administration.
- 2. The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - b. The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- 4. Annually the Bank of North Dakota may deduct a service fee for administering the infrastructure loan fund.
- 5. Projects not eligible for the state revolving fund will be given priority for these funds.

**SECTION 9. AMENDMENT.** Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

## 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a ene-third share of the cost of constructing the Red River valley water supply project.

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1	2.	In furtherance of the public purpose set forth in subsection 1, the state water
2		commission may issue bonds under chapter 61-02 and the proceeds are appropriated
3		for construction of the Red River valley water supply project authorized and funded in
4		part by the federal government and designed to provide reliable sources of water of
5		sufficient quantity and quality to supply homes, businesses, industries, wildlife, and
6		recreation in the Red-River valley within this state.
7	3.	This chapter does not affect the state water commission's authority to otherwise issue
8		bonds pursuant to chapter 61-02 or section 61-24.3-01.
9	SE	CTION 10. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is
10	amende	ed and reenacted as follows:
11	61-	24.7-05. State funding plan.
12	1.	The legislative assembly declares its intent to provide state funding for one-thirda
13		share of the total nonfederal or local cost of constructing the Red River valley water
14		supply project.
15	2.	Any general funds appropriated for the construction of the Red River valley water
16		supply project may be carried over to future bienniums.
17	3.	State funding for the Red River valley water supply project may be appropriated at the
18		time and in the manner determined by the legislative assembly, either concurrently or
19		separately from federal and local funding for the Red River valley water supply project.
20	SEC	CTION 11. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is
21	amende	ed and reenacted as follows:
22	61-	10-02. Western area water supply authority.
23	The	western area water supply authority consists of participating political subdivisions
24	located	within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water
25	supply o	contract with the authority. Other cities and water systems, within or outside the authority
26	counties	boundaries, including cities or water systems in Montana, may contract with the
27	authorit	y for a bulk water supply. The authority is a political subdivision of the state, a
28	governn	nental agency, body politic and corporate, with the authority to exercise the powers

specified in this chapter, or which may be reasonably implied. Participating member entities

may be required to pay dues or water sale income to the authority, as determined by the bylaws

and future resolutions of the authority. Participating member entities may not withdraw from the

authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dellar zero interest loan from the state water commission has not been repaid until the state-quaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 12. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designed is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 13. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

#### 1 61-40-04. Board of directors - Officers - Meetings. 2 1. The board of directors shall adopt such rules and bylaws for the conduct of the 3 business affairs of the authority as it determines necessary, including the time and 4 place of regular meetings of the board, financial participation structure for membership 5 in the authority, and membership appointment and changes. Bylaws need to be 6 approved by member entity boards. 7 2. The board shall elect from its members a chairman and a vice chairman. The board 8 shall elect a secretary and a treasurer, which offices may be held by the same 9 individual, and either or both offices may be held by an individual who is not a member 10 of the board. Special meetings of the board may be called by the secretary on order of 11 the chairman or upon written request of a majority of the qualified members of the 12 board. Notice of a special meeting must be mailed to each member of the board at 13 least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing. 14 15 3. Board members are entitled to receive as compensation an amount determined by the 16 board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and 17 18 expenses in the amount provided for by sections 44-08-04 and 54-06-09. 19 The initial board bylaws must direct board voting protocol. A weighted voting structure 20 for board members is acceptable if the voting is based upon the volume of water 21 purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board. 22 23 Before the bylaws become effective, the bylaws must be reviewed and approved by 24 the attorney general. 25 SECTION 14. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is 26 amended and reenacted as follows: 27 61-40-05. Authority of the western area water supply authority. 28 In addition to authority declared under section 61-40-01, the board of directors of the 29 western area water supply authority may:

Sue and be sued in the name of the authority.

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- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority

- and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others
  within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all oft he authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. <u>Additional debt that requires</u>
  repayment through authority or member entity water sales, except state-guaranteed

- loans, may not be acquired before August 1, 2015, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission or budget section.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 16 of this Act.
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

lateral rate adjustment must have approval of the industrial commission before going into effect.

The authority shall develop domestic water rates that must include all costs for operation, maintenance, and replacement, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 15 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 17: A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales to the oil and gas industry.

**SECTION 18. AMENDMENT.** Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of a water depot and lateral sale to meet expenses in subdivisions a through e of subsection 1 of section 15 of this Act and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and consider revision of the terms of the loan repayments. If notified, within thirty days the state water commission shall review the domestic water rates of the authority to

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commission and the authority of the determination. Within sixty days of the notification, the authority shall implement any rate adjustment in the determination. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

**SECTION 19.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Final disposition.

Once all debt is paid, the industrial commission shall have the discretion to continue to manage and operate industrial water sales assets, dispose of all or some of the assets upon public sales, and all revenue received from these sales or operations shall be paid to the resources trust fund.

**SECTION 20. REPEAL.** Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

#### PROPOSED AMENDMENTS TO SB 2233

APRIL 3, 2013

13.0597.04007

Independent Water Providers

Page 12, line 18 insert, "The power of eminent domain power may not be used, for purposes of providing industrial water to the oil and gas industry".

Comment: Art 1, Section 16, ND Constitution prohibits the condemnation of private property for economic development and other purposes. Condemning private property for taking water lines to oil wells would seem to run afoul of that provision.

Page 14, line 11 remove "depot and lateral"

Page 14, line 13 remove "depot and lateral"

Comment: Request to remove similar reference throughout bill, and use "industrial water sales". Laterals should not be included--by implication or expression in the industrial water infrastructure:

- a. Laterals were <u>not</u> part of the plan/infrastructure that was authorized in 2011 and is a broad expansion of the scope of the industrial component of this project.
- b. Laterals should not be necessary to cash flow
- c. Unfair to some members of oil industry for only a select and "early" few get to tap the public resource before water supplies are exhausted
- d. Places more pressure, diminishes more quickly limited water supply for people, and
- e. False premise that laterals will remove trucks (alters the market; trucks will seek other markets/customers; more water may accelerate pace of development = more trucks).

Page 15, line 16 delete, "and baseline 2010 industrial sales included in the initial contracts between the authority and the participating member entities".

Comment: Payments to member entities should not be part of the industrial water sales obligation of the state for these reasons:

- WAWS participation in a part of industrial sales is contrary to the fundamental premise of this compromise. WAWS is out of industrial water sales, ND takes over industrial sales.
- b. WAWS and its members are relieved of \$146-196 million in debt.
- c. WAWS has a new water system that can service thousands of new customers and generate enormous cash flow (no debt) of its own.
- d. WAWS will charge ND for industrial water sales. They do not need, nor should they get both: fee for industrial water (not previously in plan) and "lost industrial" sales fees.

Page 15, line 31, insert "for approval" after "industrial commission"

#### WAWSA Proposed Amendments to SB2233 4/3/13

- Section 14, subsection 13: Delete "or member entity water sales"
- Section 15, subsection 1, invert subdivision b and c. Clarification on participating member entity debt.
- Section 15, subsection 1, insert new subdivision d: The state shall pay any federal, state, or local statutory or regulatory requirements that impose additional monetary costs upon the project or member entities.
- 4. Section 15, subdivision d becomes e and e becomes f.
- Section 16, page 16, line 3: delete "replacement" and replace with "operating and capital reserves".
- Section 17, page 16, line 17: delete "to the oil and gas industry" and replace with "oil and gas exploration".
- 7. Section 18, page 16, line 28: delete "e" and replace with "d".
- 8. Section 18, page 16, line 30. Begin deleting at "If notified...." and continue deleting through end of full sentence ending in line 3 on page 17.
- Section 18, page 17, line 4: delete "of the principal of or interest on the obligation to the Bank
  of North Dakota for a loan for which the Bank of North Dakota is the source funds for the loan"
  and replace with "in the payment of expenses in subdivisions a through d of subsection 1 of
  Section 15 of this Act,"
- Section 18, page 17, line 6: delete "to repay the principal and interest due" and replace with "to pay the deficiency".
- 11. Section 19, page 17: delete line 17 through 20 and replace with "Once all state guaranteed debt is paid, the authority shall assume management and control of industrial water sales assets and agrees to deposit 25 percent of net industrial revenue into the resources trust fund".

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "a new section to chapter 6-09.4" with "a new subdivision to subsection 2 of section 28-32-01, a new section to chapter 61-02, and three new sections to chapter 61-40"
- Page 1, line 4, after "relating to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act,"
- Page 1, line 5, after "fund" insert ", and an infrastructure revolving loan fund for the western area water supply project"
- Page 1, line 5, remove "57-51.1-07,"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund," with "relating to"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", 61-40-06"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

"**SECTION 1.** A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40."

- Page 5, line 13, replace "long term" with "long-term"
- Page 5, line 15, replace "long term" with "long-term"
- Page 5, line 17, remove "diversion and"
- Page 5, line 24, after the second underscored semicolon insert "mill levies;"
- Page 6, line 15, replace "state funding for a share" with "one-half"
- Page 6, line 16, replace "non-federal" with "nonfederal"

- Page 6, line 16, after "the" insert "federally approved national economic development alternative for the"
- Page 7, line 12, replace "a share" with "one-half"
- Page 7, line 13, after "constructing" insert "the federally approved national economic development alternative for"
- Page 7, after line 18, insert:

"SECTION 8. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

#### Infrastructure revolving Ioan fund - Continuing appropriation - Rules.

- 1. An infrastructure revolving loan fund is established within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Beginning in the 2015-17 biennium, ten percent of the moneys derived from the oil extraction tax in the resources trust fund is appropriated on a continuing basis for making loans in accordance with this section. In the 2013-15 biennium, revenues to the resources trust fund that exceed five hundred fifteen million dollars must be deposited in the infrastructure revolving loan fund until the revenues equal ten percent of the moneys in the resources trust fund. Accounts may be established in the infrastructure loan fund as necessary for its management and administration.
- <u>2.</u> The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - <u>b.</u> The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- 4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- 5. Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, after line 19, insert:

"SECTION 11. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

**SECTION 12. AMENDMENT.** Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

**SECTION 13. AMENDMENT.** Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

**SECTION 14. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- 1. Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in

this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system

projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.

- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants.

  Additional debt that requires repayment through authority, except state-guaranteed loans, may not be acquired before August 1, 2015, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure must be approved in accordance with section 16 of this Act.</u>
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the

- purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

**SECTION 15.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - a. Reimburse authority for the costs for water supply sold at industrial water depots and lateral lines, at the participating member entity rate at the location of the depot or lateral line.
  - b. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - c. Regular payments on both the participating member entity debt and baseline 2010 industrial sales included in the initial contracts between the authority and the participating member entities.
  - d. Additional principal payment on state-guaranteed loans.
  - e. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission, the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

**SECTION 16.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before

going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 15 of this Act which are paid for by industrial water depot and lateral sales.

**SECTION 17.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

**SECTION 18. AMENDMENT.** Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through c of subsection 1 of section 15 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority. subject to approval of the plan by the budget section."

Page 8 remove lines 20 through 31

Page 9 replace lines 1 through 3 with:

"**SECTION 19. REPEAL.** Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed."

Western Area: Water Supply Authority Debt Service												
	Original			evesteni Ale	wace supp	y Authority D						
Annual Debt Service	Amount	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
2011 Loans			is the the discuss flagues.	erakaren direktor (17.)	CONTROL OF THE PROPERTY OF THE					MONEY CONTRACTOR		Area (Capang Samurana A
Resources Trust Fund	\$25,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BND - Loan #1	\$50,000,000	\$0	\$4,948,328	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$3,885,781	\$0	\$0
General Fund	\$25,000,000	\$0	\$0	\$3,791,095	\$1,253,424				\$1,250,000	\$2,535,506	\$3,831,287	\$3,831,287
Resources Trust Fund	\$10,000,000	\$0	\$0	\$1,335,616	\$501,370	\$500,000	<del></del>	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Subtotal	\$110,000,000	\$0	\$4,948,328	\$12,898,273	\$9,526,356	\$9,521,562	\$9,521,562	\$9,521,562	\$9,521,562	\$6,921,287	\$4,331,287	\$4,331,287
2013 Loan(s)												
BND - Loan #2	\$40,000,000	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	\$8,308,746	\$4,154,373	\$0	\$0
<b>Public Finance Authority SRF</b>	Loans - Existing	Debt - Note th	is reflects An	nual Average	<b>Debt Service</b>					-		
City of Williston	\$3,901,331	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$0	\$0
City of Williston	\$3,693,345	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362
City of Williston	\$17,593,143	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069
R&T Supply	\$1,452,760	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738
R&T Supply	\$10,000,000	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756
McKenzie County Water RD	\$8,200,000	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413
Williams Rural Water *	\$1,408,309	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737
Subtotal	\$46,248,888	\$2,895,592	\$2,895,592	\$2,895,592	\$2,895,592	\$2,895,592	\$2,895,592	\$2,895,592	\$2,895,592	\$2,895,592	\$2,660,075	\$2,660,075
Participating Members Other	Deht											
McKenzie County Water												
Resource District (MCWRD)												1
System 1 Distribution*	\$578,953	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
System II Distribution*	\$2,840,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
System II Distribution*	\$1,812,000	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Subtotal	\$5,230,953	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Baseline 2010 Industrial Water	er Sales Revenu	e Requirement	•									
McKenzie County Water Reso			<u> </u>									
Watford City		\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875
City of Williston		\$1,400,059	\$1,400,059			\$1,400,059	\$1,400,059		\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059
R & T Supply		\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563
City of Ray	<del>                                     </del>	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952
City of Tioga		\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038
City of Stanley		\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717
BDW Water Supply Associatio	n - Crosbv	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451
Subtotal		\$4,729,655	\$4,729,655		\$4,729,655	\$4,729,655	\$4,729,655		\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655
Total Annual Payments		\$7,625,247	\$13,462,075	\$21,412,020	\$21,894,476	\$25,744,055	\$25,744,055	\$25,744,055	\$25,744,055	\$18,989,407	\$12,009,517	\$12,009,517

2024	2025	2026	2027	2028	2029	2030	2031.	2032	2033	2034	2035	2036	
											1		405 000 000
\$0	\$0	\$0	\$0	\$0	\$0	\$0				\$5,000,000			\$25,000,000
\$0	\$0	\$0	\$0	\$0	\$0				\$0	\$0			
\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$1,596,369	\$0		\$0	\$0	\$0			
\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,880,484	\$5,265,078		\$0	\$0			<u> </u>	
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000	\$140,073,971
							1						
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$43,043,730
30	70	30	30	30	<del>- 50</del>	Ş0	\$0	30	30	٥, ٥	30	70	\$45,045,750
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,119,653
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
\$1,118,069	\$1,118,069	\$1,118,069	\$0	\$0	\$0 \$0	\$0	\$0		\$0	\$0		\$0	
\$34,738	\$34,738	\$0	\$34,738	\$34,738	\$0	\$0	\$0		\$0			\$0	
\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$0	\$0		\$0	
\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$0	\$0			\$0	
\$101,737	\$0	\$0	\$0	\$0	\$0	\$0		\$0	\$0			\$0	
\$2,422,713	\$2,320,976		\$1,202,907	\$1,202,907	\$1,168,169			\$642,756	\$0				
72,422,713	32,320,370	72,280,238	71,202,307	71,202,307	71,100,105	71,100,103	71,100,103	3042,730	, <del>, , , , , , , , , , , , , , , , , , </del>	70	70	70	744,505,402
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				ł			:		'				
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0	\$0			\$0			\$0	
\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500		\$288,500	\$288,500	\$0			
\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$0 \$0			
\$288,500	3200,300	3288,300	\$280,500	7200,300	7200,300	7200,300	\$200,500	\$200,300	7200,500	70	70	70	73,770,000
								<del></del>					
								<del></del>					
\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$17,901,000
\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059		\$1,400,059		\$1,400,059		\$1,400,059	\$33,601,416
\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$10,765,512
\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$1,870,848
\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$23,952,912
\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$19,217,208
\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$6,202,824
\$4,729,655	\$4,729,655		\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655		\$4,729,655	\$4,729,655	\$4,729,655		\$4,729,655	\$113,511,720
34,723,055	34,723,033	24,723,033	34,123,033	74,123,033	J+,1∠3,033	J+,123,033	74,123,033	,1∠2,UJ3	27,723,033	7-1123,033	7-71237033	7-4,123,033	7110,011,720
611 770 455	¢11 670 410	¢11 625 680	\$10,552,349	\$10.552.240	\$10 662 177	\$11.451.402	\$11 312 963	\$10,660,911	\$10 018 155	\$9.729.655	\$9.729.655	\$7,229 655	\$347,362,903
\$11,772,155	\$11,0/U,418	5TT'022'090	\$10,552,549	710,332,349	710,000,11/	4771407140K	ATT/010/002	710,000,311	720,020,233	75,725,055	75,725,055	7.7220,000	+311,002,000



Parameter of the control of the cont			ong sampang pangkan kang pangga			pept Servi		SINGLANDERS SERVICE CONTRACTOR	e navembro de la companya de la comp		ing is substituted to	
				Western Area	a-Water Supp	ly Authority D	ebt Service					
	Original											
Annual Debt Service	Amount	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
<u>2011 Loans</u>												
Resources Trust Fund	\$25,000,000	\$0	\$0		\$0		\$0		\$0		\$0	
BND - Loan #1	\$50,000,000	\$0	\$4,948,328	· · · · · · · · · · · · · · · · · · ·	\$7,771,562		\$7,771,562		\$7,771,562	\$3,885,781	\$0	
General Fund	\$25,000,000	\$0	\$0	\$3,791,095	\$1,253,424	\$1,250,000	\$1,250,000	\$1,250,000	\$1,250,000	\$2,535,506	\$3,831,287	\$3,831,287
Resources Trust Fund	\$10,000,000	\$0	\$0	\$1,335,616	\$501,370	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Subtotal	\$110,000,000	\$0	\$4,948,328	\$12,898,273	\$9,526,356	\$9,521,562	\$9,521,562	\$9,521,562	\$9,521,562	\$6,921,287	\$4,331,287	\$4,331,287
2013 Loan(s)												
BND - Loan #2	\$40,000,000	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	¢0 200 746	CA 15A 272	\$0	\$0
DNU - LUdii #2	\$40,000,000	\$0	3000,000	3000,000	\$4, <del>4</del> 54,575	\$6,506,746	30,300,740	\$6,506,746	\$8,308,746	\$4,154,373	\$0	ŞU
Public Finance Authority SRF	Loans - Existing	Debt - Note th	nis reflects An	nual Average	Debt Service	<u> </u>						
City of Williston	\$3,901,331	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$0	\$0
City of Williston	\$3,693,345	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362
City of Williston	\$17,593,143	\$1,118,069	\$1,118,069		\$1,118,069		\$1,118,069		\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069
R&T Supply	\$1,452,760	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738
R&T Supply	\$10,000,000	\$642,756	\$642,756	\$642,756	\$642,756		\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756
McKenzie County Water RD	\$8,200,000	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413
Williams Rural Water *	\$1,408,309	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737	\$101,737
Subtotal	\$46,248,888	\$2,895,592	\$2,895,592	\$2,895,592					\$2,895,592	\$2,895,592	\$2,660,075	
		, , ,			, , , , , , , , , , , , , , , , , , , ,					,	, -,,	
Participating Members Other	r Debt											
McKenzie County Water												
Resource District (MCWRD)				:								
System 1 Distribution*	\$578,953	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0.	\$0	\$0	\$0
System II Distribution*	\$2,840,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
System II Distribution*	\$1,812,000	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Subtotal	\$5,230,953	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
						•						
Baseline 2010 Industrial Water	er Sales Revenu	e Requiremen	ţ									
McKenzie County Water Reso	urce District -								İ			
Watford City		\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875
City of Williston		\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059		\$1,400,059		\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059
R & T Supply	ļ, l	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563
City of Ray		\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952
City of Tioga		\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038
City of Stanley		\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717
BDW Water Supply Association	n - Crosby	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451
Subtotal		\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655
								'				
Total Annual Payments		\$7,625,247	\$13,462,075	\$21,412,020	\$21,894,476	\$25,744,055	\$25,744,055	\$25,744,055	\$25,744,055	\$18,989,407	\$12,009,517	\$12,009,517

2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	
reality control and the first	TAREST SALES	THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE S	innan suku na sa sa mangalini.			SAREN ANTON MOTORIST LACTOR			6 (1986) (MARKANIT (1998) (1998) 	EHLM GENERAL GELT.	SERVINE MINIMATERIA	Period A. Sygle and J. St. o	a.c. ini .e.de i Siedeniseini ini .
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,500,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000	\$25,000,000
\$0	\$0			\$0	\$0	\$0		\$0	\$0				\$55,463,481
\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$1,596,369	\$0			\$0				\$40,995,403
\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,880,484	\$5,265,078	\$2,632,539	\$0	\$0		\$0	\$0	\$18,615,087
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000	\$140,073,971
60	<u> </u>	ćo	40		da	40	40	40	40	40	<u> </u>		Ć42 042 720
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$43,043,730
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\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,119,653
\$0	\$0		\$0	\$0	\$0	\$0		\$0	\$0				\$2,610,982
\$1,118,069	\$1,118,069	\$1,118,069	\$0	\$0	\$0	\$0		\$0	\$0				\$15,652,966
\$34,738	\$34,738	\$0	\$34,738	\$34,738	\$0	\$0		\$0	\$0				\$521,070
\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756		\$642,756	\$0				\$12,855,120
\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$525,413	\$0	\$0				\$9,982,847
\$101,737	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0				\$1,220,844
\$2,422,713	\$2,320,976	\$2,286,238	\$1,202,907	\$1,202,907	\$1,168,169	\$1,168,169	\$1,168,169	\$642,756	\$0				\$44,963,482
\$0	\$0		\$0	\$0	\$0	\$0		\$0	\$0				\$0
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0			\$0	\$0
\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500			\$0	\$5,770,000
\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$0	\$0	\$0	\$5,770,000
									<del></del>				
\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$745,875	\$17,901,000
\$1,400,059		\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059		\$1,400,059		\$1,400,059	\$1,400,059	\$33,601,416
\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$10,765,512
\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$1,870,848
\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$23,952,912
\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$19,217,208
\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$6,202,824
\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655	\$4,729,655		\$4,729,655		\$113,511,720
34,723,033	۶ <del>4,123,035</del>	74,723,033	Ş4,1 ∠3,033	74,123,033	77,123,033	77,123,033	74,123,033	ψ <del>π,123,033</del>	74,123,033	77,123,033	74,123,033	77,123,033	7110,011,720
\$11,772,155	\$11 670 419	\$11 635 680	\$10,552,349	\$10 552 349	\$10,663 177	\$11,451,402	\$11,318 863	\$10,660,911	\$10,018,155	\$9.729.655	\$9,729,655	\$7,229,655	\$347,362,903
722,114,133	711,010,410	711,000,000	710,002,040	7-0100610-3	7-0,000,277	722,702,702	7,00,000	7 -0,000,0 -1	+ -0,0, -00	, -,	1 - 7 5 / 5 - 5 /	, , , _ , _ , , , , , , , , , , , , , ,	



13.0579.04010 Title. Prepared by the Legislative Council staff for Representative Keiser April 4, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 4, after "6-09.4" insert "and a new subdivision to subsection 1 of section 54-10-14"

Page 1, line 5, after "fund" insert "and to western area water supply authority industrial water sales audits"

Page 1, line 6, after the second comma insert "relating to"

Page 3, after line 16, insert:

"SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis."

