

**2023 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1385**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1385  
2/10/2023

Relating to tribal contracts with the state water commission

9:00 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

### Discussion Topics:

- Grant fund eligibility
- Ft Berthold Indian Reservation water needs
- State cost share
- No appropriations
- State/Tribes split funding depleted
- Resources Trust Fund

Rep Jon Nelson, District 14, Rugby, introduced HB 1385, oral testimony

Jack Dwyer, policy advisor, ND Water Users Association, Testimony 20386

Eric Volk, Executive Director, ND Rural Water Systems Association, Testimony 20509

Dr Andrea Travnicek, Director, Department of Water Resources; State Water Commission Secretary, Testimony 20328

Alysia Lacounte, General Counsel, **presented testimony for Jamie Azure**, Tribal Chairman, Turtle Mountain Band of Chippewa Indians, Testimony 20430

Scott Davis, lobbyist for MHA Nation, presented testimony for: Mark Fox, Chairman Mandan, Hidatsa and Arikara Nation, Three Affiliated Tribes, Forth Berthold Indian Reservation, New Town, Testimony 20516

April Walker, PE, EFM, Water Resources Engineer, Member of Turtle Mountain Band of Chippewa Indians, Testimony 20429

### Additional written testimony:

Jason Westbrook, Vice President, Barr Engineering, Testimony 20427

9:40 AM Chairman Porter closed the hearing.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1385  
2/16/2023

Relating to tribal contracts with the state water commission

11:22 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

### Discussion Topics:

- Committee action

Rep Olson moved a Do Pass, seconded by Rep Conmy.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	AB
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

**12-0-2 Motion carried.** Rep Olson is carrier.

11:24 AM Chairman Porter closed the meeting.

*Kathleen Davis, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1385: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB  
1385 was placed on the Eleventh order on the calendar.

**2023 SENATE ENERGY AND NATURAL RESOURCES**

**HB 1385**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1385  
3/9/2023

A bill relating to tribal contracts with the state water commission.

2:30 PM Chairman Patten opened the meeting. Chairman Patten and Senators Magrum, Kessel, Kannianen, Beard and Boehm are present.

### **Discussion Topics:**

- Trust fund
- Water distribution
- Tribal Reservations

2:33 PM Jack Dwyer, Policy Advisor for the North Dakota Water Users Association, testified in favor of the bill and provided written testimony #22754.

2:37 PM Representative Nelson introduced the bill.

2:40 PM Eric Volk, North Dakota Rural Water Systems Association, testified in favor of the bill and provided written testimony #23040.

2:42 PM Mark Fox, Chairman Mandan Hidatsa and Arikara (MHA) Nation, testified in favor of the bill and provided written testimony #23314.

2:58 PM John Paczowski, North Dakota State Engineer, answered a question for the committee.

3:00 PM Scott Davis, on behalf of Jamie Azure, Tribal Chairman, Turtle Mountain Band of Chippewa, testified in favor of the bill and provided written testimony #23174.

3:07 PM Nathan Davis, Director of Indian Affairs for North Dakota, spoke in favor of the bill.

3:10 PM John Paczowski, North Dakota State Engineer, testified in favor of the bill and provided written testimony #22258.

3:13 PM April Walker, Water Resources Engineer, Member, Turtle Mountain Band of Chippewa, testified in favor of the bill and provided written testimony #23344.

3:17 PM Chad Engels on behalf of Kevin Buckholz, President, Moore Engineering Inc., testified in favor of the bill and provided written testimony #22628

### **Additional Written Testimony:**

Jason Westbrook #23164

3:21 PM Chairman Patten closed the public hearing.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1385  
3/17/2023

A bill relating to tribal contracts with the state water commission.

9:12 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Beard, Boehm and Kessel are present. Senators Magrum and Kannianen are absent.

### Discussion Topics:

- Committee action

9:13 AM The committee has discussion on the bill.

9:14 AM Senator Kessel moved to Do Pass the bill. Senator Boehm seconded the motion.

9:15 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	AB
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	AB
Senator Greg Kessel	Y

Motion passes 4-0-2.

Senator Kessel will carry the bill.

This bill does not affect workforce development.

9:15 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1385: Energy and Natural Resources Committee (Sen. Patten, Chairman)**  
recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB  
1385 was placed on the Fourteenth order on the calendar. This bill does not affect  
workforce development.

**TESTIMONY**

**HB 1385**

**Testimony**  
**HB 1385—Department of Water Resources**  
**House Energy and Natural Resources Committee**  
**Representative Todd Porter, Committee Chair**  
**February 10, 2023**

Chairman Porter, and members of the House Energy and Natural Resources Committee – I am Andrea Travnicek, Director of the Department of Water Resources and Secretary to the State Water Commission. I am here today to testify in support of House Bill (HB) 1385, relating to Tribal Nation contracts with the State Water Commission (Commission).

