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ROLL NUMBER

DESCRIPTION

2295

2005 SENATE NATURAL RESOURCES

SB 2295

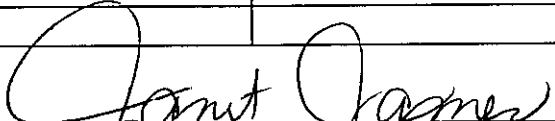
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2295

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date February 4, 2005

Tape Number	Side A	Side B	Meter #
1	X		10.8 -51.1
Committee Clerk Signature 			

Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the hearing on SB 2295 relating to water supply contracts and membership of and powers of the Lake Agassiz water authority.

All members of the committee were present.

Senator Joel Heitkamp of District 26 prime sponsor of Bill 2295 introduced the bill stating it is a more involved piece of legislation because it will allow the Lake Agassiz Authority to allow a membership seat to a Minnesota city specifically Moorhead. Presently there are 5 representative of the rural water districts on the authority including 2 from the north, 2 from the south and 1 member at large. There are also 4 representatives from the city which are defined by code according to population base. It is important to realize that the water that will be piped from the west will need to be paid for and if Moorhead is to pay for this water, they have the right to be represented on the board. It could be worked out if it is a problem for a 10 member board.

Finally, the bill empowers the Lake Agassiz Water Authority to build the pipeline to bring water to the east from the Missouri River water once all the entities have approved. This will make the authority ready when this occurs.

Senator Lyson asked if there will not be objections from citizens of North Dakota giving North Dakota water away to other states.

Senator Heitkamp answered that the water from the Red River is everyone's water and once a river distributes into the Red River it becomes everyone's water.

Senator Ben Tollefson asked if there might not be a conflict of state laws between the two states. He also asked if there might not be others cities along the boarder that would want representation on the board.

Senator Heitkamp stated it would be the choice of the city because they are self governing and although our state laws can not be infringed upon the Minnesota city, they would be part of the Lake Agassiz Water authority and would then be under their by laws. As far as the other cities wanting membership, just as in North Dakota there is a limit and at this time it is Moorhead that needs to be at that table.

Senator John Traynor asked if Minnesota law might not allow Moorhead's membership.

Senator Heitkamp answered that although he was not certain and it would have to be researched, Moorhead is independently governed and therefore should be able to make the decision.

Dave Koland, (19.6) General Manager of the Garrison Diversion Conservancy District and Secretary/Treasurer of the lake Agassiz Water Authority testified in support of SB 2295 (See attached testimony). He also stated that there is three options in order to supply water to the Red

River Valley. They are by bringing water for the Missouri River or by bringing in water from two Minnesota resources, the ground water from the Detroit Lakes area and water from the Lake of the Woods. Some think the idea of piping water to the eastern part of the state might not be viable since the drought in the western part of the US is effecting water levels in North Dakota. Studies have indicating that more water is wasted every year in the fountains of Kansas City, Missouri then will be required to be piped to the Red River Valley. The percentage of water required is so small that it cannot be measured and will not effect the levels of the Lake Sakakawea. Minnesota legislation will be required for either option of the bill and will be a challenge to acquire.

Senator Ben Tollefson asked if there were any federal concerns both up and down stream.

Dave Koland confirmed this to be true. Under the obligations of the Boundary Waters Treaty, Canadian water is not to be harmed and everything reasonable will be done to make sure that does not happen. There is not so much of a federal problem but more of a political problem to the south. Although the Corp. of Engineers operate the Garrison Dam and have control of the Lake of Woods because of the federal control, they do not have a lot to say about the removal of water out of the Missouri River.

Bob Campbell, (31.6) managing director with Lehman Brother, the Lake Agassiz Water Authority investment banker testified in support of SB 2295 (See attached testimony).

Senator Traynor (43.1) inquired if the process of issuing revenue bonds for the project was the same as those used in water law of North Dakota. He also questioned the process of public notification.

Bob Campbell confirmed the bonding process is the same, but the public notification is not the same because the time constraints make it difficult. The Lake Agassiz Water Authority will be negotiating the water contracts and the public will be able to comment to the city commission. He closed stating the rest of his testimony covers section by section, the revenue bonds provision added to the chapter for Lake Agassiz Water Authority. Simply stated the water district water revenue bond authority is lifted and added to the authority of the Lake Agassiz Water Authority so that all the laws are in one place.