13.0579.04011 Title Prepared by the Legislative Council staff for Representative Schmidt April 4, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 4, after "6-09.4" insert "and a new section to chapter 61-03"

Page 1, line 5, after "fund" insert "and to powers of the state engineer"

Page 1, line 6, after the second comma insert "relating to"

Page 4, after line 17, insert:

"SECTION 3. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

State engineer to approve western area water supply authority water depot locations.

The state engineer must approve the planning, design, location, and construction of water supply water depots on which construction is commenced after the effective date of this Act."



13.0579.04012 Title Prepared by the Legislative Council staff for Representative Schmidt April 4, 2013

## PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 4, after "6-09.4" insert "and a new section to chapter 61-40"

Page 1, line 5, after "fund" insert "and franchise protection rights of the western area water supply authority"

Page 1, line 6, after the second comma insert "relating to"

Page 9, after line 3, insert:

"SECTION 12. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales to the oil and gas industry."

# 1 handed and \$18/13

					Western A	rea Water Sup	ply Authority I	Debt Service					
	Original	Closing	Current										
Loans	Amount	Date	Balance -	Sales	2013	2014	2015	2016	2017	2018	2019	2020	202
2011 Loans													
Resources Trust Fund - 0%	\$25,000,000	4/25/2012	\$25,000,000	System	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1
BND - Loan #1 - variable 2%	\$50,000,000	4/25/2012	\$50,000,000	System	\$0	\$4,948,328	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$3,885,783
General Fund - 5% fixed	\$25,000,000	4/25/2012	\$25,000,000	-	\$0	\$0	\$3,791,095	\$1,253,424	\$1,250,000	\$1,250,000	\$1,250,000	\$1,250,000	\$2,535,506
Resources Trust Fund - 5% fixed	\$10,000,000	4/25/2012	\$10,000,000	System	\$0	\$0	\$1,335,616	\$501,370	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Subtotal	\$110,000,000	)	\$110,000,000		\$0	\$4,948,328	\$12,898,273	\$9,526,356	\$9,521,562	\$9,521,562	\$9,521,562	\$9,521,562	\$6,921,287
2013 Loan(s)													
BND - Loan #2 - 1.5%	\$40,000,000		\$40,000,000	System	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	\$8,308,746	\$4,154,373
Public Finance Authority SRF Loans - Existi	ing Debt - Note	this reflects	Annual Average	Debt Serv	ice								
City of Williston* 3%	\$3,901,331	11/28/2001	\$2,000,000	Domestic	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517
City of Williston 3%	\$3,693,345	12/30/2003	\$2,255,000	Domestic	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362
City of Williston 3%	\$17,593,143	10/24/2005	\$13,240,000	H₂0 Plant	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069
R&T Supply 3%	\$1,452,760	12/22/2008	\$455,000	Domestic	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738
R&T Supply 2.5%	\$10,000,000	4/16/2012	\$10,000,000	Industrial	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756
McKenzie County Water RD 3%	\$7,778,566	11/29/2011	\$5,795,826	Industrial	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979
Williams Rural Water* 3%	\$1,500,000	3/21/2005	\$1,045,000	Domestic	\$101,125	\$104,250	\$102,250	\$100,250	\$103,250	\$101,105	\$104,000	\$101,750	\$99,500
Subtotal	\$45,919,145		\$34,790,826		\$2,757,546	\$2,760,671	\$2,758,671	\$2,756,671	\$2,759,671	\$2,757,526	\$2,760,421	\$2,758,171	\$2,755,921
Participating Members Other Debt													
McKenzie County Water Resource District (MCWRD)													
System 1 Distribution* - USDA - 4.125%	\$630,000	2006	\$578,953	Domestic	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426
System II Distribution - USDA - 3.5%	\$3,490,000	6/1/2013	\$3,490,000	Industrial	\$94,640	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239
System II Distribution/Regional				/			- W. H.		7 6 7				
Transmission - McKenzie Co 2.5%	\$4,500,000	6/1/2013	\$4,500,000	Industrial	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Subtotal	\$8,620,000		\$8,568,953		\$127,066	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165
Baseline 2010 Industrial Water Sales Reve	nue Requireme	nt											
McKenzie County Water Resource District	- Watford City	1/1/2012		Industrial	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$815,000	\$816,000	\$816,000
City of Williston		1/1/2012		Industrial	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059
R & T Supply		1/1/2012		Industrial	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563
City of Ray		1/1/2012		Industrial	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952
City of Tioga	1	1/1/2012		Industrial	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038
City of Stanley		1/1/2012		Industrial	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717
BDW Water Supply Association - Crosby		1/1/2012		Industrial	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451
Subtotal					\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780		\$4,799,780	\$4,799,780
Total Annual Payments	\$204,539,145		\$193,359,779		\$7,684,392	\$13,591,944	\$21,539,889	\$22,020,345	\$25,872,924	\$25,870,779	\$25,873,674	\$25,871,424	\$19,114,526
*Not included in WAWSA business plan				-						1			

2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037-2053	
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,500,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$25,000,00
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	50	\$0	\$0	\$0	\$0		\$55,463,48
\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$1,596,369	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$40,995,40
\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,880,484	\$5,265,078		\$0	-	\$0	\$0	\$0		\$18,615,08
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$140,073,97
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$43,043,73
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0	\$0	\$0		\$2,119,65
\$237,362	\$237,362	\$0	\$0	\$0	.\$0	\$0	\$0	\$0	\$0	\$0	-	\$0	\$0	\$0		\$2,610,98
\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$15,652,96
\$34,738	\$34,738	\$34,738	\$34,738	\$0	\$34,738	\$34,738	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$521,07
\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$0	\$0	\$0	\$0		\$12,855,12
\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$0				\$0		\$7,371,60
\$102,250	\$99,876	\$102,500	\$2,183,542	\$2,148,804	\$1,065,473	\$1,065,473	\$1,030,735	\$0 \$1,030,735	\$1,030,735	\$642,756	\$0 \$0		\$0 \$0	\$0 \$0		\$1,222,10
\$32,426	\$32,426	\$32,426		\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426		\$32,426	the state of the state of	\$32,426	\$291,668	\$1,069,89
\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$2,663,434	\$6,489,57
\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$0	\$0	50		\$5,770,00
\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$194,665	\$194,665	\$194,665		\$10,374,36
\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000		\$19,584,00
\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059		\$33,601,41
\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563		\$10,765,51
\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952		\$1,870,84
\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038		\$23,952,91
\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717		\$19,217,20
\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451		\$6,202,82
\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780		\$115,194,72
12,137,386	\$12,135,012	\$11,900,274	\$11,797,774	\$11,763,036	\$10,679,705	\$10,679,705	\$10,790,533	\$11,578,758	\$11,446,219	\$10,925,701	\$10,282,945	\$9,994,445	\$9,994,445	\$7,494,445		\$351,040,28

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	Original -	Closing	Current		- western A	rea water Suc	ply Authority I	Jept Service					
Loans	Amount		and the second second second second	Calac	2012	2014	264.5	2016	2017	2010	2010	2020	2000
2011 Loans	- Amount		Dalatice State	Salch V.			, , , , , , , , , , , , , , , , , , ,	1 2010		**************************************		SHEETH RUZU	500 SERVE 2024
Resources Trust Fund - 0%	\$25,000,000	4/25/2012	\$25,000,000	System	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BND - Loan #1 - variable 2%	\$50,000,000		\$50,000,000	<del></del>	\$0			\$7,771,562	\$7,771,562				
General Fund - 5% fixed	\$25,000,000		\$25,000,000	<del></del>	\$0			\$1,253,424	\$1,250,000			<del></del>	\$2,535,506
Resources Trust Fund - 5% fixed	\$10,000,000		\$10,000,000	<del></del>	\$0			\$501,370	\$500,000		\$500,000	\$500,000	\$500,000
Subtotal	\$110,000,000	,, =0, 2022	\$110,000,000	<del></del>	\$0			\$9,526,356					
2013 Loan(s)	<del> </del>	<u> </u>	<u> </u>						<u> </u>	<u> </u>			
BND - Loan #2 - 1.5%	\$40,000,000		\$40,000,000	System	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	\$8,308,746	\$4,154,373
Public Finance Authority SRF Loans - Existing	ng Deht - Note i	his reflects /	I Annual Δverage	Deht Servi	ice			L		<u> </u>	l		
City of Williston* 3%	7	11/28/2001	,			\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517
City of Williston 3%	<del></del>	12/30/2003		<del></del>	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362		\$237,362	\$237,362	\$237,362
City of Williston 3%	\$17,593,143	<del> </del>	<del> </del>	<del> </del>				\$1,118,069	\$1,118,069			\$1,118,069	
R&T Supply 3%		12/22/2008		Domestic	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738		\$34,738	\$34,738	\$34,738
R&T Supply 2.5%	\$10,000,000	<del></del>	\$10,000,000		\$642,756	\$642,756		\$642,756	\$642,756				\$642,756
McKenzie County Water RD 3%	<del></del>	11/29/2011		<del></del>	\$387,979		\$387,979	\$387,979	\$387,979				\$387,979
Williams Rural Water* 3%	\$1,500,000		\$1,045,000		\$101,125	\$104,250	\$102,250	\$100,250	\$103,250	· · · · · · · · · · · · · · · · · · ·	\$104,000	\$101,750	\$99,500
Subtotal	\$45,919,145		\$34,790,826	<del></del>	\$2,757,546			\$2,756,671	\$2,759,671				
										<del>+ -,,</del>	<del>+-</del> /.00/.02	<del>+=</del> ,, ==,, =	<del>- +2,120,32</del>
Participating Members Other Debt													
McKenzie County Water Resource District													
(MCWRD)	L				·								
System 1 Distribution* - USDA - 4.125%	\$630,000	2006	\$578,953	Domestic	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426
System II Distribution - USDA - 3.5%	\$3,490,000	6/1/2013	\$3,490,000	Industrial	\$94,640	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239
System II Distribution/Regional													
Transmission - McKenzie Co 2.5%		6/1/2013	\$4,500,000	Industrial	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Subtotal	\$8,620,000		\$8,568,953		\$127,066	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165
Baseline 2010 Industrial Water Sales Rever	) Nue Reguiremer	<u>1                                    </u>	<u> </u>	L									
McKenzie County Water Resource District -	Watford City	1/1/2012		Industrial	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	¢81€ 000
City of Williston	<u>-</u>	1/1/2012		Industrial	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059			\$1,400,059	\$816,000 \$1,400,059
R & T Supply		1/1/2012		Industrial	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563
City of Ray	<del> </del>	1/1/2012		Industrial	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952
City of Tioga		1/1/2012		Industrial	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038
City of Stanley	<del> </del>	1/1/2012		Industrial	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717
BDW Water Supply Association - Crosby		1/1/2012		Industrial	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451
Subtotal	T				\$4,799,780		\$4,799,780	\$4,799,780	\$4,799,780				\$4,799,780
	1		44										
Total Annual Payments	\$204,539,145		\$193,359,779		57,684,392	\$13,591,944	\$21,539,889	\$22,020,345	\$25,872,924	\$25,870,779	\$25,873,674	\$25,871,424	\$19,114,526
*Not included in WAWSA business plan						"" " " " " " " " " " " " " " " " " " " "							
Those balances in italics are currently not fu	iiy arawn down	out this work	sneet anticipate	s the entire	e amounts wi	ıı be arawn do	ıwn	L					

7077	2023	kcoc≕	2025	2026	2027	2028	2029	neac	onan	2032	2023	2034	วกลร	i i i i i i i i i i i i i i i i i i i	3027_30E2	
34,711,742,		0224 22 44		79616161616 <b>292</b> 9				**************************************						(*************************************	-2037-2033 	
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,500,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$25,000,000
\$0	\$0	\$0	\$0	1		\$0	\$0	\$0					\$0	\$0		\$55,463,481
\$3,831,287	\$3,831,287	\$3,831,287	<del></del>	\$3,831,287	\$3,831,287	\$3 <u>,</u> 831,287	·	\$0	\$0		\$0					\$40,995,403
\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,880,484			\$0	\$0	\$0	\$0	\$0		\$18,615,087
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$140,073,971
										<u> </u>						
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$43,043,730
	60	<u> </u>	<u>+0</u>	40	**	60	Ċ	ćo	<u> </u>		do.	<u> </u>		, to		62.4-2.55
\$237,362	\$0 \$237,362	\$0 \$0	\$0 \$0		\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0		\$2,119,653 \$2,610,982
\$1,118,069	\$1,118,069	\$1,118,069		<del></del>	\$0	\$0 \$0	\$0 \$0	\$0 \$0	\$0 \$0		\$0		\$0 \$0	·		\$2,610,982
\$34,738	\$1,118,069	\$34,738	\$1,118,089			\$34,738	\$0	\$0	\$0 \$0	\$0 \$0		\$0 \$0	\$0 \$0			\$15,652,966
\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$0					\$12,855,120
\$387,979	\$387,979	\$387,979			\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$0	<del></del>					\$7,371,601
\$102,250	\$99,876	\$102,500	\$0		\$0	\$0	\$0	\$0	\$0	\$0		\$0	\$0			\$1,222,106
\$2,523,154	\$2,520,780	\$2,286,042	\$2,183,542	\$2,148,804	\$1,065,473	\$1,065,473	\$1,030,735	\$1,030,735	\$1,030,735	\$642,756	\$0	\$0	\$0	\$0		\$42,353,498
									<del></del>							
1														,		
\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$291,668	\$1,069,892
\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239		\$6,489,571
\$102,233	7102,233	\$102,255	7102,233	3202,233	Ψ10±,233	<u> </u>	7102/205	Q102,233	7202,233	7102,200	9202,233	7102,233	7102,233	7102,233	72,003,434	\$0,465,571
\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$0	\$0	\$0		\$5,770,000
\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$194,665	\$194,665	\$194,665		\$10,374,361
	-															
-	·															
\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000		\$816,000		\$816,000		\$19,584,000
\$1,400,059	\$1,400,059	\$1,400,059		\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059		\$1,400,059	\$1,400,059		\$1,400,059		\$1,400,059		\$33,601,416
\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563		\$448,563		\$10,765,512
\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952		\$1,870,848
\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038		\$23,952,912
\$800,717	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451	\$800,717 \$258,451		\$19,217,208
\$4,799,780		\$4,799,780		\$4,799,780		\$4,799,780	\$4,799,780		\$4,799,780	\$4,799,780		\$4,799,780				\$6,202,824 \$115,194,720
			1.7													
\$12,137,386	\$12,135,012	\$11,900,274	\$11,797,774	\$11,763,036	\$10,679,705	\$10,679,705	\$10,790,533	\$11,578,758	\$11,446,219	\$10,925,701	\$10,282,945	\$9,994,445	\$9,994,445	\$7,494,445		\$351,040,280
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t			L													

					Western A	rea Water Sun	ply Authority I	Debt Service					
	Original		Current	CALA	2012	2014	an de	2016	2017	2010	3010	2020	2024
Loans	Amount	Date	Balance / /	ogies : FE		(#2/#JH <b>XV</b> #4	ZU13	2016		( STANTS	2019	iiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiii	2021
2011 Loans	¢25,000,000	4/25/2012	¢25,000,000	Custons	ĊO	- co	<del>ć</del> o	ćo	to.	r'o.	Ć0		
Resources Trust Fund - 0%	\$25,000,000		\$25,000,000		\$0	\$0			\$0	\$0	\$0	· · · · · · · · · · · · · · · · · · ·	<u> </u>
BND - Loan #1 - variable 2%	\$50,000,000		\$50,000,000		\$0			\$7,771,562	\$7,771,562	\$7,771,562			\$3,885,781
General Fund - 5% fixed	\$25,000,000	<del></del> _	\$25,000,000		\$0	\$0		\$1,253,424	\$1,250,000	\$1,250,000	\$1,250,000		\$2,535,506
Resources Trust Fund - 5% fixed	\$10,000,000	4/25/2012	\$10,000,000	System	\$0	\$0		\$501,370	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Subtotal	\$110,000,000		\$110,000,000		\$0	\$4,948,328	\$12,898,273	\$9,526,356	\$9,521,562	\$9,521,562	\$9,521,562	\$9,521,562	\$6,921,287
2013 Loan(s)													
BND - Loan #2 - 1.5%	\$40,000,000		\$40,000,000	System	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	\$8,308,746	\$4,154,373
Public Finance Authority SRF Loans - Existing	g Debt - Note t	his reflects A	nnual Average	Debt Servi	ce			L					
City of Williston* 3%		11/28/2001	\$2,000,000		\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517
City of Williston 3%		12/30/2003	\$2,255,000	·	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362		\$237,362
City of Williston 3%	\$17,593,143		\$13,240,000		\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069		\$1,118,069
R&T Supply 3%		12/22/2008	\$455,000		\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738		\$34,738
R&T Supply 2.5%	\$10,000,000		\$10,000,000		\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756		\$642,756
McKenzie County Water RD 3%	\$7,778,566		\$5,795,826	Industrial	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979
Williams Rural Water* 3%	\$1,500,000			Domestic	\$101,125	\$104,250	\$102,250	\$100,250	\$103,250	\$101,105	\$104,000		\$99,500
Subtotal	\$45,919,145	,,	\$34,790,826		\$2,757,546	\$2,760,671	\$2,758,671	\$2,756,671	\$2,759,671	\$2,757,526	\$2,760,421		\$2,755,921
Participating Members Other Debt		·											
McKenzie County Water Resource District					ĺ								
(MCWRD)					`								
System 1 Distribution* - USDA - 4.125%	\$630,000	2006	\$578,953	Domestic	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426
System II Distribution - USDA - 3.5%	\$3,490,000	6/1/2013	\$3,490,000	Industrial	\$94,640	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239
System II Distribution/Regional													
Transmission - McKenzie Co 2.5%	\$4,500,000	6/1/2013	\$4,500,000	Industrial	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Subtotal	\$8,620,000		\$8,568,953		\$127,066	\$483,165	\$483,165	\$483,165	\$483 <b>,</b> 165	\$483,165	\$483,165	\$483,165	\$483,165
Baseline 2010 Industrial Water Sales Reven	ue Requiremen	<u>1t</u>											
McKenzie County Water Resource District -	Watford City	1/1/2012		Industrial	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000
City of Williston		1/1/2012		Industrial	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059
R & T Supply		1/1/2012		Industrial	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563
City of Ray		1/1/2012		Industrial	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952
City of Tioga		1/1/2012		Industrial	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038
City of Hoga City of Stanley		1/1/2012		Industrial	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717
BDW Water Supply Association - Crosby		1/1/2012		Industrial	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451
Subtotal		-, -, -, -, -			\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780		\$4,799,780		\$4,799,780
Total Annual Payments	\$204,539,145		\$193,359,779		\$7,684,392	\$13,591,944	\$21,539,889	\$22,020,345	\$25,872,924	\$25,870,779	\$25,873,674	\$25,871,424	\$19,114,526
*Not included in WAWSA business plan													
Those balances in italics are currently not ful	ly drawn down i	but this work	sheet anticipate	s the entire	amounts wi	ll be drawn do	wn						

					3,7,85,96											
2022	2023	2024	2025 		2027	2028	)   2029 	2030	2031	2032 	2033 I	2034 	2035 	);;; //;;2036	2037-2053	
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,500,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$25,000,000
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$55,463,481
\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3 <u>,</u> 831,287	\$1,596,369	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$40,995,403
\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,880,484	\$5,265,078	\$2,632,539	\$0	\$0	\$0	\$0	\$0		\$18,615,087
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$140,073,971
											<u> </u>	<u></u>	<del> </del>			
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$43,043,730
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<u> </u>	\$2,119,653
\$237,362	\$237,362	\$0		\$0	\$0	\$0				<del></del>	<del></del>	\$0	ļ			\$2,610,982
\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$0	\$0	\$0	\$0	\$0	\$0		<del></del>	<del></del>			\$15,652,966
\$34,738	\$34,738	\$34,738	\$34,738	\$0	\$34,738	\$34,738	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$521,070
\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$0	\$0				\$12,855,120
\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$0	\$0	\$0	\$0	\$0		\$7,371,601
\$102,250	\$99,876	\$102,500	\$0		\$0	\$0	<u> </u>	<u> </u>	\$0		1 -	<del> </del>				\$1,222,106
\$2,523,154	\$2,520,780	\$2,286,042	\$2,183,542	\$2,148,804	\$1,065,473	\$1,065,473	\$1,030,735	\$1,030,735	\$1,030,735	\$642,756	\$0	\$0	\$0	\$0		\$42,353,498
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\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$291,668	\$1,069,892
\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239		\$162,239		\$162,239	\$2,663,434	\$6,489,571
\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$0	\$0	\$0		\$5,770,000
\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$194,665	\$194,665	\$194,665		\$10,374,361
¢816.000	¢81 € 000	¢916.000	¢91 € 000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	¢916.000	¢91¢ 000	¢816.000	¢015 000	¢015 000	**********	\$40 F04 000
\$816,000 \$1,400,059	\$816,000 \$1,400,059	\$816,000 \$1,400,059	\$816,000 \$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$816,000 \$1,400,059		\$816,000	\$816,000	\$816,000 \$1,400,059		\$19,584,000
\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563		\$448,563		\$448,563		\$33,601,416 \$10,765,512
\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952		\$77,952		\$77,952		\$1,870,848
\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038		\$23,952,912
\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717		\$800,717		\$19,217,208
\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451		\$6,202,824
\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780		\$115,194,720
\$12,137,386	\$12,135,012	\$11,900,274	\$11,797,774	\$11,763,036	\$10,679,705	\$10,679,705	\$10,790,533	\$11,578,758	\$11,446,219	\$10,925,701	\$10,282,945	\$9,994,445	\$9,994,445	\$7,494,445		\$351,040,280
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Sixty-third Legislative Assembly of North Dakota

### **SENATE BILL NO. 2233**

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the Southwestsouthwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new section to chapter 6-09.4a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, a new section to chapter 61-03, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, powers of the state engineer, an infrastructure revolving loan fund for the western area water supply project, and franchise protection rights of the western area water supply authority; to amend and reenact sections <del>57.51.1-07,</del> 61-24.7-01, 61-24.7-05, and 61-40-0661-40-01, 61-40-02, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River water supply project, the location of industrial water depots, and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project; and to provide a continuing appropriation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created
   and enacted as follows:
- 21 Infrastructure revolving loan fund Continuing appropriation Rules.
  - The purpose of the infrastructure revolving loan fund is to provide loans for public water-related infrastructure projects, including those for water supply, flood protection, or other water project development.



