

TESTIMONY OF

**Dr. Duane Pool, Natural Resource Economist, Department of Water Resources**

Chairman Patten, and members of the Senate Energy and Natural Resources Committee, I am Duane Pool, Natural Resource Economist for the Department of Water Resources (DWR). I'm here today to provide neutral testimony related to Engrossed House Bill (HB) 1218, which pertains to increasing the total cost threshold for flood protection and water conveyance projects subject to Economic Analysis (EA) when applying for DWR Cost-Share Program assistance.

For some background regarding the EA process and requirements, in 2017, the 65<sup>th</sup> 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 economic analysis process for water conveyance and flood-related projects expected to cost more than \$1 million. It also said when the Commission is 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 an EA calculation tool and 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, Water Commission members began to appreciate having the results of EAs in their decision-making related to project reviews.

As we all know, not all projects are created equal. Thus, knowing the state's expected return on these investments, before making a decision to commit tax dollars, is viewed by DWR and Commission members 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.

The Water Commission and the agency then began to work in close cooperation with the Interim Legislative Water Topics Overview Committee to see if it was possible to use a lower threshold for EA requirements. Legislative Council was asked by the Committee Chair 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 September 2019, this determination was communicated by the Interim Legislative Water Topics Overview Committee chair to other committee members (see attached), and it was also presented at the December 2019 Water Topics meeting. That same month, the Water Commission approved \$200,000 as the new total project cost threshold for EA to be conducted. The threshold remains at that level today.

The purpose of Engrossed HB 1218 is to establish a total cost threshold for flood control and water conveyance projects “*only* for those expected to cost more than seven hundred fifty thousand dollars.” This would mean *only* those projects with a total cost of \$750,000 or more could be reviewed with EA, and the Commission's decision to establish a lower threshold (currently at \$200,000), would no longer be an option.

To put this proposal into perspective in terms of projects that have come before the Commission for cost-share consideration, since 2019, 50 projects have been required to conduct EA. Had the EA threshold been set at \$750,000, 22 of those 50 would have been required to submit the results of an EA.

Again, the very reason the Water Commission has set a lower threshold than what is minimally required in Century Code, is because many of the members appreciate the best available information in hand when allocating state tax dollars to projects. In a time where competition among projects for finite state resources is only growing, it is more important than ever to ensure state investments are made as thoughtfully as possible.

As the discussions related to this issue are covered over the course of considering HB 1218, you will likely hear a common point that is meant to support this bill. You will hear that state-required EAs are not necessary because local sponsors have voted to assess themselves, which is a demonstration that it is a beneficial project, and their positive vote should count as the economic analysis. First, not all projects get voted on at the local level. Second, a



decision to pay for something does not replace a traditional objective analysis of economic efficiency (more benefits than costs). Third, and most importantly, the sponsors approaching the DWR and Commission for cost-share are not paying for the total cost of the project themselves, but are in fact, asking the state to assist with public funds. It is for these very reasons that the Legislature back in 2017 established EA requirements – to ensure that when the state is being asked to financially participate, that those state investments were being made thoughtfully, and in a way that provides more consideration to projects that have demonstrated little return on investment compared to their total cost.

You might also hear the EA calculation tool is biased to the detriment of rural projects, and that it does not take into account all conveyance-related benefits, including the capture of higher commodity prices. The largest contributing benefit of the DWR EA tool for rural drainage is the model easily returns positive rates of return when the project in fact brings more acres into production under the designed events. This is the purpose of rural drainage, and the model reflects this goal. Where proponents are unhappy with their projects' demonstrable benefits are mostly deferred maintenance projects - where the actions proposed do not add to the acres available for planting or length of flood impacts.

In addition, chasing constantly changing commodity prices requires picking a snapshot in time whether it is over or under projecting future benefits and can lack objectivity. In the tool developed by DWR, we use decades of indexed crop damage payments to estimate the avoided damages as demonstrated in each county by the insurers and reinsurers. These are updated regularly. This avoids the propagation of errors from soils and productivity models and goes directly to the damage claims which are the intent of those models to estimate.

And finally, it is also important to note the North Dakota Department of Emergency Services (NDDDES) uses the results of EAs calculated on state cost-share projects to meet accreditation standards for the Emergency Management Accreditation Program (EMAP) and to maintain their Statewide Enhanced Mitigation Plan. These results provide an objective benchmark accounting for the efficacy of flood protection investments. Nationally NDDDES is seen as an example for the use of these data to measure the potential impact of flood mitigation policy and investment.