Mike Dwyer representing the North Dakota Water Users Association announced their support of SB 2295.

Senator Lyson asked for testimony in opposition to SB 2295 and hearing none closed the hearing on SB 2295.

Senator Heitkamp told the committee he did have a small amendment he would like to offer on SB 2295. It was decided he would present it when committee work was done on the bill.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2295

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date February 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		5.1- 16.3
Committee Clerk Signature <i>Jane Jansen</i>			

Minutes:

Senator Stanley Lyson Chairman of the Senate Natural Resources Committee opened the committee to work on SB 2295, relating to water contracts and membership of and powers of the Lake Agassiz Water Authority.

All members of the committee were present.

Senator Joel Heitkamp cosponsor of SB 2295 stated this bill is very comprehensive and does two things. It sets up a structure for how Lake Agassiz Water Authority can pay for whatever the delivery system might be to convey water to the Red River Valley and allow specifically the city of Moorhead to have membership on the board. Amendment 50450.0201 was presented to the committee as were proposed by Dave Koland and the Garrison Diversion Conservancy District.

Senator Ben Tollefson raised some concerns as to the possibility of many Minnesota cities wanting to be a part of this and will the state of Minnesota be involved.

Senator Heitkamp stated that in the bill it specifically says Moorhead who has made it clear that they want to be on the board if they are expected to help pay for this project and their monies is necessary for this project to happen. The city of Moorhead is self governed which should limit the involvement of the state. The expense of this project stays with the authority and will not be spread out over the state of North Dakota or that the bonds will be the indebtiness of the state.

Senator Heitkamp made a motion to adopt Amendment 50450.0201.

Senator Michael Every second the motion.

Roll call vote #1 was taken by voice vote indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Discussion was held by the committee as to the concerns of giving water from the western part of the state to the eastern. Water is so important to the economics of this state whether it be in the west for agriculture or the industry and expansion of the eastern side of the state. This project will not happen tomorrow as there is many issues that need to be resolved, but this is an important start. The committee was comfortable with the bonding process. Although it is difficult for some to share the water resource it will not make a marked difference in the levels of Missouri River.

Senator Wardner made a motion for a Do Pass as Amended of SB 2295.

Senator Every second the motion.

Roll call vote #2 for a Do Pass as Amended of SB 2295 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Heitkamp will carry SB 2295.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2295

Page 1, line 1, after "enact" insert "a new subsection to section 61-35-12 and"

Page 1, after line 7, insert:

"SECTION 1. A new subsection to section 61-35-12 of the North Dakota Century Code is created and enacted as follows:

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 district to secure payment of the district's obligations created by the contracts."

Renumber accordingly

Date:

Roll Call Vote #:

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO.

2295

Senate Senate Natural Resources

Committee

☐

Legislative Council Amendment Number

Action Taken

Amend. 50450, 0201

Motion Made By

Seconded By

[illegible]

Total (Yes)

No 0

Absent

6

Floor Assignment

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

Date: 2-11-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Wardner Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Stanley Lyson, Chairman	✓		Senator Joel Heitkamp	✓	
Senator Ben Tollefson, Vice Chair	✓		Senator Michael Every	✓	
Senator Layton Freborg	✓				
Senator Rich Wardner	✓				
Senator John Traynor	✓				

Total (Yes) 7 No 2

Absent 0

Floor Assignment Heitkamp

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

REPORT OF STANDING COMMITTEE

SB 2295: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2295 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new subsection to section 61-35-12 and"

Page 1, after line 7, insert:

"SECTION 1. A new subsection to section 61-35-12 of the North Dakota Century Code is created and enacted as follows:

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 district to secure payment of the district's obligations created by the contracts."

Renumber accordingly

2005 HOUSE NATURAL RESOURCES

SB 2295

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2295

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 4, 2005

Tape Number	Side A	Side B	Meter #
1	x		0-2430
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

Chr. Rep. Jon O. Nelson: I call the House Natural Resources' Committee to order. Rep. Keiser absent. Bill was read aloud. We are waiting for Sen. Heitkamp to introduce the bill.