2	<ul> <li>b. Have a repayment term not longer than fifty years;</li> </ul>
3	<u>c.</u> Be fully amortized no later than fifty years after project completion;
4	d. Be subject to repayment of principal and interest beginning not later than five
5	years after the facility financed with a loan has been completed; and
6	e. Be disbursed for specific project elements only after all applicable environmental
7	requirements have been met.
8	7. The director of the public finance authority, with the approval of the industrial
9	commission, shall adopt rules to implement a program to identify and assist with
10	development of projects eligible for loans under this section.
11	8. The director of the public finance authority may request the assistance of other
12	agencies of the state as may be necessary to the development of projects eligible for
13	loans under this section and as may be necessary for the administration of such
14	projects that have been certified by the industrial commission and such agencies of
15	the state are authorized and directed to provide such assistance.
16	9. A loan may be made to a statutory or home rule charter city to finance projects for the
17	purposes described in this section without regard to whether the city is eligible for
18	financing under a federal act or program or state law. The loan must be repayable
19	under the terms and conditions provided in this section and established by the public
20	finance authority and agreed to by the city. The loan must be repaid by the city from
21	the proceeds of special assessments, tax increments, or other local taxes, such as
22	sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
23	and beverage taxes, authorized to be used for purposes of the project.
24	— SECTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
25	amended and reenacted as follows:
26	— 57-51.1-07. Allocation of moneys in oil extraction tax development fund.
27	— Moneys deposited in the oil extraction tax development fund must be transferred monthly by
28	the state treasurer as follows:
29	TwentyEighteen percent must be allocated and credited to the sinking fund
30	established for payment of the state of North Dakota water development bonds,
1	and the second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second s

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maintain the accounts within the sinking fund and for the payment of principal and
interest on the bonds must be credited to a special trust fund, to be known as the
resources trust fund. The resources trust fund must be established in the state
treasury and the funds therein must be deposited and invested as are other state
funds to earn the maximum amount permitted by law which income must be deposited
in the resources trust fund. The principal and income of the resources trust fund may
be expended only pursuant to legislative appropriation and are available to:

- a. The state water commission for planning for and construction of water related projects, including rural water systems. These water related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
  - 4.5. Thirty percent must be allocated and credited to the state's general fund.

SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

#### 1 SECTION 3.

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The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

#### SECTION 4.

#### Legislative intent - Reports to legislative assembly.

- The legislative assembly declares and establishes the following goals and objectives:
- That it is necessary for the long-term welfare and economic well-being of the Souris
  River basin, and the entire state and its citizens, that the planning, design, and
  construction of the Mouse River enhanced flood control project be completed and
  implemented.
  - That the Red River valley water supply project is critical to provide a dependable water supply for current and future generations in eastern North Dakota and is essential to provide for the long-termlong-term welfare, economic well-being, and quality of life for the entire state.
  - That it is necessary for the leng-termlong-term welfare and economic well-being of the Red River basin, and the entire state and its citizens, that the planning, design, and

control project.

# Sixty-third Legislative Assembly

1	2.	Any funds appropriated for the construction of the Mouse River enhanced flood control
2		project may be carried over to future bienniums.
3	<u>3.</u>	State funding for the Mouse River enhanced flood control project may be appropriated
4		at the time and in the manner determined by the legislative assembly, either
5		concurrently or separately from federal and local funding for the Mouse River
6		enhanced flood control project.
7	SEC	CTION 6.
8	Sou	thwest pipeline project - Report to legislative assembly.
9	The	state water commission and the southwest water authority shall begin the process of
0	reviewir	ng capital repayment and revenues being returned to the resources trust fund; payments
11	necessa	ary to meet obligations of existing bonds and other loans; ownership of land and
2	associa	ted facilities; existing construction documents; liabilities; contracts with cities, bulk users,
3	compan	ies, and other users; and other items, and shall report to the legislative assembly those
4	steps ne	ecessary for the transfer of ownership and responsibility of the southwest pipeline
5	project t	from the state water commission to the southwest water authority.
6	SEC	CTION 7.
7	Gar	rison diversion unit.
8	The	Garrison diversion unit has extensive federal facilities that have been constructed,
9	includin	g the Snake Creek pumping plant, the McClusky canal, recreation areas, and other
20	facilities	. It is the intent of the legislative assembly that the state water commission and Garrison
21	diversio	n conservancy district begin discussions with the bureau of reclamation concerning the
22	Garriso	n diversion unit facilities.
23	SEC	CTION 8.
24	Far	go-Moorhead flood control project.
25	<u>1.</u>	The legislative assembly declares its intent to provide state funding for a shareone-half
26		of the nonfederal or local cost of constructing the federally approved national
27		economic development alternative for the Fargo-Moorhead flood control project.
28	<u>2.</u>	Nothwithstanding any other law, any funds appropriated for the construction of the
o		Fargo-Moorhead flood control project may be carried over to future hienniums

 State funding for the Fargo-Moorhead flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Fargo-Moorhead flood control project.

SECTION 9. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Infrastructure revolving loan fund - Continuing appropriation - Rules.

- 1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- 2. The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- 4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- 5. Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 10. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

SECTION 11. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

# 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- 2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
- 3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 12. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

### 61-24.7-05. State funding plan.

The legislative assembly declares its intent to provide state funding for one-thirda
 share of the total nonfederal or local cost of constructing the Red River valley water supply project.



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State funding for the Red River valley water supply project may be appropriated at the
time and in the manner determined by the legislative assembly, either concurrently or
separately from federal and local funding for the Red River valley water supply project.

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SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended amd reenacted as follows:

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61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota

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do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable,

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long-term domestic or industrial water supply; that greater economic security and the protection

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of health and property benefits the land, natural resources, and water resources of this state;

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and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this

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state and necessitates and requires the exercise of the sovereign powers of this state and

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concern a public purpose. To accomplish this public purpose, it is declared necessary that a

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water authority to treat, store, and distribute water to western North Dakota be established to

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provide for the supply and distribution of water to the people of western North Dakota for

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purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the

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people of this state, and particularly the people of western North Dakota, by the creation and

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development of a western area water supply project for beneficial and public uses. The western

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area water supply authority may acquire, construct, improve, develop, and own water supply

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infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the

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authority boundaries or the state. The western area water supply authority shall consider in the

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process of locating industrial water depots the location of private water sellers so as to minimize

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process of locating industrial water depots the location of private water sellers so as to minimize

the impact on private water sellers. The independent water providers shall consider in the

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the impact on private water sellers.

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SECTION 14. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- The board shall elect from its members a chairman and a vice chairman. The board 2. shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at

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- least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 16. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district

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- court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, 8. bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.

- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through the authority, except state-guaranteed loans, may not be acquired, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 18 of this Act.

- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.

  Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - depots and lateral lines, at the participating member entity rate at the location of the depot or lateral line.

- b. Regular payments on both the participating member entity debt and baseline
   2010 industrial sales included in the initial contracts between the authority and
   the participating member entities.
- c. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- d. Additional principal payment on state-guaranteed loans.
- e. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 17 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C.

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1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 20. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through c of subsection 1 of section 17 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

61-40-06. Oversight of authority projects.

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include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the The authority shall present the overall plan and ongoing contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty-five million dollar zero interest loan from the state water commission

The authority shall comply with the policypolicies of the state water commission as the

policy relates to bidding, planning, and construction of the project. The policypolicies must

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a

has not been repaid, without the written consent of the state water commission the authority

water system of the authority if the property is used to provide revenue.

# Franchise protection.

Notwithstanding any other other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales to the oil and gas industry.

SECTION 22. REPEAL. Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

3 Rep. Schmidt

**AMENDMENT TO 2233:** 

**NEW SECTION:** 

LOWER HEART RIVER, MORTON COUNTY, ENHANCED FLOOD CONTROL PROJECT

THE LEGISLATIVE ASSEMBLY DECLARES ITS INTENT TO PROVIDE STATE FUNDING FOR 50% OF THE NON-FEDERAL OR LOCAL COST FOR CONTRSTUCTION OF THE LOWER HEART ENHANCED FLOOD CONTROL PROJECT.

13.0579.04015 Title. 4 - 4-18-13 Prepared by the Legislative Council staff for Representative Hofstad

April 5, 2013

### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 10, after "provide" insert "a statement regarding legislative appropriations; and to provide"

Page 9, after line 5, insert:

"SECTION 13. LEGISLATIVE APPROPRIATIONS. Any funds appropriated during the 2013-15 biennium for the western area water supply project must first be used to repay any project federal loans or obligations."

Renumber accordingly

13.0579.04016

Sixty-third Legislative Assembly of North Dakota

#### **SENATE BILL NO. 2233**

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new section to chapter 6-09.4a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, a new section to chapter 61-03, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, powers of the state engineer, an infrastructure revolving loan fund for the western area water supply project, and franchise protection rights of the western area water supply authority; to amend and reenact sections 57-51.1-07. 61-24.7-01, 61-24.7-05. and 61-40-0661-40-01, 61-40-02, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River water supply project, the location of industrial water depots, and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04. and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project; and to provide a statement regarding legislative appropriations: to provide a continuing appropriation; and to provide for reports to the legislative management.

#### 20 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

21 SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created 22 and enacted as follows:



1	<u>Infr</u>	astructure revolving loan fund - Continuing appropriation - Rules.
2		The purpose of the infrastructure revolving loan fund is to provide loans for public
3		water-related infrastructure projects, including those for water supply, flood protection,
4		or other water project development.
5	<u>2.</u>	An infrastructure revolving loan fund is established to make loans for the purposes
6		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
7		for making loans in accordance with this section. Accounts may be established in the
8		fund as necessary for its management and administration.
9	<del>3.</del> _	The public finance authority shall manage and administer the infrastructure revolving
10		loan fund and individual accounts in the fund. For those purposes, the authority may
11		exercise all powers provided in this chapter.
12	<u>4.</u>	An applicant for a loan must submit an application to the Bank of North Dakota on
13		forms prescribed by the Bank. The applicant must provide the following information:
14		a. The estimated cost of the project and the amount of the loan sought;
15		b. Other possible sources of funding in addition to loans sought from the
16		infrastructure revolving loan fund;
17		c. The proposed methods and sources of funds to be used for repayment of loans
18		received; and
19		d. Information showing the financial status and ability of the borrower to repay
20		<u>loans.</u>
21		Each project must be certified by the industrial commission under subsection 5 before
22		its consideration by the public finance authority.
23	<u>5.</u>	The industrial commission shall consider the following information when evaluating
24		projects to certify to the public finance authority;
25		a. A description of the nature and purpose of the proposed infrastructure project
26		including an explanation of the need for the project and the reasons why it is in
27		the public interest:
28		b. The estimated cost of the project and the amount of loan sought;
29		c. Proposed sources of funding, in addition to loans sought from the infrastructure
30		revolving loan fund;
31		d. The need for the project as part of the overall infrastructure system:

1	e. The overall economic impact of the project; and
2	f. The extent to which completion of the project will provide a benefit to the state or
3	to political subdivisions within the state.
4	— <u>6. A loan made under this section must:</u>
5	<u>a.</u> Bear interest at or below market rates or as otherwise specified in federal law;
6	<u>b. Have a repayment term not longer than fifty years;</u>
7	<u>c.</u> Be fully amortized no later than fifty years after project completion;
8	d. Be subject to repayment of principal and interest beginning not later than five
9	years after the facility financed with a loan has been completed; and
10	e. Be disbursed for specific project elements only after all applicable environmental
11	requirements have been met.
12	- 7. The director of the public finance authority, with the approval of the industrial
13	commission, shall adopt rules to implement a program to identify and assist with
14	development of projects eligible for loans under this section.
15	8. The director of the public finance authority may request the assistance of other
16	agencies of the state as may be necessary to the development of projects eligible for
17	leans under this section and as may be necessary for the administration of such
18	projects that have been certified by the industrial commission and such agencies of
19	the state are authorized and directed to provide such assistance.
20	9. A loan may be made to a statutory or home rule charter city to finance projects for the
21	purposes described in this section without regard to whether the city is eligible for
22	financing under a federal act or program or state law. The loan must be repayable
23	under the terms and conditions provided in this section and established by the public
24	finance authority and agreed to by the city. The loan must be repaid by the city from
25	the proceeds of special assessments, tax increments, or other local taxes, such as
26	sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27	and beverage taxes, authorized to be used for purposes of the project.
28	SECTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
29	amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

— Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

- 1. Twenty Eighteen percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- 2. Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- 3.<u>4.</u> Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
- 4.5. Thirty percent must be allocated and credited to the state's general fund.

1	SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota
2	Century Code is created and enacted as follows:
3	The industrial commission with respect to approving or setting water rates under
4	<u>chapter 61-40.</u>
5	SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota
6	Century Code is created and enacted as follows:
7	Western area water supply authority industrial water sales on an annual basis.
8	SECTION 3.
9	Declaration of policy.
10	The legislative assembly declares that major water development and water management
11	goals must be set forth and implemented in order to protect the long-term interests, economic
12	vitality, and future benefits of the state and its citizens; that such water development and water
13	management goals are essential for the economic growth and quality of life across the entire
14	state; that rights to the use and enjoyment of waters of the Missouri River flowing through this
15	state cannot be restricted by the federal government; that it is necessary to develop and utilize
16	waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state;
17	that flood control works are necessary to protect the lives and property of the citizens of this
18	state; that major flood control works in and around major cities and other cities are necessary to
19	address the record and damaging floods that have occurred; that regional water supply and
20	rural water projects must be completed in order to provide a long-term, dependable quality and
21	adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation
22	provides a significant opportunity to further the agricultural opportunities in the state; and that an
23	infrastructure loan fund will enable these goals and policies to be achieved and implemented,
24	and will provide significant economic and financial benefits to the people of this state.
25	SECTION 4.
26	Legislative intent - Reports to legislative assembly.
27	The legislative assembly declares and establishes the following goals and objectives:
28	1. That it is necessary for the long-term welfare and economic well-being of the Souris
29	River basin, and the entire state and its citizens, that the planning, design, and
30	construction of the Mouse River enhanced flood control project be completed and
31	implemented.

1	<u>2.</u>	That the Red River valley water supply project is critical to provide a dependable water
2		supply for current and future generations in eastern North Dakota and is essential to
3		provide for the leng-term long-term welfare, economic well-being, and quality of life for
4		the entire state.
5	<u>3.</u>	That it is necessary for the long-termlong-term welfare and economic well-being of the
6		Red River basin, and the entire state and its citizens, that the planning, design, and
7		construction of the Fargo-Moorhead diversion and flood control project be completed
8		and implemented.
9	<u>4.</u>	That regional water supply and rural water systems are necessary to provide a
10		dependable and adequate quantity and quality water supply for municipal, domestic,
11		rural, and industrial uses.
12	<u>5.</u>	That the state water commission and the southwest water authority shall begin the
13		process of reviewing capital repayment and revenues being returned to the resources
14		trust fund; payments necessary to meet obligations of existing bonds and other loans;
15		mill levies; ownership of land and associated facilities; existing construction
16		documents; liabilities; contracts with cities, bulk users, companies, and other users;
17		and other items, and shall report to the legislative assembly those steps necessary for
18		the transfer of ownership and responsibility of the southwest pipeline project from the
19		state water commission to the southwest water authority.
20	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall
21		enter discussions with the bureau of reclamation concerning Garrison diversion unit
22		facilities.
23	<u>7.</u>	That projects receiving state funds for construction and implementation not assert,
24		claim, or seek to prevent other opportunities, either public or private, to utilize waters
25		of the Missouri River for industrial uses in this state.
26	<u>8.</u>	That local water management and flood control projects are necessary for the
27		economic well-being and quality of life of citizens in those local areas.
28	<u>9.</u>	That irrigation development offers significant opportunities for agriculture in this state.
29	<u>10.</u>	That an infrastructure loan fund for water development and management will provide
30		significant financial benefits to projects and the citizens of this state, and will provide
31		new capabilities to implement necessary water infrastructure projects across the state.

1	SEC	CTION 5.
2	Mo	use River enhanced flood control project.
3	<u>1.</u>	The legislative assembly declares its intent to provide state funding for a share one-half
4		of the non-federal nonfederal or local cost of constructing the federally approved
5		national economic development alternative for the Mouse River enhanced flood
6		control project.
7	<u>2.</u>	Any funds appropriated for the construction of the Mouse River enhanced flood control
8		project may be carried over to future bienniums.
9	<u>3.</u>	State funding for the Mouse River enhanced flood control project may be appropriated
10		at the time and in the manner determined by the legislative assembly, either
11	ı	concurrently or separately from federal and local funding for the Mouse River
12		enhanced flood control project.
13	SEC	CTION 6.
14	Lov	ver Heart River, Morton County, enhanced flood control project.
15	The	legislative Assembly declares its intent to provide state funding for fifty percent of the
16	nonfede	ral or local cost-share for construction of the lower Heart River, Morton County, flood
17	control	project.
18	SEC	CTION 7.
19	Sou	thwest pipeline project - Report to legislative assembly.
20	The	state water commission and the southwest water authority shall begin the process of
21	<u>reviewir</u>	ng capital repayment and revenues being returned to the resources trust fund; payments
22	necessa	ary to meet obligations of existing bonds and other loans; ownership of land and
23	<u>associa</u>	ted facilities; existing construction documents; liabilities; contracts with cities, bulk users,
24	compan	ies, and other users; and other items, and shall report to the legislative assembly those
25	steps ne	ecessary for the transfer of ownership and responsibility of the southwest pipeline
26	project f	rom the state water commission to the southwest water authority.
27	SEC	CTION 8.
28	<u>Gar</u>	rison diversion unit.
29	The	Garrison diversion unit has extensive federal facilities that have been constructed,
30	includin	g the Snake Creek pumping plant, the McClusky canal, recreation areas, and other
31	facilities	. It is the intent of the legislative assembly that the state water commission and Garrison

Т	aiversio	n conservancy district begin discussions with the bureau of reclamation concerning the
2	<u>Garriso</u>	n diversion unit facilities.
3	SEC	CTION 9.
4	<u>Far</u>	go-Moorhead flood control project.
5	<u>1.</u>	The legislative assembly declares its intent to provide state funding for a share one-half
6		of the nonfederal or local cost of constructing the federally approved national
7		economic development alternative for the Fargo-Moorhead flood control project.
8	<u>2.</u>	Nothwithstanding any other law, any funds appropriated for the construction of the
9		Fargo-Moorhead flood control project may be carried over to future bienniums.
10	<u>3.</u>	State funding for the Fargo-Moorhead flood control project may be appropriated at the
11		time and in the manner determined by the legislative assembly, either concurrently or
12		separately from federal and local funding for the Fargo-Moorhead flood control project.
13	SEC	CTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created
14	and ena	acted as follows:
15	Infr	astructure revolving loan fund - Continuing appropriation - Rules.
16	1.	An infrastructure revolving loan fund is established on January 1, 2015, within the
17		resources trust fund to provide loans for water supply, flood protection, or other water
18		development and water management projects. Ten percent of oil extraction moneys
19		deposited in the resources trust fund are made available on a continuing basis for
20		making loans in accordance with this section. Accounts may be established in the
21		resources trust fund as necessary for its management and administration.
22	2.	The commission shall consider the following information when evaluating projects:
23		a. A description of the nature and purposes of the proposed infrastructure project,
24		including an explanation of the need for the project, the reasons why it is in the
25		public interest, and the overall economic impact of the project.
26		b. The estimated cost of the project and the amount of the loan sought and other
27		proposed sources of funding.
28		c. The extent to which completion of the project will provide a benefit to the state or
29		regions within the state.
30	3	The commission shall approve projects and loans from the infrastructure loan fund,
31		and the Bank of North Dakota shall manage and administer loans from the

adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.	infrastructure loan fund and individual accounts in the fund. The commission may
- 사람들이 하는 것이 되었다. 그런데 이번에 가장 이번에 가장 되었다. 그런데 그런데 그런데 그런데 그런데 그런데 그런데 그런데 그런데 그런데	[[[대화] ] [[[대한 ] [대한 ] 하는 다음 하는 다른 나는 사람들이 다른 사람들이 되었다.
under this section must be made at an interest rate of one and one-half percent.	adopt policies for the review and approval of loans under this section. Loans made
under this section must be made at an interest rate of one and one-half percent.	네마살이 불통하다면서 하다는 다른 나가 되었다면서 얼마를 보고 있다. 얼마를 하고 말을 받는데 얼마를 들었다.
	under this section must be made at an interest rate of one and one-half percent.

- 4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- 5. Projects not eligible for the state revolving fund will be given priority for these funds.

**SECTION 11.** A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

# State engineer to approve western area water supply authority water depot locations.

The state engineer must approve the planning, design, location, and construction of western area water supply authority water supply water depots and laterals on which construction is commenced after the effective date of this Act.

