



Eric Volk, Executive Director

ND Rural Water Systems Association

In Opposition of Senate Bill 2379

House Energy & Natural Resources Committee

March 13, 2025

Chairman Porter and members of the House Energy & Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in opposition of Senate Bill 2379, which seeks to limit governmental entities and political subdivisions of the state, like Rural Water Districts, the ability to conduct limited preliminary (pre-condemnation/pre-eminent domain) studies (e.g., pipeline alignment justification and cultural resources surveys) without obtaining written consent from the landowner or by order of the court.

Rural/Regional Water development began in North Dakota in the late 60's and early 70's. Today, there are over 41,000 miles of Rural Water lines in every county of the state. Systems provide water to 268 of the state's 355 incorporated cities and have over 71,000 connections statewide. In total, they serve approximately 300,000 residents with affordable, ample, and quality water. Interacting with landowners is an essential process of Rural Water development. The Rural Water Industry fully understands the importance of the rights of the landowner and tries to balance those with project timing and keeping costs affordable for the end users (the landowner in most cases).

The North Dakota Supreme Court has ruled entry and examination under Section 32-15-06 is a preliminary process and not part of an eminent domain proceeding. The person entering the land is not required to file an eminent domain summons and complaint or prove eminent domain of the land to be examined is proper or necessary at this stage of the proceedings (Legislative Council, July 2017). Section 32-15-06 allows consultants in the planning phases of a project the ability to determine the correct route a pipeline will go. This gives further direction on what easements will be needed for construction. This

section also allows for completing state and federal cultural resources requirements. These requirements always require a walk of the proposed route unless the project is within an existing structure or within an existing disturbed area like a city. A cultivated or planted crop field is not considered disturbed and requires a cultural resource survey. These surveys are time sensitive, weather sensitive and performed following the North Dakota State Historical Preservation Office's "Guidelines Manual for Cultural Resource Inventory Projects". The SHPO Manual states:

"It is, therefore, the opinion of the ND SHPO that cultural resource inventories conducted in North Dakota when there is snow or heavy vegetation obscuring the surface of the study area and the ground is frozen are not adequate to either properly identify archaeological resources or evaluate the significance of resources which may be identified. Consequently, agencies which submit such reports to this office for review and comment pursuant to the above regulations will ordinarily be informed that adequate information has not been provided for this office to make an "informed and reasonable" evaluation of the proposed project's effects on significant resources and asked to provide such adequate information prior to resubmission of the materials for review and comment.

Rural Water Issues with SB 2379:

- Loss of a construction season
 - Projects will not be constructed until late in a biennium cycle and will not be completed within a single biennium (scenarios to follow).
- "Landowner" definition
 - Sounds singular; certainly is not. Most easements are husband/wife, multiple siblings, or trust with multiple signers. All would need to sign a notice to survey in addition to an easement.
- Easement and Survey notice gathering time and expense
 - On average it takes 8 hours per easement. Times this by 1.5 or 2 if signed survey notices would be needed first.
- Cultural Resource Survey time and expense
 - \$1,200.00 per mile for survey and report for a 50-to-60-mile pipeline project. This will increase if reroutes need to be done and not surveyed on the fly (example included)
- Rural Water Systems normally contact the landowners by phone or in person to let them know they will be in the area to conduct cultural surveys. This has worked in the past without much issue.

The following are two project scenarios. The first scenario illustrates how a project is normally completed and the second scenario (collection of 100% of easements) shows how this bill would adversely affect the completion of the same project.

Current Approach:

Obtain Preconstruction Funding through State Water Commission	June 2025
Design Preliminary Routing	July 2025-August 2025
Draft and Send Easements for Landowner Review – cover letter states when cultural surveys will be completed.	September 2025
Cultural Resource Onsite Surveys 2 to 3 Weeks – Onsite survey crews coordinate with the engineer on the fly to survey reroutes if cultural findings are discovered on the preliminary route.	October 2025
Cultural Surveys Complete – General avoidance areas known and reroutes already surveyed.	November 2025
Redraft Easements that Require Cultural Resource Avoidance	December 2025
Finalize and Work to Obtain Easements	November 2025-April 2026
Cultural Resource Report Drafting	November 2025-January 2026
ND SHPO Review & Concurrence of Report (minimum 30-days)	February 2026
ND Dept. of Environmental Quality (DEQ) Review of Project Facility Plan and 30-Day Public Notice of Finding of No Significant Impact	March 2026
Finalize Project Plans and have 90% of easements for Bid	April 2026
Apply for State Water Commission Construction Cost Share	Late April 2026
Collect Remaining 10% of Easements	April 2026-June 2026
Bid Project (21-day advertisement)	Late May 2026
State Water Commission Funding Meeting	Mid June 2026
Construction Start	Late July 2026

100% Easement Approach:

Obtain Preconstruction Funding through State Water Commission	June 2025
Design Preliminary Routing	July 2025-August 2025
Draft and Send Easements for Landowner Review and/or Send Survey Notice Letters for Signing	September 2025
Work to Obtain Easements or Survey Notice Letters	November 2025-April 2026
99% Plans – Plans are likely complete awaiting possible reroutes from cultural survey	April 2026
Cultural Resource Onsite Surveys Round 1 - 2 to 3 Weeks	May 2026
Additional Easements or New Landowner Survey Approval Letters - Based on routes needed during survey round 1	June 2026
Cultural Resource Onsite Surveys Round 2 - 1 Week1	July 2026
Cultural Resource Report Drafting	July 2026-September 2026
Drafting/Redrafting Easements and/or Negotiating Easements with Landowners that would not sign until survey was complete	July2026-September 2026
Finalize Plans from 99% to 100% (plans for been setting at 99% for 3-months awaiting surveys)	August 2026
ND SHPO Review & Concurrence of Report (minimum 30-days)	October 2026
ND Dept. of Environmental Quality (DEQ) Review of Project Facility Plan and 30-Day Public Notice of Finding of No Significant Impact	November 2026
Bid Project (100% Plans have been ready for 3 months)	December 2026
Apply for State Water Commission Construction Cost Share	Late December 2026
State Water Commission Funding Meeting	Mid February 2027
Construction Start	Spring 2027

The following is a perfect example of the cultural survey reroute made on the fly. The preliminary line was drafted to stay on the east side of the road through the pink box. Site surveys found some objects in the area and a reroute to the other side of the road was made on the fly. This reroute was 1,200 feet of a 30-mile project. It was a 5-minute call to discuss the need for a reroute to the west side of the road and 20 minutes to survey the reroute. If the system had first needed to contact the landowner (who was signed up to get water on the project at his farm a few miles north) they would have turned a 25-minute item into a few day, \$5,000 plus dollar expense by having to track the landowner down, get him to sign a new easement on the spot or a right to survey document. All while the archaeological survey crew is sitting and waiting to complete the job.



Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. We respectfully ask for a DO NOT Pass on SB 2379. Eric Volk, ericvolk@ndrw.org.

Incorporated Cities on a Rural or Regional System