Bruce Furness, Chr., Lake Agassiz Water Authority: This is a coalition of 13 counties in eastern ND. The intent of this authority is to distribute water through Garrison Diversion. As you know, Garrison Diversion has been a promise to ND for (about) 50 years and is coming closer to fruition. When it happens, we need this organization in place to provide the distribution and management of the water. The bill addresses two things which will be addressed by other people. The first is to expand the content of the board to include some Minnesota cities, namely one, Moorhead, the way it is written. The idea is that three cities on the Minnesota side are involved in and relying on the Red River as well and we wanted to make them part of this organization. The second part we'll talk about is the funding mechanism, the bonding part. As representing the Board of the Directors, we're in support of this bill.

Chr. Nelson: Thank you, are there questions for Mr. Furness? Seeing none, thank you for your testimony.

Dave Koland, Garrison Diversion Conservancy District/Lake Agassiz Water Authority:

(Written testimony attached.)

Sen. Joel Heitkamp, Dist. 26: SB 2295 does just the two things Dave said. It sets up the process for how they can fund this thing. The other thing, which is a very sensitive issue, was that it allowed for the city of Moorhead to have a seat at that Lake Agassiz table. The reason that is so important is we want them to help pay for it. It's tough to get people to help pay for something if you don't allow them to have a say in it. So we worked through this in our Senate Natural Resources Committee. You're about to hear about the bonding authority. The thing you will want to keep in mind is if you manage three different rural water systems this does not mean that you incur that debt unless you say, "O.K., I want some of what's coming my way." Whether I want it built in reserve or take it now, if I *choose* to do that I'm in the loop. I'm not incurring that debt if I choose not to be a player in Lake Agassiz. There has to be a way that we let them pay for it. That's what this bill does.

Chr. Nelson: Are there any questions of Sen. Heitkamp?

Rep. Drovdal: I'm not an attorney, but this bill makes common sense. It's good to have a member from Minnesota; I think we can put on property taxes in North Dakota, but does that cause any constitutional problem?

Heitkamp: Any agreement that Minnesota makes in regards to what authority *we* have or *they* have over us. I think what they are doing is making authority over their own. What you're looking at here is user fees. I will throw out a number, having NO idea what the number is going

to be. Let's say we use the Sheyenne River to do this and have this piping system to get the water where it needs to go. I would guess, that at some point my water district, if they want to be players in this, is going to have to go to the members and say, "We've got a reliable supply of water. It's going to cost each of you \$10 more a month. Are you in or out?" I think that is what Moorhead will have to do. The point is to get to that number. Of course, the more on, the cheaper the number. We want Moorhead to be part of Lake Agassiz because that will make the number cheaper.

Drovdal: I agree with you, but sometimes the constitutionality comes into play. I just wondered whether that has been checked out.

Heitkamp: Yes. I think it will come down to the meter. I don't think you will find it coming out through the property tax. I think the water meter will be the cash register. I think there will be some potential. If this thing is done right that water will make it's way to Fargo where we need it now to make sure that we can grow industry. So Fargo get's an immediate benefit. That doesn't mean that a water district like the ones that I manage wouldn't help pay for that even before you receive any help. You have to pay for what you expect them to put in the pipe or you can't make it work.

Rep. Solberg: In the previous testimony there were a number of references to Garrison Diversion. It has stopped and started many times in the past 30 years. How much does this bill and this project depend on the continued construction of Garrison Diversion?

Heitkamp: Without Garrison Diversion, without what the Conservancy district is doing, you don't have a Lake Agassiz Water Authority. Example, we have Central Power. Central Power takes us down, and now Dakota Valley is bringing the electricity. This is the Dakota Valley

level. You have Garrison getting water through the main artery, hopefully the Sheyenne River, which has been their goal all along. Then you have individuals like Mayor Furness and me asking how to distribute it beyond that. How do we (move) that water from the Sheyenne River and get it down to SE Water, down to Wahpeton, up to Grand Forks?

Porter: When looking at this as Lake Agassiz to the Red River and then allowing some Minnesota cities all along the Red River to Canada to join in, does Minnesota have a similar water authority that is coming up and touching the Red River that is spreading into ND, or are they distinctly different in how they're handling their water needs?

Heitkamp: Minnesota does things a little differently than us in the area of watershed. We deal with water resources by county. Minnesota always looks at watershed. That's one of the major differences. They do not organize and have not organized as well as we have in regards to the rural areas. I believe there is (about) four or five rural systems in all of Minnesota. Their rural water association is really about getting to small cities. I think we're light years ahead. I see SW Water Authority, I see laws, I see people in the east finally taking their lesson from people who got it right before. Let's do this and collectively work together. If you look through the code, you'll see permissive language in the code in regards to allowing their board to add other counties to it. It's made up those 13 counties in the east that the Corps is looking at as Red River Watershed. If they ever choose to allow another town in, they can. What this language does is put power in the board to let more (towns/cities) get on. I would contend, how would you expect them to help pay for a piece of infrastructure if they had no say over whatsoever. They need to be at that table.

