

Interim Water Topics Committee

September 20, 2022

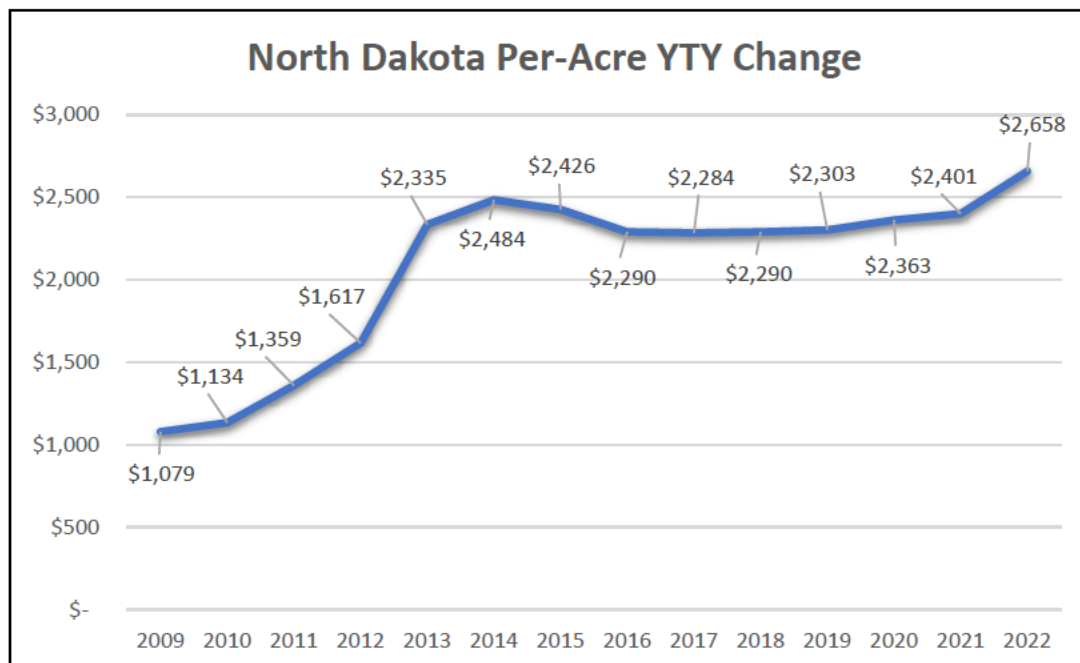
Testimony of Derrick Braaten

Red River Valley Water Supply Project Landowners

Chairman Schmidt and members of the committee, my name is Derrick Braaten and I am here to briefly discuss the Red River Valley Water Supply Project. I represent a group of landowners whose land is affected by the project and the pipeline is crossing these landowners' property.

The best way to protect landowners in this project is to have the State of North Dakota own the pipeline. If the State of North Dakota owns the pipeline, landowners will be assured an entity will protect and indemnify them. There is no plan known to landowners as to what happens when the pipeline is abandoned on their property, or if it will be removed.

The Garrison Diversion first started acquiring options in 2009 based on land values at that time. (See 2009 Garrison Easement Pricing Memorandum). Consultants for landowners put together the following graph to illustrate the rise in average land values since that time.



The appraiser who consulted with Garrison Diversion in 2009 was recently quoted in Agweek, which wrote: “When premium farmland is coming up for sale, Kyle Nelson says the bids these days can be ‘astronomical.’ Nelson of Farmers National Company said he underestimated the momentum that was building in farmland sales in 2021 that has continued to roll in 2022.” (<https://www.agweek.com/news/farmland-sees-some-astronomical-sales-results>).

Since 2009, the Garrison Diversion has refused to negotiate compensation despite an overall value increase in average land values of 146.34% based on surveys (and according to Landowner’s consultants). Rather than acknowledge the astronomical markets, in June of 2022 Garrison Diversion sent landowners a letter threatening to file eminent domain actions if landowners did not sign an agreement at its 2009 compensation offer by July 8, 2022. It indicated last week that it is initiating those eminent domain actions now.

Agricultural-use land values and the “before and after approach” are also not the only way to value pipeline easements and this is a common misconception. The federal court in North Dakota recently agreed in a case brought by a ND pipeline developer to condemn pipeline easements. The federal court agreed that other pipeline easements and the amounts paid per rod were relevant comparable sales and admissible evidence. *WBI Energy Transmission, Inc. v. Easement & Right-Of-Way Across*, No. 1:18-cv-078, 2021 U.S. Dist. LEXIS 63744, at *24 (D.N.D. Apr. 1, 2021). The RRVWSP is also not a typical pipeline project, and requires a double lift of soil and subsoil similar to what is done when strip mining for coal.

Garrison Diversion has obtained less than 10% of the funding needed for the project. Currently, Garrison Diversion has appropriated less than a quarter of 1% of its 1.3 billion-dollar-budget to compensate the hosts of the project (included as part of my testimony is a fact sheet regarding the project budget and project progress). At the current rate of funding, the project will not be completed for another 36-37 years, but Garrison Diversion is paying 2009 prices, which were insufficient even then.

The North Dakota Legislature has the power to authorize additional compensation for the hosts of this project and bring Garrison Diversion to the table to negotiate with landowners and take eminent domain off the table.