North Dakota Century Code (N.D.C.C.) § 61-02-24 and 61-02-24.1 identify political subdivisions and entities that the Commission may enter into contracts with. Federally recognized Tribal Nations are currently not among those entities listed. This bill is meant to allow the Commission to enter into agreements with federally recognized Tribal Nations – making them eligible sponsors under the Department of Water Resources’ (DWR) Cost-Share Program - like North Dakota political subdivisions, the federal government, other state political subdivisions, and Canadian provinces.

The need for critical water infrastructure exists within the jurisdictional boundaries of reservations located in North Dakota, just as that same need exists outside of Tribal boundaries. For example, as part of the DWR’s biennial water project inventory, there have been various water supply projects submitted over the years by the Turtle Mountain Public Utilities Commission (TMPUC). The projects have been related to providing improved water quality and quantity supplies to both tribal and non-tribal North Dakota residents living within the boundaries of the Turtle Mountain Reservation. However, because of the statutes’ existing language, the Commission has not been able to enter into agreements with the TMPUC to assist with cost-sharing on those projects unless they are partnered with an eligible political subdivision.

Tribal Nations to date have been encouraged to work with those political subdivisions listed in the statute. For example, in the summer of 2020, the TMPUC entered into a

Memorandum of Understanding (MOU) with Rolette County, who serves as the local sponsor of TMPUC water supply projects. During the current 2021-2023 budget cycle, Rolette County has submitted, and been approved for, three separate cost-share requests by the SWC through the DWR Cost-Share Program on behalf of TMPUC. These projects were related to water treatment, a storage reservoir and pump station, and distribution lines to serve additional water users – at a combined cost-share total of approximately \$4.7 million. All three agreements were signed between DWR and Rolette County, and two of those three projects have already been largely completed.

If not for the MOU between TMPUC and Rolette County, these three water supply projects would likely have been delayed for years while awaiting additional local and federal funding sources. And though the MOU provides an opportunity through collaboration between a Tribal Nation and an eligible political subdivision, it is time to include federally recognized tribes as eligible sponsors, who like others responsible for providing clean, reliable supplies of water to North Dakota residents, are looking for state cost-share assistance to make their projects possible.

With that, Chairman Porter, I would respectfully request a do pass on HB 1385. This concludes my testimony in support of HB 1385, and I will stand for any questions that you might have.



*DEDICATED TO PROTECTING, DEVELOPING, AND MANAGING NORTH DAKOTA'S WATER RESOURCES*  
 PO Box 2254, Bismarck, ND 58502-2254 701-223-4615 • 701-223-4645 (Fax)

**HB 1385**  
**Testimony Jack Dwyer**  
**House Energy and Natural Resources Committee**

Good morning, Chairman Porter and members of the House Energy and Natural Resources Committee:

My name is Jack Dwyer, and I serve as a policy advisor for the North Dakota Water Users Association. In December of 2021, the North Dakota Water Users and affiliates hosted the state water convention, at which we held a tribal panel to discuss water issues facing our tribal nations. At that meeting, Joe Silveria from Fort Berthold Rural Water, who served on the panel, provided an update regarding water needs on the Fort Berthold Indian Reservation. He indicated that needs were great, federal MR&I funding authorized under the Dakota Water Resources Act of 2000 is nearly tapped, and that MHA Nation was not eligible to apply for state cost share grants from the State of North Dakota, even though Fort Berthold pays a significant amount of oil extraction tax into the State of North Dakota, 20% of which makes up the Resources Trust Fund.

We dug into this to determine if state law or agency policy was driving this issue, and we didn't have to look very deep. NDCC § 61-02-24 and NDCC § 61-02-24.1 authorize the State Water Commission to coordinate and cooperate with:

1. Any state, and with any political subdivision, department, or officer thereof;
2. With the United States or Canada and any agency, department, or officer thereof;
3. And with any political subdivisions in our state.

Note that tribal governments are not included and therefore cannot currently apply to the state for cost share on their water projects.

The North Dakota Water Users has had a policy in its Long-Term Goals and Resolutions supporting development of tribal water projects since before my involvement with the organization, but the policy was silent on whether our organization supported legislation that would make the Resources Trust Fund accessible for tribal governments. At our last goals and resolutions meeting held in December, we proposed the following resolution to our membership:

**TRIBAL RURAL WATER DEVELOPMENT.** We support the supply and distribution of clean, safe, and dependable water to Indian Reservations. We also support efforts of the North Dakota Tribes to access funds which have been authorized by the Dakota Water Resources Act of 2000, which are specifically designated to resolve the critical water shortages and needs on reservations. We also support the addition of tribal governments as an eligible project sponsor to receive cost share from the State Water Commission.