Porter: As this grows up the Red River, East Grand Forks, Breckenridge, are they at some point going to be looked at in joining in, that you might end up with three cities from Minnesota being part of the Lake Agassiz board or do you think it is concentrated enough around that one metropolitan area that it will remain a Fargo/Moorhead issue?

Heitkamp: I don't see it going beyond this. There is a lot of discussion. Never say never, though. If you look at the other people that would be players, East Grand Forks and Breckenridge. Breckenridge has not been knocking on the door; that part of the state that could use more organizing in regards to where the future goes. They have the luxury of the water getting to them first. (Perhaps) they take that for granted. I think you will find that Moorhead will represent their interests well. Fargo, Grand Forks and Grafton and Valley City have seats on this board. Fargo and Grand Forks were mandated, Grafton and Valley City were elected from the League of Cities. I think the cities up and down the Valley think they are very well represented by those four representatives. I believe there are 11 different rural water systems in this; there are five of them sitting on the board. I think the five do a good job of letting the rest know what's going on. That's what Moorhead will do for East Grand Forks and Breckenridge.

Chr. Nelson: Further questions for Sen. Heitkamp? Seeing none, thanks, Joel.

Dave Koland: Just to continue, it says a Minnesota city will have a seat on the board. The Minnesota cities got together and said Moorhead would be their representative. It's our idea that there will be only one Minnesota representative on the board representing the other three. The difference between ND and Minnesota is that in ND we're looking at both the rural and municipal areas. In Minnesota, we're only looking at those three cities. They have some rural water systems, but we're not looking at rural (areas) at all on the Minnesota side.

Rep. Porter: Is the water supply for East Grand Forks the Red River also?

Koland: Their water supply is actually the Red Lake River. I'm not sure. They're negotiating with Grand Forks about the intake as they have an intake on both. The intakes are confusing because they are (both) right where they get water from both the Red Lake River and the Red River.

Chr. Nelson: Are there questions of Mr. Koland? Seeing none, I would ask Mr. Campbell to testify at this time.

Bob Campbell, Lake Agassiz Water Authority (lobbyist): (Written testimony attached)

(This is the investment banker who served on planning the financing for the water supply project)

Chr. Nelson: Are there questions for Mr. Campbell?

Rep. Porter: In the set up of the Lake Agassiz Water Authority, who holds the obligation to the individuals who purchase the bonds?

Campbell: Lake Agassiz would hold the obligation. They would said to the bondholder, "I promise to pay the principal and interest on the due date. But, I'm only going to pay it from the revenue I receive from the water districts and the cities with whom I have water contracts."

We're the authority to enter into these contracts because they are going to be binding contracts. The water districts and the cities are going to have to say, "I will pay these contracts. I will pay the operating expenses, the debt service, no matter what." So the additional language provides for those kinds of contracts. They're very strong contracts because this is just a promise to pay from revenues.

Porter: In the worst case scenario or a default on one of these revenue bonds, who is ultimately responsible, or what collateral is put in place with responsibility back to the bondholder?

Campbell: Answering the second part of your question first, there is no collateral. One of the unique features of revenue bond financing is that they are promises to pay from revenue. The project wouldn't be mortgaged, there would be no taxes to impose or add. But there are promises and they would be made by the city and the water district users to impose rates on the water users high enough to make sure the obligations to pay debt service are met. What would happen: A bondholder would come and seek a writ of mandamus from a court to tell the city councils and the water district commissioners to impose those rates because they promised to do so.

Chr. Nelson: Are there further questions for Mr. Campbell? Seeing none, thank you. Is there further testimony in support of SB 2295?

Dale Frink, State Engineer, State Water Commission: I support SB 2295.

Chr. Nelson: Any questions for Mr. Frink? Further testimony in support of SB 2295? Seeing none, is there any opposition to SB 2295? Seeing none, I will close the hearing on SB 2295.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2295

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1		x	1309-1505
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

Chr. Nelson: Let's take up SB 2295. What's the committee's wishes?