**SECTION 12. AMENDMENT.** Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

### 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- 4. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a ene-third share of the cost of constructing the Red River valley water supply project.
- 2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part-by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.

3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 13. AMENDMENT.** Section 61-24.7 05 of the North Dakota Century Code is amended and reenacted as follows:

# 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for one-thirda
   share of the total nonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.
- SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-06. Oversight of authority projects.

The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the The authority shall present the overall plan and ongoing contract plans and specifications for the project to the state water commission for approval. The atterney general shall assist the authority at the request of the state water commission. If the twenty-five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

**SECTION 14. AMENDMENT.** Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

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61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

**SECTION 15. AMENDMENT.** Section 61 40-02 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the

authority for a bulk water supply. The authority is a political subdivision of the state, a 2 governmental agency, body politic and corporate, with the authority to exercise the powers 3 specified in this chapter, or which may be reasonably implied. Participating member entities 4 may be required to pay dues or water sale income to the authority, as determined by the bylaws 5 and future resolutions of the authority. Participating member entities may not withdraw from the 6 authority or fail or refuse to pay any water sale income to the authority if the twenty five million 7 dollar zero interest loan from the state water commission has not been repaiduntil the 8 state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water 10 district.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the
  business affairs of the authority as it determines necessary, including the time and
  place of regular meetings of the board, financial participation structure for membership
  in the authority, and membership appointment and changes. Bylaws need to be
  approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

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29 30 The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.

Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40 01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

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- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or

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- reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. <u>Additional debt that requires</u> repayment through the authority, except state-guaranteed loans, may not be acquired, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits,

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- pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.
  Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - a. One-hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the costs for water supply sold at industrial water depots and lateral lines, at the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.

- c. Regular payments on both the participating member entity debt and leaseline

  2010 industrial sales included in the contracts in existence on December

  thirty-first, 2012, between the authority and the participating member entities.
- d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- e. Additional principal payment on state-guaranteed loans.
- f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

**SECTION 19.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

**SECTION 20.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C.

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28 29 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

**SECTION 21. AMENDMENT.** Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through c of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

**SECTION 22.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

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### Franchise protection.

Notwithstanding any other other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

**SECTION 23. REPEAL.** Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 24. LEGISLATIVE APPROPRIATIONS. Any funds appropriated during the 2013-15 biennium for the western area water supply project must first be used to repay any project federal loans or obligations.

SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water users and the western area water supply authority shall report to the water topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 26. FULL-TIME EQUIVALENT AUTHORIZATION. The industrial commission is authorized one additional full-time equivalent position to implement this Act.

Sixty-third Legislative Assembly of North Dakota

# SENATE BILL NO. 2233 4-9-13-14.M

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new-section to chapter 6-09.4a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, a new section to chapter 61-03, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, powers of the state engineer, an infrastructure revolving loan fund for the western area water supply project, and franchise protection rights of the western area water supply authority; to amend and reenact sections 57-51.1-07, 61-24.7-01, 61-24.7-05, and 61-40-0661-40-01, 61-40-02, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River valley water supply project, the location of industrial water depots, and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project; and to provide a continuing appropriation; and to provide for reports to the legislative management.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 21 SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created
- 22 and enacted as follows:



1	-	e. The overall economic impact of the project; and
2		f. The extent to which completion of the project will provide a benefit to the state or
3		to political subdivisions within the state.
4	<u>6.</u>	_ <u> </u>
5	-	a. Bear interest at or below market rates or as otherwise specified in federal law;
6		b. Have a repayment term not longer than fifty years;
7		c. Be fully amortized no later than fifty years after project completion;
8		d. Be subject to repayment of principal and interest beginning not later than five
9		years after the facility financed with a loan has been completed; and
10		e. Be disbursed for specific project elements only after all applicable environmental
11		requirements have been met.
12	<del>- 7.</del>	The director of the public finance authority, with the approval of the industrial
13		commission, shall adopt rules to implement a program to identify and assist with
14		development of projects eligible for loans under this section.
15	<u>8.</u>	The director of the public finance authority may request the assistance of other
16		agencies of the state as may be necessary to the development of projects eligible for
17		loans under this section and as may be necessary for the administration of such
18		projects that have been certified by the industrial commission and such agencies of
19		the state are authorized and directed to provide such assistance.
20	<u>9.</u>	A loan may be made to a statutory or home rule charter city to finance projects for the
21		purposes described in this section without regard to whether the city is eligible for
22		financing under a federal act or program or state law. The loan must be repayable
23		under the terms and conditions provided in this section and established by the public
24		finance authority and agreed to by the city. The loan must be repaid by the city from
25		the proceeds of special assessments, tax increments, or other local taxes, such as
26		sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27		and beverage taxes, authorized to be used for purposes of the project.
28	— SEC	CTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
29	amende	ed and reenacted as follows:

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57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

- Twenty Eighteen percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - The state water commission for planning for and construction of water related projects, including rural water systems. These water related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- Two percent must be allocated to the infrastructure revolving loan fund.
- Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
- Thirty percent must be allocated and credited to the state's general fund.

SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

#### SECTION 3.

### Declaration of policy.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

#### SECTION 4.

### Legislative intent - Reports to legislative assembly.

The legislative assembly declares and establishes the following goals and objectives:

That it is necessary for the long-term welfare and economic well-being of the Souris
River basin, and the entire state and its citizens, that the planning, design, and
construction of the Mouse River enhanced flood control project be completed and
implemented.

1	2.	That the Red River valley water supply project is critical to provide a dependable water
2		supply for current and future generations in eastern North Dakota and is essential to
3		provide for the long-termlong-term welfare, economic well-being, and quality of life for
4		the entire state.
5	<u>3.</u>	That it is necessary for the long-termlong-term welfare and economic well-being of the
6		Red River basin, and the entire state and its citizens, that the planning, design, and
7		construction of the Fargo-Moorhead diversion and flood control project be completed
8		and implemented.
9	4.	That regional water supply and rural water systems are necessary to provide a
10		dependable and adequate quantity and quality water supply for municipal, domestic,
11		rural, and industrial uses.
12	<u>5.</u>	That the state water commission and the southwest water authority shall begin the
13		process of reviewing capital repayment and revenues being returned to the resources
14		trust fund; payments necessary to meet obligations of existing bonds and other loans;
15		mill levies; ownership of land and associated facilities; existing construction
16		documents; liabilities; contracts with cities, bulk users, companies, and other users;
17		and other items, and shall report to the legislative assembly those steps necessary for
18		the transfer of ownership and responsibility of the southwest pipeline project from the
19		state water commission to the southwest water authority.
20	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall
21		enter discussions with the bureau of reclamation concerning Garrison diversion unit
22		facilities.
23	<u>7.</u>	That projects receiving state funds for construction and implementation not assert,
24		claim, or seek to prevent other opportunities, either public or private, to utilize waters
25		of the Missouri River for industrial uses in this state.
26	<u>8.</u>	That local water management and flood control projects are necessary for the
27		economic well-being and quality of life of citizens in those local areas.
28	<u>9.</u>	That irrigation development offers significant opportunities for agriculture in this state.
29	10.	That an infrastructure loan fund for water development and management will provide
30		significant financial benefits to projects and the citizens of this state, and will provide
31		new capabilities to implement necessary water infrastructure projects across the state.

1	SE	CTION 5.
2	Mo	use River enhanced flood control project.
3	1.	The legislative assembly declares its intent to provide state funding for a share one-half
4		of the non-federal nonfederal or local cost of constructing the federally approved
5		national economic development alternative for the Mouse River enhanced flood
6		control project.
7	2.	Any funds appropriated for the construction of the Mouse River enhanced flood control
8		project may be carried over to future bienniums.
9	3.	State funding for the Mouse River enhanced flood control project may be appropriated
10		at the time and in the manner determined by the legislative assembly, either
11	v	concurrently or separately from federal and local funding for the Mouse River
12		enhanced flood control project.
13	SE	CTION 6.
14	Lov	ver Heart River, Morton County, enhanced flood control project.
15	The	e legislative assembly declares its intent to provide state funding for fifty percent of the
16	nonfede	eral or local cost-share for construction of the lower Heart River, Morton County, flood
17	control	project.
18	SE	CTION 7.
19	Sou	uthwest pipeline project - Report to legislative assembly.
20	The	state water commission and the southwest water authority shall begin the process of
21	reviewir	ng capital repayment and revenues being returned to the resources trust fund; payments
22	necessa	ary to meet obligations of existing bonds and other loans; ownership of land and
23	associa	ted facilities; existing construction documents; liabilities; contracts with cities, bulk users,
24	compar	nies, and other users; and other items, and shall report to the legislative assembly those
25	steps ne	ecessary for the transfer of ownership and responsibility of the southwest pipeline
26	project	from the state water commission to the southwest water authority.
27	SE	CTION 8.
28	Gar	rison diversion unit.
29	The	Garrison diversion unit has extensive federal facilities that have been constructed,
30	includin	g the Snake Creek pumping plant, the McClusky canal, recreation areas, and other
31	facilities	s. It is the intent of the legislative assembly that the state water commission and Garrison

1	diversion	n conservancy district begin discussions with the bureau of reclamation concerning the
2	Garriso	n diversion unit facilities.
3	SE	CTION 9.
4	Far	go-Moorhead flood control project.
5	<u>1.</u>	The sixty-third legislative assembly declares its intent to provide state funding for a
6		shareone-half of the nonfederal or local cost of constructing thea federally authorized
7		Fargo-Moorhead flood control project not to exceed four hundred fifty million dollars.
8	<u>2.</u>	Nothwithstanding any other law, any funds appropriated for the construction of the
9		Fargo-Moorhead flood control project may be carried over to future bienniums.
10	3.	State funding for the Fargo-Moorhead flood control project may be appropriated at the
11		time and in the manner determined by the legislative assembly, either concurrently or
12		separately from federal and local funding for the Fargo-Moorhead flood control project.
13	SEC	CTION 10. A new section to chapter 61 02 of the North Dakota Century Code is created
14	and ena	acted as follows:
15	Infr	astructure revolving loan fund - Continuing appropriation - Rules.
16	1.	An infrastructure revolving loan fund is established on January 1, 2015, within the
17		resources trust fund to provide loans for water supply, flood protection, or other water
18		development and water management projects. Ten percent of oil extraction moneys
19		deposited in the resources trust fund are made available on a continuing basis for
20		making loans in accordance with this section. Accounts may be established in the
21		resources trust fund as necessary for its management and administration.
22	2.	The commission shall consider the following information when evaluating projects:
23		a. A description of the nature and purposes of the proposed infrastructure project,
24		including an explanation of the need for the project, the reasons why it is in the
25	1945	public interest, and the overall economic impact of the project.
26		b. The estimated cost of the project and the amount of the loan sought and other
27		proposed sources of funding.
28		c. The extent to which completion of the project will provide a benefit to the state or
29		regions within the state.
30	3.	The commission shall approve projects and loans from the infrastructure loan fund,
31		and the Bank of North Dakota shall manage and administer loans from the

- infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- 4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- 5. Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 11. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

State water commission to approve western area water supply authority water depot locations.

The state water commission must approve the planning, design, location, and construction of any western area water supply authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

**SECTION 12. AMENDMENT.** Section 61-24.7 01 of the North Dakota Century Code is amended and reenacted as follows:

# 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- 2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.

3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 13. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

# 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for one-thirda
   share of the totalnonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-06. Oversight of authority projects.

The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the The authority shall present the overall plan and ongoing contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty-five million dollar zero interest lean from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

**SECTION 14. AMENDMENT.** Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

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# 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

**SECTION 15. AMENDMENT.** Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the

authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dellar zero interest loan from the state water commission has not been repaid until the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

**SECTION 16. AMENDMENT.** Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the
  business affairs of the authority as it determines necessary, including the time and
  place of regular meetings of the board, financial participation structure for membership
  in the authority, and membership appointment and changes. Bylaws need to be
  approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

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- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

**SECTION 17. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- 1. Sue and be sued in the name of the authority.
- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or

- reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through the authority, except state-guaranteed loans, may not be acquired, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits,

- pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

# Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.

  Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - a. One-hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the costs for water supply sold at industrial water depots and lateral lines, at the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.

- c. Regular payments on both the participating member entity debt and baseline
   2010 industrial sales included in the contracts in existence on December 31,
   2012, between the authority and the participating member entities.
- d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- e. Additional principal payment on state-guaranteed loans.
- f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C.

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1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09, Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

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Franchise protection.

Notwithstanding any other other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

SECTION 23. REPEAL. Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 24. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water users and the western area water supply authority shall report to the water topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 25. FULL-TIME EQUIVALENT AUTHORIZATION. The industrial commission is authorized one additional full-time equivalent position to implement this Act.

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					- Western A	rea Water Sup	iply Authority	Debt Service					
	Orlginal		Current-										
Loans	Amount	Date	Balance	Sales	2013	2014	2015	2016	2017	2018	######################################	2020	2021
2011 Loans	<u> </u>										4.	40	40
Resources Trust Fund - 0%	\$25,000,000		\$25,000,000		\$0	\$0				<u> </u>			\$0
BND - Loan #1 - variable 2%	\$50,000,000		\$50,000,000		\$0	\$4,948,328		\$7,771,562	\$7,771,562		\$7,771,562		\$3,885,781
General Fund - 5% fixed	\$25,000,000		\$25,000,000		\$0	\$0		\$1,253,424	\$1,250,000		\$1,250,000	\$1,250,000	\$2,535,506
Resources Trust Fund - 5% fixed	\$10,000,000	· · · · · · · · · · · · · · · · · · ·	\$10,000,000		\$0	\$O		\$501,370	\$500,000		\$500,000	\$500,000	\$500,000
Subtotal	\$110,000,000	<b> </b>	\$110,000,000		\$0	\$4,948,328	\$12,898,273	\$9,526,356	\$9,521,562	\$9,521,562	\$9,521,562	\$9,521,562	\$6,921,287
2013 Loan(s)	<del> </del>			<b> </b>		··-	L					<u> </u>	
BND - Loan #2 - 1.5%	\$40,000,000		\$40,000,000	System	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	\$8,308,746	\$4,154,373
Public Finance Authority SRF Loans - Existin	g Debt - Note t	his reflects A	nnual Average	Debt Servi				l		<u> </u>	L		
City of Williston* 3%		11/28/2001	\$2,000,000		\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517
City of Williston 3%		12/30/2003	\$2,255,000		\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362
City of Williston 3%	\$17,593,143	<del></del>	\$13,240,000		\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069			·	\$1,118,069
R&T Supply 3%		12/22/2008	<del></del>	Domestic	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738
R&T Supply 2.5%	\$10,000,000	<del></del>	\$10,000,000		\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756
McKenzie County Water RD 3%	\$7,778,566			Industrial	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979
Williams Rural Water* 3%	\$1,500,000		\$1,045,000		\$101,125	\$104,250	\$102,250	\$100,250	\$103,250	\$101,105	\$104,000	\$101,750	\$99,500
Subtotal	\$45,919,145	5/21/2005	\$34,790,826	DOMESTIC	\$2,757,546	\$2,760,671	\$2,758,671	\$2,756,671	\$2,759,671				
			45 1,1 55,525		Ψ=,,σ,,σ,,σ	<i>\$2,700,072</i>	4-1/20/07	<i>\$2,730,071</i>	42,702,072	4-7-2-7	7-77		
Participating Members Other Debt													
McKenzie County Water Resource District													
(MCWRD)						1							
System 1 Distribution* - USDA - 4.125%	\$630,000	2006	\$578,953	Domestic	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426
System II Distribution - USDA - 3.5%	\$3,490,000	6/1/2013	\$3,490,000	Industrial	\$94,640	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239
System II Distribution/Regional					1 1	, , , , , , , ,							
Transmission - McKenzie Co 2.5%	\$4,500,000	6/1/2013	\$4,500,000	Industrial	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Subtotal	\$8,620,000		\$8,568,953		\$127,066	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165
Baseline 2010 Industrial Water Sales Rever	ue Requiremer	lI											
					[				<del></del>				
McKenzie County Water Resource District -	Watford City	1/1/2012		Industrial	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000
City of Williston		1/1/2012		Industrial	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059
R & T Supply		1/1/2012		Industrial	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563
City of Ray		1/1/2012		Industrial	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952
City of Tioga		1/1/2012		Industrial	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038
City of Stanley		1/1/2012		Industrial	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717
BDW Water Supply Association - Crosby		1/1/2012		Industrial	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451
Subtotal					\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780
Total Annual Payments	\$204,539,145		\$193,359,779		\$7,684,392	\$13,591,944	\$21,539,889	\$22,020,345	\$25,872,924	\$25,870,779	\$25,873,674	\$25,871,424	\$19,114,526
*Not included in WAWSA business plan				<u> </u>	<u> </u>								
Those balances in italics are currently not fu	lly drawn down	but this work	sheet anticipate	s the entire	amounts wi	ll be drawn do	wn			<u> </u>			

		Hariya (1866)			-Western Δ	rea Water Sin	ply Authority I	Deht Service					
	Original	Closing	Current -										
Loans La La La La La La La La La La La La La	Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Contract Con	CONTRACTOR PROPERTY.	Balance	Sales	2013	2014	2015	2016	2017	2018	2019	2020	2021
2011 Loans			DOTES OF THE STREET	Artificieniikleskii 			TATAT KANT PURPAHANI KANTAN  -		HARLE TEACHER GRAIN		 	makamara,	engeleluk Kappup Jeniu 1947 e
Resources Trust Fund - 0%	\$25,000,000	4/25/2012	\$25,000,000	System	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BND - Loan #1 - variable 2%	\$50,000,000	4/25/2012	\$50,000,000	System	\$0		\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$3,885,781
General Fund - 5% fixed	\$25,000,000	4/25/2012	\$25,000,000	System	\$0		\$3,791,095	\$1,253,424	\$1,250,000	\$1,250,000	\$1,250,000	\$1,250,000	\$2,535,506
Resources Trust Fund - 5% fixed	\$10,000,000	4/25/2012	\$10,000,000	System	\$0	\$0	\$1,335,616	\$501,370	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Subtotal	\$110,000,000		\$110,000,000		\$0	\$4,948,328	\$12,898,273	\$9,526,356	\$9,521,562	\$9,521,562	\$9,521,562	\$9,521,562	\$6,921,287
2013 Loan(s)									<u> </u>	<u> </u>			
BND - Loan #2 - 1.5%	\$40,000,000		\$40,000,000	System	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	\$8,308,746	\$4,154,373
Public Finance Authority SRF Loans - Existing	ng Debt - Note t	his reflects A	Annual Average	Debt Servi	ce								
City of Williston* 3%	\$3,901,331	11/28/2001	\$2,000,000	Domestic	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517
City of Williston 3%	\$3,693,345	12/30/2003	\$2,255,000	Domestic	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362
City of Williston 3%	\$17,593,143	10/24/2005	\$13,240,000	H <sub>2</sub> 0 Plant	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069
R&T Supply 3%	\$1,452,760	12/22/2008	\$455,000	Domestic	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738
R&T Supply 2.5%	\$10,000,000	4/16/2012	\$10,000,000	Industrial	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756
McKenzie County Water RD 3%	\$7,778,566	11/29/2011	\$5,795,826	Industrial	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979
Williams Rural Water* 3%	\$1,500,000	3/21/2005	\$1,045,000	Domestic	\$101,125	\$104,250	\$102,250	\$100,250	\$103,250	\$101,105	\$104,000	\$101,750	\$99,500
Subtotal	\$45,919,145		\$34,790,826		\$2,757,546	\$2,760,671	\$2,758,671	\$2,756,671	\$2,759,671	\$2,757,526	\$2,760,421	\$2,758,171	\$2,755,921
Participating Members Other Debt	L				L								
McKenzie County Water Resource District	Γ	· · · · · ·											
(MCWRD)					ĺ. i								
<u> </u>	4600.000		4		100 100		4 4	400.406	****	400 405	£22.426	622.426	¢22.426
System 1 Distribution* - USDA - 4.125% System II Distribution - USDA - 3.5%	\$630,000	2006		Domestic	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426 \$162,239
System II Distribution/Regional	\$3,490,000	6/1/2013	\$3,490,000	Industrial	\$94,640	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239
Transmission - McKenzie Co 2.5%	\$4,500,000	6/1/2013	\$4,500,000	Industrial	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500
Subtotal	\$8,620,000	0/1/2013	\$8,568,953	maustriai	\$127,066	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165		\$483,165
			40,300,333		\$127,000	Ψ405,105	Q-100,100	Ş-103,103	φ.ι,205	7105,205	ψ.05,103	\$ 103,200	+ 100/200
Baseline 2010 Industrial Water Sales Reven	<u>ue Requiremer</u>	<u>nt</u>											
McKenzie County Water Resource District -	Watford City	1/1/2012		Industrial	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000
City of Williston		1/1/2012		Industrial	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059			\$1,400,059
R & T Supply		1/1/2012		Industrial	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563
City of Ray		1/1/2012		Industrial	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952
City of Tioga		1/1/2012		Industrial	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038		\$998,038
City of Stanley		1/1/2012	~	Industrial	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717		\$800,717
BDW Water Supply Association - Crosby	\ <del></del>	1/1/2012		Industrial	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451
Subtotal					\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780		\$4,799,780	\$4,799,780	\$4,799,780
Total Annual Payments	\$204,539,145		\$193,359,779		\$7,684,392	\$13,591,944	\$21,539,889	\$22,020,345	\$25,872.924	\$25,870.779	\$25,873.674	\$25,871,424	\$19,114,526
*Not included in WAWSA business plan					,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	,,,- 11	,,,	,,- 15	,		·, · -, · ·		
Those balances in italics are currently not fu	lly drawn down	but this work	sheet anticipate	s the entire	amounts wi	II be drawn do	wn						
							استحسب	<u></u>		<u> </u>			

