2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1318

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1318
2/4/2011
14068
☐ Conference Committee

Committee Clerk Signature Lynnette

Minutes:

Rep. Porter: We will open HB 1318.

Rep. Pollert: I represent district 29. In front of you is HB 1318 which I am the prime sponsor of. Garrison Diversion was originally set to serve numerous separate irrigation districts, each governed by a local board. Garrison Diversion is asking in this bill for some authority to provide funding for local irrigation projects.

Dave Koland: Manager of the Garrison Diversion Conservancy District. I have a number of amendments for this bill that I have handed out a version of the bill that incorporates one of the sets of amendments. The second set of amendments is simple and deal mostly with word changes. That is the amended bill I am going to speak about in my testimony. Garrison Diversion is a local political sub division created in 1955 to be the local sponsor that would construct the Garrison Diversion unit of the Missouri River Basin Project as authorized by Congress December 22, 1944. (see attachment 1)

We serve as the fiscal agent for the Federal dollars that come to North Dakota through this project, and are party to the numerous contracts with the Federal Bureau of Reclamation to implement those parts of the project Congress has authorized North Dakota to construct. The amendments in 1996 and in 2000 have changed the Garrison Diversion Unit from a million acre irrigation project into a multipurpose project with the emphases on the development and delivery of the municipal and rural water supply. Garrison Diversion's mission remains to provide a reliable high quality and affordable water supply to benefit the people of North Dakota. Garrison Diversion is governed by a 28 member board of directors each of the 28 counties that are members of the district elect one person at the General Election to serve on the board of Directors and levee one mill to support the activities of the district.

Rep. Kasper: I don't have a fiscal note on the bill?

Rep. Porter: There are no dollars on the fiscal note.

Dave Koland: What I will try to do is to go through section by section with a one sentence summery of what that section is attempting to do. (see attachment 2)

Rep. Keiser: Are we creating any definitions in this section?

Dave Koland: The only definition we are creating is number 4 the direct benefit.

Rep. Keiser: Why do we have to restate them here?

Dave Koland: Because in this chapter there is no definition section.

Rep. Keiser: But we could refer to the other chapter?

Dave Koland: Yes.

Rep. Hofstad: When we talk about direct benefits and I expect this in relation to the assessment district Is that what we are talking about?

Dave Koland: There was a concern that because the pipeline is running past a person's land that he could be assigned a benefit. This makes it clear in that chapter that a direct benefit means water is delivered.

Section3 provides that bonds and special assessments be authorized by a majority vote of the Garrison Diversion Board. Section four makes it clear that this chapter will govern how the bonds are to be issued. Section five details that the improvements are for an irrigation water supply works, including improvement extension or replacement. We have removed any reference to any to any other type of water supply system other than irrigation.

Rep. Hofstad: You are saying that it is an Irrigation District but within that section you are talking about structures and issues that seem to apply to water delivery systems, am I reading that wrong?

Dave Koland: I don't disagree with that, things like settling basins or filtration plants, I have no objection if there are words that are to ambiguous they could be taken out.

Rep. Keiser: In section 2 and 3 we are providing the authority to the Garrison Diversion to issue bonds, you do not have authority at this point, is that correct?

Dave Koland: We do have the authority to issue revenue bonds we do not have the authority to special assessment or improvement bonds. We are adding the power to issue improvement bonds and to create special assessment districts.

Rep. Kasper: How big will the special assessment districts be?

Dave Koland: That is a difficult question to answer. I will explain later a district where we could have used this in the next face of it and that district is 3,500 acres, the total construction cost is about three million dollars.

Rep. Kasper: 3,500 acres would be assessed over three million dollars?

Dave Koland: No about 1.5 million because the state Water Commission has a 50% cost share on most of the cost of building that project.

Rep. Keiser: Will the good faith and name of the state of North Dakota be behind these special new bonds?

Dave Koland: I can say no to that, the good faith of the Garrison Diversion will be behind these special bonds. Section 6 provides quick take authority for condemnation of land and right away for improvement project.

Rep. Nelson: Why do need quick take? What is it that is so urgent about the project that you can't go through the normal condemnation?

Dave Koland: That is a complex question. When you go about building these projects you have a number of restrictions including environmental restrictions where we don't do any work on the right away during nesting season so we run into a number of problems plus in the case of the project that I am going to talk about later we worked until about 2 weeks ago on constructing this project because we made a comment to deliver water in May.

Rep. Hofstad: At the end of section 6 you talk about the judgment being vacated, explain that to me.

Dave Koland: That says if the district doesn't make payment the way it is committed to do for whatever parcel that it was going through, then the proceedings are no longer valid.

Rep. Hofstad: It seems we are talking about the condemnation of proceedings which I think would be the judgments and I am not sure how the judgments could be vacated.

Rep. Keiser: I think the question that the bond council can answer is what price do the bond holders have in this situation? Is this precluding any action against authority?

Dave Koland: You will have to defer to some legal advice on this issue. This is language pulled from the Water District Special assessment section 6135 I believe. Water districts have special assessment authority also.

Section 7 provides the irrigation improvement district be created by resolution of the Garrison Diversion Board and allows it access to the proposed project area for surveys after written notice to each landowner. Section 8 deals with the size and the form of a improvement district and allows the board to omit or add property to the improvement district.

Rep. Kasper: Section 7 the written notice, you don't give a time line or a date that you will take action after the written notice?

Dave Koland: I believe that is correct. Once they have the written notice you can go on the land only for the purpose of survey or examination.

Rep. Kasper: Do you think it might be advisable to have a timeline after the written notice?

Dave Koland: I don't see a problem with a 7 day notice.

Rep. Porter: As you work the two sections together with the quick take and then the next section the beneficial users aren't always going to be the individuals who are quick take for the land and so there is going to be a rub in this process between someone who is benefitting and someone who chooses not to be part of this project and you are digging up his field and putting a pipe across it. Now you have quick take and then you show up and put stakes in and keep going. There is a little bit of property owner rights that we have to be very aware of as we are doing this because the people who are benefitting are certainly not going to be the ones that are going to be calling us on the phone and asking us why we gave you this board brush of authority to basically impede on the land that they pay taxes on to put a pipe in the ground that they get nothing for.

Dave Koland: I think from a practical matter there is no problem putting some notice requirements in there.

Rep. Keiser: If you use quick take and get the project installed and it goes on somebody's land who is not participating in the project but you use quick take to take the land and they are fine with it and the bond gets paid off. Then that individual says I would like to access that system. Will there be any recovery for the other parties?

Dave Koland: That is what would happen in this type of district whether it is someone who you use quick take on or someone that decides three years later that now he wants water. If we have water available we would give them water, but he would have to pay from day one. That money would go into the sinking fund or into the O&M fund if the bonds are paid off.

Section 8 is how you can deal with the size of it. The key thing in the irrigation project of this type is that the special assessment districts lines can follow the water line. Section 9 requires an engineer's report and estimates on the total cost of the project. Section 10 requires the plans and specs must be approved by the resolution of the board. Section 11 provides the engineer will have copies of the plans specs and provide them to anybody that wants them at a reasonable cost. Section 12 provides the plan specs and estimate along to the Garrison Diversion and are available for inspection by anyone. Section 13 provides that there will be a public hearing in the vicinity of the proposed project. Section 14 provides a 30 voting period and requires that 75% approve the proposed project. Section 15 provides that if you get assessed one dollar you will get one vote.

Rep. Porter: In section 14 the only people that get to vote are the beneficial users, why wouldn't that be 100%?

Dave Koland: We had some debate on that. During that 30 day period someone unfortunate happens in your family and so you no longer want to be in the project. If we require 100% vote this person's only out would be to vote no and the project would be dead.

Rep. Porter: Why wouldn't you make this a 100% requirement and then put language in it that, prior to the start of the works any landowner can opt out of the project prior to the start of the project?

Dave Koland: You are talking about 2 different procedures to do the same thing. You have to draw the line some place so that you know you have a set amount of people that are committed to this project. If you leave an option there you can go right up to the start of construction and say we want to opt out then you have to reassess that and may not have a project.

Rep. Hofstad: What is the producer of the frame work? Are you the one that decides to set up the assessment district? Are you being petitioned by the benefit of the people? What is the size of the assessment district?

Dave Koland: This project started with public meetings out in the area soliciting input from the farmers and that is how we create, then the engineers lay out a plan and show they can serve this. These districts don't form themselves they require effort on the part of the district to create interest to explain the opportunity this is here. It does require good farm prices and people that are looking to expand their operations.

Rep. Hofstad: My concern is the emphases to form the district. I don't see in this chapter where it needs to be petitioned by the landowners and that is an important part of this.

Dave Koland: We have no interest in creating an assessment district of people that are not interested in irrigating. They have to sign a water service contract and that maybe what you are looking at.

Rep. Kelsh: In section 13 the language seems to limit you to one hearing only and given the circumstances you talked about where people may not be able to attend the hearing do you think one hearing is enough?

Dave Koland: We will get to another hearing in section 17. There is also the ability to appeal to the state engineer.

Rep. Kasper: In section 14 about the 100% and the 75% on line 21 "if less than 25% protest then you proceed" does that mean those people that protest have by that protest opted out and do not need to do any other notification?

Dave Koland: If you someone at that point that didn't want in, the board has the authority to cut that parcel out, but it has to reapply the assessment again over the remaining people that are participating in the project.

Rep. Kasper: That is not what I am asking. Of those people that don't want is there a formal process that they sign something that says "I am out" so that you are giving them a notice that they can opt out so that they are not part of the district?

Dave Koland: If there is less than 25% of the project then there recourse is the repeal the process at the next hearing. If the board doesn't act then there is an appeal process to the state engineer.

Rep. Kasper: For those who not wish to be in after the hearings, is there a process that they can sign something that says "we are opting out" so they won't be part of the district?

Dave Koland: No they have submitted a written note that says "no they don't want to participate" I believe what we are saying is that we would get to this process, have the vote and if you didn't want to participate then you can opt out. I would have to visit with some people and see what that would do to this process.

Rep. Kasper: Did I hear you say the people could opt out if they desire?

Dave Koland: The board has the power to admit people. In my judgment that is what would happen. If someone gets to that point and wants to opt out you would exclude them from the project which would be to opt out. The landowner is not free to do as it is currently written.

Rep. Kasper: If the vote is less than 25% the landowner is in even if he wants to be out?

Dave Koland: He is in but he is not out of options.

Rep. Kasper: Will he be assessed even if he does not want to in the project?

Dave Koland: If the board wouldn't opt him out and the state engineer wouldn't opt him out yes then he would be in.

Rep. Keiser: In section 13 since this is a small area of assessments would it be appropriate to send a letter to the residents?

Dave Koland: Would you send that to all of the property owners within the district? That is no problem because we will have a lot of correspondence with those people. The only solution I see to that is to require 100% vote and I don't have a big problem with that.

Rep. Porter: You will have some opportunity to work that out with the subcommittee.

Dave Koland: Section 15 provides that each landowner has one vote for each dollar assessment. Section 16 provides that only land that is directly benefited and that means water is delivered to a tract of land can be assessed. Section 17 provides for the assessment list to be published and a hearing held to hear objections to any assessment. Section 18 provides for an appeal to the state engineer, he can review and examine the assessments and the land.

Rep. Keiser: If we were to do through the bill and say 10 or 20 business days would that be a problem?

Dave Koland: That is no problem, one of my amendments deals with changing 10 days to 14 days on one of the publications, and adding business would be fine.

Rep. Porter: On line 20 then the individual or the landowner's last recourse is to state engineer? They have no other recourse to go to mediation or to a district court?

Dave Koland: I believe that is correct. I would not discount that they have recourse to the courts.

Rep. Nelson: You mentioned that they have to sign a water service contract. Where does that come into the process and if the guy doesn't sign the water service contract is he going to be part of this project?

Dave Koland: Early on in this process as we develop the plans and specs we will ask them to sign a contract that says that we want to go ahead. At some point earlier in this process you have to determine what the number is and how many people are in. The water service agreement is critical to them because we will be able to give them a 30 year water service agreement and that is an important factor in their planning.

Rep. Keiser: When do you talk to the users about the project? When do they sign the contract and make the commitment in this process?

Dave Koland: That all is going to happen before we get to figuring out how we are going to finance the user ship. We will go through the public meetings and find out who is interested and who wants to irrigate. This is the financing part of the deal this is not the beginning of this project.

Rep. Hofstad: This is whole process is unique because you are dealing with people that are going to be in the project. The people that are coming to you are likely the people that are will be benefitting at 100%. There are a number of costs associated to getting to the vote. Who pays for those costs?

Dave Koland: The Garrison Diversion is charged with putting the water behind the Garrison Dam to benefit the people of North Dakota. We levee one mill to do that. That one mill is to develop projects if they fall apart at the last minute that is a cost that we absorb. We spend a lot of time helping systems develop their plans to how they are going to work with the water supply. Irrigation has floundered in this state because there has not been the opportunity because there hasn't been anyone to make that initial investment. We have gone to meetings that many times and after the meeting we have said I guess they are not interested. There is no provision to pay for the cost that is born by the district.

Rep. Damschen: If the amount of the assessment is going have an effect on the vote, is it going to be necessary to have that determined before the vote is taken?

Dave Koland: Yes that is key and it provides through this process that you make an estimate and that if when you get to construction you have gone through the bidding process if your costs are now more than 40% of what you estimated before you started you can't move ahead with the project.

Section 19 provides when the special assessment can be levied and stipulates that the contract can't be awarded if it exceeds 40% or more the estimated cost of the project.

Rep. Hofstad: I believe that the statute as it deals with assessment districts and water resource districts is 20%. Have you changed that?

Dave Koland: No this came out of the water district, not the water resource district legislation.

Rep. Keiser: You made the statement that in these projects the engineer's are pretty close, if they are so close than why do we need 40% versus 20%.?

Dave Koland: I think you got me. Section 20 provides the correction of errors which will be governed by chapter 4026 which is in the municipal section of the code and deals in the process of correcting errors in the special assessments. Section 21 provides that a special assessment is a lien on the property second only to the general tax lien. Section 22 provides that a portion of the cost of the improvement can be raised by a service charge by the use of the improvement and paid into the improvement fund. What this means is that in addition to the special assessment to cover the cost of the construction, part of how you are going to repay that bond can be in the form of a service charge, a water service charge in this case there will be a charge on top of that that will go towards the repayment of this bond. Section 23 states you can use abbreviations. Section 24 provides that the Garrison Diversion will keep a complete record of all of the proceedings. Section 25 provides that defects will not be fatal unless commenced within 30 days of the board resolution awarding the sale of the bonds. Section 26 provides that special assessments can be paid within 10 days after board approval once the board is approved issuing the bond can be paid without any interest charge. Section 27 provides that unless a purchase contract provides a otherwise the special assessment becomes a lien on December 1, of each year. The purchase contract would be selling their land to someone else. Section 28 provides that the assessments can be spread over 30 years. Section 29 details the process for payment of an assessment in full and what is paid to the county and what is paid to the Garrison Diversion. Section 30 provides for the annual certification by Garrison Diversion to the County Auditor and may include the cost of maintaining the project. Section 31 sets the timeline for the District Treasurer to certify the special assessments to the County Auditor each year. Section 32 provides for the special assessment be collected with the general taxes of the county. Section 33 provides that the County Auditor shall keep a special assessment record. Section 34 provides that the county will certify the amount collected and pay it to the Garrison Diversion Treasurer monthly. Section 35 provides that the County Treasurer also collects the penalties and interest on special assessments and pay the district treasurer monthly. Section 36 provides that the Garrison Diversion must keep a special improvement fund separate and may not use it for any other purpose.

Rep. Porter: Does the fund have to pay a cost to the County Treasurer for the work that they are asking them to do?

Dave Koland: Not that I am aware of. Section 38 provides that bonds can be issued to make payments on contracts. Section 39 provides that refunding bonds can be used to extend the maturity of bonds payable or reduce the interest on bonds. Section 40 provides that a special assessment is a tax lien and if delinquent can be foreclosed on. Section 41 provides that projects in that amount in the state law which currently is $100,000 must be advertised for bids and sets out the procedure for advertising for the bids. Section 42 requires a bid bond. Sections 43 sets out what is an acceptable form of the bid bond Section 44 lists the conditions that need to be in the bidders bond. Section 45 is the

procedure for considering bids. Section 46 provides how you open and record the bids and Section 47 sets out when the bids are rejected. Section 48 the engineer makes made a careful and detailed statement of the estimated cost of the project. Section 49 the contract may not be awarded. Section 50 sets out the conditions of that bond. Section 51 requires the board to approve that bond and then you return the bidders bond to them. Section 52 sets out to what is to happen if there is no contractors bond. Section 53 provides a board may require a new contractors bond at any time if it deeds that the current bond is insufficient in form or as to the sureties. Sections 54 details how the contract for the project will be executed. Section 55 sets out the conditions that must be in the contract and provides how certain additional work can be included under the contract. Section 56 provides for monthly payments to the contractor and sets out the conditions for the payment and retainage. The next sheet if the summary that I hope will be helpful.

Rep. Porter: If the district and the contractor are disputing or if the district doesn't pay the contractor, you are setting that interest rate at 2 points below the Bank of North Dakota's prime rate that doesn't seem fair to that contractor.

Dave Koland: I copied that language out of the bonding language.

Rep. Porter: We should probably open that whole section.

Dave Koland: I am open to fixing that if you want.

Rep. Keiser: Section 22 the service charges, as I read through this it appears to me that the board can issue the service charges and there is little recourse on the part of the participants in it as I read it. Does that mean if we had signed contracts and for whatever reasons there was an error made and the cost goes up a lot does mean that I would as a user continue to pay my contract but then the board could come back and have a special assessment through service charge to insure that the bonds would be covered?

Dave Koland: I think it is better for him to answer because you are dealing with the bonds.

Rep. Keiser: As I read the service charge section it is an open line for the authority to issue a service charge whenever they deem it necessary to make the system work. There is no revote on that or the entire powers and its authority.

Dave Koland: I believe you will hear one side of that answer from the bond people. On the water service contract we detail how the service charge is calculated.

Rep. Damschen: Is there periodic maintenance required and is there a provision for that?

Dave Koland: Yes there will be yearly O&M charges created on it, there will be time involved with people working on it. On the summary (see attachment 1 page 9) I would like to take you through a project that we are doing now. We are financing it with a tax exempt bond but a similar process. The first sheet gives you an ideas where the project is which is in the Turtle Lake service area (see attachment 3) We ended up with this project which takes water out of the canal, the intake for this project is about 1/3 of this size. This has a reserve account. The water charge is $13.00. The energy cost is estimated at $39.00 and the

operation and maintenance is at $15.00 an acre. That is how a typical project would be set up. If you get up in the $150.00 range it is probably not a doable range.

Rep. Keiser: Why do we need this need this new financing approach?

Dave Koland: We have struggled with the banks on how to finance it. The banks are reluctant to loan money and they want security. The district is committed to financing the first project by itself. The district doesn't have the financial capability to develop this 23,000 acre irrigation development.

Rep. Hofstad: Wouldn't it be a lot simpler to enable you be an agent of that irrigation district and do it that way?

Dave Koland: When we went about creating this district we went to the Turtle Lake Irrigation District and got their blessing to move forward with the project in that area. Yes they do have special assessment authority. Our experience has been that the local irrigation is not willing to take on that risk for other irrigators to develop their project. You are familiar with local politics and there are always a number of hurtles when you have someone wanting to move forward in a certain area and other people don't feel that they should do that. You either don't move at all or you move very slowly and then the opportunity passes and we wish we would have done this some other way. The operators for the most part are that we are dealing with here were more comfortable dealing with the Garrison Diversion. The 28 member board elected at the General Election is spread across the state of North Dakota.

Rep. Porter: You made the comment "lease Holder would be able to join this district" what skin do they have in the game in the default?

Dave Koland: They have to have a very good contract that says someone wants to come into the area and wants to rent this land and put a pivot on it and participate in that. He would have to work out an agreement with the land owner that he will be liable for the special assessments.

Rep. Porter: The landowner is still where the buck stops?

Dave Koland: Yes the landowner votes, the landowner has to sign the water service contract.

Bob Campell: I work for Barclay's capital. To answer the question what is the credit or is there a state obligation? No the credit is the land. The relationship between the service contract and the assessment, they are related. The property owner will sign the water service contract which will obligate him to pay the assessment the rates and charges for the water delivered.

Rep. Keiser: The language in this bill sets no parameters for those special assessment fees. There is no recourse so they can charge whatever they want.

Bob Campell: I agree with you there is no language to the district to charge for those elements. That is something that could be put into the legislation that the language in the

contract would say I will pay my fair share of the cost. The condemnation and the judgments, these things are all timed so that there is no possibility that the condemnation could be vacated after the bonds are issued.

The third area is the discussion about the 100% etc. I though the statute is kind of elegant in how it makes sure that people were included only if take water from the improvement of the direct benefit. You can't be assessed unless you get a direct benefit. A direct means you get water to your property so if someone along the line says "I don't want water" then he can't be assessed.

Rep. Porter: If someone would default on their property that is inside the assessment district then that would go through the normal county tax abatement?

Bob Campell: The practical process is the bank to protect its interest will step in and pay.

Alan Butts: I represent the Irrigation Association. (see attachment 4). We ask for a favorable consideration on HB 1318.

John Leinnger: I am from Griggs County. I am in support of HB 1318, as a member of the Garrison Diversion Conservancy board. After years we have our first irrigation project on the way. We are finally doing what we set out to do in the beginning. We gave up over 500, 00 acres so of them very prime farm land so that we can protect flooding downstream. We were promised a million acres and that has changed. Our board is 100% behind this project.

Mike Dwyer: I represent the North Dakota Waters Users Association, we support this concept. We have identified the North Dakota irrigation Association's irrigation which is 260, 00 acres. We could develop another 150, 00 -200, 00 acres of irrigation. This would be a nice thing for all of those projects that would use the Central Water Supply to be able to move irrigation forward.

Todd Sando: I am the State and Chief Engineer and Secretary of the State Water Commission. I do support the concept of the irrigation development. We are providing the public funds for the Turtle Lake Irrigation.

Rep. Porter: Is there any opposition to HB 1318. We close the hearing on HB 1318.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations

Other

Date of meeting/discussion: 02/10/2011

Overview on HB 1318

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Committee Clerk Signature *Smith*

Minutes:

Rep. Damschen: We will open the subcommittee meeting on HB 1318. Have you all seen the purposed amendments? We have a version with most of them incorporated and I don't have extra copies. Is there a simpler process to do this?

Charles Carvell: I am with the Attorney General's office. I suppose the concept is workable but there would have to be some legislation because you have given all the powers to the Irrigation District and there are a number of chapters in the code. There could be something relatively simple that says everything that the Irrigation Districts now do and the way they do it could be done by the Garrison Diversion rather than enacting a new set of laws for the Conservancy District.

Rep. Damschen: Would that be simpler than what we are trying to do here?

Charles Carvell: I read the bill a couple of hours ago and it is not short or simple so it is worth thinking about. Using what we have in the statues might be a better approach and with some simpler approach saying that the C District can use those present statues.