Rep. DeKrey: I'll make a do pass motion to SB 2295.

Chr. Nelson: There is a do pass motion from DeKrey. Is there a second?

Rep. Johnson: Second.

Rep. DeKrey: What the bill does is set up revenue bonds to set up water projects and to secure water for the Red River Valley, which they desperately need. As a member from Minnesota, I think if they are within five miles of the border they can participate.

Chr. Nelson: Is there further discussion? Seeing none, I'll ask Karen to call a the roll on a do pass motion on SB 2295:

Do Pass Vote:

13-Yeas; 0-Nays; 1-Absent; CARRIER: Clark

Date: 3/11/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2295

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number : _____

Action Taken : Do Pass

Motion Made By : DeKrey Seconded By : Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	✓		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	<u>Abs</u>	
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Clark

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

REPORT OF STANDING COMMITTEE (410)
March 11, 2005 2:19 p.m.

Module No: HR-45-4789
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2295, as engrossed: Natural Resources Committee (Rep. Nelson, Chairman)
recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2295 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2295

Testimony by Dave Koland, General Manager
Garrison Diversion Conservancy District
Secretary/Treasurer
Lake Agassiz Water Authority

To the

Senate Natural Resources Committee Hearing on SB 2295

Bismarck, North Dakota
February 4, 2005

Mr. Chairman, members of the committee; my name is Dave Koland. I serve as the Secretary/Treasurer of Lake Agassiz Water Authority and the General Manager of Garrison Diversion Conservancy District.

Garrison Diversion is a political subdivision of the state created in 1955 to construct the Garrison Diversion Unit of the Missouri River Basin Project as authorized by Congress on December 22, 1944. Amendments in 1986 and 2000 have changed Garrison Diversion from a million acre irrigation project into a multipurpose project with an emphasis on the development and delivery of municipal and rural water supplies.

The Dakota Water Resources Act of 2000 (an amendment to the Garrison Diversion Reformulation Act of 1986) has several important features including the authorization of \$200 million for construction of the Red River Valley Water Supply Project (RRVWSP) to meet the needs of the Red River Valley.

During the last session the Legislature established the Lake Agassiz Water Authority (LAWA) to oversee the delivery of water provided by the Red River Valley Water Supply Project. LAWA is governed by a board of nine locally elected officials from five Water Districts and four cities in the Red River Valley of North Dakota.

The new language in 61-39-02 provides that Minnesota cities may join the authority provided a portion of the city is located within five miles of the Red River, or the city uses the Red River for its primary water supply. The scope of the Red River Valley Water Supply Project now includes the 13 eastern most counties in North Dakota and the cities of Moorhead, Breckinridge, and East Grand Forks in Minnesota.

The LAWA was designed to be governed by the entities that have a water service contract for the delivery of water from the RRVWSP. When the scope of the project was enlarged to include Minnesota cities they requested a voice in the governance of the project and the LAWA board concurred. The new language in 61-39-03.8 will give a Minnesota city a seat on the board of directors. Lines 25 through 29 provide that the initial Minnesota city will be Moorhead and sets up a procedure similar to the one used to select the North Dakota cities that serve on the board of directors.

The change reflected in lines 3 and 4 on page four is to acknowledge that the water service contracts with the water districts and cities will be with LAWA

who in turn will have a bulk water supply contract with Garrison Diversion Conservancy District.

Mr. Chairman I would like to introduce our investment banker, Mr. Robert Campbell to discuss the balance of SB2295.

Testimony of
Robert H. Campbell
Lehman Brothers
In Support of
Senate Bill No. 2295
February 4, 2005

*Same testimony
given to
House*

Mr. Chairman, members of the committee

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

My testimony this morning is made in support of the proposed amendments to chapter 61-39 of the North Dakota Century Code that deal with financing the Red River Valley Water Supply Project.

By way of background, I have been involved in the municipal securities industry for 32 years and have participated in a number of multi-party water and other utility project financings. Over the past six months, I have been working with representatives of Lake Agassiz Water Authority and their consultants to design a plan of finance that would:

Accommodate all Red River Valley Water Supply Project alternatives;

Permit phased or accelerated construction of the Project;

Embed the flexibility to impose fair and equitable cost allocations among Project water users;

Finance the Project at the lowest cost;

Be simple and efficient to use; and

Impose the fewest restrictive covenants on Project water users.