				inas juga	- Western A	rea Water Sue	oly Authority I	Debt Service			7047/F12758			
	Original	Closing	Current											
Loans	Amount	Date :	Balance 🙄	Sales	2013	2014	2015	2016	2017	2018	2019	2020	2021	
2011 Loans			gan caste-presidente anno management ag	Arte-printe-moral	Animamua-Manapana	a cochamina Asinackin	Secreta come to secretarization		mining-13/14/13/13/13/13/10/14/10/00			DOCUMENTAL SOCIETY	callin sent or a fability at the fact of	
Resources Trust Fund - 0%	\$25,000,000	4/25/2012	\$25,000,000	System	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
BND - Loan #1 - variable 2%	\$50,000,000	4/25/2012	\$50,000,000	System	\$0	\$4,948,328	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$7,771,562	\$3,885,781	
General Fund - 5% fixed	\$25,000,000	4/25/2012	\$25,000,000	System	\$0	\$0	\$3,791,095	\$1,253,424	\$1,250,000	\$1,250,000	\$1,250,000	\$1,250,000	\$2,535,506	
Resources Trust Fund - 5% fixed	\$10,000,000	4/25/2012	\$10,000,000	System	\$0	\$0	\$1,335,616	\$501,370	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	
Subtotal	\$110,000,000		\$110,000,000		\$0	\$4,948,328	\$12,898,273	\$9,526,356	\$9,521,562	\$9,521,562	\$9,521,562	\$9,521,562	\$6,921,287	
2013 Loan(s)	<del></del>				<b> </b>				<u> </u>	<u></u>	<u> </u>			
BND - Loan #2 - 1.5%	\$40,000,000		\$40,000,000	System	\$0	\$600,000	\$600,000	\$4,454,373	\$8,308,746	\$8,308,746	\$8,308,746	\$8,308,746	\$4,154,373	
	L		<u> </u>	L	<u> </u>			L	<u> </u>		<u> </u>	ļ		
Public Finance Authority SRF Loans - Existing Debt - Note this reflects Annual Average Debt Service														
City of Williston* 3%		11/28/2001	\$2,000,000		\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	\$235,517	
City of Williston 3%		12/30/2003	\$2,255,000		\$237,362	\$237,362	\$237,362	\$237,362	\$237,362	\$237,362		\$237,362	\$237,362	
City of Williston 3%	\$17,593,143		\$13,240,000	H <sub>2</sub> 0 Plant	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	
R&T Supply 3%		12/22/2008	\$455,000	Domestic	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738	\$34,738		\$34,738	\$34,738	
R&T Supply 2.5%	\$10,000,000	4/16/2012	\$10,000,000	Industrial	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756			\$642,756	
McKenzie County Water RD 3%	\$7,778,566	11/29/2011	\$5,795,826	Industrial	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	
Williams Rural Water* 3%	\$1,500,000	3/21/2005	\$1,045,000	Domestic	\$101,125	\$104,250	\$102,250	\$100,250	\$103,250	\$101,105	\$104,000	\$101,750	\$99,500	
Subtotal	\$45,919,145		\$34,790,826		\$2,757,546	\$2,760,671	\$2,758,671	\$2,756,671	\$2,759,671	\$2,757,526	\$2,760,421	\$2,758,171	\$2,755,921	
Participating Members Other Debt	L	L		L	L									
McKenzie County Water Resource District														
(MCWRD)					,									
System 1 Distribution* - USDA - 4.125%		2006	<i>\$578,95</i> 3	Domestic	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	
System II Distribution - USDA - 3.5%	\$3,490,000	6/1/2013	\$3,490,000	Industrial	\$94,640	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	
System II Distribution/Regional														
Transmission - McKenzie Co 2.5%	\$4,500,000	6/1/2013	\$4,500,000	Industrial	\$0	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	
Subtotal	\$8,620,000		\$8,568,953		\$127,066	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	
Baseline 2010 Industrial Water Sales Reven	ue Requiremer	<u>ıt</u>			l									
McKenzie County Water Resource District -	Watford City	1/1/2012		Industrial	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	
City of Williston		1/1/2012		Industrial	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059			\$1,400,059	
R & T Supply		1/1/2012		Industrial	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	
City of Ray		1/1/2012		Industrial	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	
City of Tioga		1/1/2012		Industrial	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038		\$998,038	\$998,038	
City of Stanley		1/1/2012	<del></del>	Industrial	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	
BDW Water Supply Association - Crosby		1/1/2012		Industrial	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	
Subtotal					\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780			\$4,799,780	
Total Annual Payments	\$204,539,145		\$193,359,779		\$7 684 392	\$13,591,944	\$21,539,889	\$22,020,345	\$25,872,924	\$25,870,779	\$25 873 674	\$25,871,424	\$19.114.526	
*Not included in WAWSA business plan	,,555,245		+,,1J		7.,007,332	4	72.755,005	7-2,020,040	7-210121264	+20,070,773	+=3,573,074		+ == ,== ,,== 0	
Those balances in italics are currently not fully drawn down but this worksheet anticipates the entire amounts will be drawn down														
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\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,500,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$25,000,000
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$55,463,481
\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3 <u>,</u> 831,287	\$1,596,369	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$40,995,403
\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,880,484	\$5,265,078	\$2,632,539	\$0			\$0			\$18,615,087
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$140,073,971
										<u></u>	<u> </u>					
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	~~~~	\$43,043,730
		·								- <del> </del>	7-			1		
\$0		\$0	\$0		\$0	\$0	\$0		\$0			<del></del>	<u> </u>			\$2,119,653
\$237,362	\$237,362	\$0	. \$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0	\$0				\$2,610,982
\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$1,118,069	\$0	\$0	\$0		\$0	\$0	\$0	\$0	\$0	\$0		\$15,652,966
\$34,738	\$34,738	\$34,738	\$34,738	\$0	\$34,738	\$34,738	\$0	\$0	\$0				\$0			\$521,070
\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756	\$642,756					\$0		\$12,855,120
\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$387,979	\$0						\$7,371,601
\$102,250 \$2,523,154	\$99,876 \$2,520,780	\$102,500 \$2,286,042	\$0	\$0	\$0	\$0	\$0	\$0								\$1,222,106
\$2,323,134	\$2,520,760	\$2,200,042	\$2,183,542	\$2,148,804	\$1,065,473	\$1,065,473	\$1,030,735	\$1,030,735	\$1,030,735	\$642,756	\$0	\$0	\$0	\$0		\$42,353,498
		_				i										
\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$291,668	\$1,069,892
\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239		\$162,239	\$162,239	\$2,663,434	\$6,489,571
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\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$0	\$0	\$0		\$5,770,000
\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$194,665	\$194,665	\$194,665		\$10,374,361
				<del></del>												
Ancon	A															
\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000			\$816,000	\$816,000		\$19,584,000
\$1,400,059 \$448,563		\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059		<u> </u>		\$1,400,059		\$33,601,416
\$448,563	\$448,563 \$77.952	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563		\$10,765,512
\$998,038	\$998.038	\$77,952 \$998,038	\$77,952 \$998,038	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952 \$998,038	\$77,952	\$77,952		\$1,870,848 \$23,952,912
\$800,717	\$800,717	\$998,038	\$998,038	\$998,038 \$800,717	\$998,038 \$800,717	\$998,038 \$800,717	\$998,038 \$800,717	\$998,038 \$800,717	\$998,038	\$998,038 \$800,717	\$998,038 \$800,717	\$998,038	\$998,038 \$800,717	\$998,038		\$19,217,208
\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451		\$6,202,824
\$4,799,780		\$4,799,780		\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780		\$4,799,780	\$4,799,780						\$115,194,720
¢12.127.200																
\$12,137,386	\$12,135,012	\$11,900,274	\$11,797,774	\$11,763,036	\$10,679,705	\$10,679,705	\$10,790,533	\$11,578,758	\$11,446,219	\$10,925,701	\$10,282,945	\$9,994,445	\$9,994,445	\$7,494,445		\$351,040,280
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\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$2,500,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$25,000,000
\$0	\$0	\$0	ļ	\$0	\$0	\$0	\$0	\$0		\$0		\$0				\$55,463,481
\$3,831,287	\$3,831,287	\$3,831,287		\$3,831,287	\$3,831,287	\$3,831,287	\$1,596,369	\$0	\$0	\$0		\$0				\$40,995,403
\$500,000	\$500,000	\$500,000	<del></del>	\$500,000	\$500,000	\$500,000		<del></del>		\$0		\$0				\$18,615,087
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$140,073,971
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\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$43,043,730
40	- 4-															4
\$0 \$237,362	\$0	\$0		\$0	\$0	<u>_</u>	<u>_</u>	<u> </u>				\$0				\$2,119,653
\$1,118,069	\$237,362	\$0		\$0	\$0	\$0	\$0	<del>{</del>				\$0				\$2,610,982
\$34,738	\$1,118,069	\$1,118,069		\$1,118,069	\$0	\$0	\$0		1		\$0	\$0				\$15,652,966
\$642,756	\$34,738 \$642.756	\$34,738 \$642,756	\$34,738 \$642,756	\$0	\$34,738	\$34,738	\$0		1 ··-			\$0				\$521,070 \$12,855,120
\$387,979	\$387,979	\$387,979	\$387,979	\$642,756 \$387,979	\$642,756 \$387,979	\$642,756 \$387,979	\$642,756 \$387,979	\$642,756 \$387,979		\$642,756 \$0	\$0 \$0	\$0 \$0				\$7,371,601
\$102,250	\$99,876	\$102,500	\$367,575	\$0	\$0	\$0,979 \$0	\$0¢,		<del></del>	\$0 \$0	\$0 \$0	\$0 \$0				\$1,222,106
\$2,523,154	\$2,520,780	\$2,286,042		\$2,148,804	\$1,065,473	\$1,065,473		<del>}</del>	<del></del>	\$642,756	\$0					\$42,353,498
	1,,	+-/	42,200,012	72,110,001	71,000,410	\$2,005,475	71,000,700	72,030,733		3042,730	70	70		70		
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												i 				
\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$32,426	\$291,668	\$1,069,892
\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$2,663,434	\$6,489,571
\$288,500	¢200 500	¢200 500	d=00 =00	4555	4-0	4	4			4	4		40	40		ĆE 770 000
\$483,165	\$288,500 \$483.165	\$288,500 \$483,165	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500	\$288,500		\$288,500	\$288,500	\$0	<del></del>			\$5,770,000 \$10,374,361
3403,103	3403,103	\$485,105	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$194,665	\$194,005	\$194,005		\$10,574,301
\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000	\$816,000		\$19,584,000
\$1,400,059	\$1,400,059	\$1,400,059		\$1,400,059	\$1,400,059	\$1,400,059	\$1,400,059			\$1,400,059		\$1,400,059				\$33,601,416
\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	\$448,563	<del> </del>	\$448,563	\$448,563	\$448,563	<del></del>			\$10,765,512
\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952	\$77,952		\$1,870,848
\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038			\$998,038	\$998,038	\$998,038	<del></del>	<del> </del>	<u>.                                    </u>	\$23,952,912
\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717		\$800,717		\$19,217,208
\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451		\$6,202,824
\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780			\$4,799,780		\$115,194,720
\$12,137,386	\$12,135,012	\$11,900.274	\$11 797 774	\$11 763 036	\$10 679 705	\$10,679,705	\$10.790.522	\$11 572 752	\$11 446 210	\$10,925,701	\$10 282 945	\$9 994 445	\$9 994 445	\$7,494,445		\$351,040,280
	,,	722,200,274	724,731,77	الا لا	710,013,103	710,013,103	710,190,333	7110,0,730	711,470,213	110,020,101	710,202,343	27,227,743	د بسهربدر در در	(C++1+C+1+1+1)		+332,0 10,200
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2022	::::::::::::::::::::::::::::::::::::::	2024	2025		S S ZUZ7	2028 2028	ZU29	######################################	S   2031.	2032		2U5#	2035 	 	2037=2055	
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,500,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$25,000,000
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$55,463,481
\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3,831,287	\$3 <u>,</u> 831,287	\$1,596,369	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$40,995,403
\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,880,484			\$0	\$0	\$0	\$0			\$18,615,087
\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,331,287	\$4,476,853	\$5,265,078	\$5,132,539	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000		\$140,073,971
								· · · · · · · · · · · · · · · · · · ·								
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$43,043,730
			· · · · · · · · · · · · · · · · · · ·												·	
\$0	\$0	\$0	\$0		\$0	\$0	\$0			\$0	\$0		\$0	\$0		\$2,119,653
\$237,362	\$237,362	\$0	\$0	\$0	\$0	\$0	\$0		\$0	\$0	. \$0		\$0	\$0		\$2,610,982
\$1,118,069	\$1,118,069	\$1,118,069		\$1,118,069	\$0	\$0	\$0			\$0	\$0			\$0		\$15,652,966
\$34,738 \$642,756	\$34,738 \$642,756	\$34,738	\$34,738	\$0	\$34,738	\$34,738	\$0		\$0	\$0	\$0			\$0 \$0		\$521,070 \$12,855,120
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\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$162,239	\$2,663,434	\$6,489,571
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\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$483,165	\$194,665	\$194,665	\$194,665		\$10,374,361
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\$998,038	\$998.038	\$998.038	\$998.038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038	\$998,038		\$23,952,912
\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717	\$800,717		\$19,217,208
\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451	\$258,451		\$6,202,824
\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780	\$4,799,780		\$4,799,780	\$4,799,780			\$4,799,780		\$4,799,780		\$4,799,780		\$115,194,720
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Sixty-third Legislative Assembly of North Dakota

### **SENATE BILL NO. 2233**

4-11-13

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new section to chapter 6-09.4a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, a new section to chapter 61-03, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, powers of the state water commission, and franchise protection rights of the western area water supply authority; to amend and reenact sections <del>57-51.1-07, 61-24.7-01, 61-24.7-05, and 61-40-06</del>61-40-01, 61-40-02, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River valley water supply project, the location of industrial water depots, and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; and to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

#### 20 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

21 SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created

22 and enacted as follows:



# Sixty-third Legislative Assembly

1	-	e. The overall economic impact of the project; and
2	_	f. The extent to which completion of the project will provide a benefit to the state or
3		to political subdivisions within the state:
4	<u>6.</u>	A loan made under this section must:
5		a. Bear interest at or below market rates or as otherwise specified in federal law;
6	-	b. Have a repayment term not longer than fifty years;
7	-	c. Be fully amortized no later than fifty years after project completion;
8		d. Be subject to repayment of principal and interest beginning not later than five
9		years after the facility financed with a loan has been completed; and
10	-	e. Be disbursed for specific project elements only after all applicable environmental
11		requirements have been met.
12	<u>- 7.</u>	The director of the public finance authority, with the approval of the industrial
13		commission, shall adopt rules to implement a program to identify and assist with
14		development of projects eligible for loans under this section.
15	<u>8.</u>	The director of the public finance authority may request the assistance of other
16		agencies of the state as may be necessary to the development of projects eligible for
17		loans under this section and as may be necessary for the administration of such
18		projects that have been certified by the industrial commission and such agencies of
19		the state are authorized and directed to provide such assistance.
20	<u>9.</u>	A loan may be made to a statutory or home rule charter city to finance projects for the
21		purposes described in this section without regard to whether the city is eligible for
22		financing under a federal act or program or state law. The loan must be repayable
23		under the terms and conditions provided in this section and established by the public
24		finance authority and agreed to by the city. The loan must be repaid by the city from
25		the proceeds of special assessments, tax increments, or other local taxes, such as
26		sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27		and beverage taxes, authorized to be used for purposes of the project.
28	-SEC	CTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
29	amended and reenacted as follows:	

SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

SECTION 3.

Declaration of policy.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

SECTION 4.

Legislative intent - Reports to legislative assembly.

The legislative assembly declares and establishes the following goals and objectives:

That it is necessary for the long-term welfare and economic well-being of the Souris
 River basin, and the entire state and its citizens, that the planning, design, and
 construction of the Mouse River enhanced flood control project be completed and
 implemented.

1 That the Red River valley water supply project is critical to provide a dependable water 2 supply for current and future generations in eastern North Dakota and is essential to 3 provide for the long termlong-term welfare, economic well-being, and quality of life for 4 the entire state. 5 That it is necessary for the long-term welfare and economic well-being of the 3. 6 Red River basin, and the entire state and its citizens, that the planning, design, and 7 construction of the Farqo-Moorhead diversion and flood control project be completed 8 and implemented. 9 That regional water supply and rural water systems are necessary to provide a 4. 10 dependable and adequate quantity and quality water supply for municipal, domestic, 11 rural, and industrial uses. 12 That the state water commission and the southwest water authority shall begin the 5. 13 process of reviewing capital repayment and revenues being returned to the resources 14 trust fund; payments necessary to meet obligations of existing bonds and other loans; 15 mill levies; ownership of land and associated facilities; existing construction 16 documents; liabilities; contracts with cities, bulk users, companies, and other users; 17 and other items, and shall report to the legislative assembly those steps necessary for 18 the transfer of ownership and responsibility of the southwest pipeline project from the 19 state water commission to the southwest water authority. 20 That the state water commission and the Garrison diversion conservancy district shall 6. 21 enter discussions with the bureau of reclamation concerning Garrison diversion unit 22 facilities. 23 That projects receiving state funds for construction and implementation not assert, 7. 24 claim, or seek to prevent other opportunities, either public or private, to utilize waters 25 of the Missouri River for industrial uses in this state. 26 That local water management and flood control projects are necessary for the 8. 27 economic well-being and quality of life of citizens in those local areas. 28 9. That irrigation development offers significant opportunities for agriculture in this state. 29 10. That an infrastructure loan fund for water development and management will provide 30 significant financial benefits to projects and the citizens of this state, and will provide 31 new capabilities to implement necessary water infrastructure projects across the state.

# 1 SECTION 5.

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# Mouse River enhanced flood control project.

- The legislative assembly declares its intent to provide state funding for a shareone-half
  of the non-federal nonfederal or local cost of constructing the federally approved
  national economic development alternative for the Mouse River enhanced flood
  control project.
- Any funds appropriated for the construction of the Mouse River enhanced flood control
  project may be carried over to future bienniums.
- 3. State funding for the Mouse River enhanced flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Mouse River enhanced flood control project.

#### SECTION 6.

# Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project.

#### SECTION 7.

# Southwest pipeline project - Report to legislative assembly.

The state water commission and the southwest water authority shall begin the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those steps necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.

#### **SECTION 8.**

#### Garrison diversion unit.

The Garrison diversion unit has extensive federal facilities that have been constructedincluding the Snake Creek pumping plant, the McClusky canal, recreation areas, and other
facilities. It is the intent of the legislative assembly that the state water commission and Garrison

SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

# Infrastructure revolving loan fund - Continuing appropriation - Rules.

- 1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- 2. The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the

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infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.

- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 11. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

State water commission to approve western area water supply authority water depot locations.

The state water commission must approve the planning, design, location, and construction of any western area water supply authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 12. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

# 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- 2 In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.

3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 13. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

## 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for one thirda
   share of the totalnonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-06. Oversight of authority projects.

The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the The authority shall present the overall plan and ongoing contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

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30 31 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for burposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the

authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaid until the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

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- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may.

- 1. Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way. as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district count that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- 4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or

- reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project; and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through the authority, except state-guaranteed loans, may not be acquired, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits,

- pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

## Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entitles must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - One-hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Relmburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial

water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.

- d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- e. Additional principal payment on state-guaranteed loans.
- f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial

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29 30 water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C.

1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Franchise protection.

Notwithstanding any other other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

**SECTION 23. REPEAL.** Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 25. REPORTS TO THE LEGISLATIME MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

13.0579.04018 Title. Prepared by the Legislative Council staff for Representative Hofstad

April 9, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "a new section to chapter 6-09.4" with "a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, a new section to chapter 61-03, and four new sections to chapter 61-40"
- Page 1, line 4, after the seventh "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits,"
- Page 1, line 5, after "fund" insert ", powers of the state water commission, and franchise protection rights of the western area water supply authority"
- Page 1, line 5, remove "57-51.1-07,"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund," with "relating to"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis."

Page 5, line 13, replace "long term" with "long-term"

Page 5, line 15, replace "long term" with "long-term"

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 15, replace "state funding for a share" with "one-half"

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, line 16, after "the" insert "federally approved national economic development alternative for the"

Page 6, after line 23, insert:

"SECTION 6.

# Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project."

Page 7, line 5, remove the underscored comma

Page 7, remove line 6

Page 7, line 7, remove "facilities"

Page 7, line 12, after "The" insert "sixty-third"

Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"

Page 7, line 12, replace "a share" with "one-half"

Page 7, line 13, replace "the" with "a federally authorized"

Page 7, after line 18, insert:

"SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

#### Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance.

- with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - b. The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 11. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

State water commission to approve western area water supply authority water depot locations.

The state water commission must approve the planning, design, location, and construction of any western area water supply authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act."

Page 8, remove lines 21 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural

resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-04. Board of directors - Officers - Meetings.

 The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.

- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter

- must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.

- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Additional debt that requires repayment through the authority, except state-guaranteed loans, may not be acquired, unless an unforeseen circumstance or hardship arises and then only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
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  - One-hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - <u>b.</u> Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - e. Additional principal payment on state-guaranteed loans.
  - f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.