After careful consideration, our North Dakota Water Users, North Dakota Water Resource Districts Association, and North Dakota Irrigation Association passed this resolution unanimously.

The bill before you simply allows our tribal governments to apply to the State Water Commission for state cost share just like other currently eligible entities. No appropriation is attached. Any application by a tribal government would have to comply with existing State Water Commission cost share policy.

Providing this opportunity to our fellow North Dakotans is critical. Thank you for your time this morning. I'd be happy to stand for any questions.

resourceful. naturally.  
engineering and environmental consultants



February 9, 2023

**Re: HB 1385**

Honorable members of the House Energy and Natural Resources Subcommittee:

Barr Engineering is firmly in support for House Bill 1385 relating to tribal contracts with the state water commission.

Barr Engineering has offices across the U.S. and Canada. Our Bismarck office was opened in 2008 and employs over 30 people. We are honored to serve North Dakotans, providing technical leadership in the fields of engineering and water resources, to the agriculture, education, manufacturing and energy industries.

As a company Barr has embraced and sought to embed and grow Diversity, Equity and Inclusion in all that we do. We are proud to have the opportunity to work in States that demonstrate this shared commitment. House Bill 1385 is a positive step toward fostering the necessary cooperation and coordination to solve complicated problems in water resources. We fully support its passage and implementation.

Respectfully,

A handwritten signature in black ink, appearing to read "Jason Westbrook".

Jason Westbrook, PE  
Vice President

House Bill 1385

April Walker P.E., C.F.M

Water Resources Engineer and Enrolled Member of the

Turtle Mountain Band of Chippewa Indians

House Energy and Natural Resources Committee

Representative Todd Porter Committee Chairman

February 10<sup>th</sup>, 2023

Chairman Porter and members of the Energy and Natural Resources Committee, I have had the great pleasure of testifying before various North Dakota legislatures through the years as April Walker a Water Resources Engineer working on the development of projects such as the FM Diversion. Today I wish to introduce myself with my spirit name. Ozhaawashkozi Binesi ndizhinikaaz. I am called Blue Thunderbird.

I appear here today to provide testimony in support of House Bill 1385, which pertains to allowing the Department of Water Resources (DWR) to cooperate and coordinate with federally recognized Indian tribes.

I am a tribal member who has had the unique perspective of assisting in the development of major water projects in the state and on the development of water policy at multiple government levels. This policy development covered compelling topics such as special assessments for water infrastructure, stormwater pollution prevention, and flood risk reduction. Throughout my career I have learned the importance of engaging stakeholders and bringing multidimensional perspectives to the table to work through complex problems. It can

be the difference between having a solution to a problem and having an implementable solution to a problem.

As you heard in Chairman Azure's testimony, there have been significant state investments made in projects that could have provided broader benefits, had the projects been inclusive of tribal perspectives. The addition of language that allows the DWR the opportunity to work with Tribes makes room for better solutions. As an engineer I understand that cooperation can eliminate the need for duplicative infrastructure. It just makes sense to eliminate any barriers to common sense, mutually beneficial solutions. I hope you will approve the proposed addition of Federally Recognized Indian Tribes as entities that DWR can cooperate with.

Miigwetch (Thank you) for the opportunity to testify in support of House Bill 1358.

## House Bill 1385

Turtle Mountain Band of Chippewa Indians

Tribal Chairman Jamie Azure

House Energy and Natural Resources Committee

Representative Todd Porter Committee Chairman

February 10<sup>th</sup>, 2023

Chairman Porter and members of the Energy and Natural Resources Committee, I am Tribal Chairman Jamie Azure of the Turtle Mountain Band of Chippewa Indians. I regret that I am unable to appear in person. I wish to provide testimony in support of House Bill 1385, which pertains to allowing the Department of Water Resources to cooperate and coordinate with federally recognized Indian tribes such as my own.

As we know the natural resources enjoyed by the State of North Dakota and the Turtle Mountain Band are intrinsically interwoven. Water does not recognize the jurisdictional limits devised by governments. The state has long sought to encourage and even incentivize cooperation among the many political subdivisions of the state, to create efficiency while putting resources to beneficial use. At times the state has even taken active roles in the construction, and operation of systems that serve multiple jurisdictions, such as the Northwest Area Water Supply (NAWS) Project. These collaborations have resulted in improved services and a better quality of life for many people.

