

TESTIMONY ON SB 2326
SENATOR MIKE DWYER, DISTRICT 47

MR CHAIRMAN AND MEMBERS OF THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE, SB 2326 HAS THREE SIMPLE WORDS, AS YOU SEE ON LINE 14 OF PAGE 1, BUT SB 2326 IS ABOUT THREE MAJOR ISSUES

1. REGULATION AND AGENCY BUREAUCRACY
2. WATER MANAGEMENT IN EASTERN ND
3. LEGISLATIVE AUTHORITY

I. 2017 LEGISLATION

IN 2017, THE LEGISLATURE ADDED A NEW REQUIREMENT FOR WATER MANAGEMENT PROJECTS IN THE EAST, WHICH IS THAT WATER CONVEYANCE AND FLOOD CONTROL PROJECTS EXCEEDING \$1 MILLION WOULD BE REQUIRED TO HAVE AN ECONOMIC ANALYSIS BY THE STATE. THE NEW LAW EXEMPTED BIG PROJECTS LIKE THE FARGO-MOORHEAD DIVERSION, THE SOURIS RIVER FLOOD CONTROL PROJECT, AND ALL WATER SUPPLY AND RURAL WATER PROJECTS.

THE STATE WATER COMMISSION LOWERED THE THRESHOLD FROM \$1 MILLION TO \$200,000, AND ALSO REDUCED THE COST SHARE PERCENTAGES FOR ANY PROJECT THAT HAS A COST BENEFIT RATIO UNDER 1.0. WATER SUPPLY AND RURAL WATER HAVE A LIFE CYCLE ANALYSIS, BUT THESE PROJECTS DO NOT NEED TO STUDY THE ECONOMIC BENEFIT OF THESE PROJECTS, AND THE COST SHARE HAS NEVER BEEN ADJUSTED FROM THE 75% STATE COST SHARE, WHICH IS MUCH HIGHER THAN WATER CONVEYANCE AND FLOOD CONTROL PROJECTS.

II. EASTERN ND WATER MANAGEMENT

IN ORDER TO UNDERSTAND WHY THIS 2017 LEGISLATION WAS VIGOROUSLY OPPOSED BY LOCAL ENTITIES, (IT BARELY PASSED THE SENATE BY A 24-23 VOTE), YOU NEED TO REVIEW WATER MANAGEMENT IN EASTERN ND. LOCAL FLOOD CONTROL AND WATER CONVEYANCE PROJECTS GO THROUGH A RIGOROUS LOCAL PROCESS, WITH NOTICE, PUBLIC HEARING, COST REVIEW, LANDOWNER INPUT, AND EVENTUALLY A VOTE BY THOSE WHO WILL BE PAYING THE LOCAL ASSESSMENT.

SO, THE ADDITIONAL REGULATORY REQUIREMENT WAS OPPOSED DUE TO THE ADDED COST AND DELAY, AND BUREAUCRACY, THAT WAS CERTAIN TO OCCUR. I SAY BUREAUCRACY BECAUSE THE BENEFITS CONSIDERED BY AN ECONOMIST, AND THE BENEFITS SEEN BY THE PEOPLE ON THE GROUND, CAN BE VERY DIFFERENT.

IT IS ALSO SO VERY IMPORTANT TO UNDERSTAND THAT DRAINAGE IN EASTERN ND IS CRITICAL FOR FARMING AND AGRICULTURE. FARMING IN THE RED RIVER VALLEY IS AN ECONOMIC ENGINE THAT PRODUCES STATE TAX REVENUE, JOBS, OPPORTUNITIES, AND QUALITY OF LIFE. OVER 300 ASSESSMENT DRAINS, WHICH HAVE BEEN APPROVED BY LANDOWNERS AT THE LOCAL LEVEL AND COST-SHARED BY THE STATE WATER COMMISSION, ENABLE THIS ECONOMIC ENGINE OF FARMING IN CENTRAL AND EASTERN NORTH DAKOTA TO BE REALIZED. THE STATE'S RETURN ON INVESTMENT IS SUBSTANTIAL.

VI. FLOOD CONTROL AND WATER CONVEYANCE PROJECTS.

AS I STATED, PROJECTS AT THE LOCAL LEVEL GO THROUGH A RIGOROUS PROCESS OF PUBLIC HEARINGS AND INPUT, STUDY, DETERMINATION OF BENEFITS, AND A VOTE BY LANDOWNERS WHO ARE PAYING THEIR SHARE. IT WAS STATED DURING THE SENATE HEARING THAT THE REASON THE AGENCY IGNORED THE LAW IS THAT LOCAL WATER BOARDS CHEATED, BY SPLITTING UP PROJECTS SO THE COST WOULD BE UNDER \$1 MILLION TO AVOID THE ARBITRARY ECONOMIC ANALYSIS. YOU WILL HEAR TESTIMONY FROM THESE WATER BOARDS THAT THIS ALLEGATION IS UNFOUNDED.

VII. SNAGGING AND CLEARING

THE 2017 LAW ALSO PROHIBITED SNAGGING AND CLEARING OF NATURAL STREAMS AND RIVERS, FROM RECEIVING STATE COST SHARE. SNAGGING AND CLEARING IS NECESSARY TO PROTECT COUNTY AND TOWNSHIP BRIDGES FROM DAMAGE, AND TO PREVENT BOTH RURAL AND MUNICIPAL FLOODING. THIS PROVISION WAS OVERWHELMINGLY REVERSED IN 2019. BUT THESE TYPES OF PROJECTS ARE SPLIT UP NOT TO AVOID THE \$1 MILLION LIMIT, BUT BECAUSE THE STATUTORY AUTHORIZATION FOR THESE PROJECTS HAS A LIMIT ON THE LOCAL ASSESSMENT AUTHORITY. SO, THESE PROJECTS ARE LIMITED TO SMALLER STRETCHES OF THESE NATURAL STREAMS AND RIVERS.

VIII. WATER SUPPLY AND RURAL WATER PROJECTS.

AS I PREVIOUSLY STATED, THESE PROJECTS WERE EXEMPT FROM THE ECONOMIC ANALYSIS, BECAUSE THEY WERE REQUIRED TO HAVE A LIFE CYCLE ANALYSIS. BUT THE LIFE CYCLE ANALYSIS HAS NEVER REDUCED THE 75% COST SHARE FOR THESE PROJECTS.

IX. SECTION 2 OF SB 2326.

DURING A LAWSUIT BETWEEN TWO WATER SUPPLY ENTITIES, THE JUDGE MENTIONED THERE APPEARED TO BE A MISTAKE IN THE STATUTE, AND THE DEFINITION OF PROJECT ONLY MENTIONED WATER CONVEYANCE AND NOT THE PARAGRAPH FOR WORKS. SO SECTION 2 IS SIMPLY A TECHNICAL CORRECTION.

X. CONCLUSION

I URGE THE COMMITTEE TO GIVE THIS BILL A DO PASS, AND LET THE LAW PASSED IN 2017 TAKE EFFECT. IT WILL REDUCE COSTS, REDUCE DELAYS, AND REDUCE THE REGULATORY BURDEN OF SMALL PROJECTS.