

**Testimony by Duane DeKrey  
General Manager  
Garrison Diversion Conservancy District**

**To the  
Senate Natural Resources Committee  
SB 2313 Hearing**

**Bismarck, North Dakota  
January 26, 2023**

Chairman Patten, members of the committee, I appreciate the opportunity to testify in opposition to Senate Bill 2313. -My name is Duane DeKrey, General Manager of Garrison Diversion Conservancy District since 2014.

I am here to testify today in opposition to Senate Bill 2313, which proposes to ~~drastically~~ increase the amount of litigation needed to construct a public project and would drastically increase the cost of ~~public~~ water projects by gifting landowners an additional 33% for their property above and beyond the fair market value ~~of such property~~. The ~~ensuing~~ substantial increase in ~~public~~ project costs will result in diminished funding for ~~imperative-essential~~ public projects throughout the state and ultimately, an increased financial tax burden on local citizens ~~to support public projects~~.

Garrison Diversion has successfully negotiated over 150 permanent easements on its work to build is building a 130 mile pipeline for the Red River Valley Water Supply Project ~~and has been negotiating voluntary easements with landowners over the last 13 years~~, so we have a lot of experience with the easement negotiation process, ~~and at times, the need to initiate eminent domain~~. ~~Based on this~~ In my experience, SB 2313 would greatly discourage negotiations with landowners dramatically as going to court would guarantee landowners a 33% increase above the value of their property. If this law has

~~been in place, Garrison Diversion would have been in 150 additional lawsuits where the only real winners would have been the lawyers, while leaving taxpayers on the hook for paying more than the value of the land, not to mention the increase in construction costs due to the delay of the project. increase the cost of project construction, delay construction projects, and would incentivize all landowners to force eminent domain trials to collect the 30% bonus rather than voluntarily grant easements through negotiation.~~

Since the ~~very~~ beginning of our national and state governments, the United States and North Dakota Constitutions have provided that private property cannot be taken for public use without the public entity paying “just compensation” to the private property owner. Just compensation means payment equal to the value of the property or property interest taken. In short, landowners need to be fairly compensated. made whole for the public use of their property. ~~If a case is tried in court, even if the landowner is awarded less money by a jury than was offered by the governmental entity, the landowner gets compensated for the specific property interests taken, as well as all interest, appraiser fees, attorney’s fees, and all litigation costs in order to make the landowner whole. This is a uniform standard throughout the nation with a goal of making landowners whole.~~

**Commented [RS1]:** "Made whole" is too subjective of a term outside of a court room.

Senate Bill 2313 would substantially alter the meaning of “just compensation” by providing a 33% litigation bonus. This creates a windfall to every landowner and lawyer who goes to trial while increasing the number of trials in the court system, the cost of public projects, and ultimately resulting in higher rates and tax burden on the customers and taxpayers.

**Commented [RS2]:** Is it? Doesn't Minnesota have a tiered system of covering costs based upon the final aware amount? Not sure on other states, but worry in over stating or over providing information here.

~~ADDITIONAL COMMENTS TO THE HOUSE AND SENATE COMMITTEES ON THE RESOURCES TRUST FUND~~

in less negotiations with landowners and more lengthy litigation, counter to the noble efforts of prior legislative sessions, and in the end cause a delay of projects and more financial pressure on the limited resources in the Resources Trust Fund.

I urge you to reject SB 2313, and instead continuing the sufficient constitutional protections currently in place ~~that to fairly compensate~~ landowners and encourage voluntary negotiations. ~~whole when any property is taken by eminent domain within the state.~~ Thank you for considering my comments on SB 2313.