Dave Koland: When we went about trying to solve the problem that we were confronted with, which is to provide a method of financing for irrigators to pay their share of the deal, we looked at the irrigation District special assessment authority and there are a number of things in that section that are convoluted when it comes to doing a special assessment in the process that they go through to do that. It would take some looks by

the bond people because the objective here is to be able to issue an improvement bond when we get through this. HB 1318 has been reviewed by three bond attorneys so that we were comfortable and be able to issue a bond. These bonds are not large bonds so in all likely hood be privately placed to a bank. We are willing to look for a simpler way; I don't view delegating the Irrigation District special assessment authority to Garrison Diversion as being a simpler way to go about this. Mr. Dwyer and I looked at this language and don't think this is a very doable thing.

Rep. Damschen: Is the main issue the bonding authority?

Charles Carvell: Yes the objective of this legislation is to get to the improvement bond. That improvement then gives the bank beyond the general taxing authority the next credit.

Rep. Damschen: In the existing code now for when a irrigation district is formed can they use bonding?

Charles Carvell: The irrigation has the power to do bonding right now. The difficulty with the irrigation district doing this is that these are not the people that are in the irrigation district. Twenty five years ago there would be many operators out there, now days there are three. Farming has changed there are far fewer farmers because the economy has changed that much.

Rep. Damschen: The people who pay the bill are the ones that get the water?

Charles Carvell: Right and the start of this process you go through the public deal and dwindle it down to the ones that want the water and then you have to negotiate a water contract and then you come to the part of financing, the local share of this? The people that are involved are the people that are going to get water.

Rep. Nelson: We amended in the direct benefit meaning water is delivered to a tract of land. Isn't the irrigation law a little boarder than what you are asking for here?

Charles Carvell: Yes there it is any benefit. The board is suppose to go out and look at the tract and try to determine if there was a benefit. I came up with that language after I heard some concerns about going by my land and saying that is a benefit to make it clear direct benefit was inserted that the only people that can be assessed are the people that are getting the water.

Rep. Hofstad: Did the irrigators start this process?

Charles Carvell: It starts when the Federal Government says we can irrigate up to 10,000 acres out the McClusky Canal and 10,700 acres in the Turtle Lake area. We got calls about getting water out of the Canal so we went out and had some meetings in the Turtle Lake area and advertised in that area.

Rep. Hofstad: Does the water appropriation come from the Bureau of Reclamation?

Charles Carvell: Yes, the Bureau of Reclamation has a water permit from the Missouri River and that is about 3 million acre feet of water. They have allocated 1.5 million acre feet of that to the state of North Dakota. To get water out of the McClusky Canal which is a Federal Facility owned by the Bureau of Reclamation, you have to go to them and get a water service contract. We can get a 5 year contract, the reason they can't give a longer contract is because there is no repayment contract in place with the Bureau of Reclamation to repay them for the construction of the Canal and the Snake Creek pumping Plant.

Rep. Hofstad: Is the water service contract to supply water to the McClusky Canal or is that a water service contract to take water out of the canal for various uses?

Charles Carvell: That is to take water out of the canal. The Bureau won't get a water service until there is a contract in pace to repay for the construction of the McClusky Canal and the Snake Creek pumping plant. Once we have that repayment contract then we can get a 30 year water service agreement and pass that on to the irrigators.

Rep. Hofstad: How much water do you have to appropriate each year?

Charles Carvell: We have enough water to irrigate those authorized acres. Our contracts are for a maximum of 9 inches of water a year.

Rep. Hofstad: Could the project be expanded?

Chares Carvell: We cannot expand beyond the authorized acres other than the 28,000 undesignated acres that we could use. These acres are outside of the Red River Valley and in the Oaks area.

Rep. Hofstad: Could you use those acres for another area?

Charles Carvell: They were intended to be used in counties like Williams, or McKenzie and other places along the Missouri River. Those 28,000 acres is intended to be in other places in North Dakota. (see attachment 1) We had interest there, we had a project that was doable, and we indentified 7,000 acres to be irrigated here. All of this had to be built under Reclamation Law and that requires a considerable amount of environmental work and environmental commitments as to what we were going to do as far as drainage, wet areas when we can construct because there are several times of the year like at nesting time that we can't do construction or ground work. We have also started the process of negotiating a repayment contract and that process will take at least 2 years to go through. We have explained that to the irrigators that we are in this process until we get that repayment contract which will only be a one year contract and we have never been able to do that before because we never had anyone put together a project so that we needed to negotiate a service contract.

Rep. Hofstad: The repayment?

Charles Carvell: The repayment from building the McClusky Canal. We go through this process and this is a 2000 CFS canal that we are going to take a very minimal amount of water out of.

Rep. Hofstad: Then part of the service contract is to pay for the construction of the canal that was constructed when?

Charles Carvell: In 19?? We have gotten to the point where we could work on a repayment contract.

Rep. Hofstad: As you go forward you become involved in the assessment process and the bonding process, how does that all tie together? You can't develop a service contract before you know all of the costs and at this point do you have all of the costs indentified?

Charles Carvell: We have a short term agreement with the Bureau and we are charging $13.00 an acre for the water service and that will very closely mirror where we will end up with the bureau on the repaying part. Our records are open we explain how we compute the charges. The assessment is pretty simple we are spreading 100% of the cost over these 21 irrigators. They understand that even though we don't know the final cost of the project they will pay by the pivots.

Rep. Hofstad: By the pivots not by the acres?

Charles Carvell: It is assuming 130 acres pre pivot.

Rep. Hofstad: Is all of the environmental work done at this point?

Charles Carvell: Yes. We have a memorandum of an agreement with the bureau with that process and a timeline laid out for that to get us 2 years down the road to that repayment contract. So far we have no red flags or problems on these issues.

Rep. Hofstad: How do you come with a value for some of the costs like the transmission of the water?

Charles Carvell: Yes one of the key points of these irrigation projects is the power cost. We are going to build this project and where the pumping station will set; we will give back to the Federal Government and sign a maintenance agreement where we agree to maintain that pumping station. That way we can get project pumping power.

Rep. Hofstad: What is the cost of this project?

Charles Carvell: this is a 3.5 million dollar project.

Rep. Hofstad: Is that the cost that will be assessed?

Charles Carvell: No about 1.3 cost share when we get our final numbers we will ask for some additional consideration up to 1.5 million will be cost shared from the cost state Water Commission.

Rep. Hofstad: Will you bonded for that?

Charles Carvell: We are already bonded for their share of this project. We did a tax exempt bond, the bank bought that bond and we are repaying that bond. We put the backing of the district behind that bond.

Rep. Damschen: We will conclude the meeting for today.

2011 General Discussion

(Check appropriate box)

- ☐ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- x Other

Date of meeting/discussion: 02/14/2011

Subcommittee meeting Garrison Diversion Conservancy District

Recorder Job Number: 14522

Committee Clerk Signature Jeanette

Minutes:

Rep. Damschen: We will open HB 1318. This is our third meeting, Mr. Carvell would you explain your previsions?

Charles Carvell: I am with the Attorney General's Office. My first approach was to do a lot of editing in an effort to reduce the length of the bill and make a little clearer and easier to follow. One of the easiest things that I did was to cut off the last 16 sections because those have been drawn without any revision from chapter 61-35 I believe and it didn't deal with any important matters. A lot of the things in the bill seem unnecessary, in the definition sections, for example I took out the word "director" because I couldn't find the word director anywhere in the bill. Another is "Federal Agency" everyone knows what the Federal Agency is so why define it. There a number of things that I got rid of. The bill was reduced in size by quite a bit.

Revision number 2 that I sent you got the bill down to about 9 pages. Rather than repeating those sections from Chapter 61-35 I made a reference to them. Some of those sections that were pulled over from Chapter 61-35 had some changes in it and it looked like those changes might have been important for the C District so I left those sections in there.
You can break it down to about four parts, the first part of it is the organizational part which say's the C District is going to create an irrigation this is how it goes about doing it.

The second part of the bill deals with special assessments, and how that process works. The third part of the bill deals another financing part of the irrigation districts which is the bonding. The fourth part of the bill is the section on construction, bidding and advertizing and things like that. I think you would want to go to revision number 2 and consider that.

There is also a way to do this with one page or no bill at all but it doesn't accomplish what the C District wants. The concept here would be that the Irrigation Districts continue to be created as they have been in the past. The work of administrating the irrigation work performed by the district would be transferred to the C District. They then would be the ones that would be doing all the work. I don't see why that couldn't happen under our current statues. Looking at Chapter 6107 which is entitled "Powers of Irrigation Districts" in that section there it says that the board of directors in the Irrigation District has the power to manage and conduct the business affairs of the district. It has the power to make and execute all necessary contracts, it has the power to employ such officers, agents and employees it deems necessary. (see attachment 1)

An Irrigation District once it is set up can say to the C District "come and do all the work" We will be the supervisors, meet once a year or whenever you need we are going to hire you to run the Irrigation District, it seems to me under the current law that could happen. There is another section here where it says "the Irrigation District has the power to enter into contract with the Water Commission for the purposes of financing, construction of the irrigation works and such contracts may authorize the commission to supervise and improve the construction, maintenance and operation of such irrigation works. If irrigation District wanted to they could employee, hire and engage the C District in some fashion to run these Irrigation Districts. The C District has the power to contract with any political subdivision. Irrigation Districts are political subdivisions and they have the power to contract political subdivisions to carry out any activity promoting the development or operation in the development of the Garrison Diversion Unit. They have the power to operate and maintain or contract for the operation for the maintenance of the water supply and irrigation works. The C District has some concerns about the current law that is not going to work. You need at least 5 landowners that want to do it and 5 members on the Board of Directors, it you have 2 or 3 individuals that want to put the Irrigation District together this not going to work. The local politics get involved in these things and that doesn't work out so it might be a good idea to remove those local politics and put them with a boarder district like the C District.

Rep. Damschen: Is there a provision for the Irrigation District to assign a special tax assessment as bond security for a project?

Charles Carvell: Here in Chapter 6109 it says "assessments and Irrigation Districts" I assume that empowers the Irrigation District to assess. Chapter 6108, entitled Fiscal Affairs of the Irrigation District, looking at it I see reference to bonds and the bond issues. I assume that the law currently give the Irrigation Districts the power to issues bonds and impose special assessments.

Rep. Damschen: Would it be out of order to set up an alternative plan so that the problem of the voting procedure would be taken care of if they were going to set up a cooperative project?

Charles Carvell: That the rules of the Irrigation District would change a bit if the idea was to have the C District involved? Maybe, those references to the 5 Board Directors and electors could be changed to 4 or 3 and make it easier for the local people to create district if they wanted.

Rep. Hofstad: Do you want me to pass these amendments out and go through them or do you want to look at revision number 2 from Mr. Carvell first?

Rep. Damsched: Let's have comments first on Mr. Carvells comments.

Dave Koland: General Manager of Garrison Diversion Conservancy District. We looked over Mr. Carvell's suggestions and asked Mike Dwyer to look over his suggestions because we appear to be in an argument between a number of attorneys from the Bond Attorneys, the Legislative Council, Mr. Carvell and Mr. Dwyer. I would appreciate it if Mr. Dwyer could handle the lawyer part of it.

Rep. Damschen: Mr. Carvell doesn't promise that everything he addressed accomplishes what you are trying to do.

Mike Dwyer: The North Dakota Irrigation Association of the North Dakota Water Users. I don't think we have an argument here. I didn't try to go through Charles's comments and respond to them. What I did was there were some concerns that were expressed like can people petition out? Can people petition in? What is the voting? Who can appeal to the state Engineer if they don't like the assessment? What I gave to you is the set of amendments number 1 in red from the Legislative Council. In the green is the new amendments number 1 so they are incorporated into this draft that I gave you. (see attachment 2) The amendments that Rep. Hofstad has are a result of going through and trying to address some of the concerns that were addressed on Friday. When we adopted all the assessment provisions of drain boards we didn't just refer to that chapter. The Legislature adopted a whole new provision and there are some differences. When we did the water provisions we didn't just refer to the Water District. We adopted new language so that people don't get different interruptions of what we did mean. The idea of having a one page bill I don't think is workable. It may be appropriate to update the Irrigation District laws because we haven't done that for a long time but I don't think we should do them here.

Rep. Damschen: I agree with you, we will not do them here. Is there something that could be misinterpreted if we refer to those sections of the law?

Mike Dwyer: There are, and no it isn't strange to refer to other sections of the law, in fact the bidding and the contracting for example, the legislature adopted a uniform code and said "let's all follow that" so that everybody is doing the same thing. Here there are

some differences; we are only talking about direct benefits. In the Water District assessment project we are also talking about indirect benefits. We are also changing the voting percentage in water resource district projects. In the Water District projects is 50% and we have a positive vote which is different here it is 25%. I didn't take out the 25% and make it 100% because you might have a piece of land that is owned by 4 parties and you could have one of the owners objecting.

Rep. Damschen: I meant in the last 15 sections that we are taking out.

Mike Dwyer: No because the legislature has a uniform code on bidding and contracting. The drafters of HB 1318 overlooked the uniform code of bidding and contracting.

Rep Hofstad: This is one of the most restrictive assessment codes, is there any, more restrictive, than this? Is there any way to tie the contract to the vote so that we could go 100%?

Mike Dwyer: I can't speak for the C District, I think this is really going to be an assessment district for those that want it, and if you decide to change that 75% to 100% I think that would still be workable because if you are going to do a water service contract you have to deal with those absentee owners.

Rep. Hofstad: Mr. Koland would you comment on that?

Dave Koland: I don't have any problem with 100%. We are a victim of this legislation that has had a considerable review by the district board etc. and so people like legislatures here are always able to think of situations that need to be covered. That is what happened not only in this section but in one other section. If you recall yesterday I was trying to point out to you where the assessments benefits is covered. Between version 6 and version 7 that provision disappeared and I have no idea what happened, maybe someone said "I don't think we need it" and so did away with it.

Rep. Nelson: My concern is the 100% of when it comes into the process. When you are singing people up and you are going through and designing the project that doesn't 100% effectively let everybody go in now and yet have complete veto power later on that they really don't have any risk so to speak?

Dave Koland: I don't believe so because what you are voting on is the special assessment. By the time we get to that process we have a project and we have the participants and because of how this process is set up we will have a water service contract and so then they will be committed. We will have a water service contract in place to cover the contract O&m and the water service charge and so forth.

Rep. Nelson: What is there left to appeal to the State Engineer?

Dave Koland: We could go through this process and get ready to build it and by the time we get to construction someone could say "I don't your design" that is an appealable deal. The State Engineer person seems to be the logical person to look at that. I

wonder that section needs to be in there. When this gets to the floor it will be asked "who is the final arbitrator here?"

Rep. Damschen: They are locked in to pay for it.

Dave Koland: They are, but like this project that we built, as it was developed and we got the corp. group together and then we knew we had a project. At about that stage we were ready to go forward we had 2,500 acres. By the time we had proceeded to construction we were at 3,500 acres because now people see what is happening and want in.

Our adjective is to come out of this session with some method of providing this financing. If Irrigation would have worked that are in the code we would be using them. The voting is wrong. Voting in an Irrigation District is based on how much land you own and that just doesn't work when you special assessment is based on how many dollars you are going to be assessed.

Rep. Damschen: Should that be changed across the board for Irrigation Districts?

Dave Koland: We are not doing flood irrigations so I think Mr. Dwyer has a good point and that is we need to look at that whole section, there are a number of chapters that deal with just the Irrigation Districts and update it because, that is pretty much not how they are operating anymore.

Jeff Nelson: I am from the Legislative Council. We have no position on the bill. When we are drafting our objective is to make the law as easy to follow, as easy to find and as user friendly as we can to the public.

Rep. Damschen: I like the language in the original version because it is easier to know what is there then digging to try and find out what portion of the code is being referred to. Do you have a problem with the final version that refers to those sections?

Jeff Nelson: No I don't.

Rep. Hofstad: Michelle could you step to the podium please? In addressing the bonding portion of this bill, would these be revenue bonds?

Michelle Klose: From the State Water Commission The bonding area is not my expertise. Karlene is here she could answer that question.

Karlene Fine: I am from the North Dakota Industrial Commission we have no position on this bill. The revenue is coming from the taxes as I understand they may structure the bond issue in such a way that it could be revenues as well as special assessments.

Rep. Hofstad: How does that whole thing work?

Karlene Fine: The bond holders look to get as many sources of repayment as they can for the bonds. Special assessments are considered very good source of repayment.

Rep. Hofstad: Would the original issue that you have with the project in place, would you move under this legislation?

Dave Koland: It doesn't prevent us from doing it only if we would save some money in doing it.

Rep. Hofstad: Do you have that ability with this legislation to do that?

Karlene Fine: I believe so.

Rep. Damschen: Would it be irregular for an entity such as a separately established Irrigation District to assign that security to someone like the C District?

Karlene Fine: No I don't think it would be unusual. It depends on what kind of power agreement you can do.

Rep. Damschen: Does the length of the assessment have any effect on the value of the assessment for security proposes?

Karlene Fine: The bond holders would be looking for security to be there for the length of the bonds.

Rep. Hofstad: I would like to see the engrossed bills under those amendments that I submitted.

Rep. Damschen: Council can you get us an engrossed version?

Jeff Nelson: Would these be engrossing the 03 version of the amendments or all of the previous amendments that we are engrossing here?

Rep. Hofstad: I think the 03 so that we are looking at them separately.

Rep. Damschen: The version that we worked off had the 01 and 02 amendments in it.

Jeff Nelson: We would be incorporating the 01,02and 03 amendments.

Rep. Damschen: We will adjourn meeting.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations

Other

Date of meeting/discussion 02/16/2011

Subcommittee HB 1318

Recorder Job Number: 14640

Committee Clerk Signature

Minutes:

Rep. Damschen: We will open the subcommittee on HB 1318. Jeff handed me an unofficial version of the amendments included. I visited with Mr. Koland this morning and going through the 3004 version there are still areas of concern. This subcommittee feels it best that these concerns were addressed by updating the Code as it refers to the irrigation districts and the forming of them and then we could include them with that. Our time constraint does not allow us time to do that. We have possibly got something in place that would address that and that would be the County Commission. I realize that is a contentious suggestion and not real popular with everybody but it does address some of the concerns that I have with taxing across county lines. The signing and granting taxing authority to the third party referring to the C district as the third party. I have addressed surcharges for improvements or the authorization for improvements and expansions.

Mr. Koland would you be willing to set this aside for a term and have us adopt a bill that would hog house this into an interim study and revision of the Irrigation District Code, not the C district?

Dave Koland: I am the General Manager of the Garrison Conservancy District. I don't know how to respond to that. My board has directed and authorized me to go forward. In visiting with the engineer I found we have people calling us and have had to tell them that we are getting a load on engineering. They say "If we bring a project to you can you

Program of 50% to encourage irrigation development in the state, and we trying to do that. We have a 2007 CFS canal running through this state that we need to utilize and put that water to use. Why would we talk about not doing it in the face of this kind of demand? If you don't think people want this I can tell them the legislature is not of the opinion that this is needed and we can let them speak. I hesitate to do that in point of the process because we don't have a bill up on the floor but you may as well say "I am opposed to this bill so let's kill it." If you don't want to do this irrigation deal then let's amend the bill because it is so restrictive that it is getting to the point that yes I think I can make it work but I know that I see things that are out there today that are going to work but that will change. There is no flexibility in this legislation but I still think I can make it work. We have a bill in front of you that the chamber is going to vote on. We exceeded every single question that is reasonable about changing the bill and said "yes our objective is to make this work." There comes a point in this process where you have to say "gentleman we have to do some responsible legislation." If you don't want the district to exist put a bill in to eliminate the district. We had a bill last session and you voted it down. So I have to gather that the people of North Dakota want some entity promoting some irrigation development and water supply development in this state across more than one county. We cover 28 counties of the state and I think we need some tools to finish that job.

Rep. Nelson: We have people standing there right now do we have an emergency clause on this? Do you need an emergency clause on this? Do you want to wait until August to start?

Dave Koland: We have had this question before and by the time we get in the process to where we are going to do the special assessments portion I think August would work. I would not object to the emergency clause.

Rep. Hofstad: From the beginning my problem has certainly not been with irrigation and not about moving that industry forward. It is the duplicate part of the code because we already have that part of the code. We already have in statue the ability for irrigation districts to do these kinds of things that has been the problem and you along with Mr. Dwyer have said the problems associated with that quite well. I would rather that we entered into a joint powers agreement with an irrigation district. I understand the issues we are in right now and I understand we are not going to be able to redo that. We will have to move forward and try our best to get this thing past in some way, If you would tell us how this project goes forth. I am interested in knowing what is going to happen a few years later as you expend the project as you bring more people into here.

Dave Koland: If an irrigation project district was doing this the irrigation district would be coming to Garrison because Garrison has the water contract with the Bureau of Reclamation. The concept was that we would have these irrigation districts and that is what is not working in this process. Now let's go on to what is happening today. Someone comes and might be 5 miles from the project that we are working on, so what we have is another project and it is usually how we get going on this is, two or three

guys will call and say "we want to irrigate." In the Turtle Lake area, we sent a letter to every landowner in about a 10 mile area put an ad in the paper and we had some public meeting's where we asked "are you interested." We then had a meeting with the people that were interested and tell them "here's all that we can do here is how the grant deal is offered and here is what we have to do." Then we did the engineering work to figure out what it would take, what kind of pump size etc. then a preliminary cost estimated to see if we are within what we can afford to do. If it is feasible then we move forward to do the financing, and then get a water service contract with these people. The concept then is Garrison will provide the O&M on that supply system. It will typically be a pump station and intake out of the canal, a pump station and pipeline out of the canal to deliver the water to the irrigator's pit. He has to buy the pivots and do all of that.

Since this is a reclamation project we have to comply with reclamation law and we have to do environmental work. We go through the environmental process, working towards finding no significant impact. The irrigator has to use the Best Management Practices. These are the responsibility of NDSU and haven't been updated for quite some time so we have had a staff member working on updating those Best Management Practices because they must be followed.

The other issue that we have to deal with from the environmental assessment is the finding of no significant impact we will have environmental commitments that we have to comply with through that project. The environmental rules are 2-3 pages, simple things but we are responsible for complying with them. Another thing is the land classification, so we know what we are dealing with and that the land can be irrigated. We also have drainage issues, which, we are working through until we get into operation and then we will deal with the drainage issue. The initial drainage issue is that there won't be any drainage.

Rep. Hofstad: The first part of that process is to get a petition from the affected landowners or to get some kind of indication that they are interested in the project. Would that be the first step?

Dave Koland: We went out and surveyed that interest along the canal, then we were able to indentify several different pockets where there was interest all grouped together. We started with the most feasible project. We then did some kind of preliminary engineering work to see how far we could run that pipeline and do we have enough people on this pipeline to pay for the cost of the pump and the pipeline. That is kind of an ongoing deal as more people indicate more interest or not interested.
We made the decision to move ahead when we had 2,500 acres signed up. In construction we have 3,500 acres.

Rep. Hofstad: Who pays for the cost to do the feasibility study?

