

## **WATER TOPICS OVERVIEW COMMITTEE - BASINWIDE JOINT WATER RESOURCE BOARDS**

North Dakota Century Code Section 54-35-02.7 directs the Legislative Management during each interim to appoint a Water Topics Overview Committee in the same manner as the Legislative Management appoints other interim committees, and to designate a chairman. The committee must meet quarterly and operate according to the statutes and procedures governing the operation of other Legislative Management interim committees. The statute also sets out the committee's responsibilities, including legislative overview of water topics and related matters, the Garrison Diversion Project, and any necessary discussions with adjacent states on water topics. The statute directs the committee to work collaboratively with the State Water Commission and authorizes the committee to hold joint meetings with the commission.

In addition to the responsibilities in Section 54-35-02.7, pursuant to Senate Concurrent Resolution No. 4009 (2019), the Legislative Management directed the Water Topics Overview Committee to study the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basinwide needs.

### **BACKGROUND**

#### **Water Resource Districts and Boards**

Pursuant to Section 61-16-05, all land in North Dakota is included in water resource districts. According to the [State Water Commission's website](#), there are 90 water resource boards in the state, and each water resource district is governed by a water resource board appointed by county commissioners. If the water resource district's boundaries are within one county, that county's commissioners appoint three or five water resource board managers. If the district's boundaries include multiple counties, each county's commissioners appoint a number of water resource board managers based on the county's aggregate taxable valuation of property in the district, as provided by Section 61-16-07.

Under Section 57-15-26.6, each board of county commissioners may levy a tax of up to four mills on each dollar of taxable valuation in the county or portion of county for the water resource district in which the county or portion of the county is included. The amount of the levy should be based upon a budget and estimated expenses submitted by the water resource board to the county auditor and then forwarded to the board of county commissioners. The board may approve, amend, or disapprove of the budget. Once the board approves a budget for the water resource district, the board may authorize the levy amount to be extended and spread by the auditor in the same manner as general property taxes. In anticipation of the collection of taxes, a water resource board may issue warrants bearing interest. The interest rate is set by the board and generally may not exceed 12 percent per annum.

#### **Basinwide Responsibilities for Water Resource Boards**

Water resource boards have dozens of powers and responsibilities, including responsibilities to act jointly with other water resource boards in a common river basin, set forth in Chapter 61-16.1. Under Section 61-16.1-10, water resource boards in a common river basin must meet jointly at least twice per year, cooperate and lend mutual assistance, and jointly exercise their authority "to effectively resolve the significant and common water resource management problems" in the basin and jointly develop a comprehensive plan for the river basin or region.

#### **Joint Water Resource Districts and Boards**

Water resource districts may form joint water resource districts to exercise any of their powers jointly. According to the State Water Commission, at least 28 of the 90 water resource districts in the state are joint water resource districts, including:

- Cass County Joint District;
- Devils Lake Basin Joint District;
- Dickey-Sargent Joint District;
- Elm River Joint District;
- Forest River Joint District;
- Griggs/Barnes Joint District;
- Hurricane Lake Joint District;
- James River Joint District;

- Maple River & Barnes County Joint District;
- Maple River - Ransom Joint District;
- Maple River - Richland Joint District;
- Maple River - Rush River Joint District;
- Maple River - Southeast Cass Joint District;
- Maple River - Steele County Joint District;
- McLean - Sheridan Joint District;
- Missouri River Joint District;
- North Cass and Rush River Joint District;
- Park River Joint District;
- Red River Joint District;
- Richland - Cass Joint District;
- Richland - Sargent Joint District;
- Rocky Run Joint District;
- Sheyenne River Joint District;
- Souris River Joint District;
- Southeast Cass - Rush River Joint District;
- Tri-County Joint District;
- Upper Sheyenne River Joint District; and
- West River Joint District (See the [State Water Commission's website](#)).

Under Section 61-16.1-11, water resource boards that want to create a joint water resource district first must ensure the State Water Commission receives:

- A petition signed by a majority of the water resource board managers from each district or by 50 percent or more of the landowners in each district;
- A certified copy of a resolution by each water resource board authorizing the signing of the petition; and
- A detailed plan to dispose of the property, assets, and liabilities of each district which may provide for the continued assessment of properties in individual districts.

After receiving the necessary materials, the State Water Commission must provide notice of a public hearing regarding the consolidation of the districts. At the hearing, the State Engineer must present a report on the commission's findings regarding the need to consolidate the districts. If the commission finds it is not feasible, desirable, or practical to consolidate them, the commission will deny the petition. If the commission finds problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation desirable, the commission will grant the petition and create the district.

Under Section 61-16.1-11(1), the member districts of a joint district must enter an agreement stating the purpose of the joint district, the powers the joint district will exercise, and the method for exercising the powers. If the member districts agree the joint district should have its own board, the members of the joint board must be "representative" of the member district's boards. A joint water resource board is a separate political subdivision of the state.

Joint water resource districts are funded two ways, pursuant to Section 61-16.1-11(2). First, the member water resource districts may disburse district funds to carry out the purposes of the joint district. Second, taxes may be levied for joint water resource districts. To levy a tax, the joint board must adopt a budget, including proposed contributions by each member district, by resolution before July 1 of each year. Then the boards of county commissioners for the member districts must levy a tax not to exceed two mills upon the taxable valuation of the

real property in each member district.<sup>1</sup> Section 61-16.1-11(2) specifically provides the levy for the joint water resource district "may be in excess of any other levy authorized for a district."

Century Code is silent regarding how many joint water resource districts may encompass a parcel of land. It is possible for a parcel of land to be subject to multiple layers of joint water resource districts or overlapping joint water resource districts. Each joint water resource district that encompasses the land may levy a tax on the land.

### **SUGGESTED STUDY APPROACH**

The assigned study will require the committee to identify the objectives of having a joint water resource district for each river basin. The committee may wish to:

- Determine whether the objectives are being met and, if not, whether the relevant statutes need to be amended or enforced to meet the objectives;
- Determine whether any river basins currently lack a joint water resource district and whether the creation of a joint water resource district for each river basin should be mandatory; and
- Hear testimony from the State Water Commission, water resource board members, and residents whose land is included in joint water resource districts or who would like their land to be included in joint water resource districts.

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<sup>1</sup> The language in Section 61-16.1-11(2) is ambiguous regarding the entity that must levy the tax for the joint water resource district. In a 1985 opinion, Attorney General Nicholas Spaeth interpreted the language as requiring the boards of county commissioners for the member districts to levy the tax because "the Legislature could not constitutionally delegate authority to tax to the water resource board." [\*Attorney General Opinion No. 85-16\*](#) (May 1, 1985).