

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

**To the
Senate Natural Resources Committee
Senate Bill 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 (SB) 2313. My name is Duane DeKrey, General Manager of Garrison Diversion Conservancy District since 2014.

I am here to testify today in opposition to SB 2313, which proposes to increase the amount of litigation needed to construct a public project and would drastically increase the cost of water projects by gifting landowners an additional 33% for their property above and beyond the fair market value, in addition to the reasonable attorney's fees that property owners are awarded as part of the eminent domain process. For clarity, under the current law, landowners whose land is taken by eminent domain are awarded their reasonable attorney's fees. Thus, the additional 33% will increase the cost of the project and provide a disincentive for landowners to negotiate with public entities. The substantial increase in project costs will result in diminished funding for essential public projects throughout the state and, ultimately, an increased tax burden on local citizens.

Garrison Diversion has successfully negotiated over 150 permanent easements on its work to build the Red River Valley Water Supply Project, so we have a lot of experience with the easement negotiation process. Based on this experience, SB 2313 would greatly discourage negotiations with landowners as going to court would guarantee

landowners a 33% increase above the value of their property. If this law had 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.

Since the 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.

SB 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 burdens on the customers and taxpayers.

I am not sure what problem SB 2313 is hoping to solve, but the bill would result 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 continue the sufficient constitutional protections currently in place to fairly compensate landowners and encourage voluntary negotiations. Thank you for considering my comments on SB 2313.