Dave Koland: The district.

Rep. Hofstad: Now you would have a group of people and the area identified as you are going forward because you have already done this on the project that you are talking about. Do you then get your engineers involved so that you get more concrete numbers and figures together?

Dave Koland: Once we get that initial group put together and feel we have a project we turn it over to the consulting engineers.

Rep. Hofstad: At that point where does that cost get shipped to?

Dave Koland: We hire the engineers and that is part of the project cost. It is not covered by the cost share. That has to be borne by users.

Rep. Hofstad: And if the project does not get a positive vote?

Dave Koland: The district will eat that.

Rep. Hofstad: Where does the contract come into play or does the vote come first?

Dave Koland: In mile marker 7.5 there was no vote involved? The water service contract would come before the vote.

Rep. Hofstad: So you would know prior to the vote what the water contract would be?

Dave Koland: Yes.

Rep. Hofstad: All of the transmission, administrative, and other costs would be part of that and you would know what that would be?

Dave Koland: Yes.

Rep. Damschen: I think this bill is asking us to authorize a handful of people, the Garrison Diversion authority to tax across county lines, which is something we don't give counties and township the ability to do. The expansion part takes some participation on part of the benefactor but the surcharges are really unsupervised by any government entity. I am not in favor of that type of an arrangement. I don't know that it is even right to consider it. I am not willing to fight for it. I would like to see some irrigation go forward, but I want it to go forward in a proper manner and a manner that doesn't disregard the local entities of government that have been elected or appointed by elected officials. I feel this is important legislation and I think we need to keep in mind what we do is for the people. It isn't always doing things fair, but I think it is the best way.

Dave Koland: I respect your opinion but the district is an official political subdivision of the State of North Dakota. The 28 board members are elected at the General Election for a 4 year term by the people in their county to represent their county on the districts

Board of Directors. This is a government entity that is dealing with this. Only100% of the landowner can be brought into it. The contract is a contractual obligation that the irrigators that are developing this project are committed to paying the O&M and the service charges. In that contract is the arrangement upfront of how the energy costs will be spread back because when they make a payment, of that amount the energy costs are estimated at $39.00 per acre. If the energy costs for that particular user is only $25.00 per acre because he uses very little water then that would be credited back to him and that money will go into the sinking fund. The fund for that irrigation district will get that money and if that is build up then it will get reduced. They are a self pool of money and are accounted for individually within that. The contract specifies that they can check our books at any time.

Rep. Damschen: I realize that you are an entity to some extend but have very limited taxing authority or you wouldn't need this legislation.

Dave Koland: We need this legislation because this moves us. The special assessment is number two in the line of who gets paid. If you don't do that the district will still take the risk, this is where it falls apart with the irrigation district. They are not willing to upfront costs to develop this. They are not willing to put their assists on the line to develop this irrigation for somebody else. We can argue whether we should do this for individual farmers? I don't know. We are dealing with 50 % cost share program that the State Water Commission has deemed as a good thing for the state of North Dakota developing the irrigation. It is not unlike other similar type grant programs we have through the state.
There are any number of these things that are built and that district cannot decide that it is going to charge these users X amount of dollars for some unknown reason.

Rep. Damschen: It appears that action in dealing with surcharges is pretty broad.

Dave Koland: It is broad but what it does is allow you for the water that you are delivering. The concept is that if irrigator is putting 9 inches of water on his land and irrigator B is only putting 2 inches on his land, irrigator A should pay a little more than irrigator B. The only way you can do that is allow for a service charge. The service charge has to be charge according to the water that is delivered to his land.

Mike Dwyer: I understand your concern about not putting in place something that has a chance to go array because we have had long terms battles over water resource districts projects across county lines. The amendments that are offered provide for a report to the State Water Commission and you might add to a report to the overview Legislative Committee. We would like to see the bill passed. You could also add a provision that the Legislative Water Topics Overview Committee study it. Your suggestion of requiring approval of county commissions, I think that would be better than scraping the bill and studying it for 2 years.

Rep. Damschen: We did have some discussion about the reporting. The catch there is it is going to be after the fact.

Mike Dwyer: We could have the reporting to the Water Commission and the Legislative Water Committee which would be information and you could have approval of the County Commission so that we would have that local government that you are concerned about.

Rep. Damschen: I think we should set some parameters for them to base their approval on.

Mike Dwyer: I saw the amendment that Jeff drafted, which doesn't have those parameters on it. If we went through the process in this project and had trouble we could come back with those parameters.

Rep. Hofstad: I am having a difficult time with having the county commissioners involved with this. Everybody that is involved in this process is affected by it.

Mike Dwyer: If a person doesn't want the line there we look to locate it someplace else, that is our first response. We know that line carrying irrigation water benefits that property because of the potential that they want to use it sometime. I heard the concern about the county commissioners I believe that for any number of reasons that there are widely despaired views on most everything, it is not a workable deal to go seek the approval of the county commission. If there is concern in the over the county lines put in there that it can extend over the county lines.

Rep. Nelson: I to would like to go on the record saying that I don't see the county commission as being a good thing. As far as the county line goes I don't understand why we need to add that either. I work with a lot of farmers that are in multiple counties the county line doesn't change the land. We don't tax political subdivisions. We don't tax the Universities but they do pay for special assessments.

Rep. Damschen: On the county lines, each county has a special assessment unless you have a joint contract.

Rep. Nelson: An irrigation district wouldn't follow county lines. Garrison Diversion already was set up as a multiple county political subdivision.

Rep. Damschen: This has been tried as special assessments for drainage projects and ended up in court.

Rep. Nelson: You are talking about a situation where there wasn't 100% approval, and you had to sign a contract to be in it.

Rep. Damschen: But now we have 100% approval of people who want to participate, but you don't necessarily have the approval.

Rep. Damschen: There are some things I won't fight for, and there are some things that won't fight against.

Rep. Nelson: It is to the point if you want to oppose it then do it. What you are going to do is put the Garrison Diversion in a position of spending a lot of money and then have this oversight with people that aren't involved with this and not knowable of the project.

Rep. Damschen: Somebody has to look at political aspect of it as well.

Rep. Hofstad: We do have that elected person on the board. I think we have that representation in place.

Rep. Damschen: My concern is hopefully they would have some level of input. I passed out amendment 05 and 06.

Rep. Hofstad: I move that we carry the amendments 03005 forward to the full committee.

Rep. Nelson: Second.

Rep. Damschen: Is there any discussion.

Rep. Hofstad: This is very restricted. I don't know this can go array. The district is bearing the cost of the feasibility studies. The bottom line is I want to move irrigation forward.

Rep. Damschen: We discussed the 20% contingency instead of 40% do you know if that is in the amendments?

Jeff Nelson: yes it is and if we go to page 12 line 5 it is there.

Rep. Damschen: All in favor voice vote taken 2-1 vote in favor of the subcommittee. We will close the meeting.

2011 General Discussion

(Check appropriate box)

- ☒ Committee on Committees
- ☐ Rules Committee
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- ☐ House Appropriations
- ☐ Senate Appropriations
- Other

Date of meeting/discussion: 02/17/2011

HB 1318 subcommittee

Recorder Job Number: 14715

Committee Clerk Signature Jeanette

Minutes:

Rep. Damschen: We will open HB 1318. We have amendments before us.

Rep. Nelson: I am not sure about the Legislative overview.

Rep. Damschen: 2 years ago the water related topics water review committee was formed. That committee is overseeing water related topics, but is retiring in 2013. The language saying "effective after 2013" would return it to what it was prior to the formation of the water related topics of the overview committee. I visited with Jeff Nelson about that because that did surprise me when I got the amendments. Apparently that would read "return it after that expires to the way it was previously."

Rep. Hofstad: I move to bring 03007 to a full committee.

Rep. Nelson: Second.

Rep.Hofstad: I think the in tend is that it is time to look at the irrigation law, amend it fix it or get it off the books. I also think that we get ourselves in trouble in this legislative session by having a disconnect between us and the water world. I think that is apparent in some of the issues that we get involved in, we need to fix that.

Rep. Damschen: Is there any other discussion? We will have a vote. Voice vote taken. Motion carried. We will close the meeting.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1318
02/18/2011
14746

☐ Conference Committee

Committee Clerk Signature

Minutes:

Rep. Porter: We will open HB 1318.The 003 bill is engrossed with the 005 amendments.

Rep. Damschen: The engrossed version 03005 has any amendments from 01-05 included.

Rep. Keiser: Do you want to wait until the end?

Rep. Porter: We will let Rep. Damschen: give his overview and then we can go back and talk about any concerns.

Rep. Damschen: We will go through this quickly. Notice the colors red is removed and replaced by the green words (see attachment 1)

Rep Nelson: It is a tight project compared to a lot of other things we do. The Garrison Conservancy District puts up front and does risk the start up cost. We discussed the county commissioners having veto power on it but we were concerned that they aren't involved in this type of thing they don't have that type of authority with the Water Boards so we opposed that.

Rep. Hofstad: The goal in this is to enhance agriculture. We are building an irrigation project. We have a structure in code that allows the opportunity to do that with our Irrigation Districts however the way that code is written it is truly at this point unworkable. The C District came to us with this bill to allow us to build that Irrigation District. What we now have in code is workable. We do 2 things with this we establish an assessment area which is unique because it only allows the people that are directly benefitted from this project to be assessed. They all have to agree, this is unlike any other district that I can think of. The last amendment that we are going to look at is to bring that irrigation code back during the interim and rework it so that we will have a vehicle to work with. I encourage a pass on this.

Rep. Porter: I want to thank the subcommittee on all the work they did on this bill.

Rep. DeKrey: Is this limited to Irrigation?

Rep. Damschen: I don't know. We are pretty much saying Irrigation.

Rep. Hofstad: I think that is right because they would have to petition in, be part of that service agreement and pay for the project from the beginning.

Rep. Damschen: I don't know how they could figure the assessment under the current plan because we have it per dollar.

Rep. Porter: In the works as it is being developed it is all above ground pumping systems it is all shallow pipe so there wouldn't be any way to run this in the winter because of freeze up. This is non potable water with no filtration systems involved with this going forward.

Rep. Nelson: If someone came to the Garrison Conservancy District and said "help us set up an irrigation district" and then tried to sell to the oil wells they wouldn't be able to do that.

Rep. Keiser: On page 8 the election portion, the way it is now structured it is who signs the contract as an election. We are changing the way in which we do the election and so what happens to those people whose property this goes through that don't have direct impact?

Rep. Damschen: I don't know that I can answer that about the previous system. The existing system they are talking about 20 acre tracks where they have to vote. You are right that we actually become a voter by saying you are going irrigate. On page 9 line 10 it says voting rights "It says the landowner of land affected by the project has one vote for each dollar of assessment to which the land is subject or one vote for each dollar of the assessed evaluation of land condemned for the project." If there was eminent domain used in the plan between the final destination and the final source I read that to say that those people would have a vote as well.

Rep. Keiser: I don't think that is right because you have to directly benefit, I think we have it back words I think you would have to have a contract before you get the vote. I see this as having a lot of problems with people in that water district that choose not to participate but get commendation and have no vote.

Rep. Porter: In the engrossed version the landowner whether they are involved by easement or by commendation can stop the project because they are allowed a vote and we changed the voting percentage from 50% to 100 % now everybody whether they are part of the assessment or part the easement process has to agree to this project or it can be stopped.

Rep. Keiser: I read it differently.

Rep. Damschen: That was a big issue that held us back.

Rep. Nelson: Running a pipeline is an easement; we are not condemning the land. If we build a storage reservoir or pumping station then that would be taking that land so those people would have a vote in the project.

Rep. Hanson: On page 26 line 18 "The district shall report periodically to the state water commission" What is the definition of periodical?

Rep. Damschen: We didn't define periodical I would think it would be whenever the state water commission had a question.

Rep. Hanson: Do you think you should put annually in there?

Rep. Damschen: That may be addressed in the next set of amendments.

Rep. Hofstad: I think it is meant and understood that it is at the regular meeting at the state water commission Mr. Koland would report as he does at all the meetings of that commission.

Rep. Damschen: The 03007 amendments put a sunset clause on the whole bill for two years and the Water Related Topics Overview Committee would have an overview in each project. (see attachment 2) My concerns are alleviated by the 03007 amendments; I think we should discuss these amendments and then adopt them to the bill.

Rep. Nelson: I hope we adopt the 005 separately because 007 is kind of other things. The section 3 expiration of the sunset clause properly doesn't do what Rep. Damschen thinks it does. The only thing it does is remove the reporting requirement out of the bill.

Rep. Hofstad: I did not catch that either.

Rep. Kelsch: Under section 1 of the 007 amendment it states that section is effective through November 30, 2013 and it the language it says in each interim. What is the in tend of the language?

Rep. Porter: That language is already code.

Rep. Kelsch: Then what is the in tend of the language in the following paragraph?

Rep. Porter: That would take it back to the way it was prior to code. We have the 03005 amendment in front of us.

Rep. Damschen: I move the 03005 amendments for adoption

Rep. Hofstad: Second.

Rep. Porter: Discussion voice vote taken, motion carried. Before we adopt 03007 we need to overstrike the word in section 2 "of" and leave it as "this act is effective through July 31,2013 and after that date is ineffective"

Rep. Damschen: I move the 03007 amendments for adoption but overstrike the word in section 2 "of" and leave it as "this act effective through July 31, 2013 and after that date is ineffective"

Rep. Hofstad: Second.

Rep. Porter: Discussion.

Rep. Kelsh: By adding the sunset to that entire act you are sun setting the interim committee right?

Rep. Porter: I think already expires because the overview committee goes back to the way it was effective after November 30, 2013. The key to the expiration of this act is to give that 13 member committee the ability to study not only this but also the existing irrigation portion of the code and also their existence and then address this if they want or feel that this should be continued.

Rep. Porter: Discussion voice vote taken motion carried. If we want to be clear on page 9 and I am not sure that this addressed Rep. Keiser's or not but on page 9 line 12 after the word "condemned" if we insert "or used for construction for the project" that would include those lands that would be where the pipe would go underneath so that they have to actually able to participate so they would have a vote in the project to say how they feel.

Rep. Damschen: I make a motion on line 12 after the word "condemned" insert the word "or used for the construction for the project."

Rep. Keiser: second.

Rep. Porter: Discussion

Rep. Nelson: I resist that motion because it gives that person with pipe going through his land veto power on the whole project. We don't it in any other special assessment district.

Rep. Kreun: Under those conditions with quick take or eminent domain that individual that you are crossing and has a problem with this project a lot of rights to go along with it and also lets the project continue through.

Rep. Porter: Is there further discussion on the amendment? Voice vote taken motion carried. We have the amended HB1318 before us.

Rep. DeKrey: I move a do pass as amended.

Rep. Hofstad: Second.

Rep. Porter: Is there any further discussion?

Yes 15 NO 0 Absent 0 Carrier: Rep. Damschen.

FISCAL NOTE

Requested by Legislative Council
01/13/2011

Bill/Resolution No.: HB 1318

1A. **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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1318 provides Garrison Diversion Conservancy District with the power to create a special assessment district for water supply or irrigation purposes. It allows these districts to assess the benefited properties. It also allows the District to bond for the construction of the projects.

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.*

There does not appear to be any fiscal impact to the State, Counties, Cities or School Districts.

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.*

   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
Phone Number:	328-2750	**Date Prepared:**	01/20/2011

11.0377.03005
Title.

Prepared by the Legislative Council staff for
Representative Damschen
February 16, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 1, line 2, replace "water supply or irrigation districts" with "irrigation works"

Page 1, line 3, after "District" insert "; and to provide for reports to the state water commission"

Page 1, line 13, after "4." insert:

""Direct benefit" means water is delivered to a tract of land.

5."

Page 1, line 14, replace "5." with "6."

Page 1, line 15, replace "6." with "7."

Page 1, line 20, replace "7." with "8."

Page 1, line 23, replace "8." with "9."

Page 2, line 1, replace "9." with "10."

Page 2, line 2, after "all" insert "irrigation"

Page 2, line 7, after "any" insert "irrigation"

Page 2, line 9, replace "10." with "11."

Page 2, line 13, replace "11." with "12."

Page 2, line 16, replace "12." with "13."

Page 2, line 19, replace "13." with "14."

Page 2, line 20, replace "14." with "15."

Page 3, line 3, after the second "to" insert "direct"

Page 3, line 6, after the first "the" insert "direct"

Page 3, line 6, remove "any political subdivision"

Page 3, line 31, replace "a" with "an irrigation"

Page 4, line 1, replace "system or an irrigation system, or both," with "works"

Page 4, line 2, replace "systems" with "works"

Page 4, line 5, replace "complete water" with "central"

Page 4, line 5, replace "system" with "works"

Page 5, line 20, replace "water districts and irrigation" with "improvement"

Page 5, line 21, remove "appropriate"

Page 5, line 22, after "The" insert "special improvement"

Page 5, line 22, after "be" insert "directly"

Page 5, line 24, remove "Nothing in this chapter prevents the district from making and financing any"

Page 5, line 25, remove "improvement under any alternate procedure in this title."

Page 6, line 10, remove "a"

Page 6, line 11, replace "water or irrigation" with "an improvement"

Page 6, line 11, after the first "the" insert "improvement"

Page 6, line 11, remove "which are benefited by the"

Page 6, remove lines 12 and 13

Page 6, line 14, remove "permitted by law"

Page 6, line 15, replace "or" with an underscored comma

Page 6, line 15, after "construction" insert ", or in existence"

Page 6, line 16, replace "three-fourths" with "all"

Page 7, line 12, remove "district"

Page 7, line 18, remove "each political subdivision assessed in its corporate capacity as well as"

Page 7, line 20, replace "ten" with "fourteen"

Page 7, line 31, after the first "the" insert "first"

Page 8, line 2, remove "and the governing body of any"

Page 8, line 3, remove "county, township, or city"

Page 8, line 7, remove "and any county, township, or city to be assessed"

Page 8, line 9, remove "and the governing body of any county, township, or city"

Page 8, line 15, replace "fifty" with "one hundred"

Page 8, line 15, remove "or more"

Page 8, line 15, replace "against" with "for"

Page 8, line 16, replace "a bar against proceeding further with" with "an affirmation of"

Page 8, line 16, remove "If the board finds that the number"

Page 8, line 17, replace "of votes filed against the proposed project is less than fifty percent of the votes filed," with "and"

Page 8, line 21, replace "sections 61-24.8-43 through 61-24.8-58" with "section 61-24.8-42"

Page 8, line 25, replace "sections 61-24.8-43 through 61-24.8-58" with "section 61-24.8-42"

Page 9, line 7, remove "The governing body"

Page 9, remove line 8

Page 9, line 9, remove "such political subdivision."

Page 9, line 15, remove "district"

Page 9, line 19, replace "especially" with "directly"

Page 9, line 21, after "with" insert "direct"

Page 9, line 22, remove the underscored colon

Page 9, remove lines 23 and 24

Page 9, line 25, replace "2. Any" with "any"

Page 9, remove line 26

Page 9, line 27, remove "of improvement of properties, and productivity."

Page 9, line 29, remove "Benefited property"

Page 9, remove lines 30 and 31

Page 10, remove lines 1 through 5

Page 10, line 6, remove "political subdivision for paying any special assessments made under this chapter."

Page 10, line 12, remove "district"

Page 10, line 14, remove "in the district and"

Page 10, line 23, remove "or political subdivision"

Page 10, line 25, remove "secretary shall file the"

Page 10, line 25, after "list" insert "must be filed"

Page 10, line 27, remove "and any"

Page 10, line 28, remove "political subdivision"

Page 10, line 28, remove ", having not less than twenty-five percent of the"

Page 10, line 29, remove "possible votes as determined under section 61-24.8-15"

Page 11, line 8, remove "or political subdivision"

Page 11, line 9, after "no" insert "direct"

Page 11, line 10, after "any" insert "direct"

Page 11, line 12, remove "or political subdivision"

Page 11, line 13, after "any" insert "direct"

Page 11, line 13, remove "or political subdivision"

Page 11, line 17, remove "district"

Page 12, line 4, remove "district"

Page 12, line 9, remove "district"

Page 12, line 15, remove "**or water**"

Page 12, line 16, remove "or water"

Page 12, line 17, remove "or ordinance"

Page 12, line 20, remove ", ordinances"

Page 12, line 23, replace "61-24.8-37" with "61-24.8-36"

Page 13, line 2, replace "61-24.8-37" with "61-24.8-36"

Page 13, line 4, remove the underscored comma

Page 13, line 5, remove "and ordinances,"

Page 13, line 14, after the third "the" insert "improvement"

Page 14, line 26, remove "ordinance or"

Page 14, remove lines 27 through 31

Page 15, remove lines 1 and 2

Page 15, line 3, replace "**61-24.8-30.**" with "**61-24.8-29.**"

Page 15, line 17, replace "**61-24.8-31.**" with "**61-24.8-30.**"

Page 15, line 18, remove "district"

Page 15, line 25, after the third "the" insert "improvement"

Page 15, line 25, after the fourth "the" insert "improvement"

Page 15, line 26, after "which" insert "improvement"

Page 16, line 1, remove "district"

Page 16, line 4, after the first "the" insert "improvement"

Page 16, line 6, replace "61-24.8-37" with "61-24.8-36"

Page 16, line 8, replace "61-24.8-37" with "61-24.8-36"

Page 16, line 9, replace "**61-24.8-32.**" with "**61-24.8-31.**"

Page 16, line 12, after "the" insert "improvement"

Page 16, line 19, after the second "the" insert "improvement"

Page 16, line 26, replace "**61-24.8-33.**" with "**61-24.8-32.**"

Page 16, line 28, after the second "the" insert "improvement"

Page 17, line 1, replace "**61-24.8-34.**" with "**61-24.8-33.**"

Page 17, line 3, after the first "the" insert "improvement"

Page 17, line 10, replace "**61-24.8-35.**" with "**61-24.8-34.**"

Page 17, line 28, replace "**61-24.8-36.**" with "**61-24.8-35.**"

Page 18, line 3, replace "**61-24.8-37.**" with "**61-24.8-36.**"

Page 18, line 16, replace "**61-24.8-38.**" with "**61-24.8-37.**"

Page 18, line 20, remove "or water"

Page 18, line 29, after the third "the" insert "district"

Page 19, line 1, replace "**61-24.8-39.**" with "**61-24.8-38.**"

Page 19, line 10, replace "**61-24.8-40.**" with "**61-24.8-39.**"

Page 19, line 17, remove "district"

Page 19, line 25, replace "**61-24.8-41.**" with "**61-24.8-40.**"

Page 20, remove lines 3 through 29

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 31

Page 23, remove lines 1 through 28

Page 24, remove lines 1 through 29

Page 25, remove lines 1 through 31

Page 26, replace lines 1 through 5 with:

"**61-24.8-41. Contracts for construction or maintenance of project.**

If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the costs of the construction or maintenance exceed the amount provided for construction of a public improvement under section 48-01.2-02, the board must let a contract in accordance with chapter 48-01.2.

SECTION 2. REPORT TO STATE WATER COMMISSION. The Garrison Diversion Conservancy District shall report periodically to the state water commission on the development and status of irrigation projects constructed under this Act."