The Federally recognized Indian Tribes are not political subdivisions of the State. The current law provides for the DWR to cooperate with other states and even Canada. This demonstrates the understanding that government to government relationships are necessary when addressing this vital resource, WATER. It does not currently allow for enjoyment of that benefit for Tribes and their agencies within the boundary of the state. This bill is a significant opportunity for the state to participate in meaningful ways as an ally to the many tribal citizens within the state boundary.

The Turtle Mountain Band has 32,910 enrolled members, of which 13,383 reside in Rolette County, on or around, our 6 mile by 12 mile Reservation boundary that was first established by Executive Order in 1882, seven years prior to statehood for North Dakota.

You may know that the Turtle Mountain Band is the owner of a public utility that draws water from the Shell Valley Aquifer (SVA) to provide for the needs of these individuals living on and around our Reservation. In addition, we service others who are not enrolled members of our tribe.

We, like the other tribes in the state, have not yet adjudicated our federally reserved Indian Water rights, and as such, we have utilized state appropriation permits for the water drawn from our Aquifer. The State has now deemed the SVA to be fully appropriated. This presents new and unique challenges. Had TMBCI been invited to cooperate and coordinate on the development of the NAWS project, there would have been an opportunity for the project to fully provide an appropriate quantity of water to serve as a secondary source sufficient for the future needs of the Tribe. As this project, and others by various political subdivisions, continue to be built out without ongoing cooperation and coordination, we continue to lose opportunities to secure and protect a water source that could be vital to future needs that extend far beyond the needs of our tribe.

Let us take the first step together on establishing a culture of cooperation.

Thank you very much for the opportunity to testify in support of House Bill 1358. I am also submitting TMBC 66-01-23 a written Resolution of Support from the Turtle Mountain Tribal Council, and Resolution Number 02-07-23-1 from the Trenton Indian Service Area Council for the record. Miigwetch.

RESOLUTION NUMBER **TMBC66-01-23** OF THE DULY ELECTED AND CERTIFIED GOVERNING BODY OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

- WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-Laws empowers the Tribal Council with the authority to represent the Band and to negotiate with Federal, State, and Local Governments and with private persons; and
- WHEREAS, Title 30 the Tribal Water Act Section 30.0103 Findings declares " *Water has cultural, spiritual, social, environmental, health, and economic values that require protection and we must guide the appropriate use and management of all resources affecting the watershed and drainage basins of the reservation and its allotted lands*"; and
- WHEREAS, the Tribe bears a right and a responsibility to protect and provide a healthy water supply to all forms of creation within our area of responsibility based on our federal reserved water rights dating back to the Treaties and the Agreements with the United States; and
- WHEREAS, it is the policy of the Tribe to preserve and protect in perpetuity the quantity and quality of tribal water resources and to exercise the self determination of the tribe through the use, administration, protection and management of Tribal water resources; and
- WHEREAS, it is the Tribes intent to provide long term planning and investment to enable the delivery and use of water to individual water users both on Reservation and on Tribal lands bordering the Reservation; and
- WHEREAS, unfunded needs for water infrastructure exist and the Tribe, in certain defined instances, supports efforts by the Tribe or its designated agency to cooperate and coordinate with the State Water Commission to investigate, plan, conserve, utilize, develop and handle water; now

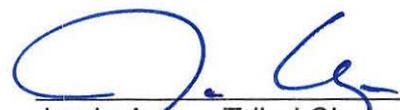
THEREFORE BE IT RESOLVED that the Tribe supports proposed legislation in the State of North Dakota that provides for the State, through the Water Commission to cooperate and coordinate with federally recognized Indian tribes, or any agency, department, or officer thereof.

CERTIFICATION

I, the undersigned Tribal Secretary of the Turtle Mountain Band of Chippewa Indians, do hereby certify that the Tribal Council is composed of **nine (9) members** of whom **seven (7)** constituting a quorum were present at a meeting duly called, convened and held on the **24<sup>th</sup> day of January, 2023**, that the foregoing resolution was adopted by an affirmative vote of **six (6) in favor**-Representatives Elmer Davis Jr., Jon Jon Keplin, Ron Trottier Sr., Lynn Gourneau, Kenneth Malaterre and Craig Lunday; two (2) absent Representatives-Blaine Davis and Chad Counts; none (0) opposed; with the Tribal Chairman not voting.