The financing plan that both meets all of these objectives and is consistent with the existing statutory framework for developing the Red River Valley Water Supply Project would involve the issuance by Lake Agassiz Water Authority of revenue bonds to finance the Project. Those revenue bonds would be paid solely from revenues received by Lake Agassiz Water Authority under Water Supply Contracts with the city and water district Project participants. To implement this plan, three sets of contractual relationships must be clearly authorized:

A Master Repayment Contract between the Bureau of Reclamation and Garrison Diversion Conservancy District;

A Bulk Water Supply Contract between Garrison Diversion Conservancy District and Lake Agassiz Water Authority; and

Project Water Supply Contracts between Lake Agassiz Water Authority and the city and water district Project water users.

While the existing legislation appears to allow the financing structure we contemplate, in order to get the best possible rating on the bonds, the underwriters like to see clearly drafted authorities for these types of contracts. The legislative changes to support this financing structure we have suggested, although somewhat voluminous, are fairly simple straightforward amendments that would be necessary to create a "financeable" revenue bond structure that clearly defines the sources of revenue and credit that back the Project financing.

For example, although chapter 61-39 of the North Dakota Century Code clearly contemplated the purchase of water for resale by Lake Agassiz Water Authority from Garrison Diversion Conservancy District, the Century Code could more clearly state the authorization of Garrison Diversion Conservancy District to sell water to Lake Agassiz Water Authority for resale beyond the boundaries of Garrison Diversion Conservancy District. The amendments to Section 61-39-01 clarify Garrison Diversion's authority.

Also, the plan of finance contemplates financing the Project with a self-contained revenue bond structure. That is to say, the only credit that will be pledged and the only source of revenue that will be made available to pay the Project bonds will be the revenues collected by the city and water district participants from their water customers. No taxes or general obligation of any entity will be pledged to the payment of Project

bonds. Consequently, the Water Supply Contract provisions between Lake Agassiz Water Authority and its city and water district participants must be strong and binding. The amendments to Section 61-39-05 are intended to authorize the types of contracts that will be necessary to support Lake Agassiz Water Authority's Project revenue bonds, and the additions to Chapter 61-39 proposed as Sections 61-39-06 through 61-39-16 are intended to give Lake Agassiz Water Authority the ability to issue the types of revenue bonds that will be necessary to fund the Project.

With regard to **Section 61-39-05:**

Subsection 4. The existing subsection 4 allows Lake Agassiz Water Authority to contract with the State of North Dakota, its agencies and political subdivisions. The amendment to subsection 4 is intended to make it clear Lake Agassiz Water Authority is empowered to cooperate in and contract for developmental activities with agencies or political subdivisions not only of the State of North Dakota but other states that may be involved or interested in a project being pursued by Lake Agassiz Water Authority.

Subsection 6. The existing subsection 6 allows water to be distributed throughout eastern North Dakota, within or without the Lake Agassiz Water Authority boundaries. The amendment to subsection 6 is intended to expand the entities to which Lake Agassiz Water Authority may distribute water beyond those located in eastern North Dakota to include all entities that might benefit from the Project or any project Lake Agassiz Water Authority develops, including Minnesota cities.

Subsection 8. The amendment to subsection 8 adds a provision that simply reaffirms Garrison Diversion's authority to enter into a bulk water supply contract with Lake Agassiz Water Authority. This amendment has a fourfold purpose:

- i) it is intended to authorize bulk water supply contracts between Lake Agassiz Water Authority and Garrison Diversion Conservancy District;
- ii) it is intended to allow such contracts to coincide with the long useful life of the Project by eliminating term limitations for them;
- iii) it is intended to authorize Lake Agassiz Water Authority to make payments under such contracts to support the capital and operating costs of a Project owned by Garrison Diversion Conservancy District; and
- iv) it authorizes the type of "hell or high water" contractual commitments common to and required by the financial markets for the stand alone revenue bond type of financing contemplated for the Project.

Subsection 9. The amendment to subsection 9 deals with the Project water supply contracts Lake Agassiz Water Authority would enter into with the city and water district distributors of Project water. It has a threefold purpose:

- i) it is intended to authorize Lake Agassiz Water Authority sell the Project water it acquires from Garrison Diversion Conservancy District to persons and entities within or outside Lake Agassiz Water Authority's boundaries;
- ii) it is intended to authorize Lake Agassiz Water Authority to pass its Garrison Diversion Conservancy District Project bulk water contract

obligations on to the city and water district end distributors of Project water; and

- iii) it authorizes the same types of "hell or high water" financial commitments in its Project water supply contracts with the city and water district end distributors of Project water as Subsection 8 authorizes it to make in its bulk Project water supply contract with Garrison Diversion Conservancy District.