Renumber accordingly

Date: 2-16-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Hofstad Seconded By Rep. Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
move that we carry 03005 forward to the full Committee
voice vote taken motion carried 2-1 vote

attachment 2

11.0377.03007
Title.

Prepared by the Legislative Council staff for
Representative Damschen
February 17, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 1, line 3, after "District" insert "; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to membership and duties of the water-related topics overview committee; and to provide an expiration date"

Page 1, after line 4, insert:

"**SECTION 1. 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 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 consists of ~~nine~~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 26, after line 5, insert:

"**SECTION 3. EXPIRATION DATE.** Section 2 of this Act is effective through July 31, 2013, and after that date is ineffective."

Renumber accordingly

Date: 2-17-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1218

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Hofstad Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote taken motion carried to
move .03007 to a full committee.

Date: 2-18-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Damschen Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice Vote taken motion Carries

03005 for adoption Version

Date: 2-18-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Damschen Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

to adopt the 3007 version

Voice vote motion carried

Date: 2-18-11
Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Damschen Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
made a motion to change line 12, after the word "condemned" and insert the word or used for the construction for the project.
motion carries

11.0377.03008
Title.04000

Adopted by the Energy and Natural Resources Committee

February 18, 2011

VK 2/21/11 1 of 6

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 1, line 2, replace "water supply or irrigation districts" with "irrigation works"

Page 1, line 3, after "District" insert "; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to membership and duties of the water-related topics overview committee; to provide for reports to the state water commission; and to provide an expiration date"

Page 1, after line 4, insert:

"**SECTION 1. 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 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 consists ~~nine~~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 discussion with adjacent states on water-related topics."

Page 1, line 13, after "4." insert:

""Direct benefit" means water is delivered to a tract of land.

5."

Page 1, line 14, replace "5." with "6."

Page 1, line 15, replace "6." with "7."

Page 1, line 20, replace "7." with "8."

Page 1, line 23, replace "8." with "9."

Page 2, line 1, replace "9." with "10."

Page 2, line 2, after "all" insert "irrigation"

Page 2, line 7, after "any" insert "irrigation"

Page 2, line 9, replace "10." with "11."

Page 2, line 13, replace "11." with "12."

Page 2, line 16, replace "12." with "13."

Page 2, line 19, replace "13." with "14."

Page 2, line 20, replace "14." with "15."

Page 3, line 3, after the first "to" insert "direct"

Page 3, line 6, after the first "the" insert "direct"

Page 3, line 6, remove "and any political subdivision"

Page 3, line 31, replace "a" with "an irrigation"

Page 4, line 1, replace "system or an irrigation system, or both," with "works"

Page 4, line 2, replace "systems" with "works"

Page 4, line 5, replace "complete water" with "central"

Page 4, line 5, replace "system" with "works"

Page 5, line 20, replace "water districts and irrigation" with "improvement"

Page 5, line 21, remove "appropriate"

Page 5, line 22, after "The" insert "special improvement"

Page 5, line 22, after "be" insert "directly"

Page 5, line 24, remove "Nothing in this chapter prevents the district from making and financing any"

Page 5, line 25, remove "improvement under any alternate procedure in this title."

Page 6, line 10, remove "a"

Page 6, line 11, replace "water or irrigation" with "an improvement"

Page 6, line 11, after the first "the" insert "improvement"

Page 6, line 11, remove "which are benefited by the"

Page 6, remove lines 12 and 13

Page 6, line 14, remove "permitted by law"

Page 6, line 15, replace "or" with an underscored comma

Page 6, line 15, after "construction" insert ", or in existence"

Page 6, line 16, replace "three-fourths" with "all"

Page 7, line 12, remove "district"

Page 7, line 18, remove "each political subdivision assessed in its corporate capacity as well as"

Page 7, line 20, replace "ten" with "fourteen"

Page 7, line 31, after the first "the" insert "first"

Page 8, line 2, remove "and the governing body of any"

Page 8, line 3, remove "county, township, or city"

Page 8, line 7, remove "and any county, township, or city to be assessed"

Page 8, line 9, remove "and the governing body of any county, township, or city"

Page 8, line 15, replace "fifty" with "one hundred"

Page 8, line 15, remove "or more"

Page 8, line 15, replace "against" with "for"

Page 8, line 16, replace "a bar against proceeding further with" with "an affirmation of"

Page 8, line 16, remove ". If the board finds that the number"

Page 8, line 17, replace "of votes filed against the proposed project is less than fifty percent of the votes filed," with "and"

Page 8, line 21, replace "sections 61-24.8-43 through 61-24.8-58" with "section 61-24.8-41"

Page 8, line 25, replace "sections 61-24.8-43 through 61-24.8-58" with "section 61-24.8-41"

Page 9, line 7, after "condemned" insert ", or used for construction,"

Page 9, line 7, remove "The governing body"

Page 9, remove line 8

Page 9, line 9, remove "such political subdivision."

Page 9, line 15, remove "district"

Page 9, line 19, replace "especially" with "directly"

Page 9, line 21, after "with" insert "direct"

Page 9, line 22, remove the underscored colon

Page 9, remove lines 23 and 24

Page 9, line 25, replace "2. Any" with "any"

Page 9, remove line 26

Page 9, line 27, remove "of improvement of properties, and productivity."

Page 9, line 29, remove "Benefited property"

Page 9, remove lines 30 and 31

Page 10, remove lines 1 through 5

Page 10, line 6, remove "political subdivision for paying any special assessments made under this chapter."

Page 10, line 12, remove "district"

Page 10, line 14, remove "in the district and"

Page 10, line 23, remove "or political subdivision"

Page 10, line 25, remove "secretary shall file the"

Page 10, line 25, after "list" insert "must be filed"

Page 10, line 27, remove "and any"

Page 10, line 28, remove "political subdivision"

Page 10, line 28, remove ", having not less than twenty-five percent of the"

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Page 11, line 8, replace "payment of the costs of the state engineer in the matter, any" with "Any"

Page 11, line 8, remove "or political subdivision"

Page 11, line 9, after "no" insert "direct"

Page 11, line 10, after "any" insert "direct"

Page 11, line 12, remove "or political subdivision"

Page 11, line 13, after "any" insert "direct"

Page 11, line 13, remove "or political subdivision"

Page 11, line 17, remove "district"

Page 11, line 27, replace "forty" with "twenty"

Page 12, line 4, remove "district"

Page 12, line 9, remove "district"

Page 12, line 15, remove "**or water**"

Page 12, line 16, remove "or water"

Page 12, line 17, remove "or ordinance"

Page 12, line 20, remove ", ordinances"

Page 12, line 23, replace "61-24.8-37" with "61-24.8-36"

Page 13, line 2, replace "61-24.8-37" with "61-24.8-36"

Page 13, line 4, remove the underscored comma

Page 13, line 5, remove "and ordinances,"

Page 13, line 14, after the second "the" insert "improvement"

Page 14, line 26, remove "ordinance or"

Page 14, remove lines 27 through 31

Page 15, remove lines 1 and 2

Page 15, line 3, replace "**61-24.8-30.**" with "**61-24.8-29.**"

Page 15, line 17, replace "**61-24.8-31.**" with "**61-24.8-30.**"

Page 15, line 18, remove "district"

Page 15, line 25, after the third "the" insert "improvement"

Page 15, line 25, after the fourth "the" insert "improvement"

Page 15, line 26, after "which" insert "improvement"

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Page 16, line 19, after the second "the" insert "improvement"

Page 16, line 26, replace "**61-24.8-33.**" with "**61-24.8-32.**"

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Page 17, line 1, replace "**61-24.8-34.**" with "**61-24.8-33.**"

Page 17, line 3, after the first "the" insert "improvement"

Page 17, line 10, replace "**61-24.8-35.**" with "**61-24.8-34.**"

Page 17, line 28, replace "**61-24.8-36.**" with "**61-24.8-35.**"

Page 18, line 3, replace "**61-24.8-37.**" with "**61-24.8-36.**"

Page 18, line 16, replace "**61-24.8-38.**" with "**61-24.8-37.**"

Page 18, line 20, remove "or water"

Page 18, line 29, after the third "the" insert "district"

Page 19, line 1, replace "**61-24.8-39.**" with "**61-24.8-38.**"

Page 19, line 10, replace "**61-24.8-40.**" with "**61-24.8-39.**"

Page 19, line 17, remove "district"

Page 19, line 25, replace "**61-24.8-41.**" with "**61-24.8-40.**"

Page 20, remove lines 3 through 29

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 31

Page 23, remove lines 1 through 28

Page 24, remove lines 1 through 29

Page 25, remove lines 1 through 31

Page 26, replace lines 1 through 5 with:

"**61-24.8-41. Contracts for construction or maintenance of project.**

If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the costs of the construction or maintenance exceed the amount provided for construction of a public improvement under section 48-01.2-02, the board must let a contract in accordance with chapter 48-01.2.

SECTION 3. REPORT TO STATE WATER COMMISSION. The Garrison Diversion Conservancy District shall report periodically to the state water commission on the development and status of irrigation projects constructed under this Act.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2013, and after that date is ineffective."

Renumber accordingly

Date: 2-18-11
Roll Call Vote #: 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

House House Energy and Natural Resources Committee

Legislative Council Amendment Number 11.0377.03008

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By DeKrey Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper	✓				
Rep. Keiser	✓				
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 15 No 0

Absent

Floor Assignment Rep Damschen

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

REPORT OF STANDING COMMITTEE

HB 1318: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1318 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "water supply or irrigation districts" with "irrigation works"

Page 1, line 3, after "District" insert "; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to membership and duties of the water-related topics overview committee; to provide for reports to the state water commission; and to provide an expiration date"

Page 1, after line 4, insert:

"**SECTION 1. 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 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 consists ~~nine~~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 discussion with adjacent states on water-related topics."

Page 1, line 13, after "4." insert:

""Direct benefit" means water is delivered to a tract of land.

5."

Page 1, line 14, replace "5." with "6."

Page 1, line 15, replace "6." with "7."

Page 1, line 20, replace "7." with "8."

Page 1, line 23, replace "8." with "9."

Page 2, line 1, replace "9." with "10."

Page 2, line 2, after "all" insert "irrigation"

Page 2, line 7, after "any" insert "irrigation"

Page 2, line 9, replace "10." with "11."

Page 2, line 13, replace "11." with "12."

Page 2, line 16, replace "12." with "13."

Page 2, line 19, replace "13." with "14."

Page 2, line 20, replace "14." with "15."

Page 3, line 3, after the first "to" insert "direct"

Page 3, line 6, after the first "the" insert "direct"

Page 3, line 6, remove "and any political subdivision"

Page 3, line 31, replace "a" with "an irrigation"

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Page 4, line 2, replace "systems" with "works"

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Page 4, line 5, replace "system" with "works"

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Page 5, line 21, remove "appropriate"

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Page 5, line 22, after "be" insert "directly"

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Page 5, line 25, remove "improvement under any alternate procedure in this title."

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Page 12, line 20, remove ", ordinances"

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Page 19, line 25, replace "**61-24.8-41.**" with "**61-24.8-40.**"

Page 20, remove lines 3 through 29

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Page 22, remove lines 1 through 31

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Renumber accordingly

2011 SENATE NATURAL RESOURCES

HB 1318

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1318
March 18, 2011
Job #15684

☐ Conference Committee

Committee Clerk Signature Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to creation of special assessment districts for irrigation works by the Garrison Diversion Conservancy District; relating to membership and duties of the water-related topics overview committee; to provide for reports to the state water commission; and to provide an expiration date.

Minutes: Testimony Attached

Chairman Lyson opened the hearing on HB 1318.

Representative Curt Hofstad, District 15, the heart of Devils Lake Basin, stood in support of HB 1318. He used to think this bill duplicated. After discussions and looking at the irrigation code, he realized this is a good bill. He fully endorses HB 1318. The bill was changed in the House. This is an irrigation project that adds value to agriculture. Our irrigation code is outdated and unworkable. There were issues in code they had trouble with as they considered this bill. In Section 1 of the bill it directs the Water Topics Overview Committee to review the state's irrigation laws during the upcoming interim. It is important to look over those rules and rewrite them. They also directed the interim committee to prioritize the water projects in the state. That is an important line because there is a disconnect between this body and the entire water world. We have so very many important projects across the state that affect all of us. There is a lot of information needed before those projects can go forward. He believes this committee is a good fit between the legislature and the water world. The committee needs to be expanded and developed. We need to become involved in those projects as they developed and as they are prioritized. The next part of the bill gives the C District the power to assess. There are many steps to establishing an assessment district. The C District has staff, it has a revenue stream, it has the ability to gather information, it has engineers on board. (The C District is the Garrison Conservancy District.) It is difficult for an irrigation district to establish itself because they are generally very small. It may be a group of just a few farmers. He believes the C District is a good fit. The assessment process we have in place is very tight. It needs a 100% vote to establish it. There are no other assessment districts in code as tight as that.

Representative Marvin Nelson, District 9, served on the subcommittee that worked on HB 1318. They used parts of the Century Code to create this bill. He suggested an

amendment. See **Attachment #1**. The language he would like to strike is a holdover from when the irrigation projects were flood irrigation. They would be digging channels so a lot of people would give property to it. At that time they needed 75% vote. Now we went to 100% vote. The vote is dollar for dollar to what the land assess for. But with this if someone had some land condemned to make the project happen, he would have veto power on the whole project the way this wording is. The guy who gives the land up gets paid, he has the ability to go to court. I don't think condemnation will get overused. Everyone who has land condemned would have veto power over the whole project. I just don't think that 100% vote will work. If you go into the bill they have "Quick Claim" condemnation ability. That started out as a problem for our committee, but as we learned about it Quick Claim made more sense. For a good portion of the year March 15-August 15 they couldn't go in. Now I can see why they need quick claim. Otherwise it would easily be another year delay with the restrictions they operate under.

Alan Butts, representing the ND Irrigation Association, presented written testimony. See **Attachment #2**. He farmed in Carrington and irrigated his land; the water was close. HB 1318 makes water available. There are 2 reasons that irrigation will increase in North Dakota. The Freedom to Farm Bill in 1996 decoupled payments and since then North Dakota has had less wheat, more corn and soybeans. As those varieties improve, there will be a greater need for irrigation. He stood in support of HB 1318.

John Leininger, Chairman of the Board of the Garrison Diversion Conservancy District, presented written testimony in support of HB 1318. He urged the committee to pass an amendment to remove Section 4 from the bill. See **Attachment #3**.

Norman Haak is an irrigator from Dickey Seargent Irrigation District at Oakes,ND. It is a project that was started by the Bureau of Reclamation twenty-some years ago. As of now they are trying to struggle into an irrigation district by themselves. The Bureau of Reclamation wants to leave town. The Bureau doesn't have any money, so the farmers have to take it over. In that process, they are looking for help. North Dakota has approximately 260,000 acres of irrigation on which conventional crops are grown. In the Oakes area they are raising onions, potatoes, and other specialty crops. Sugar beets are a main crop in North Dakota. A lot of them in the northwest are grown under irrigation. The two French fry plants, Grand Forks and Jamestown, pretty much rely on irrigated potatoes. North Dakota Crops Statistic Service shows that on an average, 4 dry-land acres equal the gross return on one acre of irrigation. New opportunities for irrigation are being explored. Research is currently underway to determine the feasibility of using energy beets to produce ethanol. This research has been underway for about 4 years with production trials in five areas across the state. North Dakota has the potential of supporting five full size processing plants requiring as much as 100, 000 acres of irrigation. It is estimated that half of these would be irrigated acres. The Dakota Water Resource Act authorized some 23,000 acres of Missouri River water for McClusky now. Landowners in the Turtle Lake area are developing this at this time. It is intended that the development of the remaining 15,000 acres will follow closely. Operating irrigation districts, making improvements in infrastructure, or expanding the principal supply works to accommodate these new acres or improve efficiency. It is essential that the water commission continues with their 50% cost share in these improvements. He asked the committee to support HB 1318.

Bill Ongstad, a farmer from Harvey and the elected Wells County director of the Garrison Diversion Conservancy District and a director of Farm Credit Services of North Dakota urged passage of HB 1318 with section 4 removed. See **Attachment #4**.

Senator Uglem: What was the reason for the sunset clause?

Bill Ongstad: They wanted to give it two years and then re evaluate it.

Senator Burckhard: What is flood irrigation?

Bill Ongstad: It's a series of canals and gates that let water out on the fields, into the rows. The runoff goes back to recycle it.

Senator Schneider: How much has our need for irrigation diminished during this wet cycle?

Bill Ongstad: We will not always have a wet cycle. 1988 was the worst drought and other years we have had reduced rainfall. Irrigation will give us stability in crop yields. Irrigation results in more revenue. Agriculture production in ND is highly variable.

Dave Koland, General Manager of the Garrison Diversion Conservancy District, presented written testimony. See **Attachment #5**. When Garrison Diversion was formed as a 1million acre project, it was planned as flood irrigation, but times have changed. There are much larger farms, and small irrigation districts no longer work. Farmers may have land in various areas. If a group of farmers can get together and build an irrigation water supply facility, they can go from 8-10 miles away from the canal. If you are 10 miles away from the canal, you now have the potential to irrigate 1 million acres. The availability of land that is irrigable is much greater. The potential to put together a unit that you can supply water to and afford to supply water to is much greater. This bill is simply about a way for the irrigators to finance their share of constructing that supply route. If they don't do it this way they will have to borrow the money from Farm Credit. The state water commission has a 50% cost share so that is a huge incentive. You need a water service contract with the Garrison Diversion to get water out of the canal. You can get a 30-year contract; that gives you stability. It can be financed over a 15-year period. The land is the security for it. We feel it is a very good risk to lend out. To answer the question, is irrigation valuable in wet years? Yes, it can be irrigated when the crop needs it, at the critical times during the growing period. If everyone would have a vote, that would prove very problematic. The House put an amendment on and that amendment has to be taken off. Local politics go on and on and you don't get anything done. If it sunsets, we have no ability as a district to certify the special assessment to the county so that they can collect it. We would need a 10 or 15 year period. He summarized the eighth page of his testimony.

Chairman Lyson: Do they have to sign up right away or can they sign up later?

Dave Koland: They can add in later if they don't need many pivots. If it is over the limit of 100,000 it has to go through the public hearing process. The only people being assessed are the ones getting the water so the 100% should not be a problem. The bill provides for Quick Take authority and that is important as much for psychological things as it is for

actually using. We pay for the easements to put in the pipeline. The bill gives the person you get the easement from and the person whose land you condemned a vote on the project. They get the same number of votes as the tax evaluation of their land. They will make sure to condemn the land of people who want the irrigation so they will get the votes. They have to follow all environmental laws and reclamation laws.

Senator Burckhard: How were we promised 1million acres and we are now down to 75,000?

Dave Koland: When Garrison Dam was built and North Dakota suffered a permanent flood of 500,000 acres the government said, "Iin return for accepting this permanent flood you will get irrigation; you will stabilize your agriculture economy; you will improve North Dakota's economy; you will be compensated." The federal government said that to the state of North Dakota and to the tribes. The Three Affiliated Tribes and Standing Rock were the main ones impacted. The federal government started building the canals. Canada and the environmental community got excited about the return flows from flood irrigation. The Oakes test area was created. In the Oakes area was at one time about 45,000 acres of irrigation. An irrigation test plot was created to test what the return flows actually were. In 1986 a huge commission was formed. There were hearings all though the state. Once again we had a broken treaty and we got the short end of the stick. It was reduced to 250,000 acres. Instead of irrigation they said we will give you 200 million dollars to build municipal, rural and industrial water systems. They never bothered to pay us anything. They just made these promises and in 1965 it was reformulated again. In the year 2000 it was reformulated again. What is called the Dakota Water Resources Act of 2000 is what we are currently under. The MR&I program was up to 400 million dollars. The tribes were given 200 million plus 20 million from before for a total of 220 million. The irrigation acreage was reduced to the 75,000 of which 10,000 acres was on the reservations. The rest of it was spread across North Dakota.

Bill Ongstad: We have gone from flood irrigation to sprinkling high, then sprinkling low; now the next is soaker hoses. Now the water is just getting to the roots. We are moving in an environmentally friendly direction.

Opposition

Neutral

Jack McDonald, on behalf of the North Dakota newspaper association, pointed out that the deletion of a few words on page 10, line 10 and 11 would make it read better. You need to delete the last 5 five words. He offered to submit an amendment to fix it.

Chairman Lyson closed the hearing on HB 1318.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1318
March 24, 2011
Job #15928

☐ Conference Committee

Committee Clerk Signature Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to creation of special assessment districts for irrigation works by the Garrison Diversion Conservancy District; relating to membership and duties of the water-related topics overview committee; to provide for reports to the state water commission; and to provide an expiration date.

Minutes: Attachments

Chairman Lyson opened the discussion on HB 1318.

Mike Dwyer, representing the ND Water Users and the ND Irrigation Association, presented amendments to HB 1318. See **Attachment #1**.

Senator Hogue: The first page of the bill addresses increasing the size of the committee from 9 to 13. Do you know why that is?

Mike Dwyer: Last session the legislature established an interim committee on water and it had nine members. We had that interim committee and it was the consensus of the legislature that there should be more. When there were nine on the committee, sometimes with schedules, etc. there were only 4-6 in attendance at a meeting. They felt it was important to have more at the meeting and to have a larger group of legislators that understood the water issues.

Senator Triplett: Could you talk to me about the financing of the projects through special assessments?

Mike Dwyer: What this would do is establish special assessment authority for irrigation projects with the Garrison Diversion Conservancy District. This is mechanism the C District could levy or establish a special assessment district for an irrigation project. They are developing two projects as part of the McClusky Canal right now. That is kind of the impetus for this legislation. It would be the same as any special assessment district that is established by a city or an irrigation district or a water board or in this case Garrison Conservancy District. You would have to hold hearings, you would have to have cost estimates, and then you have to have a vote of the landowners that are going to be assessed. As I indicated earlier you would have to have 100%. If there is any landowner

that objects you couldn't do it. That was one thing that the House wanted to put in just to make sure that there was a comfort level and that landowners were not being imposed an assessment for a center pivot system that they were not going to use.

Senator Triplett: So when and if Senator Fischer accomplishes his objective of getting rid of the Garrison Diversion Conservancy District, then all of this would just transfer over to the Water Commission and it would flow with the state law just fine?

Mike Dwyer: Hopefully that objective won't be accomplished, but we are going to do this two year study on the irrigation districts and hopefully we can bring irrigation districts into more of a current status.

Chairman Lyson: When this is going through by pipeline, if the people do not sign up right away, can they sign up later?

Mike Dwyer: There is a provision for people to add in later.

Senator Triplett: Line 22 on page 3 says "the board 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 direct benefits accruing to the property that is benefited." How much of the cost of these projects will be borne by the taxpayers?

Mike Dwyer: The current project is a 50/50 split between state and the special assessments charged to the landowners. This is standard language for all assessment districts, cities, counties, and water boards. The 50% that the state pays is a combination of the Garrison Conservancy District, state water commission, and some additional landowner contributions that don't flow through special assessments.