  
Jolean A. Morin, Tribal Secretary *1/31/23*

SIGNED INTO LAW/Dated this 31<sup>st</sup> day of January, 2023  
 VETOED/Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

  
Jamie Azure, Tribal Chairman



# TRENTON INDIAN SERVICE AREA

P.O. Box 210  
Trenton, North Dakota 58853-0210  
Telephone: (701) 572-8316  
Fax: (701) 572-0124

**Resolution Number 02-07-23-1 of the Duly Elected And  
Certified Governing Body of the Trenton Indian Service Area**

**Whereas**, the Trenton Indian Service Area, (TISA) pursuant to the Act of April 21, 1904, 58 P.L. 125 (1904); Snyder Act, 25 U.S.C. §§ 452-457 (1934); S. Rep. No. 93-1069, at 16 (1974); 25 U.S.C. § 1680e (1976) Indian Self Determination and Education Assistance Act, 93 Pub. L 638, 88 Stat. 2203 (1975); 25 U.S.C 450b (e) & (l) organized & authorized to contract for funds the Secretary receives to be administered to Indians because of their status as Indians;

**Whereas**, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-Laws empowers the Tribal Council with the authority to represent the Band and to negotiate with federal, state, and local governments and with private persons: and

**Whereas**, Title 28 allows for the Trenton Indian Service Area (TISA) to be managed by a Board of Directors and provides for the Board to exercise powers subject to limitations; and

**Whereas**, The TISA Board of Directors acting as provided for in Title 28, bears a right and a responsibility to protect and provide a healthy water supply to all forms of creation within the TISA area; and

**Whereas**, it is the policy of TISA Board of Directors' to preserve and protect in perpetuity the quantity and quality of Tribal water resources and to exercise the self determination of the Tribe through the administration, protection, and management of Tribal water resources; and

**Whereas**, it is the TISA Board of Directors intent to provide long term planning and investment to enable the delivery and use of water to individual water users on TISA owned lands and allotments; and

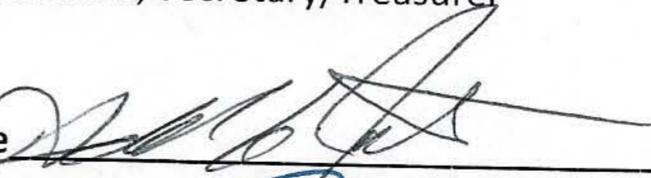
**Whereas**, Unfunded needs for water infrastructure exist and the Tribe, in certain defined instances, supports efforts by the Tribe or its designated agency to cooperate and coordinate with the State Water Commission to investigate, plan, conserve, utilize, develop and handle water, now

**Therefore Be It Resolved**, the TISA Board of Directors supports proposed legislation in the State of North Dakota that provides for the State, through the Water Commission to cooperate and coordinate with federally recognized Indian tribes, or any agency, department, or officer thereof.

**CERTIFICATION**

I, the undersigned Secretary/Treasurer of the Trenton Indian Service Area, do hereby certify that the Board of Directors is composed of seven (7) members of whom 6 constituting a quorum were present at a meeting duly called, convened and held on the 7<sup>th</sup> day of February, 2023 that the foregoing resolution was adopted by an affirmative vote of 6 members in favor, to 0 members opposing, and the Chairperson (voting, not voting).

2-7-23  
Albert Zaste, Secretary/Treasurer

Date 

CONCUR: 