Mr. Chairman, and members of the committee, in the interest of meeting taxpayer expectations that government is being as thoughtful as possible when allocating public funds, the implementation of EA just makes sense. DWR's EA tool is the best option available to ensure that when the state is asked to invest in local projects, investment decisions are supported with the results of objective quantitative analysis.

Mr. Chairman, and members of the committee, this concludes my testimony, and I will stand for any questions you might have.

**Subject:** FW: economic analyses for projects under \$1 million  
**Date:** Friday, September 27, 2019 at 11:45:35 AM Central Daylight Time  
**From:** Erbele, Garland G.  
**To:** Fridgen, Patrick M., Pool, Duane B., Mattern, Jeff N.  
**CC:** Paczkowski, John A., Verleger, Jennifer L.

Fyi,

Email from Claire Ness on authority of commission to require EA's on flood control projects less than \$1.0 million.

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**From:** "Schmidt, James E." <jeschmidt@nd.gov>  
**Date:** Friday, September 27, 2019 at 11:22 AM  
**To:** "Sanford, Brent" <bsanford@nd.gov>, "dickjohnsondvl@gmail.com" <dickjohnsondvl@gmail.com>, "Erbele, Garland G." <gerbele@nd.gov>  
**Cc:** "Sorvaag, Ronald G." <rsorvaag@nd.gov>, "Lee, Gary A." <galee@nd.gov>, "Kreun, Curt E." <ckreun@nd.gov>, "Ness, Claire J." <claireness@nd.gov>, "Kadrmass, Chris J." <cjkadrmass@nd.gov>  
**Subject:** Fwd: economic analyses for projects under \$1 million

Good morning,  
Regarding SWC authority to require flood control projects with estimated cost less than \$1 million dollars to include a cost benefit analysis, Ms. Claire Ness, Legislative Council, has provided the following.  
SWC may proceed as it deems appropriate in this matter.  
If you have any questions please contact Ms. Ness.  
Thank you  
Jim

Sent from my iPhone

Begin forwarded message:

**From:** "Ness, Claire J." <claireness@nd.gov>  
**Date:** September 27, 2019 at 9:33:06 AM CDT  
**To:** "Schmidt, James E." <jeschmidt@nd.gov>  
**Cc:** "Kadrmass, Chris J." <cjkadrmass@nd.gov>, "Richter, Vonette J." <vrichter@nd.gov>  
**Subject:** economic analyses for projects under \$1 million

Representative Schmidt,

This responds to your question regarding whether the State Water Commission may require sponsors of projects under \$1 million who are seeking approval to provide economic analyses to the commission for review. North Dakota Century Code Section 61-03-21.4 requires the State Engineer to develop an economic analysis process for certain water projects expected to cost more than \$1 million. Projects expected to cost \$1 million or less are not addressed specifically.

However, the State Water Commission and State Engineer have authority to require information about those projects when evaluating whether to fund them. That authority appears broad enough to require project sponsors to submit economic analyses. This office cannot anticipate how a court would rule on this issue if it were brought to court though.

Under North Dakota Century Code Section 61-02-78, when the commission is deciding whether to approve a project to fund with resources trust fund money, the commission is required to consider, among other things, "the overall economic impact of the project" and "the reasons why it is in the public interest". Also, under Section 61-02-14, the commission is granted broad authority to "investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and project, public and provide, which in the commission judgement may be necessary or advisable..." In order for the commission to understand the "overall economic impact" of a project and whether the project is in the public interest, necessary, or advisable, the commission must have sufficient information about the project. The commission is given discretion how to obtain that information and is not restricted by statute as to the types of information it may require from project sponsors.

Additionally, Section 61-02-14(5) gives the commission the authority to "exercise all express and implied rights, power, and authority that may be necessary, and to do, perform, and carry out the expressed purposes of this chapter and the purposes reasonably implied incidentally to or lawfully connected with the expressed purposes of this chapter." This section essentially says the commission may do things that are not explicitly stated in statute, provided the things are necessary to carry out the commission's duties. Even though the commission is not explicitly required to request economic analyses for projects under \$1 million, the commission arguably may do so if the commission believes it is necessary to the exercise of the commission's duties set forth in Sections 61-02-78, 61-02-14, and other statutes.

This is not an exhaustive review of the entirety of the commission's and State Engineer's authority. If you have additional questions or would like additional information, please let me know.

Thank you,  
Claire

Claire J. Ness  
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Legislative Council  
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