Senator Triplett: So the federal money that's in there from the Garrison Diversion would be limited to engineering and administrative costs?

Mike Dwyer: That is not federal money; that comes from their mill levy.

Senator Schneider: I am curious about the section 4 expiration date that you would like us to lift. Was that in the original version of the bill or did the House add that?

Mike Dwyer: That was added by the House. The House was careful to give the Garrison Conservancy District assessment authority. They were looking for ways to restrict or make sure it wasn't misused so they basically had three things they did. They required 100% approval, they put the interim study in, and put the sunset clause on. The reason for asking for that to be removed is so that if you do this project in the next two years you can continue to execute it. If we did come up with some legislation on the irrigation district laws we would have to incorporate this into that so that could continue.

Senator Hogue: I want to understand your earlier comment about two different landowners sharing a center pivot.

Mike Dwyer: If I said that, I didn't mean to.

Senator Hogue: They would each be paying to bring it to their own land?

Mike Dwyer: Yes. Each landowner pays for his own installation of the pivot. The price of a pivot is $75,000 to $100,000.

Senator Burckhard: How do you go about prioritizing water projects in North Dakota?

Mike Dwyer: In 1994 we established a North Dakota Water Coalition which brings together all the water groups in North Dakota to discuss and prioritize the projects and then take a look at the funding that might be available. Then they make recommendations for allocations. Those recommendations then go to the state water commission and the water commission submits their executive budget to the governor. The governor does his executive budget. Then the legislature approves that. The appropriation is not project specific. Then the water commission makes the final allocation.

Senator Triplett: I think that irrigation projects are somehow different than other water issues. Water supply and flood control projects can be spread broadly across a community and people can choose to sign on or not to sign on but it is being made available to a lot of people. Flood control projects are about public safety and protecting our infrastructure. Irrigation projects are more voluntary and more localized and more specific. I think we really do need to pay attention to how these choices are made. There are opportunities for winners and losers among landowners. I think that a group of landowners who are willing to go forward and have the cash to put the pivots in and have community consensus about a project, they can develop their land in a way that maybe someone who has an equal passion for irrigation but lives in a different part of a community where they can't get the surrounding landowners together to make that commitment. Suddenly it changes the dynamics of the local farm community. I think there are some serious equity issues in how these areas for irrigation are chosen. I have some real concerns about it. I see them as inherently different than what the water groups have done in the past with providing rural water or providing flood control. I am in favor of studying them but I think it is an issue. Can you talk about how these project areas are chosen?

Mike Dwyer: For irrigation a primary factor is water supply. An NDSU study has found that an irrigated acre produces 5 times as much as a non-irrigated acre. That creates jobs and economic development. State money is spent on it and certainly it is a group of landowners that benefit. It is primarily driven by whether there is a water supply and whether there is interest. The state water commission has a policy that they will cost share in 50% of the infrastructure to get the water to the field.

Chairman Lyson: How many people in the group have to be involved in it?

Mike Dwyer: If it is a Garrison developed area, it would have to be 100% of the landowners. If one chose not to, he would not be assessed.

Senator Hogue: Is that part of the reason for your amendments?

Mike: Yes, every assessment district requires a 50-60% approval. They give those that are condemned a vote, but here we require 100%. While the landowner whose land is being condemned is getting paid, if he has a vote he is obviously going to vote no. Since you need 100% it is just not going to be able to be implemented.

Senator Hogue: Motion to adopt amendments dated 3/24/11. See **Attachment #1**.

Senator Schneider: Second

Motion carried by voice vote.

There was discussion about the amendment brought forward by Jack McDonald. See **Attachment #2**.

Senator Schneider: motion to adopt the Jack McDonald amendment.

Senator Triplett: Second

Motion carried by voice vote.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1318
March 25, 2011
Job #15999

☐ Conference Committee

Committee Clerk Signature Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to creation of special assessment districts for irrigation works by the Garrison Diversion Conservancy District; relating to membership and duties of the water-related topics overview committee; to provide for reports to the state water commission; and to provide an expiration date.

Minutes: No Attachments

Chairman Lyson opened the discussion on HB 1318.

There was discussion about whether this bill had to be re referred to Appropriations. The committee was reminded that they had adopted 2 amendments.

Senator Triplett: I think it is a good thing that our state helps to fund flood control projects and water supply projects but I do not think the state should be funding irrigation projects with a 50% cost share. The cost share policy of the water commission varies from 65 to 60 and 50 and 40 on different kinds of things. The 50% is at least less than the cost share for some other things, such as projects for the public interest. Maybe I will just let this go. I just object to allowing certain people to take advantage of the location of their land and their ability to afford center pivot irrigation, for them to be able to take advantage of state resources in this way. I think they ought to pay for it. They are getting the primary benefit and if there is a small side benefit to their community in terms of economic development maybe a 90/10 cost share would be appropriate. I can't see where a 50/50 cost share is appropriate. I will vote no.

Senator Burckhard: motion for Do Pass as Amended

Senator Uglem: Second

Roll Call Vote: 6-1-0

Carrier: Senator Hogue

#1

3/24/11

Amendments to HB 1318

On page 9, Line 17, after the word "subject" delete the words "or one vote for each dollar of the assessed valuation of"

Page 9, delete Line 18

Page 9, on Line 19, delete the words " title 57"

On Page 19, delete section 4

Date: 3-24-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Hogue Seconded By Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Lyson			Senator Schneider		
Vice-Chair Hogue			Senator Triplett		
Senator Burckhard					
Senator Freborg					
Senator Uglem					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: amendments dated 3-24-11

carried by voice vote

#2

PROPOSED AMENDMENT TO HB 1318

Page 10, line 11, after "circulation" insert "in the area in which the affected landowners reside and"

Date: 3-24-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Schneider Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Lyson			Senator Schneider		
Vice-Chair Hogue			Senator Triplett		
Senator Burckhard					
Senator Freborg					
Senator Uglem					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Jack McDonald amendment

carried by voice vote

Date: 3-25-17
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

Senate Natural Resources Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ as Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Burckhard Seconded By Uglem

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider	✓	
Vice-Chair Hogue	✓		Senator Triplett		✓
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglem	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Hogue

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

REPORT OF STANDING COMMITTEE

HB 1318, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1318 was placed on the Sixth order on the calendar.

Page 1, line 4, after the semicolon insert "and"

Page 1, line 5, remove "; and to provide an expiration date"

Page 9, line 17, remove "or one vote for each dollar of the assessed valuation of"

Page 9, remove line 18

Page 9, line 19, remove "title 57"

Page 10, line 11, after "circulation" insert "in the area in which the affected landowners reside and"

Page 19, remove lines 29 and 30

Renumber accordingly

2011 HOUSE ENERGY AND NATURAL RESOURCES

CONFERENCE COMMITTEE

HB 1318

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1318
4/7/2011
16424

☒ Conference Committee

Committee Clerk Signature

Minutes:

0 "attached testimony."

Rep. Damschen: We call the conference committee on HB 1318 to order. All were present. I have the amendments before us. I would like to know the intent of the issues that need to be addressed. Would you like to give us your concerns?

Senator Uglem: By leaving one vote for each dollar of the assessed valuation of line commended for use of construction allows someone that doesn't want to participate in the project to veto the project. We feel it is only right that those that are going to participate in the irrigation project should be the ones voting those who are going to use the waters. The person whose land is condemned will get payment for the use of this property to run the pipeline under his property which shouldn't bother him in the future. This calls for a 100% vote.

Rep. Damschen: We are aware of that. The bill came to us originally with less than 100% approval required. We heard in testimony that they started thinking that 100 % approval was what they wanted but they cut it back to 75% I think. I thought the concern was if there were landowner changes or second thoughts on the part of people that were directly benefited from the project. I see your point. We share those concerns but I am not sure we are comfortable addressing it without giving the affected landowner some say. What are your feelings on removing the sunset clause?

Senator Uglem: The request to remove the sunset clause was because of concerns once the district is set up. If this sunset clause ends it what happens to the fees to keep the district running?

Rep Damschen: The intent was not to cancel the work or the establishment of an irrigation district that will be formed in the next 2 years. We did want to see that it is revisited in 2 years. We have the clause in there for rewriting the irrigation code. This bill is probably going to be moved in 2 years except for the districts that are going to be established in the next 2 years. I think we would find wording that would address the ones that are established and give security for the bonding on the special assessments they would continue for the period of time that it was set up. Is there a problem with the wording in the area where the landowners reside? Would it be a problem if we say absentee landowners?

Senator Uglem: That was not our intent. Our intent was to put it in the local paper where the affected land is.

Rep. Damschen: The only one that is going to be a challenge is page 9 line 17 to try to give some consideration to the affected landowner who isn't going to be benefit from the project.

Senator Uglem: Our thought is if the landowner does not want to sign up for the water they are not going to vote for it.

Rep. Hofstad: If you are looking at this piece of legislation as a piece that would build future projects it would be completely inappropriate to put anything like that in here. At the end of 2 years or during this interim period our intent is to rewrite this irrigation law because it is antiquated and it doesn't fit what we are doing right now. This gets us from this point to the next legislative session. What I am wondering is if the irrigation district that we are building right now is it suffice in getting us to that point.

Senator Uglem: Do we have any idea if there is more than one irrigation district that will be under development in the 2 year period?

Rep. Hofstad: That is the question that we need to have answered.

Mike Dwyer: I represent the North Dakota Irrigation Association. There are plans for 2 districts. I can't say there aren't plans for other districts. I received an email from an irrigator in Williams County saying they are looking at trying to form a district and want me to explain this process so there could be others.

Senator Triplett: There are 2 that are currently in the planning plus you received an email, is the email about the Williams County one?

Mike Dwyer: That is the third one.

Rep. Hofstad: What face are the other 2 in development and is there enough money in the budget to participate in that cost share. Where is this thing in the process?

Mike Dwyer: The Garrison Diversion Project is long standing where a lot of features have been built. One of the features is the McClusky Canal we have to date not developed any irrigation under the Garrison Project. The 2 projects that are under way started under discussion in some faces of progress along the McClusky Canal. It is a total of 23,000 acres. It is part of the federal authorization for the Garrison project. The cost share for the first face is in the Water Commissions budget and has already been approved with previous funds. There is also an additional five million dollars that the Water Commission has tentatively allocated for irrigation generally across the state. Those funds go toward a number of things. There is an Ag. based program for irrigation which could be available for the cost share on a project. There has been no request at this point so that is the money that the Water Commission has tentatively allocated in their testimony to the House and Senate appropriations committee that they intend to use for irrigation development.

Rep. Hofstad: Can we live with this with the idea that when we come back in the next session we are going to fix all of this. It would be much easier to get it through the house.

Mike Dwyer: Our Association does not want the sunset you have to take into account that my comments are directed towards why we would like to see that out of there. If your group that is trying to set up a district and you hire a lawyer or look at the bill and it was going to sunset you would look at the bill and say "I don't know if we should do this." I think there would be some hesitation trying to implement those provisions especially in the light of the fact that if it sunsets that county no longer has the authority to assess those assessments which are usually ten or fifteen years.

Rep. Damschen: I think their consensus is that we take the sunset out of it and so anyone formed in the next 2 years would be allowed to continue as is. I think the sunset portion of it would just apply to the law for those setting up a new district under this law after 2 years. Rep. Hofstad's concern is this one vote for the assessed value for the condemned land.

Mike Dwyer: When the bill came in I think it was 50% and there were amendments to take it to 75% and then the house made it 100%. With that I think it is essential a landowner who gives a voluntary easement or a condemned easement and not have a vote because he has an absolute veto power over the project. If it is voluntary easement you may have a positive vote from that landowner but if it is a condemned easement it would be very unlikely to get that vote. If it was a three million dollar project but the cost of that easement is $500.00 if you are crossing a quarter section for example that $500.00 would veto that entire project.

Rep. Hofstad: The project that is under development right now are you ok with it and are there no issues with it right now as far as the condemnation for the pipe that is going in the ground?

Mike Dwyer: To my knowledge they don't have any condemnation.

Senator Uglem: Would the second face be allowed if we sunset this? Would that be considered part of the project even though it wouldn't be constructed yet?

Rep. Damschen: I was assuming that it would have the wording that it would continue under the provisions of this bill. I am not certain how the cost sharing might work if one would be applying for Water Commission funds in each face.

Mike Dwyer: It is a separate issue in a sense that Senator Triplett's draft is that what you are suggesting is that you will have a grandfather clause for any district that is set up in the next 2 years in terms of the repeal and so whether they get cost share or not is not a issue. Some projects may not be requesting that.

Rep. Nelson: When an irrigation project gets started when is an irrigation project started?

Mike Dwyer: If an vote has been held in an assessment then the assessment system has been implemented.

Rep. Nelson: But would you have put a lot into the engineering already?

Mike Dwyer: Having a sunset does create a problem for a group that is looking at it and see there is a sunset it may be a determining factor as to whether they will proceed or not.

Rep. Damschen: One of the drives behind this legislation was to have assessments available as bond security and I think you are right in saying that the commencement to the project probably is at the time of the approval by vote and that would be addressed in this legislation and in the future legislation that rewrites the code. We are for that, this is one detail that we need to work out for the next 2 years so it doesn't block every project that is attempted.

Rep. Hofstad: Can you speak about the supply channels that go to the irrigation district? Are they closed underground pipes? Are they open channel?

Mike Dwyer: I have not aware of any open channels conveyance systems other than the McClusky Canal.

Rep. Nelson: I wonder about the purpose of the sunset clause we keep talking about the fact that we are going to be working on irrigation laws and rewriting this again. What does the sunset clause provide us? We are going to be on this law if this there is a problem we are going to be amending it. If for some reason the projects of this type it is our opinion by the time we get to the next session as we rewrite the laws they should they should quit doing things this way.

Rep. Damschen: It assures us that it is going to be revisited and that the other thing we can do is have a repeal in the rewrite of the laws I think it gives some assurance that we are not going to overlook the portion of the bill that requires a rewrite of the irrigation code and it also draws attention to the projects that would be set up under this.

Rep. Hofstad: If we were to amend that to say one vote for each dollar of assessed valuation for which the beneficial use is lost. An open channel is a loss of beneficial use where as an underground pipe is an easement and you are farming on top of it if that is not the issue maybe that is the compromise that we can think about.

Rep. Nelson: On the vote for the condemnation it seems to me that we have a lot of different situations across the state where a lot of these types of things where the court provides the redress for the person.
I don't see what the difference is it is not that the person is not protected it is that instead of trying to anticipate every situation and write it into the law it is a matter for the law to try to decide in my mind. We did it this way so that it has to be a 100% vote but that takes away that persons chance if there was one before of giving them a vote because it is back to the fact that they are not part of the project.

Rep. Damschen: That works good until it is your land and you have hire the attorney to go to court.

Rep. Nelson: I realize that but that is what we do in every other situation.

Rep. Damschen: I am not sure this is comparable to a 30 inch pipeline that transports gas or oil I think that is more of a public utility. This is a project that is a area that is initiated by a group of landowners.

Senator Uglem: Would the Ag. Mediation Board fit in there?

Rep. Damschen: I don't have an answer for that. Would the committee in favor if I got some amendments drafted to address some of these other issues and talk to the Legislative Council about that?

Senator Uglem: Go ahead and try to draw something up. I would comment on the second amendment in the area in which the benefited plans are located.

Rep. Damschen: Benefited lands or affected lands?

Senator Uglem: Benefited. It still does leave the question about other projects starting to organize. It could make them wait a year or two.

Senator Triplett: The other thing is it could make them unreasonably speed up other projects to meet the deadline.

Rep. Damschen: We can think about all of that. I will have the amendment drafted for the next meeting. We will adjourn the meeting.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1318
4/12/2011
16505

☒ Conference Committee

Committee Clerk Signature Minutte

Minutes: no "attached testimony."

Rep Damschen: We will bring HB 1318 back to order. I passed out some amendments. The first one is dealing with removing the line about condemned or use of construction. The second line removes title 57 and inserts "for beneficial use is lost as a result of the project" that would mean that if a pipe was buried and they could farm over it there wouldn't be a vote for that individual but if there was going to be an open ditch that would cause them to lose the beneficial use of the land they would have a vote. So it encourages consideration of the affected landowner who won't benefit.

Senator Triplett: Are these amendments working with the 4000 version of the bill?

Rep. Damschen: They are working with the 4000 version. Page 10 line 10 deals with the notification process. Remove "newspapers of general" on page 10 line 10 and remove circulation on line 11. On line 12 after 'located' insert "and in local newspapers of general circulation in the area of the affected lands."

Senator Uglem: That was our intention with our amendment as well so that looks good.

Rep. Damschen: Page 19 line 30 is the sunset clause where we grandfathered in "projects for which all steps up to and including approval" The approval is the vote if they have the vote they would have to do the preparation up to the vote, and if they approved it by vote then it would be grandfathered in.

Senator Uglem: I think these amendments will be satisfactory I look for comments from other committee members here.

Rep. Damschen: I should mention here I had a comment from Mr. Dwyer who has a copy of the amendments he felt that may be "beneficial use" should be replaced with "fee title" I didn't ask Jeff Nelson up in council, we could get his opinion on that. It would be nice if we could agree and settle this.

Mike Dwyer: I represent the North Dakota Irrigation Association. That would be a technical legal term. Beneficial use is relating to the use of water and if you are going to lose your land you are really talking about the fee title, it is trying to be correct.

Rep. Damschen: Should we make that change and then double check with the legislative council before they write it in?

Senator Uglem: I say we should try to get it as close to perfect as possible.

Mike Dwyer: We would take the words "beneficial use" out and insert in place of those two words "fee title interest" which is the legal term for ownership.

Rep. Damschen: Does that mean the ownership would remain with the present landowner but he is losing the use of it?

Mike Dwyer: No it means if the district was going to acquire the land in ownership so that he couldn't use it and instead they were going to use it for a canal it would be condemning a fee title interest. The other option is an easement where the landowner would continue to use the land.

Senator Triplett: If we could go to the final change of the sunset clause where it references "except for projects for all steps up to and including are completed before August 1, 2013. What does approval mean? And is it adequately defined? Should be reference that in the sunset clause section by section?

Mike Dwyer: My understanding of the intent is that the approval that is being is on page 8 section 6124.8- 14 where the landowners vote and establish the assessment district and the approval you mentioned comes earlier. The approval as I understood the committee to be talking about is the approval of the assessments so that would be the section that you would reference.

Rep. Nelson: On line 28 the board should immediately determine whether the project is approved. It actually uses that word.

Rep. Damschen: Should we have council reference to 61-24.8-14? I think that would be a good way to avoid confusion.

Senator Uglem: We should wait for the final version of the amendment before we take action.

Rep. Damschen: I will get the amendment amended. I will reschedule the meeting as soon as we can. The meeting is adjurned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB1318
4/12/2011
16527

☒ Conference Committee

Committee Clerk Signature Emmeth

Minutes: no "attached testimony."

Rep. Damaschen: We will call the conference committee on HB 1318 to order. All members are present. I do have the updated version of the amendments 04004 they are as we discussed except for where we replaced title 57 as I was visiting with council it was suggested that we put "for which fee title interest is lost as a result of the project" If a fee title is lost that means it is condemned. That wouldn't happen until after the project was established. We changed it to "for which fee title interest will be lost."

Senator Uglem: That is what we have agreed upon at the last meeting. Does anyone have any further questions? I would move that the Senate recede from their amendments and further amend amendment 4004.

Rep. Nelson: Second.

Rep. Damschen: Is there any discussion? Roll call taken motion passed.

YES 6 NO 0 ABSENT 0 Carriers Senator Uglem and Rep. Nelson.

VR
4/12/11

11.0377.04004
Title.06000

Prepared by the Legislative Council staff for
Representative Damschen
April 12, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1318

That the Senate recede from its amendments as printed on page 1203 of the House Journal and pages 904 and 905 of the Senate Journal and that Engrossed House Bill No. 1318 be amended as follows:

Page 9, line 18, remove "condemned, or used for construction, for the project, as determined in accordance with"

Page 9, line 19, replace "title 57" with "for which fee title interest will be lost as a result of the project"

Page 10, line 10, remove "in the newspapers of general"

Page 10, line 11, remove "circulation"

Page 10, line 12, after "located" insert "and in local newspapers of general circulation in the area of the affected lands"

Page 19, line 30, after "ineffective" insert "except for projects for which all steps up to and including approval as described in section 61-24.8-14 are completed before August 1, 2013"

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy - Natural Resources

Bill/Resolution No. H 1318 as (re) engrossed

Date: 4-4-11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
- ☐ HOUSE accede to Senate amendments and further amend
- ☐ SENATE recede from Senate amendments
- ☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1203 --

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

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

Motion Made by: Senator Uglem Seconded by: Rep Nelson

attendance

Representatives	4/7	4/11	4/12	Yes	No	Senators	4/7	4/11	4/12	Yes	No
Chairman Rep Damschen	✓	✓	✓	✓		Senator Uglem	✓	✓	✓	✓	
Rep Hofstad	✓	AB	✓	✓		Senator Triplett	✓	✓	✓	✓	
Rep Nelson	✓	✓	✓	✓							

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep Damschen Senate Carrier Senator Uglem

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2011 TESTIMONY

HB 1318

attachment 1

Testimony by Dave Koland, General Manager
Garrison Diversion Conservancy District

To the

House Energy and Natural Resources Committee Hearing on HB 1318

Bismarck, North Dakota
February 4, 2011

Mr. Chairman, members of the committee; my name is Dave Koland. I serve as the General Manager of the Garrison Diversion Conservancy District (Garrison Diversion).

Garrison Diversion is the local political subdivision created in 1955 to be the local sponsor that would construct the Garrison Diversion Unit (GDU) of the Missouri River Basin Project as authorized by Congress on December 22, 1944. We serve as the fiscal agent for the federal dollars that come to North Dakota through this project and are party to the numerous contracts with the federal Bureau of Reclamation to implement those parts of the project Congress has authorized North Dakota to construct. Amendments in 1986 and 2000 have changed the GDU from a million acre irrigation project into a multipurpose project with an emphasis on the development and delivery of municipal and rural water supplies. Garrison Diversion's mission remains: **To provide a reliable, high quality and affordable water supply to benefit the people of North Dakota**.

Garrison Diversion is governed by a 28-member board of directors. Each of the 28 counties that are members of Garrison Diversion elect one person at

the general election to serve on the board of directors and levy one mill to support the activities of Garrison Diversion.

Due to the large number of irrigated acres that were envisioned to be served by the GDU, the conceptual plan for developing irrigation included the formation of local irrigation districts throughout the state. The current GDU irrigation authorization is 75,480 acres of which 13,700 acres are in the Turtle Lake service area and 10,000 acres are in the McClusky Canal service area. A number of changes since that plan was developed include the reduction in authorized irrigation acres, consolidation of farming operations and economies of scale for water supply operations. These changes have all prompted the need for a more streamlined method of irrigation development in North Dakota.