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and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

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## Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil development industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

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Notwithstanding any other other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 4, insert:

"SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

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Renumber accordingly

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SENATE BILL NO. 2233

4-11-13

of North Dakota Introduced by

Legislative Assembly

Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new section to chapter 6-09.4, a new section to chapter 61-03, a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fundpowers of the state water commission, and franchise protection rights of the western area water supply authority; to amend and reenact sections <del>57-51,1-07, 61-24,7-01, 61-24,7-05, and 61-40-06</del>61-40-01, 61-40-02, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River valley water supply project, the location of industrial water depots, and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; and to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

#### 20 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

21 SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created

22 and enacted as follows:

1	Infr	astructure revolving loan fund - Continuing appropriation - Rules.
2	1.	The purpose of the infrastructure revolving loan fund is to provide loans for public
3		water-related infrastructure projects, including those for water supply, flood protection,
4		or other water project development.
5	2.	An infrastructure revolving loan fund is established to make loans for the purposes
6		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
7		for making loans in accordance with this section. Accounts may be established in the
8		fund as necessary for its management and administration.
9	<u>3.</u>	The public finance authority shall manage and administer the infrastructure revolving
10		loan fund and individual accounts in the fund. For those purposes, the authority may
11		exercise all powers provided in this chapter.
12	4.	An applicant for a loan must submit an application to the Bank of North Dakota on
13		forms prescribed by the Bank. The applicant must provide the following information:
14		a. The estimated cost of the project and the amount of the loan sought;
15		b. Other possible sources of funding in addition to loans sought from the
16		infrastructure revolving loan fund;
17		c. The proposed methods and sources of funds to be used for repayment of loans
18		received; and
19	_	d. Information showing the financial status and ability of the borrower to repay
20		<del>loans.</del>
21		Each project must be certified by the industrial commission under subsection 5 before
22		its consideration by the public finance authority.
23	<u>5.</u>	The industrial commission shall consider the following information when evaluating
24		projects to certify to the public finance authority:
25		a. A description of the nature and purpose of the proposed infrastructure project
26		including an explanation of the need for the project and the reasons why it is in
27		the public interest;
28		<ul> <li>b. The estimated cost of the project and the amount of loan sought;</li> </ul>
29		c. Proposed sources of funding, in addition to loans sought from the infrastructure
30		revolving loan fund;
31		d. The need for the project as part of the overall infrastructure system:

# Sixty-third Legislative Assembly

1	e. The overall economic impact of the project; and
2	f. The extent to which completion of the project will provide a benefit to the state of
3	to political subdivisions within the state.
4	6. A loan made under this section must:
5	a. Bear interest at or below market rates or as otherwise specified in federal law;
6	<ul> <li>b. Have a repayment term not longer than fifty years;</li> </ul>
7	c. Be fully amortized no later than fifty years after project completion;
8	d. Be subject to repayment of principal and interest beginning not later than five
9	years after the facility financed with a loan-has been completed; and
10	<ul> <li><u>a.</u> Be disbursed for specific project elements only after all applicable environmenta</li> </ul>
11	requirements have been met.
12	7. The director of the public finance authority, with the approval of the industrial
13	commission, shall adopt rules to implement a program to identify and assist with
14	development of projects eligible for loans under this section.
15	8. The director of the public finance authority may request the assistance of other
16	agencies of the state as may be necessary to the development of projects eligible for
17	loans under this section and as may be necessary for the administration of such
18	projects that have been certified by the industrial commission and such agencies of
19	the state are authorized and directed to provide such assistance.
20	9. A loan may be made to a statutory or home rule charter city to finance projects for the
21	purposes described in this section without regard to whether the city is eligible for
22	financing under a federal act or program or state law. The loan must be repayable
23	under the terms and conditions provided in this section and established by the public
24	finance authority and agreed to by the city. The loan must be repaid by the city from
25	the proceeds of special assessments, tax increments, or other local taxes, such as
26	sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27	and beverage taxes, authorized to be used for purposes of the project.
28	SECTION 2. AMENDMENT, Section 57-51.1-07 of the North Dakota Century Code is
29	nended and reenacted as follows:

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57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

- 1. Twenty Eighteen percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water related projects, including rural water systems. These water related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
  - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- 2. Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
- 4.5. Thirty percent must be allocated and credited to the state's general fund.

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	SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Da	akota
Ce	Century Code is created and enacted as follows:	

The industrial commission with respect to approving or setting water rates under chapter 61-40.

SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

# Declaration of policy.

SECTION 3.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

#### SECTION 4.

# Legislative intent - Reports to legislative assembly.

The legislative assembly declares and establishes the following goals and objectives:

1. That it is necessary for the long-term welfare and economic well-being of the Souris River basin, and the entire state and its citizens, that the planning, design, and construction of the Mouse River enhanced flood control project be completed and implemented.

1 That the Red River valley water supply project is critical to provide a dependable water 2 supply for current and future generations in eastern North Dakota and is essential to 3 provide for the long termlong-term welfare, economic well-being, and quality of life for 4 the entire state. 5 3. That it is necessary for the long termlong-term welfare and economic well-being of the 6 Red River basin, and the entire state and its citizens, that the planning, design, and 7 construction of the Fargo-Moorhead diversion and flood control project be completed 8 and implemented. 9 That regional water supply and rural water systems are necessary to provide a 10 dependable and adequate quantity and quality water supply for municipal, domestic, 11 rural, and industrial uses. 12 5. That the state water commission and the southwest water authority shall begin the 13 process of reviewing capital repayment and revenues being returned to the resources 14 trust fund; payments necessary to meet obligations of existing bonds and other loans; 15 mill levies; ownership of land and associated facilities; existing construction 16 documents; liabilities; contracts with cities, bulk users, companies, and other users; 17 and other items, and shall report to the legislative assembly those steps necessary for 18 the transfer of ownership and responsibility of the southwest pipeline project from the 19 state water commission to the southwest water authority. 20 6. That the state water commission and the Garrison diversion conservancy district shall 21 enter discussions with the bureau of reclamation concerning Garrison diversion unit 22 facilities. 23 7. That projects receiving state funds for construction and implementation not assert, 24 claim, or seek to prevent other opportunities, either public or private, to utilize waters 25 of the Missouri River for industrial uses in this state. 26 8. That local water management and flood control projects are necessary for the 27 economic well-being and quality of life of citizens in those local areas. 28 9. That irrigation development offers significant opportunities for agriculture in this state. That an infrastructure loan fund for water development and management will provide 29 10. 30 significant financial benefits to projects and the citizens of this state, and will provide 31 new capabilities to implement necessary water infrastructure projects across the state.

# 1 SECTION 5.

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# Mouse River enhanced flood control project.

- The legislative assembly declares its intent to provide state funding for a shareone-half
  of the non-federal nonfederal or local cost of constructing the federally approved
  national economic development alternative for the Mouse River enhanced flood
  control project.
- Any funds appropriated for the construction of the Mouse River enhanced flood control
  project may be carried over to future bienniums.
- 3. State funding for the Mouse River enhanced flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Mouse River enhanced flood control project.

#### SECTION 6.

# Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project.

#### SECTION 7.

# Southwest pipeline project - Report to legislative assembly.

The state water commission and the southwest water authority shall begin the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those steps necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.

#### SECTION 8.

#### Garrison diversion unit.

The Garrison diversion unit has extensive federal facilities that have been constructed. 
including the Snake Creek pumping plant, the McClusky canal, recreation areas, and other facilities. It is the intent of the legislative assembly that the state water commission and Garrison

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1 diversion conservancy district begin discussions with the bureau of reclamation concerning the 2 Garrison diversion unit facilities. 3 SECTION 9. 4 Fargo-Moorhead flood control project. 5 The sixty-third legislative assembly declares its intent to provide state funding not to 6 exceed four hundred fifty million dollars for a-shareone-half of the nonfederal or local 7 cost of constructing thea federally authorized Fargo-Moorhead flood control project. 8 Nothwithstanding any other law, any funds appropriated for the construction of the 2. 9 Fargo-Moorhead flood control project may be carried over to future bienniums. State funding for the Fargo-Moorhead flood control project may be appropriated at the 10 3. 11 time and in the manner determined by the legislative assembly, either concurrently or 12 separately from federal and local funding for the Fargo-Moorhead flood control project. 13 SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created 14 and enacted as follows: 15 Infrastructure revolving loan fund - Continuing appropriation - Rules. 16 An infrastructure revolving loan fund is established on January 1, 2015, within the 17 resources trust fund to provide loans for water supply, flood protection, or other water 18 development and water management projects. Ten percent of oil extraction moneys 19 deposited in the resources trust fund are made available on a continuing basis for 20 making loans in accordance with this section. Accounts may be established in the 21 resources trust fund as necessary for its management and administration. 22 The commission shall consider the following information when evaluating projects: 23 A description of the nature and purposes of the proposed infrastructure project, 24 including an explanation of the need for the project, the reasons why it is in the 25 public interest, and the overall economic impact of the project. 26 The estimated cost of the project and the amount of the loan sought and other 27 proposed sources of funding. 28 The extent to which completion of the project will provide a benefit to the state or 29 regions within the state.

and the Bank of North Dakota shall manage and administer loans from the

The commission shall approve projects and loans from the infrastructure loan fund,

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infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.

- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 11. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

## 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- In furtherance of the public purpose set forth in subsection 1, the state water 2. commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
- 3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.
- SECTION 12. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

# 1 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for one-thirda
   share of the total nonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-06. Oversight of authority projects.

The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the The authority shall present the overall plan and ongoing contract plans and specifications for the project to the state water commission for approval. The atterney general shall assist the authority at the request of the state water commission. If the twenty five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that officer areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection



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of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

**SECTION 14. AMENDMENT.** Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the

authority or fail or refuse to pay any water sale income to the authority if the twenty five million dellar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-04. Board of directors - Officers - Meetings.

- 1. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- 5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

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SECTION 16. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- Accept funds, property, services, pledges of security, or other assistance, financial or 3. otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local

- cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- 4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others
  within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- 9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.

- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 18 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.

- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 17. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.
  Participating member entities must transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority must immediately apply all revenues each month in the following order:
  - a. One-hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the

- year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
- d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- e. Additional principal payment on state-guaranteed loans.
- f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- The state water commission must approve the planning, location, and water supply
  contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales
  for oil and gas exploration and production after the effective date of this Act.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority

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water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production. SECTION 20. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

on project funding first is reserved for state-guaranteed loan payments if not met by industrial

61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 17 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

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Franchise protection.

Notwithstanding any other other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

SECTION 22. REPEAL. Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 23. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 24. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

Sixty third Legislative Assembly of North Dakota

### **SENATE BILL NO. 2233**

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new section to chapter 6-09.4 new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund and franchise protection rights of the western area water supply authority; to amend and reenact sections 57 51.1 07, 61 24.7-01, 61-24.7 05, and 61 40 0661-40-01, 61-40-02, 61-40-03, 61 40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River valley water supply project, the location of industrial water depots, and oversight of the western area water supply project; to repeal sections 61-24.7 02, 61 24.7 03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; and to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

# 20 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

— SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

1		astructure revolving loan runu - Continuing appropriation - Rules.
2		The purpose of the infrastructure revolving loan fund is to provide loans for public
3		water related infrastructure projects, including those for water supply, flood protection,
4		or other water project development.
5		An infrastructure revolving loan fund is established to make loans for the purposes
6		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
7		for making loans in accordance with this section. Accounts may be established in the
8		fund as necessary for its management and administration.
9	<u> 3.</u>	The public finance authority shall manage and administer the infrastructure revolving
10		loan fund and individual accounts in the fund. For those purposes, the authority may
11		exercise all powers provided in this chapter.
12	<u>4.</u>	An applicant for a loan must submit an application to the Bank of North Dakota on
13		forms prescribed by the Bank. The applicant must provide the following information:
14		a. The estimated cost of the project and the amount of the loan sought;
15	-	b. Other possible sources of funding in addition to loans sought from the
16		infrastructure revolving loan fund:
17		c. The proposed methods and sources of funds to be used for repayment of loans
18		received; and
19	-	d. Information showing the financial status and ability of the borrower to repay
20		<del>loans.</del>
21		Each project must be certified by the industrial commission under subsection 5 before
22		its consideration by the public finance authority.
23	<u>— 5.</u>	The industrial commission shall consider the following information when evaluating
24		projects to certify to the public finance authority:
25	-	a. A description of the nature and purpose of the proposed infrastructure project
26		including an explanation of the need for the project and the reasons why it is in
27		the public interest:
28		b. The estimated cost of the project and the amount of loan sought:
29	*	c. Proposed sources of funding, in addition to loans sought from the infrastructure
30		revolving loan fund;
31		d. The need for the project as part of the overall infrastructure system;

1	-	e. The overall economic impact of the project; and
2		f. The extent to which completion of the project will provide a benefit to the state or
3		to political subdivisions within the state.
4	<u>6.</u>	A loan made under this section must:
5		a. Bear interest at or below market rates or as otherwise specified in federal law;
6		b. Have a repayment term not longer than fifty years:
7		e. Be fully amortized no later than fifty years after project completion;
8		d. Be subject to repayment of principal and interest beginning not later than five
9		years after the facility financed with a loan has been completed; and
10		e. Be disbursed for specific project elements only after all applicable environmental
11		requirements have been met.
12	<u>-7.</u>	The director of the public finance authority, with the approval of the industrial
13		commission, shall adopt rules to implement a program to identify and assist with
14		development of projects eligible for loans under this section.
15	<u>8.</u>	The director of the public finance authority may request the assistance of other
16		agencies of the state as may be necessary to the development of projects eligible for
17		loans under this section and as may be necessary for the administration of such
18		projects that have been certified by the industrial commission and such agencies of
19		the state are authorized and directed to provide such assistance:
20	<u>9.</u>	A loan may be made to a statutory or home rule charter city to finance projects for the
21		purposes described in this section without regard to whether the city is eligible for
22		financing under a federal act or program or state law. The loan must be repayable
23		under the terms and conditions provided in this section and established by the public
24		finance authority and agreed to by the city. The loan must be repaid by the city from
25		the proceeds of special assessments, tax increments, or other local taxes, such as
26		sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27		and beverage taxes, authorized to be used for purposes of the project.
28	-SE	CTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
29	amende	ed and reenacted as follows:

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57-51.1-07. Allocation of moneys in oil extraction tax development fund.

— Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

- Twenty Eighteen percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water related projects, including rural water systems. These water related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- 2. Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
- 4.5. Thirty percent must be allocated and credited to the state's general fund.

SECTION 1. A new subdivision to subsection 2 of section 28 32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

SECTION 3.

### Declaration of policy.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

#### SECTION 4.

# Legislative intent - Reports to legislative assembly.

- The legislative assembly declares and establishes the following goals and objectives:
- That it is necessary for the long-term welfare and economic well-being of the Souris River basin, and the entire state and its citizens, that the planning, design, and construction of the Mouse River enhanced flood control project be completed and implemented.

1 That the Red River valley water supply project is critical to provide a dependable water 2 supply for current and future generations in eastern North Dakota and is essential to 3 provide for the long termlong-term welfare, economic well-being, and quality of life for 4 the entire state. 5 That it is necessary for the long termlong-term welfare and economic well-being of the 3. 6 Red River basin, and the entire state and its citizens, that the planning, design, and 7 construction of the Fargo-Moorhead diversion and flood control project be completed 8 and implemented. 9 That regional water supply and rural water systems are necessary to provide a 4. 10 dependable and adequate quantity and quality water supply for municipal, domestic, 11 rural, and industrial uses. 12 5. That the state water commission and the southwest water authority shall begin the 13 process of reviewing capital repayment and revenues being returned to the resources 14 trust fund; payments necessary to meet obligations of existing bonds and other loans; 15 mill levies; ownership of land and associated facilities; existing construction 16 documents; liabilities; contracts with cities, bulk users, companies, and other users; 17 and other items, and shall report to the legislative assembly those steps necessary for 18 the transfer of ownership and responsibility of the southwest pipeline project from the 19 state water commission to the southwest water authority. 20 6. That the state water commission and the Garrison diversion conservancy district shall 21 enter discussions with the bureau of reclamation concerning Garrison diversion unit 22 facilities. 23 That projects receiving state funds for construction and implementation not assert, 24 claim, or seek to prevent other opportunities, either public or private, to utilize waters 25 of the Missouri River for industrial uses in this state. 26 That local water management and flood control projects are necessary for the 8. 27 economic well-being and quality of life of citizens in those local areas. 28 That irrigation development offers significant opportunities for agriculture in this state. 9. 29 That an infrastructure loan fund for water development and management will provide 10. 30 significant financial benefits to projects and the citizens of this state, and will provide

new capabilities to implement necessary water infrastructure projects across the state.

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#### Legislative Assembly 1 SECTION 5. 2 Mouse River enhanced flood control project. 3 The legislative assembly declares its intent to provide state funding for a share one-half 1. 4 of the non-federal or local cost of constructing the federally approved national economic development alternative for the Mouse River enhanced flood 5 6 control project. 7 Any funds appropriated for the construction of the Mouse River enhanced flood control 2. 8 project may be carried over to future bienniums. 9 3. State funding for the Mouse River enhanced flood control project may be appropriated 10 at the time and in the manner determined by the legislative assembly, either 11 concurrently or separately from federal and local funding for the Mouse River 12 enhanced flood control project. 13 SECTION 6. 14 Lower Heart River, Morton County, enhanced flood control project. 15 The legislative assembly declares its intent to provide state funding for fifty percent of the 16 nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood 17 control project. 18 SECTION 7. 19 Southwest pipeline project - Report to legislative assembly. 20 The state water commission and the southwest water authority shall begin the process of 21 reviewing capital repayment and revenues being returned to the resources trust fund; payments 22 necessary to meet obligations of existing bonds and other loans; ownership of land and 23 associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those 24 25 steps necessary for the transfer of ownership and responsibility of the southwest pipeline 26 project from the state water commission to the southwest water authority. 27 SECTION 8. 28 Garrison diversion unit. 29 The Garrison diversion unit has extensive federal facilities that have been constructed.

including the Snake Creek pumping plant, the McClusky canal, recreation areas, and other facilities. It is the intent of the legislative assembly that the state water commission and Garrison

1	diversion conservancy district begin discussions with the bureau of reclamation concerning the							
2	Garrison diversion unit facilities.							
3	SECTION 9.							
4	Fargo-Moorhead flood control project.							
5	1.	The sixty-third legislative assembly declares its intent to provide state funding not to						
6		exceed four hundred fifty million dollars for a share one-half of the nonfederal or local						
7		cost of constructing the federally authorized Fargo-Moorhead flood control project.						
8	2.	Notwithstanding any other law, any funds appropriated for the construction of the						
9		Fargo-Moorhead flood control project may be carried over to future bienniums.						
10	<u>3.</u>	State funding for the Fargo-Moorhead flood control project may be appropriated at the						
11		time and in the manner determined by the legislative assembly, either concurrently or						
12		separately from federal and local funding for the Fargo-Moorhead flood control project						
13	SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created							
14	and ena	acted as follows:						
15	Infrastructure revolving loan fund - Continuing appropriation - Rules.							
16	1.	An infrastructure revolving loan fund is established on January 1, 2015, within the						
17		resources trust fund to provide loans for water supply, flood protection, or other water						
18	000	development and water management projects. Ten percent of oil extraction moneys						
19	1700	deposited in the resources trust fund are made available on a continuing basis for						
20		making loans in accordance with this section. Accounts may be established in the						
21		resources trust fund as necessary for its management and administration.						
22	2.	The commission shall consider the following information when evaluating projects:						
23	115116000	a. A description of the nature and purposes of the proposed infrastructure project,						
24		including an explanation of the need for the project, the reasons why it is in the						
25		public interest, and the overall economic impact of the project.						
26		b. The estimated cost of the project and the amount of the loan sought and other						
27		proposed sources of funding.						
28		c. The extent to which completion of the project will provide a benefit to the state or						
29		regions within the state.						
30	3.	The commission shall approve projects and loans from the infrastructure loan fund.						
31		and the Bank of North Dakota shall manage and administer loans from the						

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infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund. Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 11. AMENDMENT. Section 61 24.7 01 of the North Dakota Century Code is amended and reenacted as follows:

# 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a ene-third share of the cost of constructing the Red River valley water supply project.
- 2 In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61 02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
- This chapter does not affect the state water commission's authority to otherwise issue 3. bonds pursuant to chapter 61-02 or section 61-24.3-01.
- SECTION 12. AMENDMENT. Section 61 24.7 05 of the North Dakota Century Code is amended and reenacted as follows:

### Sixty-third Legislative Assembly 1 61-24.7-05. State funding plan. 2 The legislative assembly declares its intent to provide state funding for ene-thirda 3 share of the totalnonfederal or local cost of constructing the Red River valley water 4 supply project. 5 2. Any general funds appropriated for the construction of the Red River valley water 6 supply project may be carried over to future bienniums. 7 3. State funding for the Red River valley water supply project may be appropriated at the 8 time and in the manner determined by the legislative assembly, either concurrently or 9 separately from federal and local funding for the Red River valley water supply project. 10 SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is 11 amended and reenacted as follows: 12 61-40-06. Oversight of authority projects. The authority shall comply with the policypolicies of the state water commission as the 13 14 15

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The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and dobt repayment, the <u>The</u> authority shall present the overall plan and <u>engoing</u> contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection

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of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

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SECTION 14. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the

 authority or fail or refuse to pay any water sale income to the authority if the twenty five million dellar zero interest loan from the state water commission has not been repaid until the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

# 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

**SECTION 16. AMENDMENT.** Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

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29 30 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

Sue and be sued in the name of the authority.

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- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the nextregular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority

- and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection.

for industrial water sales for oil and g	as explo	ration and	produ	ction may	be acquired
by the authority or member entities or	nly upon	approval b	y the	industnal	commission
and the emergency commission.					

- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 18. A new section to chapter 61 40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.
  Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - a. One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - e. Additional principal payment on state-guaranteed loans.
  - f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed

loans for establishment of reserve funds for operation and maintenance or debt service are waived.

3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 19. A new section to chapter 61 40 of the North Dakota Century Code is created and enacted as follows:

# Water rates.

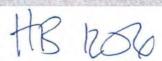
The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61 40 of the North Dakota Century Code is created and enacted as follows:

# Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:



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#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 22. A new section to chapter 61 40 of the North Dakota Century Code is created and enacted as follows:

Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

**SECTION 23. REPEAL.** Sections 61-24.7 02, 61 24.7 03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water related sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

13.0579.04023 Title. Prepared by the Legislative Council staff for Representative Hofstad April 22, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

Page 1, line 5, after "sections" insert "54-35-02.7,"

Page 1, line 6, after the second comma insert "relating to jurisdiction of the water-related topics overview committee,"

Page 3, after line 16, insert:

"SECTION 2. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. (Effective through November 30, 2013) Water-related topics overview committee - Duties.

The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters, the Garrison diversion project, and for any necessary discussions with adjacent states on water-related topics. During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee shall work collaboratively with the state water commission to develop policies to further define the state role in major flood control projects and in the prioritization of water projects. During the 2013-14 interim, the committee shall review water supply routes and alternatives for the Red River valley water supply project. The committee consists of thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

(Effective after November 30, 2013) Garrison diversion overview. The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water related topics."

Renumber accordingly

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "new section to chapter 6-09.4" with "new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits,"
- Page 1, line 5, after "fund" insert ", and franchise protection rights of the western area water supply authority"
- Page 1, line 5, remove "57-51.1-07,"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund," with "relating to"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis."

Page 5, line 13, replace "long term" with "long-term"

Page 5, line 15, replace "long term" with "long-term"

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 15, replace "state funding for a share" with "one-half"

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, line 16, after "the" insert "federally approved national economic development alternative for the"

Page 6, after line 23, insert:

#### "SECTION 6.

# Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project."

