Testimony
SB 2326—Department of Water Resources
Senate Energy and Natural Resources Committee
Senator Dale Patten, Committee Chair
February 3, 2023

Chairman Patten, and members of the Senate Energy and Natural Resources Committee – I am Michael Anderson, a member of the North Dakota State Water Commission (Commission). I am here today to provide neutral testimony related to Senate Bill 2326, which pertains to the total cost threshold for flood protection and water conveyance projects subject to Economic Analysis (EA) when applying for Commission cost-share assistance.

On behalf of the Commission, which is responsible for enforcing EA requirements, I thought it would be helpful for the committee to receive some background on the total cost threshold issue – particularly related to the decision made by the Commission to require EA for projects with a total cost of $200,000, which is lower than the minimum $1 million threshold included in Statute.

In 2017, the 65th Legislative Assembly passed House Bill 1020 – the budget bill for the agency that was then called the State Water Commission. Section 21 said the State Engineer shall develop an EA process for water conveyance and flood-related projects expected to cost more than $1 million. It also said when the Commission was considering funding for one of the aforementioned types of projects, that the State Engineer would provide the results of an EA for Commission consideration.

After a lengthy public process to establish EA guidelines, and after beginning to implement statutory EA requirements for water conveyance and flood-related projects with a total cost of at least $1 million during the 2019-2021 biennium, my fellow Commissioners and I began to appreciate having the results of those analyses in our decision-making.

As we all know, not all projects are created equal. Thus, knowing the state's return on investment, before making a decision to commit tax dollars, was viewed by my colleagues and I as a good thing. That is, after all, the fundamental purpose of EA – to calculate the ratio of benefits returned to those investing in a project, compared to the overall costs of the project. In short, for every dollar of cost, is there at least one dollar of benefit when looking at projects in their entirety? With that in mind, the Commission began discussing the possibility of reducing the threshold of the total cost to a lower level during the summer of 2019.

In cooperation with the Interim Legislative Water Topics Overview Committee, Legislative Council was asked by the Committee Chair, Representative Jim Schmidt, to weigh in on the Commission's ability to require EA for projects with a total cost of less than $1 million. Legislative Council reported back that the Commission does have that authority – so long as the minimum statutory threshold is met. In December 2019, the Water Commission approved $200,000 as the new total project cost threshold for EA to be conducted. The $200,000 amount was chosen by the Commission because it matched the statutory requirement for bidding public improvement construction projects. It should also be noted that after the Commission's most recent year-long process that concluded in December 2022 to update and modify the Cost-Share Program policy, the Commission reaffirmed approval of the $200,000 threshold.

As I mentioned previously, Mr. Chairman, I wanted to appear before you today so you and the other committee members had some historical context of why, and how, the Commission established the current $200,000 EA threshold.

Mr. Chairman, this concludes my testimony related to SB 2326, and I will try to answer any questions that you or other committee members might have.