The revised concept has the irrigator enter into a water service contract directly with Garrison Diversion for the delivery of water and the operation and maintenance of the central supply works needed to provide water to the irrigator's pivots. The central supply works in the development we will talk about today are needed to lift water from the McClusky Canal and transport it by a buried pipeline to provide water to an irrigator's center pivot system.

The construction of the central supply works is the obligation of the irrigators and can be constructed utilizing a 50% cost/share grant from the State Water Commission. HB1318 will provide the irrigators a long-term financing method to fund their share of the construction costs of the central supply works.

Section 1 defines some of the terms used in this chapter.

Section 2 gives Garrison Diversion the power to issue improvement bonds and levy special assessments to repay them.

Section 3 provides the bonds and special assessment be authorized by a majority vote of the Garrison Diversion board.

Section 4 makes it clear that this chapter will govern how the bonds are to be issued.

Section 5 details that the improvement projects are for an irrigation water supply works, including improvement, extension or replacement.

Section 6 provides "quick take" authority for condemnation of land and rights of way for the improvement project.

Section 7 provides the irrigation improvement district be created by resolution of the Garrison Diversion board and allows it access to the proposed project area for examinations of surveys after written notice to each landowner.

Section 8 deals with the size and form of the improvement district and allows the board to omit or add property to the improvement district.

Section 9 requires an engineer's report and estimates of the total cost.

Section 10 requires that the plans and specifications must be approved by a resolution of the board.

Section 11 provides the engineer will provide copies of the plans, specifications, and estimates upon request at a reasonable cost.

Section 12 provides the plans, specifications, and estimates belong to Garrison Diversion and are available for inspection by anyone.

Section 13 provides there will be a public hearing in the vicinity of the proposed project. The board will file with the county auditor a complete list of the benefits and assessments to be made and publish a notice of the hearing once a week for two consecutive weeks. The notice must contain the list of assessments and approximate assessment against each parcel of land benefited by the proposed project.

Section 14 provides a 30-day voting period and requires that 75% approve the proposed project. The board issues an order establishing or denying establishment of a project and then must publish notice of the order in the newspaper. Any right of appeal begins to run on the date of publication.

Section 15 provides that each landowner has one vote for each dollar of assessment.

Section 16 provides that only land that is directly benefitted, which is defined in section 1 to mean "water is delivered to a track of land", can be assessed.

Section 17 provides for the assessment list to be published and a hearing held to hear objections to any assessment. The board can make adjustments to correct any errors but the aggregate must still equal the total cost of the project.

Section 18 provides for an appeal to the State Engineer to review the assessments and examine the location and design of the proposed project.

Section 19 provides when the special assessment can be levied and stipulates that a contract or contracts may not be awarded which exceed by 40% or more the estimated cost of the project approved by the affected landowners.

Section 20 provides that the correction of errors will be governed by Chapter 40-26, Municipal Government; Correction, Reassessments, and Fund Deficiencies.

Section 21 provides that a special assessment is a lien on the property second only to the general tax lien.

Section 22 provides that a portion of the cost of the improvement can be raised by a service charge for the use of the improvement and paid into the improvement fund.

Section 23 deals with the use of abbreviations.

Section 24 provides that Garrison Diversion will keep a complete record of all proceedings.

Section 25 provides that defects will not be fatal unless commenced within 30 days of the board resolution awarding the sale of the bonds.

Section 26 provides that the special assessment can be paid within 10 days after board approval without an interest charge.

Section 27 provides that, unless a purchase contract provides otherwise, the special assessment becomes a lien on December 1 of each year.

Section 28 provides that assessments can be spread over 30 years.

Section 29 details the process for payment of an assessment in full and what is paid to the county and what is paid to Garrison Diversion.

Section 30 provides for the annual certification of costs by Garrison Diversion to the county auditor and may include the cost of maintaining the project.

Section 31 sets the timeline for the district treasurer to certify the special assessments to the county auditor each year.

Section 32 provides for the special assessments to be collected with the general taxes of the county.

Section 33 provides that the county auditor shall keep a special assessment record.

Section 34 provides that the county treasurer will certify the amount collected and pay to the district treasurer monthly.

Section 35 provides that the county treasurer also collects interest and penalties on special assessments and pays the district treasurer monthly.

Section 36 provides that Garrison Diversion must keep special improvement funds separate and may not use them for any other purpose.

Section 37 provides that bonds may be issued any time after the project is under contract.

Section 38 provides that bonds can be issued to make payments on contracts.

Section 39 provides that refunding bonds can be used to extend the maturities of bonds payable or to reduce the interest on bonds.

Section 40 provides that special assessment is a tax lien and, if delinquent, can be foreclosed on.

Section 41 provides that projects (currently over $100,000) must be advertised for bids and sets out the procedure.

Section 42 requires a bid bond to accompany the bid.

Section 43 sets out the acceptable form of the bid bond.

Section 44 sets out the conditions of bidder's bond.

Section 45 provides the procedure for considering bids.

Section 46 provides for opening and recording the bids.

Section 47 sets out the procedure when bids are rejected.

Section 48 requires the engineer to make a careful and detailed statement of the estimated cost of the project and if that estimate is greater than 40% of the estimate prepared under section 9, then the contract may not be awarded.

Section 49 requires the successful bidder to have a contract bond in the full amount of the contract file it with Garrison Diversion.

Section 50 sets out the conditions for the contractor's bond.

Section 51 requires the board to approve the contractor's bond and return the bidder's bond.

Section 52 sets out what is to happen if there is no contractor's bond.

Section 53 provides that the board may require a new contractor's bond if it deems the current bond insufficient in form or as to sureties.

Section 54 details how the contract for the project will be executed and filed.

Section 55 sets out the conditions that must be in the contract and provides how certain additional work may be included under the contract.

Section 56 provides for monthly payments to the contractor and sets out the conditions for payments and retainage.

SUMMARY

1. Garrison Diversion board passes resolution authorizing irrigation project and issuance of irrigation improvement bonds in anticipation of the collection of special assessments to pay for the bonds.

2. Garrison Diversion board passes resolution to create an irrigation improvement district.

3. Engineer's report prepared on feasibility and total cost.

4. Plans and specifications approved by Garrison Diversion board resolution.

5. Public hearing held in the vicinity of the proposed project.

6. After 30 days of voting ($1 assessment=1 vote) if 75% approve, the Garrison Diversion board issues an order establishing the proposed project.

7. Public hearing held to hear any objections.

8. Public bidding process for project construction.

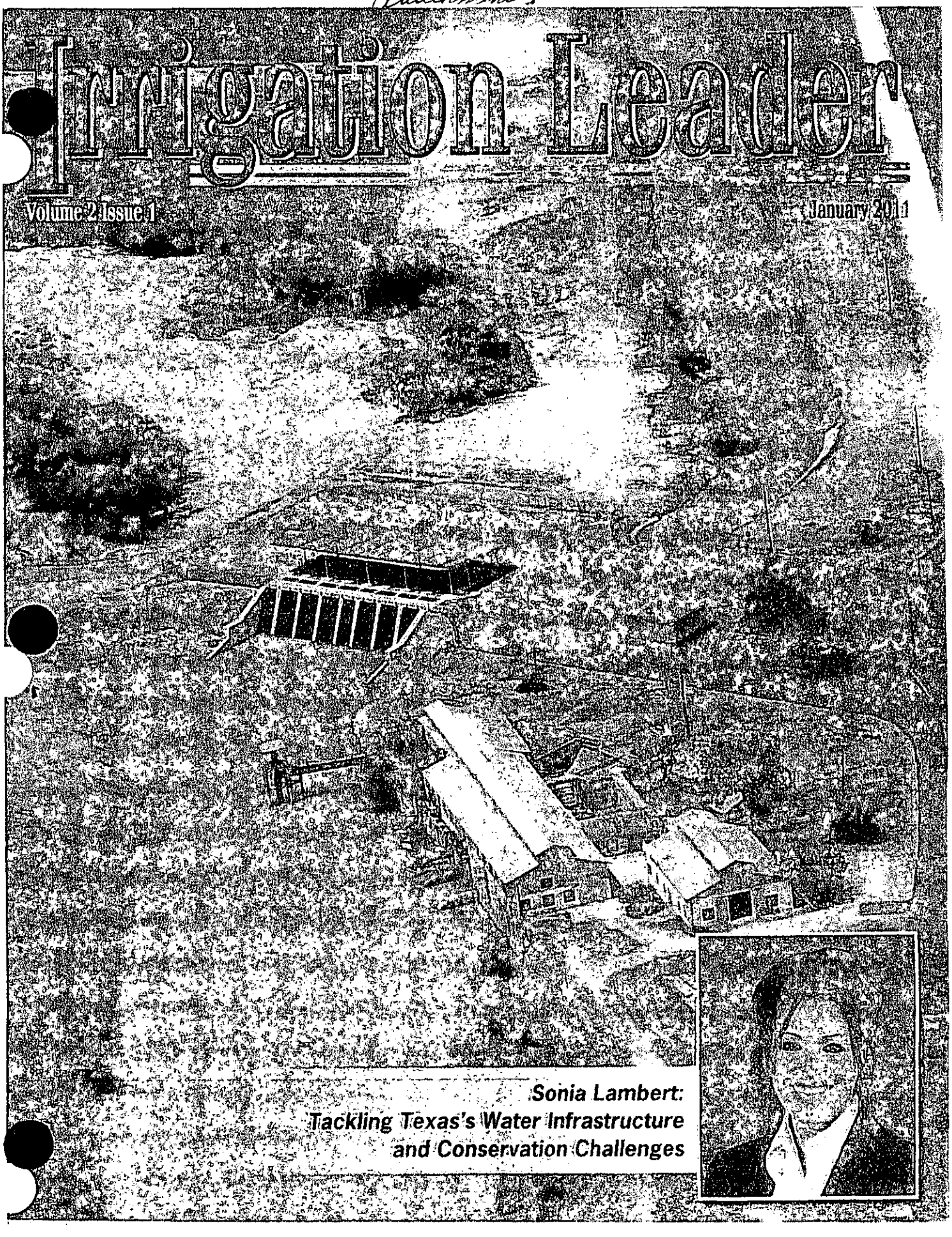
9. Bid bonds and contractor bond required.

10. Special assessment requires water delivery, needs 75% approval, is a tax lien, foreclosable, can be paid without interest, can be spread over 30 years maximum, service charge can be used to pay bonds, a maintenance charge can be added to special assessment, can be paid off in full at any time, collected by county with general tax.

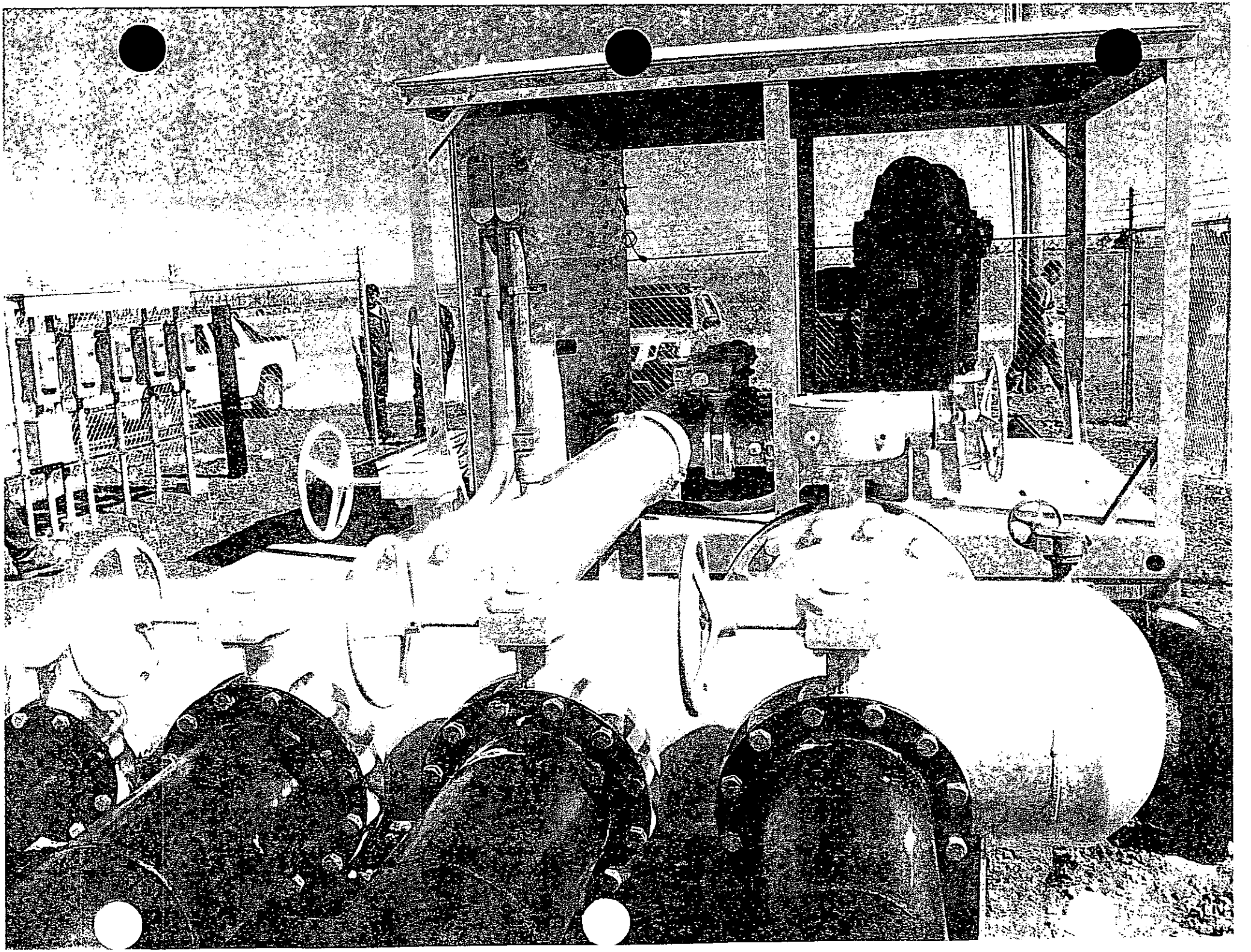
Attachment 1

Irrigation Leader

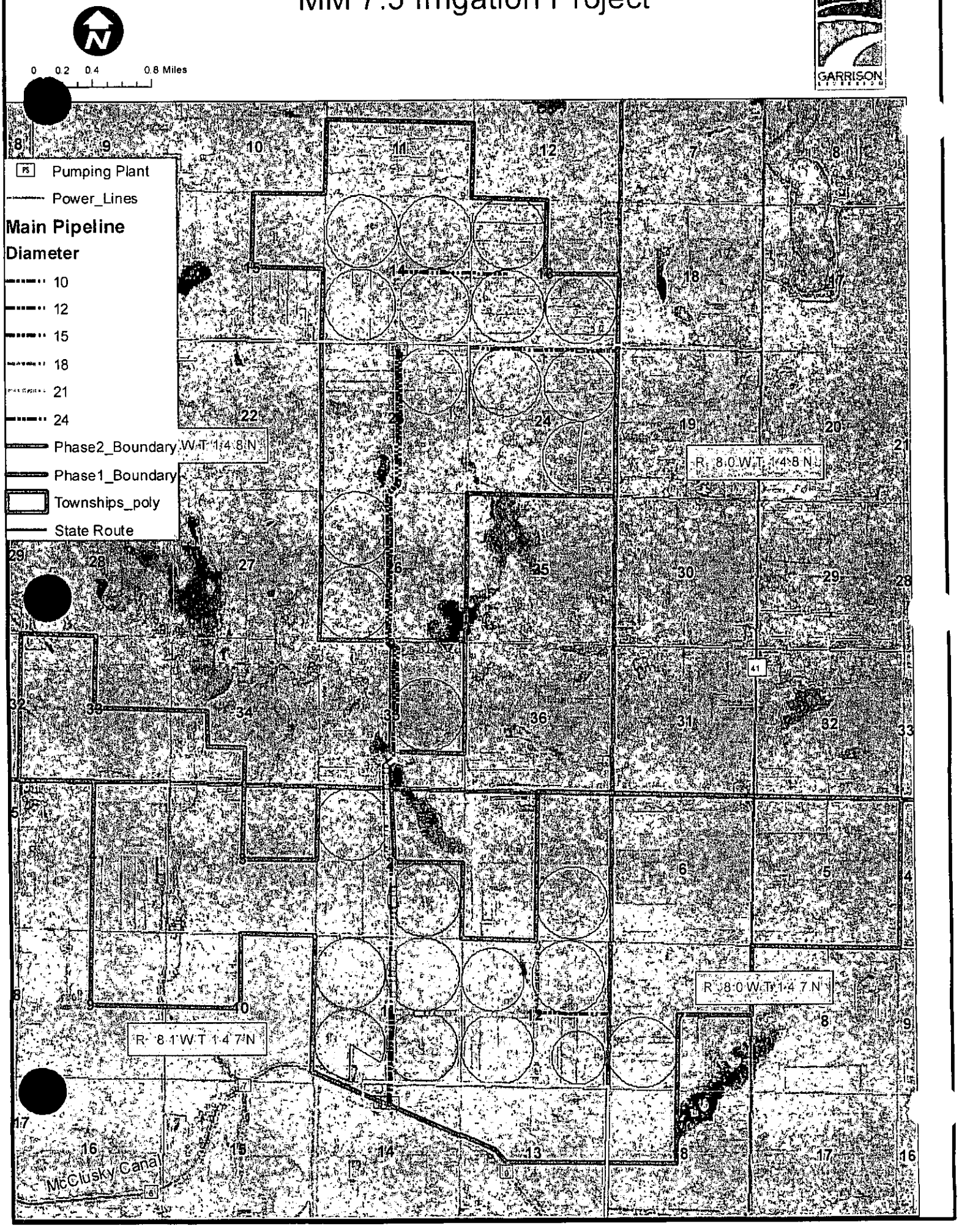
Volume 2 Issue 1 January 2011

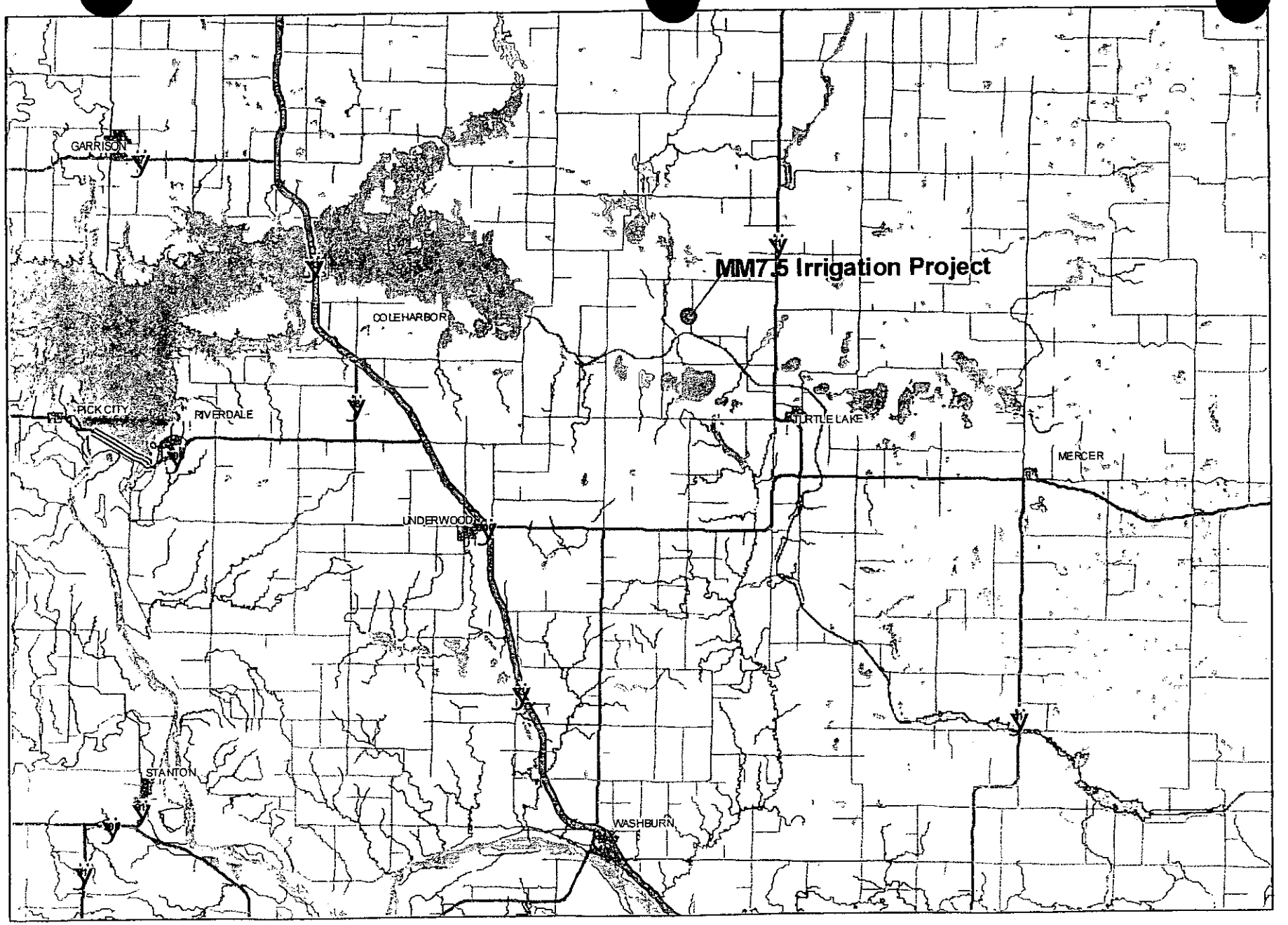


Sonia Lambert:
Tackling Texas's Water Infrastructure and Conservation Challenges



MM 7.5 Irrigation Project





J

MM 7.5 Irrigation Project

43,000 21,500 0 43,000 Feet

Typical Irrigator Repayment Schedule ($3.2 Million Project)	
Total Debt Service Per Acre	$5,576.94
Reserve Account (10%)	$557.69
Total Debt Payment Per Acre	$6,134.63
Annual Costs Per Acre	
Debt Service (4.77% / 15 years)	$46.47
Reserve Acct (10%)	$4.65
Water Service	$13.00
Energy Costs	$39.00
Operations & Maintenance	$15.00
Total Annual Cost Per Acre	$118.12

Attachment 4

North Dakota Irrigation Association

P.O. Box 2254
Bismarck, ND 58502
701-223-4615, 701-223-4645 (fax)
e-mail: ndirrigation@btinet.net

Dedicated to strenghtening and expanding irrigation to build and diversify our economy.

Testimony on House Bill No. 1318
House Committee on Energy and Natural Resources

Alan Butts, North Dakota Irrigation Association
9:00 a.m. February 4, 2011

Mr. Chairman and members of the committee my name is Alan Butts, Member of the Board of Directors of the North Dakota Irrigation Association. The Association is made up of members who are irrigators, potential irrigators, irrigation equipment dealers, power suppliers, and others who wish to support irrigation development.