Page 7, line 5, remove the underscored comma

Page 7, remove line 6

Page 7, line 7, remove "facilities"

Page 7, line 12, after "The" insert "sixty-third"

Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"

Page 7, line 12, replace "a share" with "one-half"

Page 7, line 13, replace "the" with "a federally authorized"

Page 7, after line 18, insert:

"SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

# Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance.

- with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - <u>b.</u> The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, remove lines 20 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water

supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 14. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dellar zero interest loan from the state water commission has not been repaid until the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.

3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

**SECTION 17. AMENDMENT.** Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

Sue and be sued in the name of the authority.

- 2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for

- payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.</u>
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical,

and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.

- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

# Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.

- e. Additional principal payment on state-guaranteed loans.
- f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- 3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the

budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority. subject to approval of the plan by the budget section.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 5, insert:

"SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Sixty-third Legislative Assembly of North Dakota

### SENATE BILL NO. 2233

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new section to chapter 6-09.4 new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, and franchise protection rights of the western area water supply authority; to amend and reenact sections 57-51.1-07, 61-24.7-01, 61-24.7-05, and 61-40-0661-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River valley water supply project, the location of industrial water depots, and eversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; and to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

21 SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

1	Infr	rastructure revolving loan fund - Continuing appropriation - Rules.
2	1.	The purpose of the infrastructure revolving loan fund is to provide loans for public
3		water-related infrastructure projects, including those for water supply, flood protection,
4		or other water project development.
5	2.	An infrastructure revolving loan fund is established to make loans for the purposes
6		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
7		for making loans in accordance with this section. Accounts may be established in the
8		fund as necessary for its management and administration.
9	3.	The public finance authority shall manage and administer the infrastructure revolving
10		loan fund and individual accounts in the fund. For those purposes, the authority may
11		exercise all powers provided in this chapter.
12	4.	An applicant for a loan must submit an application to the Bank of North Dakota on
13		forms prescribed by the Bank. The applicant must provide the following information:
14		a. The estimated cost of the project and the amount of the loan sought:
15		b. Other possible sources of funding in addition to loans sought from the
16		infrastructure revolving loan fund;
17 -		<u>c.</u> The proposed methods and sources of funds to be used for repayment of loans
18		received; and
19 -		d. Information showing the financial status and ability of the borrower to repay
20		loans.
21		Each project must be certified by the industrial commission under subsection 5 before
22		its consideration by the public finance authority.
23 -	<u>5.</u>	The industrial commission shall consider the following information when evaluating
24		projects to certify to the public finance authority:
25		a. A description of the nature and purpose of the proposed infrastructure project
26		including an explanation of the need for the project and the reasons why it is in
27		the public interest;
28 -		b. The estimated cost of the project and the amount of loan sought;
29 -		c. Proposed sources of funding, in addition to loans sought from the infrastructure
30		revolving loan fund;
31 -		d. The need for the project as part of the overall infrastructure system:

# Sixty-third Legislative Assembly

1		e. The overall economic impact of the project; and
2		f. The extent to which completion of the project will provide a benefit to the state or
3		to political subdivisions within the state.
4	<u>-6.</u>	A loan made under this section must:
5	-	a. Bear interest at or below market rates or as otherwise specified in federal law;
6		b. Have a repayment term not longer than fifty years;
7		c. Be fully amortized no later than fifty years after project completion;
8	_	d. Be subject to repayment of principal and interest beginning not later than five
9		years after the facility financed with a loan has been completed; and
10	-	e. Be disbursed for specific project elements only after all applicable environmental
11		requirements have been met.
12	<del>7.</del>	The director of the public finance authority, with the approval of the industrial
13		commission, shall adopt rules to implement a program to identify and assist with
14		development of projects eligible for loans under this section.
15	<u>8.</u>	The director of the public finance authority may request the assistance of other
16		agencies of the state as may be necessary to the development of projects eligible for
17		loans under this section and as may be necessary for the administration of such
18		projects that have been certified by the industrial commission and such agencies of
19		the state are authorized and directed to provide such assistance.
20	<u>9.</u>	A loan may be made to a statutory or home rule charter city to finance projects for the
21		purposes described in this section without regard to whether the city is eligible for
22		financing under a federal act or program or state law. The loan must be repayable
23		under the terms and conditions provided in this section and established by the public
24		finance authority and agreed to by the city. The loan must be repaid by the city from
25		the proceeds of special assessments, tax increments, or other local taxes, such as
26		sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27		and beverage taxes, authorized to be used for purposes of the project.
28	-SEC	CTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
29	amende	d and reenacted as follows:

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57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

- 1. Twenty Eighteen percent must be allocated and credited to the sinking fund established for payment of the state of North-Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water related projects must be these which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
- 4.5. Thirty percent must be allocated and credited to the state's general fund.

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SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

> The industrial commission with respect to approving or setting water rates under chapter 61-40.

SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

# Declaration of policy.

SECTION 3.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

### SECTION 4.

## Legislative intent - Reports to legislative assembly.

The legislative assembly declares and establishes the following goals and objectives:

That it is necessary for the long-term welfare and economic well-being of the Souris River basin, and the entire state and its citizens, that the planning, design, and construction of the Mouse River enhanced flood control project be completed and implemented.

1	2.	That the Red River valley water supply project is critical to provide a dependable water
2		supply for current and future generations in eastern North Dakota and is essential to
3		provide for the long-termlong-term welfare, economic well-being, and quality of life for
4		the entire state.
5	3.	That it is necessary for the long termlong-term welfare and economic well-being of the
6		Red River basin, and the entire state and its citizens, that the planning, design, and
7		construction of the Fargo-Moorhead diversion and flood control project be completed
8		and implemented.
9	4.	That regional water supply and rural water systems are necessary to provide a
10		dependable and adequate quantity and quality water supply for municipal, domestic,
11		rural, and industrial uses.
12	<u>5.</u>	That the state water commission and the southwest water authority shall begin the
13		process of reviewing capital repayment and revenues being returned to the resources
14		trust fund; payments necessary to meet obligations of existing bonds and other loans;
15		mill levies; ownership of land and associated facilities; existing construction
16		documents; liabilities; contracts with cities, bulk users, companies, and other users;
17		and other items, and shall report to the legislative assembly those steps necessary for
18		the transfer of ownership and responsibility of the southwest pipeline project from the
19		state water commission to the southwest water authority.
20	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall
21		enter discussions with the bureau of reclamation concerning Garrison diversion unit
22		facilities.
23	7.	That projects receiving state funds for construction and implementation not assert,
24		claim, or seek to prevent other opportunities, either public or private, to utilize waters
25		of the Missouri River for industrial uses in this state.
26	8.	That local water management and flood control projects are necessary for the
27		economic well-being and quality of life of citizens in those local areas.
28	9.	That irrigation development offers significant opportunities for agriculture in this state.
29	10.	That an infrastructure loan fund for water development and management will provide
30		significant financial benefits to projects and the citizens of this state, and will provide
31		new capabilities to implement necessary water infrastructure projects across the state.

	Legislative Assembly
1	SECTION 5.
2	Mouse River enhanced flood control project.
3	1. The legislative assembly declares its intent to provide state funding for a share one-ha
4	of the non-federal nonfederal or local cost of constructing the federally approved
5	national economic development alternative for the Mouse River enhanced flood
6	control project.
7	2. Any funds appropriated for the construction of the Mouse River enhanced flood control
8	project may be carried over to future bienniums.
9	3. State funding for the Mouse River enhanced flood control project may be appropriate
10	at the time and in the manner determined by the legislative assembly, either
11	concurrently or separately from federal and local funding for the Mouse River
12	enhanced flood control project.
13	SECTION 6.
14	Lower Heart River, Morton County, enhanced flood control project.
15	The legislative assembly declares its intent to provide state funding for fifty percent of the
16	nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood
17	control project.
18	SECTION 7.
19	Southwest pipeline project - Report to legislative assembly.
20	The state water commission and the southwest water authority shall begin the process of
21	reviewing capital repayment and revenues being returned to the resources trust fund; payments
22	necessary to meet obligations of existing bonds and other loans; ownership of land and
23	associated facilities; existing construction documents; liabilities; contracts with cities, bulk users
24	companies, and other users; and other items, and shall report to the legislative assembly those
25	steps necessary for the transfer of ownership and responsibility of the southwest pipeline
26	project from the state water commission to the southwest water authority.
27	SECTION 8.
28	Garrison diversion unit.
29	The Garrison diversion unit has extensive federal facilities that have been constructed,
30	including the Snake Creek numning plant, the McClusky canal, recreation areas, and other

facilities. It is the intent of the legislative assembly that the state water commission and Garrison

diversion conservancy district begin discussions with the bureau of reclamation concerning the 2 Garrison diversion unit facilities. 3 SECTION 9. 4 Fargo-Moorhead flood control project. 5 The sixty-third legislative assembly declares its intent to provide state funding not to 6 exceed four hundred fifty million dollars for a share one-half of the nonfederal or local 7 cost of constructing thea federally authorized Fargo-Moorhead flood control project. 8 Notwithstanding any other law, any funds appropriated for the construction of the 2. 9 Fargo-Moorhead flood control project may be carried over to future bienniums. 10 3. State funding for the Fargo-Moorhead flood control project may be appropriated at the 11 time and in the manner determined by the legislative assembly, either concurrently or 12 separately from federal and local funding for the Fargo-Moorhead flood control project. 13 SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created 14 and enacted as follows: 15 Infrastructure revolving loan fund - Continuing appropriation - Rules. 16 An infrastructure revolving loan fund is established on January 1, 2015, within the 17 resources trust fund to provide loans for water supply, flood protection, or other water 18 development and water management projects. Ten percent of oil extraction moneys 19 deposited in the resources trust fund are made available on a continuing basis for 20 making loans in accordance with this section. Accounts may be established in the 21 resources trust fund as necessary for its management and administration. 22 The commission shall consider the following information when evaluating projects: 23 A description of the nature and purposes of the proposed infrastructure project, 24 including an explanation of the need for the project, the reasons why it is in the 25 public interest, and the overall economic impact of the project. 26 The estimated cost of the project and the amount of the loan sought and other 27 proposed sources of funding. 28 The extent to which completion of the project will provide a benefit to the state or 29 regions within the state. 30 The commission shall approve projects and loans from the infrastructure loan fund,

and the Bank of North Dakota shall manage and administer loans from the

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27 28 infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.

- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 11. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

### 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a ene-third share of the cost of constructing the Red River valley water supply project.
- In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
- This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section-61-24.3-01.
- SECTION 12. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

### 1 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for one-thirda
   share of the total nonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-06. Oversight of authority projects.

The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the The authority shall present the overall plan and ongoing contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection

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of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

**SECTION 14. AMENDMENT.** Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the

 authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

**SECTION 15. AMENDMENT.** Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

**SECTION 16. AMENDMENT.** Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

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29 30 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

Sue and be sued in the name of the authority.

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- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way. as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority

- and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection.

- for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

**SECTION 18.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.

  Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - a. One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - e. Additional principal payment on state-guaranteed loans.
  - f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed

loans for establishment of reserve funds for operation and maintenance or debt service are waived.

3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure, managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Construction funding.

amended and reenacted as follows:

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is

### 61-40-09. Default.

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obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

If the authority is in default in the payment of the principal of or interest on any of the

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

**SECTION 23. REPEAL.** Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assemble
hat after all loans to the state of North Dakota and contractual responsibilities to participating
nembers are fulfilled, that any revenues generated by industrial water related sales for oil an
gas exploration and production be prioritized for use for infrastructure development in oil and
pas-impacted areas of the state.

SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.



13.0579.04021 Title.

### Prepared by the Legislative Council staff for Senator Hogue

April 19, 2013

### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

That the House recede from its amendments as printed on pages 1482-1491 of the Senate Journal and pages 1572-1581 of the House Journal and that Senate Bill No. 2233 be amended as follows:

- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "new section to chapter 6-09.4" with "new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits."
- Page 1, line 5, after "fund" insert ", and franchise protection rights of the western area water supply authority"
- Page 1, line 5, remove "57-51.1-07,"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund," with "relating to"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 17 with:

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis."

Page 5, line 13, replace "long term" with "long-term"

Page 5, line 15, replace "long term" with "long-term"

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, after line 23, insert:

### "SECTION 6.

### Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project."

Page 7, line 5, remove the underscored comma

Page 7, remove line 6

Page 7, line 7, remove "facilities"

Page 7, line 12, after "The" insert "sixty-third"

Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"

Page 7, line 12, replace "a share" with "one-half"

Page 7, line 13, replace "the" with "a federally authorized"

Page 7, after line 18, insert:

"SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

### Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance

- with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- 2. The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - <u>b.</u> The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - <u>c.</u> The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
- 4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, remove lines 20 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water

supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 14. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.

3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

Sue and be sued in the name of the authority.

- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for

- payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water <u>depot and lateral</u> supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. <u>The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.</u>
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical,

and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.

- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.

- e. Additional principal payment on state-guaranteed loans.
- f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the

budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

### Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 5, insert:

"SECTION 24. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

13.0579.04021

#4

Sixty-third Legislative Assembly of North Dakota

### **SENATE BILL NO. 2233**

Introduced by

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Senators Grindberg, Wardner, Heckaman Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project, to create and enact a new section to chapter 6-09.4 new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, and franchise protection rights of the western area water supply authority; to amend and reenact sections 57-51.1-07, 61-24.7-01, 61-24.7-05, and 61-40-0661-40-01, 61-40-02. 61-40-03. 61-40-04. 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fund, relating to the Red River valley water supply project, the location of industrial water depots, and oversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; and to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

### 20 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6 09.4 of the North Dakota Century Code is created and enacted as follows:

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# Sixty-third Legislative Assembly

1	Infi	astructure revolving loan fund - Continuing appropriation - Rules.
2 -	1.	The purpose of the infrastructure revolving loan fund is to provide loans for public
3		water-related infrastructure projects, including those for water supply, flood protection,
4		or other water project development.
5 -	2.	An infrastructure revolving loan fund is established to make loans for the purposes
6		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
7		for making leans in accordance with this section. Accounts may be established in the
8		fund as necessary for its management and administration.
9 -	3.	The public finance authority shall manage and administer the infrastructure revolving
10		loan fund and individual accounts in the fund. For those purposes, the authority may
11		exercise all powers provided in this chapter.
12 -	4.	An applicant for a loan must submit an application to the Bank of North Dakota on
13		forms prescribed by the Bank. The applicant must provide the following information:
14 -		a. The estimated cost of the project and the amount of the lean sought;
15 -		b. Other possible sources of funding in addition to leans sought from the
16		infrastructure revolving loan fund;
17 -		<u>c.</u> The proposed methods and sources of funds to be used for repayment of loans
18		received; and
19 -		d. Information showing the financial status and ability of the borrower to repay
20		loans.
21		Each project must be certified by the industrial commission under subsection 5 before
22		its consideration by the public finance authority.
23 -	5.	The industrial commission shall consider the following information when evaluating
24		projects to certify to the public finance authority:
25 -		a. A description of the nature and purpose of the proposed infrastructure project
26		including an explanation of the need for the project and the reasons why it is in
27		the public interest;
28 -		b. The estimated cost of the project and the amount of loan sought;
29 -		c. Proposed sources of funding, in addition to loans sought from the infrastructure
30		revolving loan fund;
24		The send for the section of the system inferior to the system.

# Sixty-third Legislative Assembly

1	-	e. The overall economic impact of the project; and
2		f. The extent to which completion of the project will provide a benefit to the state or
3		to political subdivisions within the state.
4	<u>6.</u>	△ lean made under this section must:
5	-	a. Bear interest at or below market rates or as otherwise specified in federal law;
6		b. Have a repayment term not longer than fifty years:
7		c. Be fully amortized no later than fifty years after project completion:
8		d. Be subject to repayment of principal and interest beginning not later than five
9		years after the facility financed with a loan has been completed; and
10		e. Be disbursed for specific project elements only after all applicable environmental
11		requirements have been met.
12	<u>7.</u>	The director of the public finance authority, with the approval of the industrial
13		commission, shall adopt rules to implement a program to identify and assist with
14		development of projects eligible for loans under this section.
15	<u>8.</u>	The director of the public finance authority may request the assistance of other
16		agencies of the state as may be necessary to the development of projects eligible for
17		leans under this section and as may be necessary for the administration of such
18		projects that have been certified by the industrial commission and such agencies of
19		the state are authorized and directed to provide such assistance.
20	<u>9.</u>	A loan may be made to a statutory or home rule charter city to finance projects for the
21		purposes described in this section without regard to whether the city is eligible for
22		financing under a federal act or program or state law. The loan must be repayable
23		under the terms and conditions provided in this section and established by the public
24		finance authority and agreed to by the city. The loan must be repaid by the city from
25		the proceeds of special assessments, tax increments, or other local taxes, such as
26		sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27		and beverage taxes, authorized to be used for purposes of the project.
28	—SEC	TION 2. AMENDMENT. Section 57-51.1 07 of the North Dakota Century Code is
29	amende	d and reenacted as follows:

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57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

- 1. Twenty Eighteen percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bends, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- 2. Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
- 4.5. Thirty percent must be allocated and credited to the state's general fund.

1	SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota		
2	Century Code is created and enacted as follows:		
3	The industrial commission with respect to approving or setting water rates under		
4	chapter 61-40.		
5	SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota		
6	Century Code is created and enacted as follows:		
7	Western area water supply authority industrial water sales on an annual basis.		
8	SECTION 3.		
9	Declaration of policy.		
10	The legislative assembly declares that major water development and water management		
11	goals must be set forth and implemented in order to protect the long-term interests, economic		
12	vitality, and future benefits of the state and its citizens; that such water development and water		
13	management goals are essential for the economic growth and quality of life across the entire		
14	state; that rights to the use and enjoyment of waters of the Missouri River flowing through this		
15	state cannot be restricted by the federal government; that it is necessary to develop and utilize		
16	waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state;		
17	that flood control works are necessary to protect the lives and property of the citizens of this		
18	state; that major flood control works in and around major cities and other cities are necessary to		
19	address the record and damaging floods that have occurred; that regional water supply and		
20	rural water projects must be completed in order to provide a long-term, dependable quality and		
21	adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation		
22	provides a significant opportunity to further the agricultural opportunities in the state; and that an		
23	infrastructure loan fund will enable these goals and policies to be achieved and implemented,		
24	and will provide significant economic and financial benefits to the people of this state.		
25	SECTION 4.		
26	Legislative intent - Reports to legislative assembly.		
27	The legislative assembly declares and establishes the following goals and objectives:		
28	1. That it is necessary for the long-term welfare and economic well-being of the Souris		
29	River basin, and the entire state and its citizens, that the planning, design, and		
30	construction of the Mouse River enhanced flood control project be completed and		
31	implemented.		

### Sixty-third Legislative Assembly

1	2.	That the Red River valley water supply project is critical to provide a dependable water
2		supply for current and future generations in eastern North Dakota and is essential to
3		provide for the leng termlong-term welfare, economic well-being, and quality of life for
4		the entire state.
5	<u>3.</u>	That it is necessary for the long termlong-term welfare and economic well-being of the
6		Red River basin, and the entire state and its citizens, that the planning, design, and
7		construction of the Fargo-Moorhead diversion and flood control project be completed
8		and implemented.
9	<u>4.</u>	That regional water supply and rural water systems are necessary to provide a
10		dependable and adequate quantity and quality water supply for municipal, domestic,
11		rural, and industrial uses.
12	<u>5.</u>	That the state water commission and the southwest water authority shall begin the
13		process of reviewing capital repayment and revenues being returned to the resources
14		trust fund; payments necessary to meet obligations of existing bonds and other loans;
15		mill levies; ownership of land and associated facilities; existing construction
16		documents; liabilities; contracts with cities, bulk users, companies, and other users;
17		and other items, and shall report to the legislative assembly those steps necessary for
18		the transfer of ownership and responsibility of the southwest pipeline project from the
19		state water commission to the southwest water authority.
20	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall
21		enter discussions with the bureau of reclamation concerning Garrison diversion unit
22		facilities.
23	<u>7.</u>	That projects receiving state funds for construction and implementation not assert,
24		claim, or seek to prevent other opportunities, either public or private, to utilize waters
25		of the Missouri River for industrial uses in this state.
26	8.	That local water management and flood control projects are necessary for the
27		economic well-being and quality of life of citizens in those local areas.
28	9.	That irrigation development offers significant opportunities for agriculture in this state.
29	10.	That an infrastructure loan fund for water development and management will provide
30		significant financial benefits to projects and the citizens of this state, and will provide
31		new capabilities to implement necessary water infrastructure projects across the state.