Duane Rabbe, Chairperson  
Trenton Indian Service Area

Date 2-7-23



**Eric Volk, Executive Director**

**ND Rural Water Systems Association**

**In Support of House Bill 1385**

**House Energy & Natural Resources Committee**

**February 10, 2023**

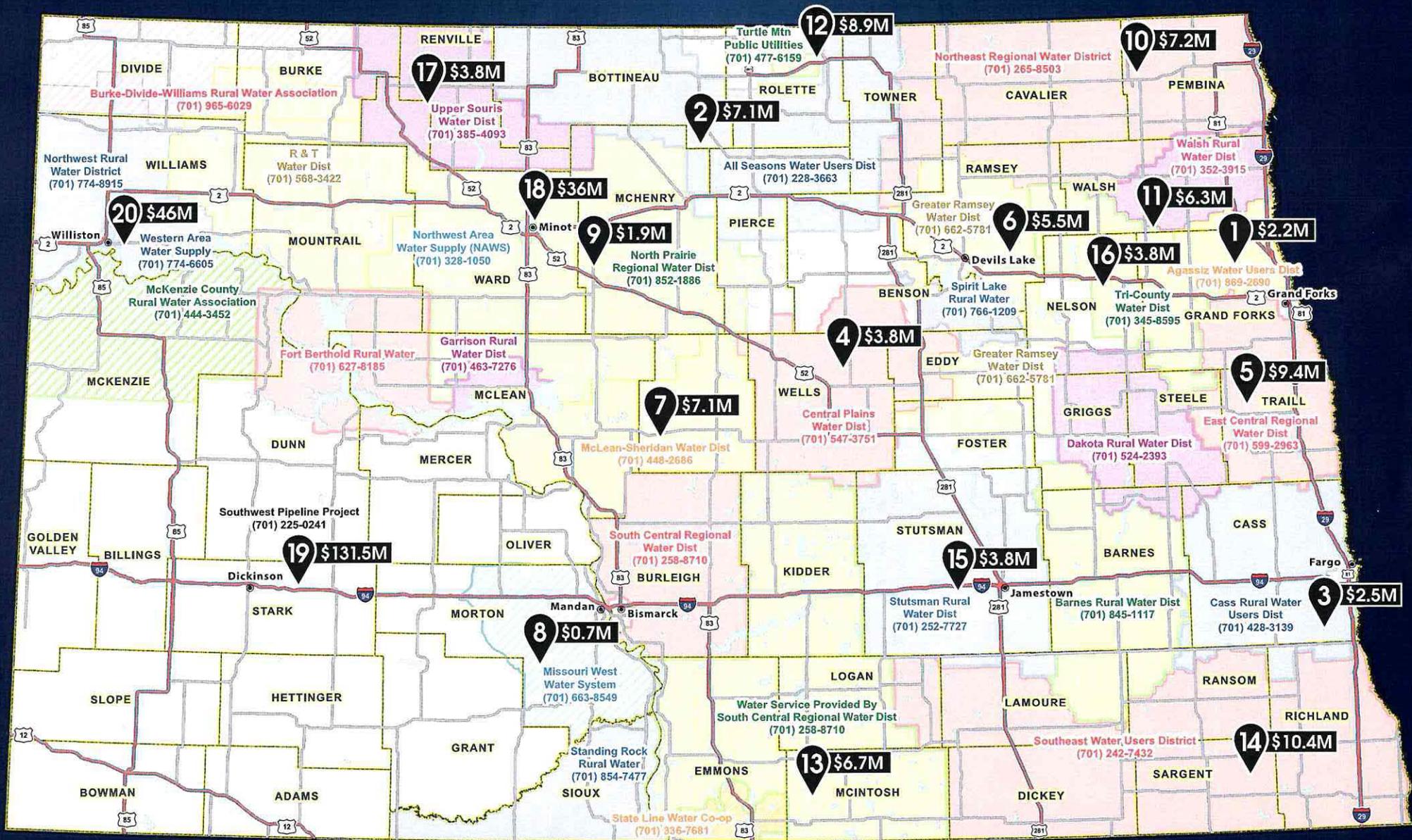
Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in support of HB 1385 which allows for funding opportunities for all water systems to help meet the state's critical drinking water needs.

**Rural/Regional Water Summary:**

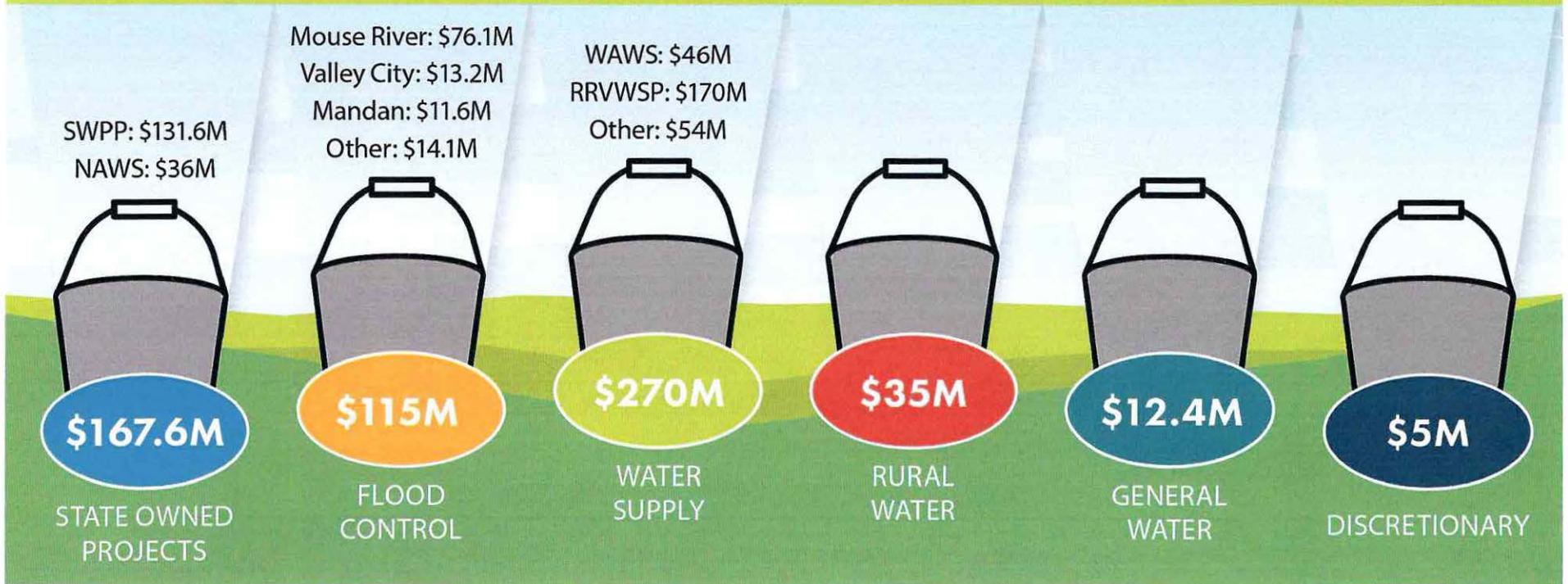
- Serve over 170,000 rural residents (70,000 connections).
- Provide water to 266 (75%) of North Dakota's 355 incorporated cities.
- Furnish water to nearly 300,000 North Dakota residents.
  - Service through over 41,000 miles of pipe.
  - See the [23-25 Project Funding Map](#) for reference.