The Dakota Water Resources Act authorizes the development of 23,700 acres of irrigation using Missouri River water from the McClusky canal in the Turtle Lake area. Landowners wish to begin developing the authorized acreage under the sponsorship of the Garrison Diversion Conservancy District. The first stage of the first phase consisting of approximately 3,000 acres is currently underway. The entire first phase will consist of more than 7,000 acres.

The Garrison Diversion Conservancy District will construct and operate the principal water supply works and deliver the water to the edge of the property boundary. In the original Garrison Diversion Plan, the Conservancy District would have held contracts with the irrigation districts for the delivery of water and the irrigation districts would have been responsible for the contracts with the landowners. Under the current plan the Conservancy District will have the contract with each landowner that receives water.

House Bill No. 1318 provides the authority for the Garrison Diversion Conservancy District to create special assessment districts for the purpose of issuing bonds. The water users will pay a special assessment for the payment of interest and principal based on the benefits received. The Conservancy District has expertise and the authorities to build and manage the project. This includes fiscal management, the technical expertise to design projects, supervise construction , and manage the water delivery system. These are essential elements of today's unitized irrigation enterprise using available technology.

This bill provides a clear method for financing, constructing, and operating the principal water supply works for a very significant irrigation project. North Dakota has approximately 260,000 acres of irrigation. The completion of the authorized acreage would represent and increase of more than 8 percent. Data from the North Dakota Crop Statistics Service shows that on the average about 4 dryland acres are needed to equal the gross returns from one acre of irrigation.

Therefore, we ask your favorable consideration of HB 1318.

#1

Testimony of Representative Marvin Nelson on HB 1318

Pg 9 line 16 after "section." Remove "

The landowner of land affected by the project has one vote for each dollar of assessment to which the land is subject ~~or one vote for each dollar of the assessed valuation of land condemned, or used for construction, for the project, as determined in accordance with title 57~~.

The stricken language was a holdover from the outdated law we used as the basis and it's effect in the current form is that it gives anyone who would have property used or condemned for the project veto power over the project since the voting requirement has been changed to 100%

#2

North Dakota Irrigation Association

P.O. Box 2254
Bismarck, ND 58502
701-223-4615, 701-223-4645 (fax)
e-mail: ndirrigation@btinet.net

Dedicated to strenghtening and expanding irrigation to build and diversify our economy.

Testimony on House Bill No. 1318
House Committee on Natural Resources

Alan Butts, North Dakota Irrigation Association
9:00 a.m. March 18, 2011

Mr. Chairman and members of the committee my name is Alan Butts, Member of the Board of Directors of the North Dakota Irrigation Association. The Association is made up of members who are irrigators, potential irrigators, irrigation equipment dealers, power suppliers, and others who wish to support irrigation development.

The Dakota Water Resources Act authorizes the development of 23,700 acres of irrigation using Missouri River water from the McClusky canal in the Turtle Lake area. Landowners wish to begin developing the authorized acreage under the sponsorship of the Garrison Diversion Conservancy District. The first stage of the first phase consisting of approximately 3,000 acres is currently underway. The entire first phase will consist of more than 7,000 acres.

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House Bill No. 1318 provides the authority for the Garrison Diversion Conservancy to create special improvement districts for the purpose of issuing bonds. The water users will pay a special assessment for the payment of interest and principal based on the benefits received. The Conservancy District has expertise and the authorities to build and manage the project. This includes fiscal management, the technical expertise to design projects, supervise construction , and manage the water delivery system. These are essential elements of today's unitized irrigation enterprise using available technology.

This bill provides a clear method for financing, constructing, and operating the principal water supply works for a very significant irrigation project. North Dakota has approximately 260,000 acres of irrigation. The completion of the authorized acreage would represent and increase of more than 8 percent. Data from the North Dakota Crop Statistics Service shows that on the average about 4 dryland acres are needed to equal the gross returns from one acre of irrigation.

We ask that you support HB 1318.

#3

Testimony by John Leininger, Chairman of the Board
Garrison Diversion Conservancy District

To the

Senate Natural Resources Committee
Hearing on HB 1318

Bismarck, North Dakota
March 18, 2011

Mr. Chairman, members of the committee; my name is John Leininger. I currently serve as the chairman of the board of the Garrison Diversion Conservancy District.

First of all, I want to assure the committee that HB 1318 has the support of the entire 28 member board of Garrison Diversion. This bill will give Garrison Diversion the ability to form special assessment irrigation districts to help landowners pay for irrigation supply works and the operation and maintenance of the water delivery system.

The exception to the support of the bill is Section 4 – referred to as **Expiration Date** (commonly referred to as the "sunset clause"). This section was added by the House Natural Resources Committee just prior to the hearing on HB 1318. We are asking this committee to pass an amendment that will remove Section 4 from HB 1318.

As a political subdivision of the state created in 1955, GDCD is authorized with the promotion and development of 75,480 acres of irrigation in North Dakota. This year, 2011, will be the first irrigation project developed by GDCD along the McClusky canal. This is a 7,000 acre project that will be completed in three phases. Phase I, approximately 3,500 acres, will be in operation this spring at a cost estimated at $3.3 million. $1.3 million provided as a 50% cost share grant by the State Water Commission and $1.8

million provided by the irrigators. Garrison Diversion, as of this date, has expended over $43,000 in develop costs.

Phase II, estimated to cost $4.6 million, can only by developed by Garrison Diversion during 2011-2013 if the sunset clause is removed from HB 1318. This will enable Garrison Diversion to construct the project infrastructure and allow the District to recover costs for operation and maintenance of the water delivery system.

Again, I urge you to pass an amendment to HB 1318 that removes Section 4 from this bill.

#4

Ongstad Farm

Bill Ongstad
4135 25th St NE
Harvey, ND 58341
bill.ongstad@gmail.com
701-341-2937

HB 1318 Testimony March 18, 2011 9:00 am

Mr. Chairman and members of the committee, my name is Bill Ongstad, a farmer from 10 miles east of Harvey. I am the Wells County director on the Garrison Diversion Conservancy District and a director of Farm Credit Services of North Dakota headquartered in Minot, ND.

I am asking that you pass HB1318 with an amendment that removes section 4 -the sunset clause. This bill will give Garrison Diversion the ability to form special assessment irrigation districts to help landowners pay for irrigation supply works. These special assessment irrigation districts will only come into being with direct approval of 100% of the affected landowners.

As a Farm Credit Director, my association will be financing many of the farmer irrigation investments. This bill will make it certain that affordable water will be available very near the quarter section to be irrigated. This will be a good thing for the farmer, farm credit and the food security needs of the state and nation.

I urge you to pass HB 1318 without section 4.

Sincerely yours,

Bill Ongstad

#5

Testimony by Dave Koland, General Manager
Garrison Diversion Conservancy District

To the

Senate Natural Resources Committee
Hearing on HB 1318

Bismarck, North Dakota
March 18, 2011

Mr. Chairman, members of the committee; my name is Dave Koland. I serve as the General Manager of the Garrison Diversion Conservancy District (Garrison Diversion).

Garrison Diversion is the local political subdivision created in 1955 to be the local sponsor that would construct the Garrison Diversion Unit (GDU) of the Missouri River Basin Project as authorized by Congress on December 22, 1944. We serve as the fiscal agent for the federal dollars that come to North Dakota through this project and are party to the numerous contracts with the federal Bureau of Reclamation to implement those parts of the project Congress has authorized North Dakota to construct. Amendments in 1986 and 2000 have changed the GDU from a million acre irrigation project into a multipurpose project with an emphasis on the development and delivery of municipal and rural water supplies. Garrison Diversion's mission remains: **To provide a reliable, high quality and affordable water supply to benefit the people of North Dakota.**

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The revised concept has the irrigator enter into a long-term water service contract directly with Garrison Diversion for the delivery of water and the operation and maintenance of the central supply works needed to provide water to the irrigator's pivots. The central supply works are needed to lift water from the McClusky Canal and transport it by a buried pipeline to provide water to an irrigator's center pivot system.

The construction of the central supply works is the obligation of the irrigators and can be constructed utilizing a 50% cost-share grant from the State Water Commission's Irrigation Program. HB1318 will provide the irrigators a long-term financing method to fund their share of the construction costs of the central supply works.

Section 1 expands the water-related topics interim committee to thirteen members and provides that during the 2011-12 interim the committee review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. It also provides that after November 30, 2013 the legislative management committee will be responsible for overview of the Garrison Diversion project.

Section 2 creates a new chapter 61-24.8

Section .01 defines some of the terms used in this chapter.

Section .02 gives Garrison Diversion the power to issue improvement bonds and levy special assessments to repay them.

Section .03 provides the bonds and special assessment be authorized by a majority vote of the Garrison Diversion board.

Section .04 makes it clear that this chapter will govern how the bonds are to be issued.

Section .05 details that the improvement projects are for an irrigation water supply works, including improvement, extension or replacement.

Section .06 provides "quick take" authority for condemnation of land and rights of way for the improvement project.

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Section .09 requires an engineer's report and estimates of the total cost.

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Section .13 provides there will be a public hearing in the vicinity of the proposed project. The board will file with the county auditor a complete list of the benefits and assessments to be made and publish a notice of the hearing once a week for two consecutive weeks. The notice must contain the list of assessments and approximate assessment against each parcel of land benefited by the proposed project.

Section .14 provides a 30-day voting period and requires that 100% of the landowners and land used for construction approve the proposed project. The board issues an order establishing or denying establishment of a project and then must publish notice of the order in the newspaper. Any right of appeal begins to run on the date of publication.

Section .15 provides that each landowner has one vote for each dollar of assessment or assessed valuation of land condemned or used for construction.

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Section .37 provides that bonds may be issued any time after the project is under contract.

Section .38 provides that bonds can be issued to make payments on contracts.

Section .39 provides that refunding bonds can be used to extend the maturities of bonds payable or to reduce the interest on bonds.

Section .40 provides that special assessment is a tax lien and, if delinquent, can be foreclosed on.

Section .41 provides that projects (currently over $100,000) must be advertised for bids and follow 48-01.2.

Section 3 provides that Garrison Diversion report periodically to the State Water Commission on the status of projects constructed under this Act.

Section 4 sunsets the entire Act after July 31, 2013.

SUMMARY

1. Garrison Diversion board passes resolution authorizing irrigation supply works project and issuance of irrigation improvement bonds in anticipation of the collection of special assessments to pay for the bonds.

2. Garrison Diversion board passes resolution to create an irrigation improvement district.

3. Engineer's report prepared on feasibility and total cost.

4. Plans and specifications approved by Garrison Diversion board resolution.

5. Public hearing held in the vicinity of the proposed project.

6. After 30 days of voting ($1 assessment=1 vote) if 100% of landowners to be assessed and 100% of landowners of land used for construction (pipeline easement) approve, the Garrison Diversion board issues an order establishing the proposed project.

7. Public hearing held to hear any objections.

8. Public bidding process for project construction.

9. Bid bonds and contractor bond required.

10. Special assessment requires water delivery, needs 100% approval, is a tax lien, foreclosable, can be paid without interest, can be spread over 30 years maximum, service charge can be used to pay bonds, a maintenance charge can be added to special assessment, can be paid off in full at any time, collected by county with general tax.

(Dave Roland) #6

GARRISON DIVERSION
CONSERVANCY DISTRICT
P.O. BOX 140
CARRINGTON, N.D. 58421
(701) 652-3194
FAX (701) 652-3195
gdcd@daktel.com
www.garrisondiversion.org

Board of Directors
Roger Bischoff, Barnes
David B. Johnson, Benson
Kenny Rogers, Bottineau
Ken Royse, Burleigh
Roger Fenstad, Cass
Norman Haak, Dickey
Charles A. Richter, Eddy
Steve Metzger, Foster
Ken Vein, Grand Forks
John Leininger, Griggs
Dennis Wendel, LaMoure
Cliff Hanretty, McHenry
Richard Cayko, McKenzie
Rick Anderson, McLean
Dan Marquart, Nelson
Dave Anderson, Pierce
John Peyerl, Ramsey
Warren Lyons, Ransom
James Burbidge, Renville
Kelly Klosterman, Richland
Jeffrey Breker, Sargent
Tim Schindler, Sheridan
Richard H. Fugleberg, Steele
Thomas Olson, Stutsman
Dr. Bill Krivarchka, Traill
Alan Walter, Ward
Bill Ongstad, Wells
E. Ward Koeser, Williams

March 17, 2011

Dear North Dakota Legislator,

North Dakota has two water issues: too much and too little.

The Garrison Diversion Conservancy District has focused on addressing "too little" water for almost 60 years. We have planned carefully, worked cooperatively with state and federal entities and been a responsible fiscal agent for decades, always working to achieve our mission: **To provide a reliable, high quality and affordable water supply to benefit the people of North Dakota.**

But today we are faced with legislative intent language in SB2020 that will cripple our ability to meet this mission. By limiting the State Water Commission's ability to provide funding to Garrison Diversion, you will halt our important work in irrigation and municipal and rural water systems across North Dakota. We are asking that you remove the legislative intent language found in SB2020 Section 9.

We are also asking that you pass HB1318 with an amendment that removes section 4 – the sunset clause. This bill will give Garrison Diversion the ability to form special assessment irrigation districts to help landowners pay for irrigation supply works. These special assessment irrigation districts will only come into being with direct approval of 100% of the affected landowners.

The goal of the enclosed report is to provide you with a comprehensive review of what Garrison Diversion does and how it responsibly performs the task assigned to it in 1955 when Garrison Dam was completed. At that time, we were entrusted with helping provide the people of the state with water, and our work toward that end has been thorough, effective and comprehensive for almost 60 years.

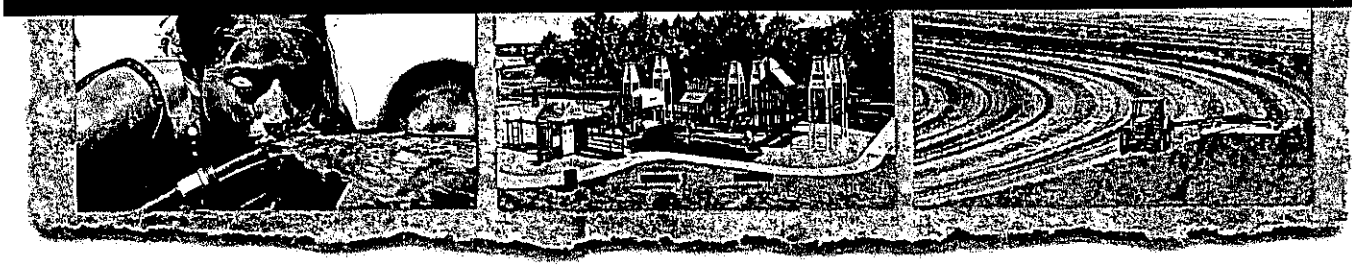
Water is vital to growth. At stake is North Dakota's ability to provide the necessary infrastructure needs of the current and next generation.

Sincerely,

Garrison Diversion Conservancy District Board of Directors

Garrison Diversion Conservancy District Report to the North Dakota Legislature

March 2011



MISSION

To provide a reliable, high quality and affordable water supply to benefit the people of North Dakota.

Introduction

The North Dakota Legislature leads our state's efforts to manage and develop our water resources. This report provides a brief picture of how the Garrison Diversion Conservancy District plays a vital role in helping the North Dakota Legislature accomplish the effective and efficient development and management our state's water infrastructure and outlines the legislative support necessary to continue our work.

Legislative Priorities

In order to ensure our vital work continues, we are asking for your help on two pieces of legislation:

1. Legislative intent language in SB2020 limits the State Water Commission to allocating no more than $1 million to the Garrison Diversion Conservancy District. Passage would adversely affect the following:
   - $5 million for irrigation project funding through 2013.
     - $2.5 million for Dickey-Sargent Irrigation District at Oakes.
     - $2.5 million for McClusky Canal Irrigation Project Phase II.
   - $5 million for Red River Valley Water Supply Project.
     - The project is working to bring a supplemental water supply to the Valley.
     - Funds will investigate a modification to the pipeline route and reduce the project's total cost by $30 million.
   - $1 million for Devils Lake outlet maintenance.
   - Availability of the $16.5 million carryover from the 2009-2010 biennium in state funding for Municipal, Rural & Industrial (MR&I) projects.
   - $52 million in 2011-12 biennium state funding for MR&I projects across North Dakota.
     - Affected communities include Watford City, Minot, Maddock, Anamoose, Parshall, Bismarck, Hazen, Clifford, Washburn, Garrison, Thompson, Turtle Lake, Fessenden, Dickinson, Jamestown, Bottineau, Cando, Carrington, LaMoure, Park River, Wimbledon, Ellendale, Fargo, Devils Lake, Cavalier, Grafton, and Williston.
   - Credit for state match for federally funded MR&I program projects.

We are asking that you remove the legislative intent language found in SB2020 Section 9.

2. HB1318 would give Garrison Diversion the power to levy a special assessment for funding important irrigation supply works. The bill requires:
   - 100% approval of landowners affected by the project.
   - Reevaluation of water project prioritization by a legislative committee during the 2011-12 interim.
   - Garrison Diversion to report regularly to the State Water Commission.

We are asking that you pass HB1318 with an amendment that removes Section 4 - the sunset clause.

About Garrison Diversion Conservancy District

Established in 1955, Garrison Diversion was charged with using the water behind the Garrison Dam for the "prosperity and general welfare of all the people of North Dakota." Over the course of almost 60 years, Garrison Diversion has worked toward this end with an eye on the current and future needs of the people of our state. While Garrision Diversion has several areas of focus, the most vital are the development of irrigation systems and delivery of municipal and rural water supplies.

Accountability

The Garrison Diversion Conservancy District answers to the people of North Dakota, state government and its partners in several ways.

- Governed by a 28-member board of directors. Each member county elects one person in the general election to serve on the board of directors.
- The board oversees all Garrison Diversion Conservancy District activities.
- Regular reports to the Governor at State Water Commission meetings.
- Regular reports to assigned legislative committee.

Management

The board uses a committee system to oversee the many activities of the Garrison Diversion Conservancy District.

- Executive Committee - Monitors financial and federal matters and the overall operations.
- Agriculture and Natural Resources Committee - Develops and enhances irrigation in North Dakota.
- Recreation Committee - Oversees $6.5 million federal Dakota Water Resources Act Recreation program and the .2 mill levy that funds recreation programs within the Garrison Diversion Conservancy District.
- Engineering and Operations Committee - Oversees work done under contract with Bureau of Reclamation.
- Red River Valley (RRV) Committee - Monitors the RRV Water Supply Project and public info activities.
- MR&I Committee - A joint committee with the State Water Commission tasked with overseeing multiple water supply projects in the state.

Fiscal Responsibility

The Garrison Diversion Conservancy District takes our fiduciary responsibility seriously and has a proven track record of operating excellence.

- Follows strict policies and procedures to ensure competitive bid processes for all projects we manage.
- Works cooperatively with federal and state agencies to maximize effectiveness and reduce duplication.
- Volunteers our resources and expertise to other government entities to help in flood protection and water supply management.
- Transcends local, county, state and federal jurisdictions to get important projects done and funded through a wide variety of resources.

Funding

Garrison Diversion funding comes through a variety of sources at the local, state and federal level.

- Receives one mill in property tax for operation from each member county.
- Utilizes State Water Commission funding for authorized and approved projects.
- Qualifies state projects for federal MR&I funding match.

Getting the Job Done for North Dakota

For almost 60 years, the Garrison Diversion Conservancy District has been committed to its mission of building, planning and implementing water projects across the state. Achievements include:

- **Agriculture & Natural Resources** - Garrison Diversion partners with NDSU Extension Service and the North Dakota Irrigation Association to develop, expand and enhance irrigation efforts.
  - 75,480 acres have been authorized for federal irrigation development in North Dakota.

- Jointly funds irrigation research with NDSU at the Oakes Irrigation Research Site.
- Working with ND Irrigation Association to expand the number of acres under irrigation.

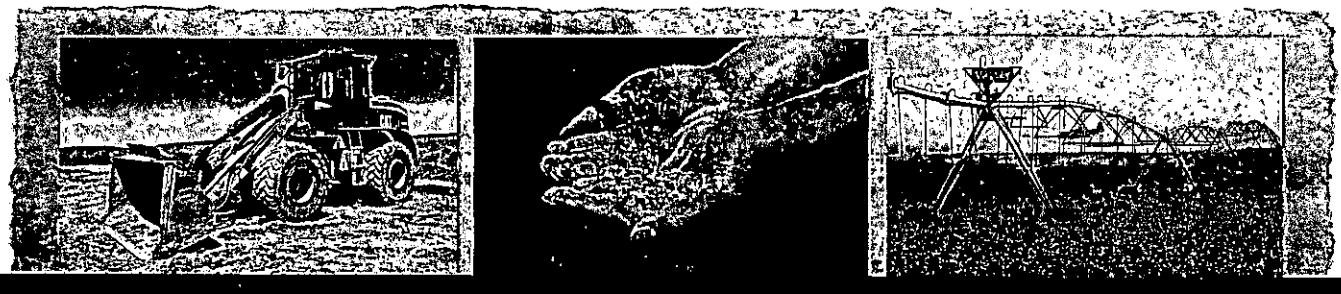
- **Municipal, Rural & Industrial Water Supply Program (MR&I)** – Provides hundreds of thousands of North Dakota citizens and businesses with reliable and high quality water.
  - These water systems deliver quality water to homes, businesses and farms across North Dakota.
  - More than $250 million has been awarded for water system expansions and improvements. Systems that received funding include:
    - Southwest Pipeline Project
    - Southeast Water Users District
    - All Seasons Rural Water
    - South Central Regional Water District
    - Northwest Area Water Supply

- **Devils Lake Outlet** – Garrison Diversion works with the State Water Commission to provide support and maintenance of the Devils Lake outlet.

- **Red River Valley Water Supply Project** – 42% of our state's population lies in the Red River Valley and those residents rely on the drought-prone Red River for their primary water supply needs. Despite a current excess of water, a severe drought *will* occur; it is only a question of how soon. Garrison Diversion is:
  - Working to supplement existing water supplies to meet the needs of the Red River Valley.
  - Operating under the plan endorsed by the Governor's Office and U.S. Department of Interior.
  - Operating under a plan that meets all international treaty obligations and overcomes objections by Canada.

- **Recreation** – 20% of Garrison Diversion's property tax funding goes toward the Matching Recreation Grant Program.
  - More than $3.5 million has been awarded to local recreation projects within the Garrison Diversion Conservancy District.
  - Supports the Chain of Lakes Recreation Area along the McClusky Canal.
  - Supports the Devils Lake Park System in cooperation with North Dakota State Parks and Recreation Department.