	Legislative Assembly
1	SECTION 5.
2	Mouse River enhanced flood control project.
3	1. The legislative assembly declares its intent to provide state funding for a share of the
4	non-federal nonfederal or local cost of constructing the Mouse River enhanced flood
5	control project.
6	2. Any funds appropriated for the construction of the Mouse River enhanced flood contro
7	project may be carried over to future bienniums.
8	3. State funding for the Mouse River enhanced flood control project may be appropriated
9	at the time and in the manner determined by the legislative assembly, either
10	concurrently or separately from federal and local funding for the Mouse River
11	enhanced flood control project.
12	SECTION 6.
13	Lower Heart River, Morton County, enhanced flood control project.
14	The legislative assembly declares its intent to provide state funding for fifty percent of the
15	nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood
16	control project.
17	SECTION 7.
18	Southwest pipeline project - Report to legislative assembly.
19	The state water commission and the southwest water authority shall begin the process of
20	reviewing capital repayment and revenues being returned to the resources trust fund; payments
21	necessary to meet obligations of existing bonds and other loans; ownership of land and
22	associated facilities; existing construction documents; liabilities; contracts with cities, bulk users,
23	companies, and other users; and other items, and shall report to the legislative assembly those
24	steps necessary for the transfer of ownership and responsibility of the southwest pipeline
25	project from the state water commission to the southwest water authority.
26	SECTION 8.
27	Garrison diversion unit.
28	The Garrison diversion unit has extensive federal facilities that have been constructed,
29	including the Snake Creek pumping plant, the McClusky canal, recreation areas, and other
30	facilities. It is the intent of the legislative assembly that the state water commission and Garrison

1 diversion conservancy district begin discussions with the bureau of reclamation concerning the 2 Garrison diversion unit facilities. 3 SECTION 9. 4 Fargo-Moorhead flood control project. 5 The sixty-third legislative assembly declares its intent to provide state funding not to 1. 6 exceed four hundred fifty million dollars for a share one-half of the nonfederal or local 7 cost of constructing thea federally authorized Fargo-Moorhead flood control project. 8 Notwithstanding any other law, any funds appropriated for the construction of the 2. 9 Fargo-Moorhead flood control project may be carried over to future bienniums. 10 State funding for the Fargo-Moorhead flood control project may be appropriated at the 3. 11 time and in the manner determined by the legislative assembly, either concurrently or 12 separately from federal and local funding for the Fargo-Moorhead flood control project. 13 SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is created 14 and enacted as follows: 15 Infrastructure revolving loan fund - Continuing appropriation - Rules. 16 An infrastructure revolving loan fund is established on January 1, 2015, within the 17 resources trust fund to provide loans for water supply, flood protection, or other water 18 development and water management projects. Ten percent of oil extraction moneys 19 deposited in the resources trust fund are made available on a continuing basis for 20 making loans in accordance with this section. Accounts may be established in the 21 resources trust fund as necessary for its management and administration. 22 The commission shall consider the following information when evaluating projects: 23 A description of the nature and purposes of the proposed infrastructure project. 24 including an explanation of the need for the project, the reasons why it is in the 25 public interest, and the overall economic impact of the project. 26 The estimated cost of the project and the amount of the loan sought and other 27 proposed sources of funding. The extent to which completion of the project will provide a benefit to the state or 28 29 regions within the state. 30 The commission shall approve projects and loans from the infrastructure loan fund,

and the Bank of North Dakota shall manage and administer loans from the

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infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.

- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 11. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

### 61-24.7-01. Legislative findings and intent - Authority to issue bonds.

- 4. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
- In furtherance of the public purpose set forth in subsection 1, the state water 2. commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
- This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.
- SECTION 12. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

### 1 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for ene thirda
   share of the totalnonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-06. Oversight of authority projects.

The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the The authority shall present the overall plan and ongoing contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

SECTION 13. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection

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of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

**SECTION 14. AMENDMENT.** Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the

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authority or fail or refuse to pay any water sale income to the authority if the twenty five million dollar zero interest loan from the state water commission has not been repaiduntil the state-quaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 15. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-03. Western area water supply authority - Board of directors.

- The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 16. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

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### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 17. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

Sue and be sued in the name of the authority.

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- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority

- and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others
  within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- 11. Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection.

- for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- 15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 19 of this Act.
- 18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 18. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.
  Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - e. Additional principal payment on state-guaranteed loans.
  - f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed

- loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- 3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 18 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 21. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

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If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 18 of this Act, and if the industrial commission is uncertain. of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 22. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

**SECTION 23. REPEAL.** Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

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SECTION 25. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2233

That the House recede from its amendments as printed on pages 1432-1491 of the Senate Journal and pages 1572-1581 of the House Journal and that Senate Bill No. 2233 be amended as follows:

- Page 1, line 2, after the second comma insert "the lower Heart River Morton County enhanced flood control project,"
- Page 1, line 2, replace "Southwest" with "southwest"
- Page 1, line 4, replace "new section to chapter 6-09.4" with "new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40"
- Page 1, line 4, after the second "to" insert "exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits,"
- Page 1, line 5, after "fund" insert ", and franchise protection rights of the western area water supply authority"
- Page 1, line 5, replace "57-51.1-07" with "54-35-02.7"
- Page 1, line 6, replace "and 61-40-06" with "61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09"
- Page 1, line 6, remove "allocation of moneys in the oil"
- Page 1, line 7, replace "extraction tax development fund" with "relating to jurisdiction of the water-related topics overview committee"
- Page 1, line 7, after "River" insert "valley"
- Page 1, line 7, after the second comma insert "the location of industrial water depots,"
- Page 1, line 7, remove "oversight of"
- Page 1, line 8, remove "and"
- Page 1, line 8, after "61-24.7-04" insert ", and 61-40-06"
- Page 1, line 9, after "project" insert "and oversight of western area water supply authority projects"
- Page 1, line 10, remove "and"
- Page 1, line 10, after "appropriation" insert "; to provide a statement of legislative intent; and to provide for reports to the legislative management"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31

Page 4, replace lines 1 through 17 with:

"SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

**SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

SECTION 3. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. (Effective through November 30, 2013) Water-related topics overview committee - Duties.

The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters, the Garrison diversion project, and for any necessary discussions with adjacent states on water-related topics. During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee shall work collaboratively with the state water commission to develop policies to further define the state role in major flood control projects and in the prioritization of water projects. During the 2013-14 interim, the committee shall review water supply routes and alternatives for the Red River valley water supply project. The committee consists of thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

(Effective after November 30, 2013) Garrison diversion overview. The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics."

Page 5, line 13, replace "long term" with "long-term"

Page 5, line 15, replace "long term" with "long-term"

Page 5, line 17, remove "diversion and"

Page 5, line 24, after the second underscored semicolon insert "mill levies;"

Page 6, line 15, replace "state funding for a share" with "one-half"

Page 6, line 16, replace "non-federal" with "nonfederal"

Page 6, line 16, after "the" insert "federally approved national economic development alternative for the"

Page 6, after line 23, insert:

#### "SECTION 7.

#### Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for fifty percent of the nonfederal or local cost-share for construction of the lower Heart River, Morton County, flood control project."

Page 7, line 5, remove the underscored comma

Page 7, remove line 6

Page 7, line 7, remove "facilities"

Page 7, line 12, after "The" insert "sixty-third"

Page 7, line 12, after "funding" insert "not to exceed four hundred fifty million dollars"

Page 7, line 12, replace "a share" with "one-half"

Page 7, line 13, replace "the" with "a federally authorized"

Page 7, after line 18, insert:

"SECTION 11. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

#### Infrastructure revolving loan fund - Continuing appropriation - Rules.

- 1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
- The commission shall consider the following information when evaluating projects:
  - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
  - b. The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
  - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
- 3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.

- Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
- Projects not eligible for the state revolving fund will be given priority for these funds."

Page 8, remove lines 20 through 31

Page 9, replace lines 1 through 3 with:

"SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or

water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five-million dollar zero interest loan from the state-water commission has not been repaid until the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-03. Western area water supply authority - Board of directors.

- 1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 17. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written

- request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
- 4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

SECTION 18. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- Sue and be sued in the name of the authority.
- Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction,

maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.

- Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
- Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- Enter contracts to obtain a supply of bulk water through the purchase of
  infrastructure, bulk water sale or lease, which contracts may provide for
  payments to fund some or all of the authority's costs of acquiring,
  constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.

- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 20 of this Act.
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

 An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:

- One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
- b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
- c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
- d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- e. Additional principal payment on state-guaranteed loans.
- Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all

costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 19 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 22. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 19 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ewnership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production."

Page 9, line 4, remove "and"

Page 9, line 4, after "61-24.7-04" insert ", and 61-40-06"

Page 9, after line 5, insert:

"SECTION 25. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 26. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Sixty-third Legislative Assembly of North Dakota

#### **SENATE BILL NO. 2233**

Introduced by

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Senators Grindberg, Wardner, Heckaman

Representatives Carlson, Hofstad, Onstad

A BILL for an Act to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the Southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project, to create and enact a new section to chapter 6-09.4 new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund and franchise protection rights of the western area water supply authority; to amend and reenact sections <del>57-51.1-07</del>54-35-02.7, 61-24.7-01, 61-24.7-05, and 61-40-0661-40-01. 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, allocation of moneys in the oil extraction tax development fundrelating to jurisdiction of the water-related topics overview committee, the Red River valley water supply project, the location of industrial water depots, and oversight of the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; and to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

21 SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created
22 and enacted as follows:

1	Inf	rastructure revolving loan fund - Continuing appropriation - Rules.
2	1.	The purpose of the infrastructure revolving loan fund is to provide loans for public
3		water-related infrastructure projects, including those for water supply, flood protection,
4		or other water project development.
5	2.	An infrastructure revolving loan fund is established to make loans for the purposes
6		described in subsection 1. Moneys in the fund are appropriated on a continuing basis
7		for making loans in accordance with this section. Accounts may be established in the
8		fund as necessary for its management and administration.
9	3.	The public finance authority shall manage and administer the infrastructure revolving-
10		loan fund and individual accounts in the fund. For those purposes, the authority may
11		exercise all powers provided in this chapter.
12	4.	An applicant for a loan must submit an application to the Bank of North Dakota on
13		forms prescribed by the Bank. The applicant must provide the following information:
14		a. The estimated cost of the project and the amount of the loan sought:
15		b. Other possible sources of funding in addition to loans sought from the
16		infrastructure revolving loan fund:
17		c. The proposed methods and sources of funds to be used for repayment of loans
18		received; and
19		d. Information showing the financial status and ability of the borrower to repay
20		leans.
21		Each project must be certified by the industrial commission under subsection 5 before
22		its consideration by the public finance authority.
23	5.	The industrial commission shall consider the following information when evaluating
24		projects to certify to the public finance authority:
25		a. A description of the nature and purpose of the proposed infrastructure project
26		including an explanation of the need for the project and the reasons why it is in
27		the public interest:
28		b. The estimated cost of the project and the amount of loan sought;
29		c. Proposed sources of funding, in addition to loans sought from the infrastructure
30		revolving loan fund:
04		

## Sixty-third Legislative Assembly

1	<ul> <li>The overall economic impact of the project; and</li> </ul>
2	f. The extent to which completion of the project will provide a benefit to the state or
3	to political subdivisions within the state.
4	6. A loan made under this section must:
5	a. Bear interest at or below market rates or as otherwise specified in federal law:
6	b. Have a repayment term not longer than fifty years:
7	e. Be fully amortized no later than fifty years after project completion:
8	d. Be subject to repayment of principal and interest beginning not later than five
9	years after the facility financed with a loan has been completed; and
10	e. Be disbursed for specific project elements only after all applicable environmental
11	requirements have been met.
12	7. The director of the public finance authority, with the approval of the industrial
13	commission, shall adopt rules to implement a program to identify and assist with
14	development of projects eligible for loans under this section.
15	8. The director of the public finance authority may request the assistance of other
16	agencies of the state as may be necessary to the development of projects eligible for
17	loans under this section and as may be necessary for the administration of such
18	projects that have been certified by the industrial commission and such agencies of
19	the state are authorized and directed to provide such assistance.
20	9. A loan may be made to a statutory or home rule charter city to finance projects for the
21	purposes described in this section without regard to whether the city is eligible for
22	financing under a federal act or program or state law. The loan must be repayable
23	under the terms and conditions provided in this section and established by the public
24	finance authority and agreed to by the city. The loan must be repaid by the city from
25	the proceeds of special assessments, tax increments, or other local taxes, such as
26	sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food
27	and beverage taxes, authorized to be used for purposes of the project.
28	SECTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is
9	amended and reenacted as follows:

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29 30 57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

- 1. Twenty Eighteen percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
- Two percent must be allocated to the infrastructure revolving loan fund.
- 3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North-Dakota.
- 3.4. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
- 4.5. Thirty percent must be allocated and credited to the state's general fund.

1	SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota		
2	Century Code is created and enacted as follows:		
3	The industrial commission with respect to approving or setting water rates under		
4	chapter 61-40.		
5	SECTION 2. A new subdivision to subsection 1 of section 54-10-14 of the North Dakota		
6	Century Code is created and enacted as follows:		
7	Western area water supply authority industrial water sales on an annual basis.		
8	SECTION 3. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is		
9	amended and reenacted as follows:		
10	54-35-02.7. (Effective through November 30, 2013) Water-related topics overview		
11	committee - Duties.		
12	The legislative management, during each interim, shall appoint a water-related topics		
13	overview committee in the same manner as the legislative management appoints other interim		
14	committees. The committee must meet quarterly and is responsible for legislative overview of		
15	water-related topics and related matters, the Garrison diversion project, and for any necessary		
16	discussions with adjacent states on water-related topics. During the 2011-12 interim, the		
17	committee shall review the state's irrigation laws and rules and evaluate the process of the		
18	prioritization of water projects. The committee shall work collaboratively with the state water		
19	commission to develop policies to further define the state role in major flood control projects and		
20	in the prioritization of water projects. During the 2013-14 interim, the committee shall review		
21	water supply routes and alternatives for the Red River valley water supply project. The		
22	committee consists of thirteen members and the legislative management shall designate the		
23	chairman of the committee. The committee shall operate according to the statutes and		
24	procedure governing the operation of other legislative management interim committees.		
25	(Effective after November 30, 2013) Garrison diversion overview. The legislative		
26	management is responsible for legislative overview of the Garrison diversion project and related		
27	matters and for any necessary discussions with adjacent states on water-related topics-		
28	SECTION 4.		
29	Declaration of policy.		
30	The legislative assembly declares that major water development and water management		
31	goals must be set forth and implemented in order to protect the long-term interests, economic		

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- Legislative Assembly 1 vitality, and future benefits of the state and its citizens; that such water development and water 2 management goals are essential for the economic growth and quality of life across the entire 3 state; that rights to the use and enjoyment of waters of the Missouri River flowing through this 4 state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; 5 6 that flood control works are necessary to protect the lives and property of the citizens of this 7 state: that major flood control works in and around major cities and other cities are necessary to 8 address the record and damaging floods that have occurred; that regional water supply and 9 rural water projects must be completed in order to provide a long-term, dependable quality and 10 adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation 11 provides a significant opportunity to further the agricultural opportunities in the state; and that an 12 infrastructure loan fund will enable these goals and policies to be achieved and implemented. 13 and will provide significant economic and financial benefits to the people of this state. 14 SECTION 5. 15 Legislative intent - Reports to legislative assembly. 16 The legislative assembly declares and establishes the following goals and objectives:
  - 1. That it is necessary for the long-term welfare and economic well-being of the Souris River basin, and the entire state and its citizens, that the planning, design, and construction of the Mouse River enhanced flood control project be completed and implemented.
  - That the Red River valley water supply project is critical to provide a dependable water 2. supply for current and future generations in eastern North Dakota and is essential to provide for the long termlong-term welfare, economic well-being, and quality of life for the entire state.
  - 3. That it is necessary for the long-termlong-term welfare and economic well-being of the Red River basin, and the entire state and its citizens, that the planning, design, and construction of the Fargo-Moorhead diversion and flood control project be completed and implemented.
  - That regional water supply and rural water systems are necessary to provide a dependable and adequate quantity and quality water supply for municipal, domestic, rural, and industrial uses.

1	<u>5.</u>	That the state water commission and the southwest water authority shall begin the
2		process of reviewing capital repayment and revenues being returned to the resources
3		trust fund; payments necessary to meet obligations of existing bonds and other loans;
4		mill levies; ownership of land and associated facilities; existing construction_
5		documents; liabilities; contracts with cities, bulk users, companies, and other users;
6		and other items, and shall report to the legislative assembly those steps necessary for
7		the transfer of ownership and responsibility of the southwest pipeline project from the
8		state water commission to the southwest water authority.
9	<u>6.</u>	That the state water commission and the Garrison diversion conservancy district shall
10		enter discussions with the bureau of reclamation concerning Garrison diversion unit
11		facilities.
12	<u>7.</u>	That projects receiving state funds for construction and implementation not assert,
13		claim, or seek to prevent other opportunities, either public or private, to utilize waters
14		of the Missouri River for industrial uses in this state.
15	8.	That local water management and flood control projects are necessary for the
16		economic well-being and quality of life of citizens in those local areas.
17	9.	That irrigation development offers significant opportunities for agriculture in this state.
18	10.	That an infrastructure loan fund for water development and management will provide
19		significant financial benefits to projects and the citizens of this state, and will provide
20		new capabilities to implement necessary water infrastructure projects across the state.
21	SE	CTION 6.
22	Mo	use River enhanced flood control project.
23	1.	The legislative assembly declares its intent to provide state funding for a share of the
24		non-federal nonfederal or local cost of constructing the Mouse River enhanced flood
25		control project.
26	2.	Any funds appropriated for the construction of the Mouse River enhanced flood control
27		project may be carried over to future bienniums.
28	3.	State funding for the Mouse River enhanced flood control project may be appropriated
29		at the time and in the manner determined by the legislative assembly, either
30		concurrently or separately from federal and local funding for the Mouse River
31		enhanced flood control project

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#### SECTION 7.

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Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost for construction of the lower Heart River, Morton County, flood control project.

**SECTION 8.** 

Southwest pipeline project - Report to legislative assembly.

The state water commission and the southwest water authority shall begin the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those steps necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.

SECTION 9.

#### Garrison diversion unit.

The Garrison diversion unit has extensive federal facilities that have been constructed, including the Snake Creek pumping plant, the McClusky canal, recreation areas, and other facilities. It is the intent of the legislative assembly that the state water commission and Garrison diversion conservancy district begin discussions with the bureau of reclamation concerning the Garrison diversion unit facilities.

#### SECTION 10.

#### Fargo-Moorhead flood control project.

- The sixty-third legislative assembly declares its intent to provide state funding not to
  exceed four hundred fifty million dollars for a shareone-half of the nonfederal or local
  cost of constructing thea federally authorized Fargo-Moorhead flood control project.
- Notwithstanding any other law, any funds appropriated for the construction of the Fargo-Moorhead flood control project may be carried over to future bienniums.
- 3. State funding for the Fargo-Moorhead flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Fargo-Moorhead flood control project.



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1	SE	CTION 11. A new section to chapter 61-02 of the North Dakota Century Code is created
2	and en	acted as follows:
3	Inf	rastructure revolving loan fund - Continuing appropriation - Rules.
4	1.	An infrastructure revolving loan fund is established on January 1, 2015, within the
5		resources trust fund to provide loans for water supply, flood protection, or other water
6		development and water management projects. Ten percent of oil extraction moneys.
7		deposited in the resources trust fund are made available on a continuing basis for
8		making loans in accordance with this section. Accounts may be established in the
9		resources trust fund as necessary for its management and administration.
10	2.	The commission shall consider the following information when evaluating projects:
11		a. A description of the nature and purposes of the proposed infrastructure project.
12		including an explanation of the need for the project, the reasons why it is in the
13		public interest, and the overall economic impact of the project.
14		b. The estimated cost of the project and the amount of the loan sought and other
15		proposed sources of funding.
16		c. The extent to which completion of the project will provide a benefit to the state of
17		regions within the state.
18	3.	The commission shall approve projects and loans from the infrastructure loan fund.
19	A STORE	and the Bank of North Dakota shall manage and administer loans from the
20		infrastructure loan fund and individual accounts in the fund. The commission may
21		adopt policies for the review and approval of loans under this section. Loans made
22		under this section must be made at an interest rate of one and one-half percent.
23	4.	Annually the Bank of North Dakota may deduct a service fee of one-half of one
24		percent for administering the infrastructure loan fund.
25	5.	Projects not eligible for the state revolving fund will be given priority for these funds.
26	SEC	CTION 12. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is
27	amende	ed and reenacted as follows:
28	61-	24.7-01. Legislative findings and intent - Authority to issue bonds.
29	4	The legislative assembly finds that the provision of water of sufficient quantity and



quality to supply homes, businesses, industries, wildlife, and recreation in the Red

River valley within this state is necessary for the protection of health, property, and

- enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third-share of the cost of constructing the Red River valley water supply project.
- 2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
- This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 13. AMENDMENT.** Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-24.7-05. State funding plan.

- The legislative assembly declares its intent to provide state funding for one-thirda
   share of the totalnonfederal or local cost of constructing the Red River valley water supply project.
- Any general funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
- State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 18. AMENDMENT. Section 61-40-06 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-06. Oversight of authority projects.

The authority shall comply with the policypolicies of the state water commission as the policy relates to bidding, planning, and construction of the project. The policypolicies must include provisions for insurance, including general liability insurance, in adequate amounts. The

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authority shall report to and consult with the state water commission regarding the operationand financial status of the project, as requested by the state water commission. In relation toinitial construction of the system and debt repayment, the The authority shall present the overallplan and ongoing contract plans and specifications for the project to the state water commissionfor approval. The attorney general shall assist the authority at the request of the state water
commission. If the twenty-five million dollar zero interest loan from the state water commissionhas not been repaid, without the written consent of the state water commission the authority
may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a
water system of the authority if the property is used to provide revenue.

SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the

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process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty five milliondollar zero interest loan from the state water commission has not been repaiduntil the state-guaranteed loans have been repaid. The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

## 61-40-03. Western area water supply authority - Board of directors.

The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority

board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.

- Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
- 3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 17. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

### 61-40-04. Board of directors - Officers - Meetings.

- The board of directors shall adopt such rules and bylaws for the conduct of the
  business affairs of the authority as it determines necessary, including the time and
  place of regular meetings of the board, financial participation structure for membership
  in the authority, and membership appointment and changes. Bylaws need to be
  approved by member entity boards.
- 2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
- 3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative

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management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

- The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formulaagreed by a majority of the board.
- Before the bylaws become effective, the bylaws must be reviewed and approved bythe attorney general.

SECTION 18. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

- 1. Sue and be sued in the name of the authority.
  - Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next

- regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
- 3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
- 4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
- 5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain afforneys to assist, advise, and act for the authority in its proceedings.
- 6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
- 7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
- 8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
- Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
- 10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing.

- one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
- Borrow money as provided in this chapter.
- 12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
- 13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
- 14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
- Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
- 16. Accept, apply for, and hold water allocation permits.
- 17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 20 of this Act.
- Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling,

- manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
- 19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
- 20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Industrial water depot and lateral sales.

- 1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis.

  Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order.
  - a. One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots

and lateral lines, at a cost no greater than the participating member, or	
submember, if applicable, entity rate at the location of the depot or lateral lin	e.

- agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
- d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
- e. Additional principal payment on state-guaranteed loans.
- f. Payment to the resources trust fund.
- 2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
- 3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 19 of this Act which are paid for by industrial water depot and lateral sales.

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SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 22. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### 61-40-09. Default.

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 19 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the membersof the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission

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determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state watercommission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

SECTION 24. REPEAL. Sections 61-24.7-02, 61-24.7-03, and 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 25. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water related sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 26. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.