Meeting the demands of repairing & replacing aging infrastructure and complying with rules & regulations are taking its toll on many small and rural water systems. A study completed by the United States Environmental Protection Agency revealed the rates needed to cover future infrastructure repair and replacement for small systems will be four times as high as their larger counterparts. Without significant state grant funding, the cost to the consumer is just too much for the average family to afford.

With that said, the NDRWSA supports HB 1385 which will allow for state funding opportunities for all water systems to help meet needs of North Dakota. Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. Eric Volk, [ericvolk@ndrw.org](mailto:ericvolk@ndrw.org).



## 2023-2025 DWR PROJECT & PURPOSE FUNDING RECOMMENDATIONS



Northwest Area Water Supply (NAWS) | Southwest Pipeline Project (SWPP) | Red River Valley Water Supply Project (RRVWSP) | Western Area Water Supply (WAWS)



**MANDAN, HIDATSA & ARIKARA NATION**  
Three Affiliated Tribes \* Fort Berthold Indian Reservation  
404 Frontage Road New Town, ND 58763  
Tribal Business Council

Office of the Chairman  
Mark N. Fox

**HOUSE BILL 1385**  
**HOUSE ENERGY AND NATURAL RESOURCE COMMITTEE**  
**FEBRUARY 10, 2023**

**TESTIMONY OF MARK N. FOX, CHAIRMAN**  
**MANDAN, HIDATSA AND ARIKARA NATION**

Chairman Porter and members of the Energy and Natural Resources Committee, My Name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara (MHA) Nation. The MHA Nation supports House Bill 1385, which will allow North Dakota Indian Tribes to be eligible for Water appropriation funds through the ND Department of Water Resources (DWR). Together, we have established a number of agreements, legislation and policy that benefits both North Dakota and the MHA Nation. This Bill paves the way toward continued cooperation and success.

As we know, the natural resources enjoyed by the State of North Dakota and the MHA Nation are intrinsically interwoven. Water does not recognize the jurisdictional limits devised by governments. The state has long sought to encourage and even incentivize cooperation among the many political subdivisions of the state, to create efficiency while putting resources to beneficial use. At times the state has even taken active roles in the construction, and operation of systems that serve multiple jurisdictions. These collaborations have resulted in improved services and a better quality of life for many people.

Federally recognized Indian Tribes are not political subdivisions of the State. The current law provides for the DWR to cooperate with other states and even Canada. This

demonstrates the understanding that government to government relationships are necessary when addressing this vital resource, WATER. Current law does not allow for enjoyment of that benefit for Tribes and their agencies within the boundary of the state. This bill is a significant opportunity for the MHA Nation to once again participate in meaningful way with the State of North Dakota regarding water projects in our area.

Mr. Chairman and members of the committee, I urge you to support HB 1385.

Thank you.

**Testimony**  
**Engrossed HB 1385—Department of Water Resources**  
**Senate Energy and Natural Resources Committee**  
**Senator Dale Patten, Committee Chair**  
**March 9, 2023**

Chairman Patten, and members of the Senate Energy and Natural Resources Committee – I am John Paczkowski, North Dakota’s State Engineer. I am here today to testify in support of Engrossed House Bill (HB) 1385, relating to Tribal Nation contracts with the State Water Commission (Commission).

