North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

Dear Chairman Patten and Senate Energy and Natural Resources Committee:

Water resource districts have serious concerns about the version of House Bill 1462 that passed the House. I would like you to compare two bills that passed the House. HB 1462 and HB 1391. Both bills are aimed at providing statutory protections for the public in obtaining notice of water resource districts activities. HB 1391 is fair and provides statutory protections to ensure the public has notice of WRD decisions, but HB 1462 is oppressive and unnecessary.

To provide background, HB 1462 would require water resource districts to serve notice under the North Dakota Rules of Civil Procedure under Rule 4 by advertisement on all "aggrieved parties" before the 30-day appeal period set forth in NDCC 61-16.1-54 accrues. NDCC 61-16.1-54 provides a catch-all appeal for a water resource district decision. Because this statute provides a catch-all appeal, HB 1462 would apply to all decisions of a water resource district, even decisions to undertake routine maintenance.

Requiring service under Rule 4 by publication would be a significant burden. No other political subdivisions are required to "serve" notice of its decisions by publication or otherwise, although cities have a duty to publish minutes. NDCC 40-01-09.1. As you are aware, water resource districts are political subdivisions created under NDCC 61-16 and NDCC 16-16.1. As such, water resource districts must comply with open meetings and open records laws. Water boards are not concerned with a statute that would require minutes to be sent to the local paper for publication, or alternatively that would require minutes to be posted on a water resource district's website within a reasonable time frame. In fact, HB 1391, which was referred to a Senate Ag, is a competing bill that would require that a WRD do so within 10 days. The NDWRDA is not opposed to HB 1391.

Currently, under our open meetings and records laws, the notice and agenda of all meetings can be requested by any citizen, which must be provided to them as soon as the notice and agenda are circulated to the board of any political subdivision under NDCC 44-04-20. Those requests will remain effective for one year, but must be renewed annually NDCC 44-04-20(5). Minutes are governed under NDCC 44-04-21, which cannot be withheld from any open records request pending approval. In other words, minutes should be available to the public as soon as they are drafted.

Requiring service by publication under Rule 4 would have unintended consequences. Rule 4 would require the minutes or decision to be published 3 times, and would require the minutes or decision to be mailed to everyone they could aggrieve. I assume that in order for the service to be effective, the publication would have to list every potentially aggrieved party by name, if known. By way of example, if SE Cass WRD decided to maintain the Sheyenne Diversion project, for example, which has two assessment districts, each with over 6,000 parcels, there would have to be 12,000 parcel owners named in the paper, which must be published 3 times, and there would be $7,200 worth of stamps.

In practice, I have not heard that there is a problem for the public to obtain meeting minutes. I believe that currently, statewide, anyone who requests meeting notices and agendas from their local water board, or a copy of meeting minutes, they would have those documents mailed or emailed by the water board's secretary regularly and shortly after any meeting. We do not have a problem providing statutory safeguards for the public but would like those safeguards to follow existing practice with other political subdivisions and citizen responsibility.