Subsection 11. The amendment to subsection 11 is intended to:

- i) confine to revenue bonds the types of bonds Lake Agassiz Water Authority is authorized to issue; and
- ii) to make it clear Lake Agassiz Water Authority may finance the Project if it is owned by Garrison Diversion Conservancy District by allowing the proceeds of those bonds to be used for the benefit of or as payment for Project water delivered by Garrison Diversion Conservancy.

Subsection 12. Subsection 12 allows Lake Agassiz Water Authority to lend proceeds of its revenue bonds to Garrison Diversion Conservancy District, the State, its political subdivisions or public bodies to facilitate the development or construction of the Project. This Subsection is added to make certain Lake Agassiz Water Authority may lend its revenue bond proceeds as advances to pay the Project costs of others that may be repaid pursuant to a repayment obligation other than one contained in a water supply contract.

Subsection 14. The amendment to Subsection 14 adds “or otherwise” to give Lake Agassiz Water Authority the flexibility to pledge its revenues to obligations in addition to its revenue bonds. An example of such an obligation would be its bulk Project water supply contact with Garrison Diversion Conservancy District.

Subsection 16. The amendments to Subsection 16 are intended to authorize Lake Agassiz Water Authority to pledge its revenues to the payment of its bulk Project water purchase contract and to make certain the payments it receives from its water supply contracts with the city and water district distributors it sells Project water to are included in the definition of the revenues it is authorized to pledge.

Subsection 20. This Subsection is added to conform to the amendments allowing Minnesota cities to join Lake Agassiz Water Authority. It allows Lake Agassiz Water Authority to exercise its powers for those entities as well as North Dakota entities.

With regard to the revenue bond provisions, **Sections 61-39-06 through 61-39-16**, the proposed additions simply “flesh out” Lake Agassiz Water Authority’s existing authority to issue revenue bonds by adding specificity to that authority and including up to date financing flexibility. These provisions were taken almost verbatim from North Dakota Century Code Chapter 61-35, the Chapter that authorizes water districts to issue revenue bonds. Because of the amount and complexity of Lake Agassiz Water Authority’s revenue bond financing plan for the Project, the need for clear authority to issue those bonds without creating statutory or constitutional debt, we believe that establishing Lake

Agassiz Water Authority's power to issue revenue bonds in the North Dakota Century Code Chapter devoted to Lake Agassiz Water Authority will produce the strongest, surest and least expensive financing program.

Section 61-39-06. This Section describes how Lake Agassiz Water Authority may authorize revenue bonds and generally what must be included in that authorization. It provides that revenue bonds may be issued upon the approval of a bond resolution by a majority of the Lake Agassiz Water Authority board and that the resolution will become effective immediately. The detailed requirements of the resolution are contained in subsequent Sections of Chapter 61-39, but at a minimum, the resolution must i) set forth the purpose or purposes of the bond; ii) contain provisions for bond repayment; and iii) describe the funds pledged to secure payment of the bonds.

Section 61-39-07. This Section sets forth the categories of topics the bond resolution must cover. It requires the resolution to describe when, where and how the bonds will be repaid, the form and content of the bonds and the terms, conditions and covenants under which the bonds will be sold. It expressly allows both fixed and variable rate debt.

Section 61-39-08. This Section deals with how the revenue bonds may be sold. It allows both of the commonly used forms of sale, public competitive sales or privately negotiated sales, under the terms and conditions the Lake Agassiz Water Authority deems most appropriate. It conforms to the more modern practice of allowing the issuer to determine the appropriate price and interest rates its bonds should bear.

Section 61-39-09. This Section permits the sale of bond anticipation notes pending the preparation of definitive revenue bonds. Bond anticipation notes usually are sold to fund project costs during high interest rate construction periods. They are paid solely from revenue bonds typically issued after construction has been completed.

Section 61-39-10. This Section makes it clear that bonds properly authenticated by the officials in office at the time of execution are valid notwithstanding the fact those officials may not be in office when the bonds are delivered for payment. This type of section has been added to most bond statutes to make certain that bonds are not invalidated because the officials who properly executed the bonds died or were removed from office between the time the bonds were executed and the time the bonds were delivered at closing (usually, about two weeks after bond execution).