- **Operations & Maintenance** – Garrison Diversion is responsible for the operations and maintenance (O&M) on the Garrison Diversion Unit project facilities under a cooperative agreement with the Bureau of Reclamation. These include:
  - McClusky Canal
  - New Rockford Canal
  - Oakes Test Area
  - Snake Creek Pumping Plant



- **Community Support** – Garrison Diversion actively engages their resources and expertise to help local governments deal with water related emergencies.
  - Fargo and Jamestown flood
  - Arrowwood National Wildlife Refuge flood
  - Fort Yates intake failure
  - McLean County snow removal

- **Water Organization Support**
  - North Dakota Water Magazine
  - Devils Lake Downstream Awareness Coordinator
  - North Dakota Water Coalition
  - North Dakota Water Users Association
  - Missouri River Joint Board
  - North Dakota Water Education Foundation
  - National Water Resources Association
  - Upper Missouri Water Association

Conclusion

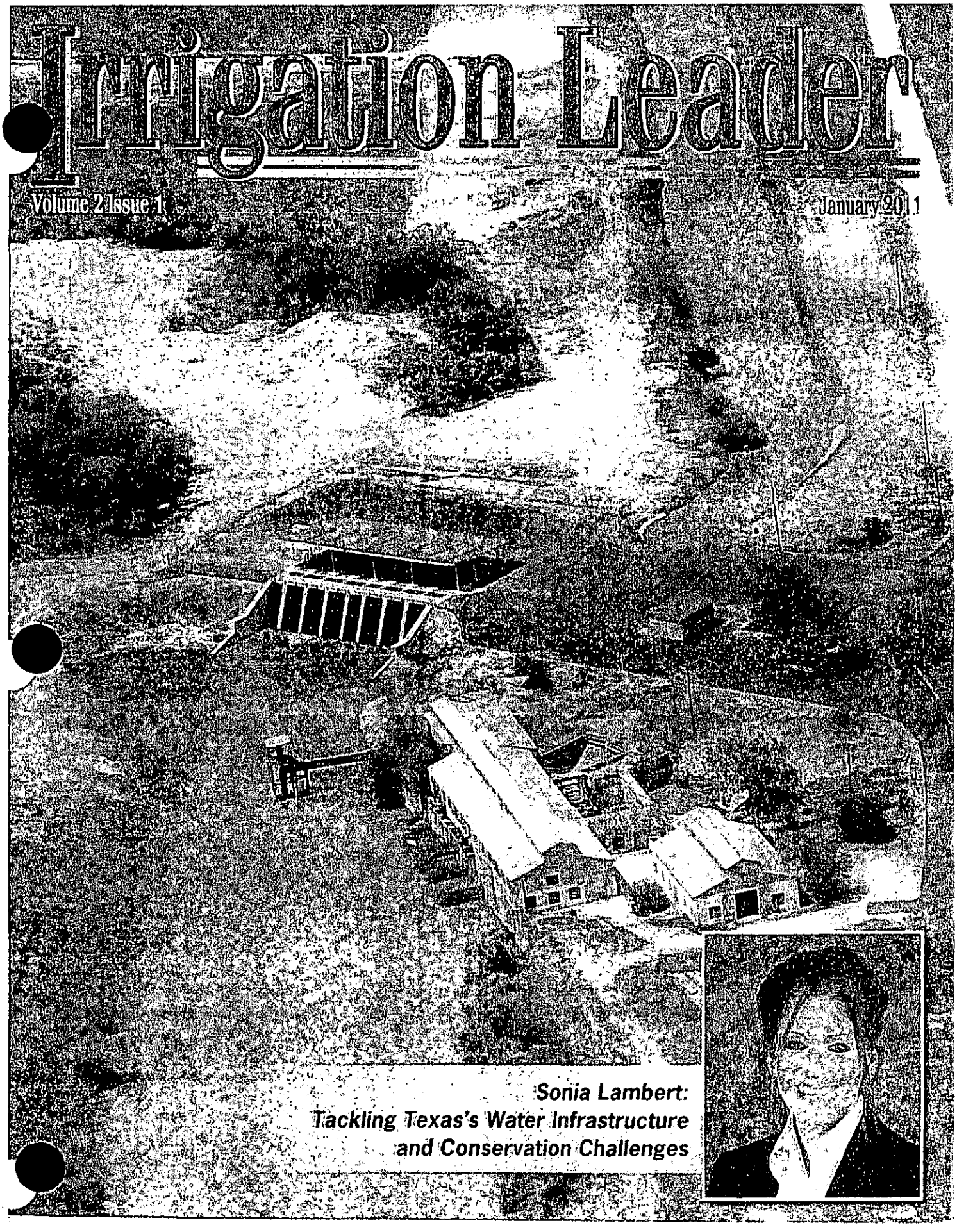
The Garrison Diversion Conservancy District works responsibly and successfully to fulfill its mission **to provide a reliable, high quality and affordable water supply to benefit the people of North Dakota.** We ask that you ensure we can continue to achieve that mission moving forward.

For more information about our organization, our projects or North Dakota's water needs, please contact us at:

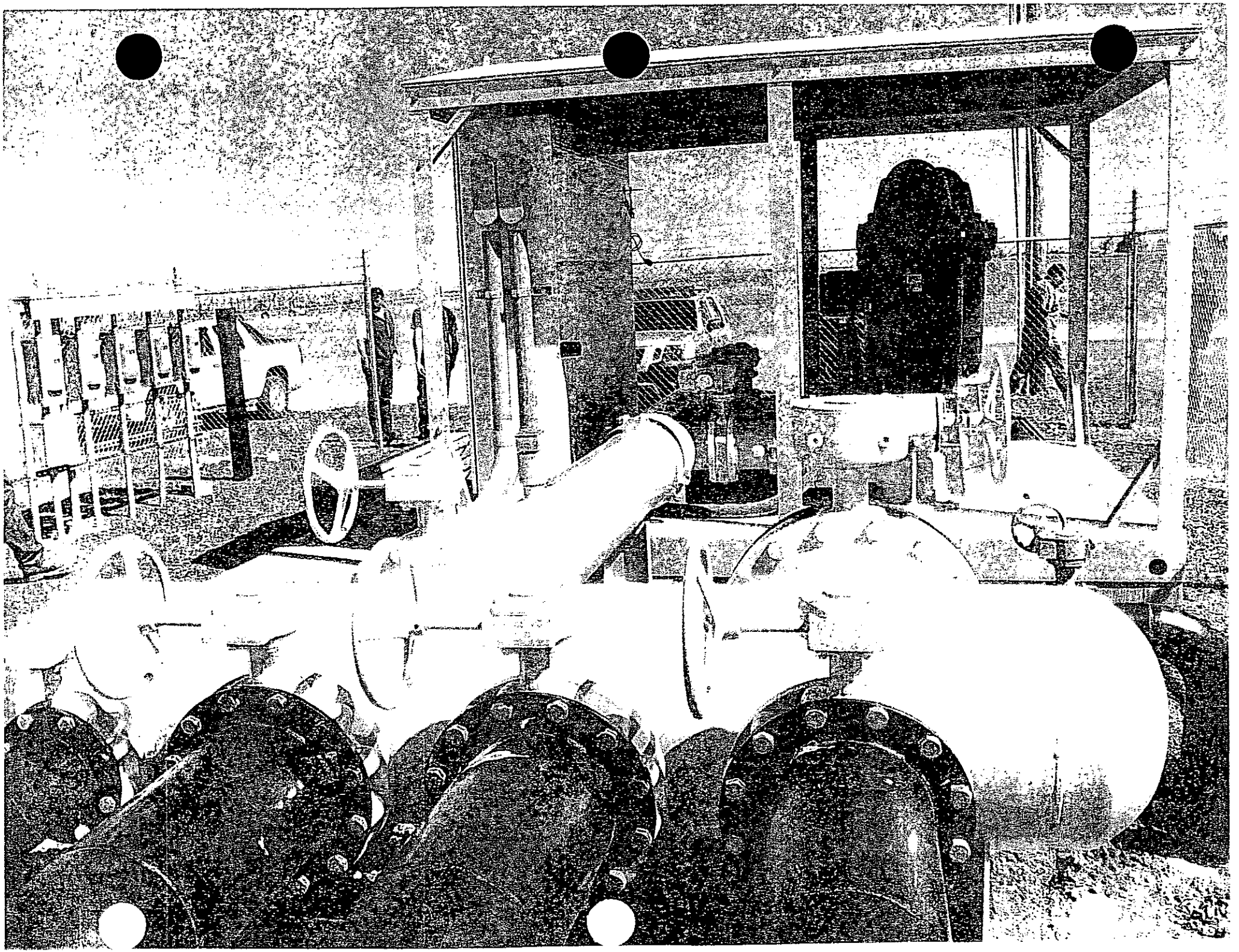
Dave Koland, General Manager
Garrison Diversion Conservancy District
davek@daktel.com
701.652.3194
garrisondiversion.org

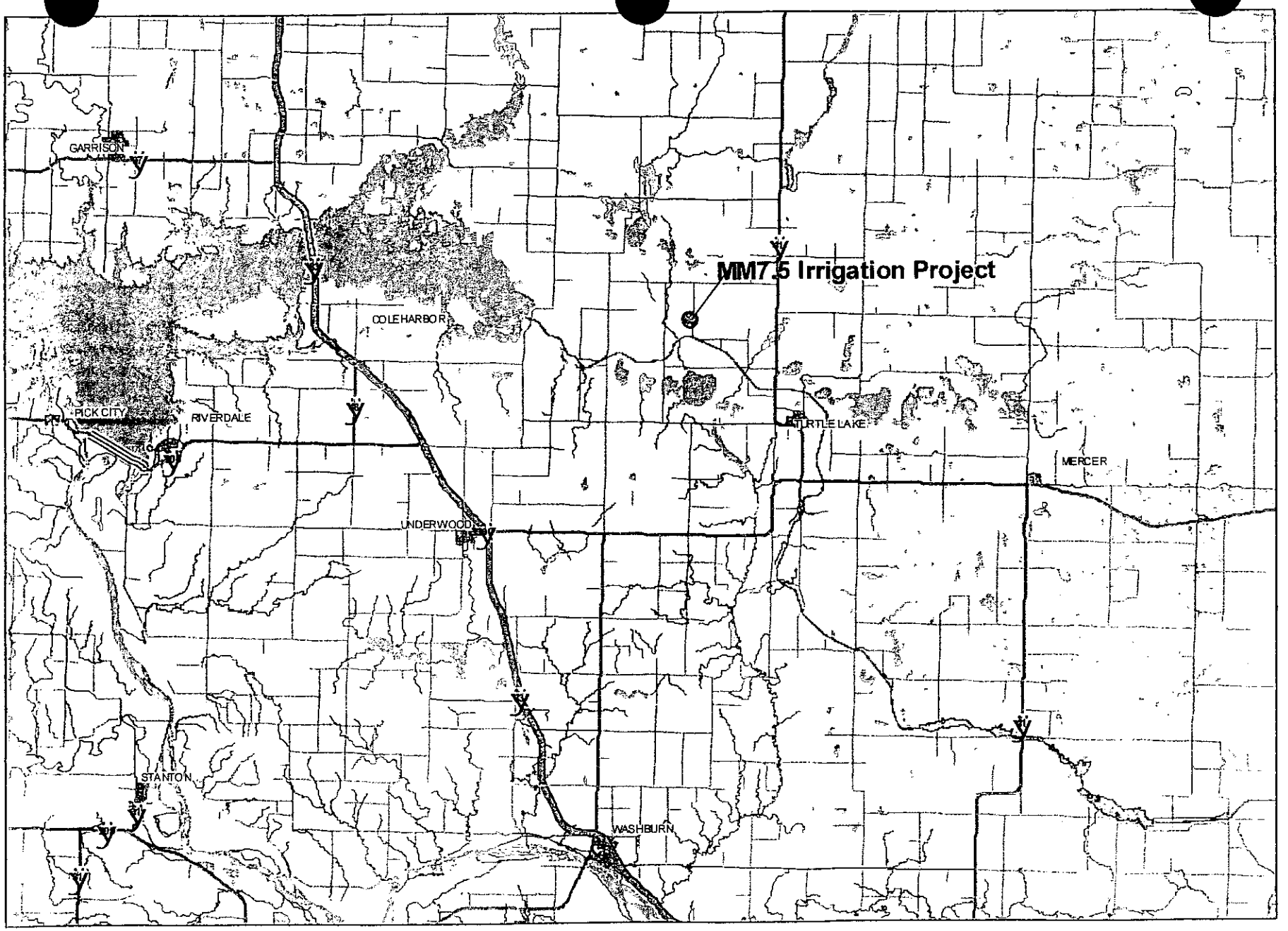
Irrigation Leader

Volume 2 Issue 1 January 2011



Sonia Lambert:
Tackling Texas's Water Infrastructure and Conservation Challenges



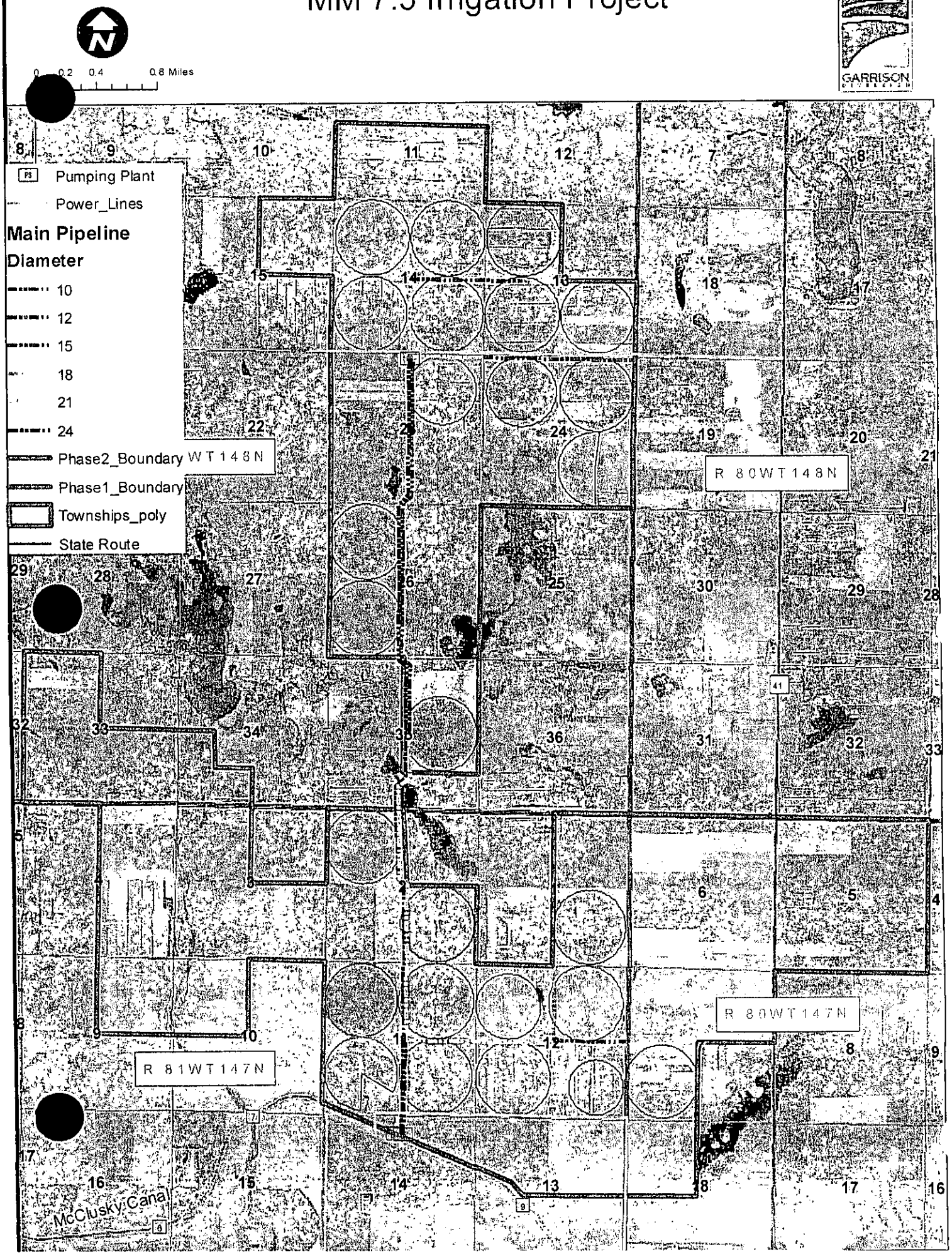


J

MM 7.5 Irrigation Project

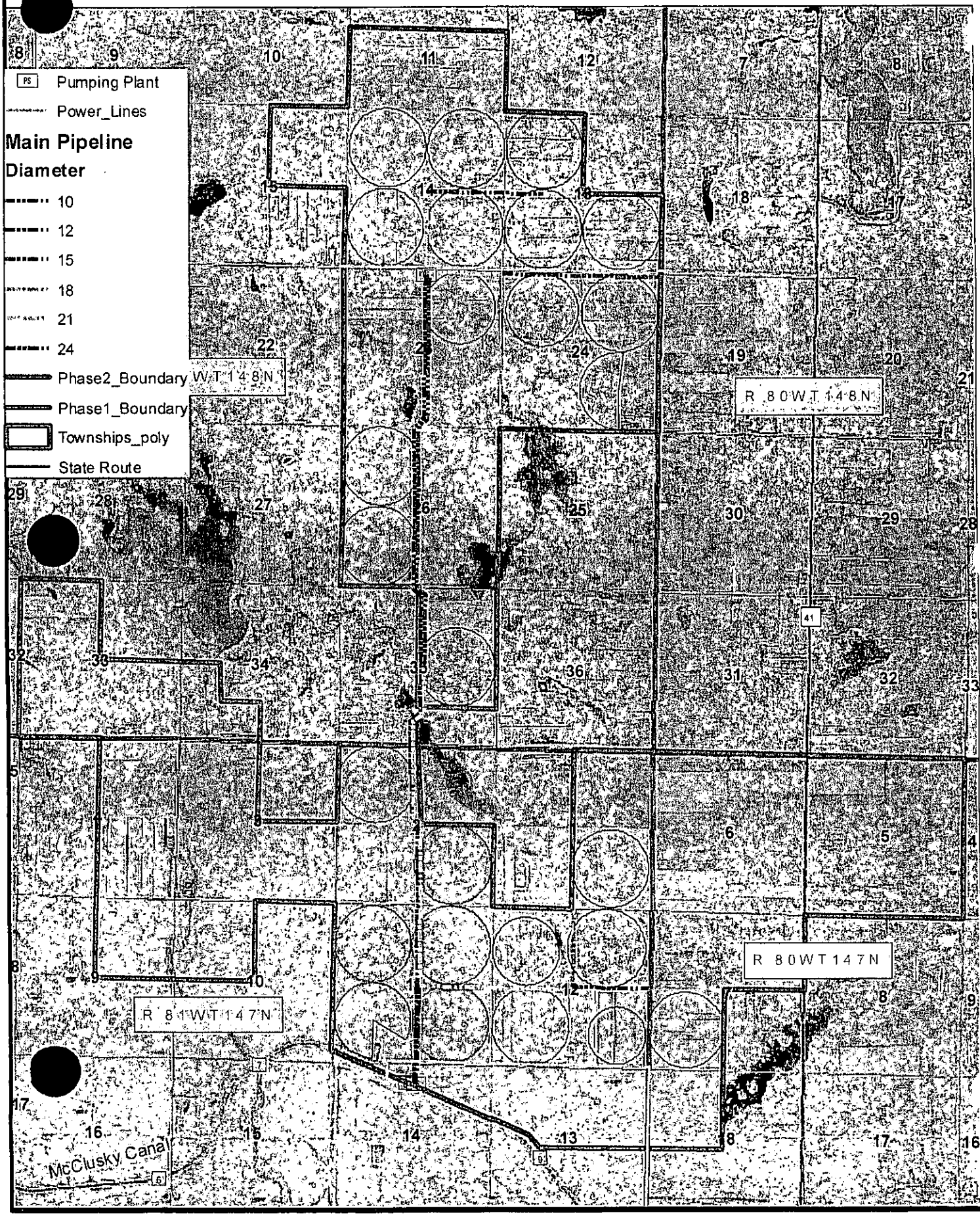
43,000 21,500 0 43,000 Feet

MM 7.5 Irrigation Project



Typical Irrigator Repayment Schedule (3.2 Million Project)	
Total Debt Service Per Acre	$5,576.94
Reserve Account (10%)	$557.69
Total Debt Payment Per Acre	$6,134.63
Annual Costs Per Acre	
Debt Service (4.77% / 15 years)	$46.47
Reserve Acct (10%)	$4.65
Water Service	$13.00
Energy Costs	$39.00
Operations & Maintenance	$15.00
Total Annual Cost Per Acre	$118.12

MM 7.5 Irrigation Project



attachment 1 2-14-11

11.0377.03003
Title.

Prepared by the Legislative Council staff for
Representative Hofstad
February 14, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 1, line 2, replace "water supply or irrigation districts" with "irrigation works"

Page 2, line 2, after "all" insert "irrigation"

Page 2, line 7, after "any" insert "irrigation"

Page 5, line 24, remove "Nothing in this chapter prevents the district from making and financing any"

Page 5, line 25, remove "improvement under any alternate procedure in this title."

Page 6, line 11, remove "which are benefited by the"

Page 6, remove lines 12 and 13

Page 6, line 14, remove "permitted by law"

Page 6, line 15, replace "or" with an underscored comma

Page 6, line 15, after "construction" insert ", or in existence"

Page 8, line 21, replace "sections 61-24.8-43 through 61-24.8-58" with "section 61-24.8-42"

Page 8, line 25, replace "sections 61-24.8-43 through 61-24.8-58" with "section 61-24.8-42"

Page 10, line 28, remove ", having not less than twenty-five percent of the"

Page 10, line 29, remove "possible votes as determined under section 61-24.8-15"

Page 20, remove lines 3 through 29

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 31

Page 23, remove lines 1 through 28

Page 24, remove lines 1 through 29

Page 25, remove lines 1 through 31

Page 26, replace lines 1 through 5 with:

"**61-24.8-42. Contracts for construction or maintenance of project.**

If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the costs of the construction or maintenance exceed the amount provided for construction of a public improvement under section 48-01.2-02, the board must let a contract in accordance with chapter 48-01.2."

Renumber accordingly

Adopted by the Natural Resources Committee

March 25, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1318

Page 1, line 4, after the semicolon insert "and"

Page 1, line 5, remove "; and to provide an expiration date"

Page 9, line 17, remove "or one vote for each dollar of the assessed valuation of"

Page 9, remove line 18

Page 9, line 19, remove "title 57"

Page 10, line 11, after "circulation" insert "in the area in which the affected landowners reside and"

Page 19, remove lines 29 and 30

Renumber accordingly

Prepared by the Legislative Council staff for
Representative Damschen
April 8, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1318

That the Senate recede from its amendments as printed on page 1203 of the House Journal and pages 904 and 905 of the Senate Journal and that Engrossed House Bill No. 1318 be amended as follows:

Page 9, line 18, remove "condemned, or used for construction, for the project, as determined in accordance with"

Page 9, line 19, replace "title 57" with "for which beneficial use is lost as a result of the project"

Page 10, line 10, remove "in the newspapers of general"

Page 10, line 11, remove "circulation"

Page 10, line 12, after "located" insert "and in local newspapers of general circulation in the area of the affected lands"

Page 19, line 30, after "ineffective" insert "except for projects for which all steps up to and including approval are completed before August 1, 2013"

Renumber accordingly