Section 61-39-11. This Section permits financial institutions to invest in Lake Agassiz Water Authority's revenue bonds and declares that the interest on those bonds shall be exempt from State and local taxation. This is a common provision in all North Dakota Century Code bond authorizations. Exemption of interest on the bonds from federal income taxation is determined by federal law. State law governs the exemption from state and local taxation.

Section 61-39-12. This Section is key to Lake Agassiz Water Authority's authority to issue revenue bonds. Revenue bonds do not create constitutional or statutory debt. The

last paragraph of this Section makes that limitation abundantly clear. Instead, revenue bonds simply are promises to pay the principal of and interest on the bonds from the proceeds of specifically described revenues that are encumbered in the manner described in the bond resolution. Revenue bond resolutions are the contracts that contain those promises. To ensure that those promises are enforceable, state legislatures must grant issuers of revenue bonds the clear power to generate revenues, determine how and in what order the revenues it collects will be applied, pledge that revenue to payment of the revenue bonds, and describe the various ways bondholders will be protected against dilution, covenant modification and breaches of contract. This Section includes all of those powers and is virtually identical to Chapter 61-35-38 (the water district revenue bond covenant section). It also permits Lake Agassiz Water Authority to use modern provisions, such as synthetic interest rate contracts, interest rate caps, floors and collars, to lower its borrowing costs and reduce its exposure to interest rate risk and makes it clear Lake Agassiz Water Authority may establish and enforce the liens it creates.

Section 61-39-13. This Section re-enforces the revenue bond nature of Lake Agassiz Water Authority's bonds and bond anticipation notes. It prohibits the bonds from being payable from any revenues or sources other than the revenues pledged to their payment; it forbids the mortgage or other encumbrance of property to secure payment of the bonds; and it requires the bonds to state on their face that they do not create statutory or constitutional debt.

Section 61-39-14. Revenue bond financings rely exclusively on the faithful performance of the covenants contained in the bond resolution. This Section specifically recognizes the essentiality of the performance of those covenants and imposes on Lake Agassiz Water Authority, its officers, agents and employees fiduciary duties that are essential to the contract between Lake Agassiz Water Authority and its bondholders. Those duties include: the punctual payment of the bonds; the collection of sufficient revenues to enable Lake Agassiz Water Authority to fulfill all of its obligations; the performance and enforcement of water purchase and sale contracts; the maintenance of its own property in good working order and free from liens; the keeping of good books; the protection and preservation of the security of its bonds; and the requirement that pledged revenues be held in trust for the benefit of the bondholders. This Section also re-enforces the restrictive nature of Lake Agassiz Water Authority's revenue bonds by limiting to Project revenues or water sale contract revenues the categories of revenues that Lake Agassiz Water Authority may be required to use to fulfill these duties.

Section 61-39-15. This Section grants bondholders the right to sue Lake Agassiz Water Authority, its officers, agents and employees to force them to perform their statutory or bond covenant duties or to enjoin them from doing things that may be unlawful or in violation of the bond covenants. These equitable rights are cumulative to any rights bondholders may otherwise have at law or under the terms of the bond resolution.

Section 61-39-16. This Section articulates the single purpose nature of Lake Agassiz Water Authority by defining the "project" as the Red River valley water supply project

and its related facilities or a bulk water purchase contract with Garrison Diversion Conservancy District for delivery of water by means of a Red River valley water supply project. By defining the term project in this fashion, this Section both limits and enables Lake Agassiz Water Authority to perform its statutory powers in association with the Red River valley water supply project or Lake Agassiz Water Authority's contract with Garrison Diversion Conservancy District for bulk delivery of water from that project.

All of these amendments and additions proposed for Lake Agassiz Water Authority's chapter of the North Dakota Century Code are necessary to permit the most flexible and cost effective financing of the Red River Valley Water Supply Project and are consistent with the financing and ownership framework that has been contemplated for the Project for years. They give all parties involved the opportunity to meet the financing goals I mentioned at the beginning of my presentation and will allow those parties to construct, finance, own and operate the Red River Valley Water Supply Project that best fits their current and future needs. Therefore, I would urge you to pass Senate Bill 2295.

Thank you for your time.

Red River Valley Water Supply Project Financing Plan