North Dakota Century Code (N.D.C.C.) § 61-02-24 and 61-02-24.1 identify political subdivisions and entities that the Commission may enter into contracts with. Federally recognized Tribal Nations are currently not among those entities listed. This bill is meant to allow the Commission to enter into agreements with federally recognized Tribal Nations – making them eligible sponsors under the Department of Water Resources’ (DWR) Cost-Share Program - like North Dakota political subdivisions, the federal government, other state political subdivisions, and Canadian provinces.

The need for critical water infrastructure exists within the jurisdictional boundaries of reservations located in North Dakota, just as that same need exists outside of Tribal boundaries. For example, as part of the DWR’s biennial water project inventory, there have been various water supply projects submitted over the years by the Turtle Mountain Public Utilities Commission (TMPUC). The projects have been related to providing improved water quality and quantity supplies to both tribal and non-tribal North Dakota residents living within the boundaries of the Turtle Mountain Reservation. However, because of the statutes’ existing language, the Commission has not been able to enter into agreements with the TMPUC to assist with cost-sharing on those projects unless they are partnered with an eligible political subdivision.

Tribal Nations to date have been encouraged to work with those political subdivisions listed in the statute. For example, in the summer of 2020, the TMPUC entered into a

Memorandum of Understanding (MOU) with Rolette County, which serves as the local sponsor of TMPUC water supply projects. During the current 2021-2023 budget cycle, Rolette County has submitted, and been approved for, three separate cost-share requests by the SWC through the DWR Cost-Share Program on behalf of TMPUC. These projects were related to water treatment, a storage reservoir and pump station, and distribution lines to serve additional water users – at a combined cost-share total of approximately \$4.7 million. All three agreements were signed between DWR and Rolette County, and two of those three projects have already been largely completed.

If not for the MOU between TMPUC and Rolette County, these three water supply projects would likely have been delayed for years while awaiting additional local and federal funding sources. And though the MOU provides an opportunity through collaboration between a Tribal Nation and an eligible political subdivision, it is time to include federally recognized tribes as eligible sponsors, who like others responsible for providing clean, reliable supplies of water to North Dakota residents, are looking for state cost-share assistance to make their projects possible.

With that I respectfully request a do pass on HB 1385. This concludes my testimony in support of HB 1385, and I will stand for any questions.



925 10th Avenue East  
West Fargo, ND 58078  
P: 701.282.4692  
F: 701.282.4530



March 7, 2023

Senator Curt Kreun  
Chairman  
ND Senate Energy and Natural Resources Committee  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Chairman Kreun and Committee Members,

I write on behalf of Moore Engineering to express my strong support for House Bill (HB 1385). We urge the Senate Energy and Natural Resources Committee to complete the bipartisan work already achieved by the ND House of Representatives that unanimously passed the bill on February 22, 2023.

Our shared values of respect, integrity, accountability, loyalty, and kindness guide us as we strive to fulfill our mission of “improving lives by building strong communities.” For over 60 years, we have served communities across the state to develop and maintain the water supply infrastructure on which your constituents rely. Passing HB 1385 would allow Tribal Nations to enter into agreements with the State Water Commission, allowing them to receive the same water infrastructure support privileges that other communities enjoy. The bill would provide equal access to clean and safe water for thousands of North Dakota residents living in tribal communities.

Moore Engineering believes that HB 1385 is essential to addressing the water infrastructure challenges afflicting the Tribal communities in North Dakota. By allowing Tribal Nations to enter funding agreements with the State Water Commission and participate in the Department of Natural Resources’ Cost-Sharing program, tribal communities will be one step closer to completing the water infrastructure improvement projects that many of them desperately need.

We urge you to vote in the affirmative on House Bill 1385, as the ND House of Representatives has already unanimously done, to work alongside Moore Engineering and others dedicated to providing equitable access to clean water for all North Dakotans. We appreciate your consideration of our position.

Sincerely,

Kevin Bucholz, PE  
President



*DEDICATED TO PROTECTING, DEVELOPING, AND MANAGING NORTH DAKOTA'S WATER RESOURCES*  
 PO Box 2254, Bismarck, ND 58502-2254 701-223-4615 • 701-223-4645 (Fax)

**HB 1385**  
**Testimony Jack Dwyer**  
**Senate Energy and Natural Resources Committee**

Good morning, Chairman Patten and members of the Senate Energy and Natural Resources Committee:

My name is Jack Dwyer, and I serve as a policy advisor for the North Dakota Water Users Association. In December of 2021, the North Dakota Water Users and affiliates hosted the state water convention, at which we held a tribal panel to discuss water issues facing our tribal nations. At that meeting, Joe Silveria from Fort Berthold Rural Water, who served on the panel, provided an update regarding water needs on the Fort Berthold Indian Reservation. He indicated that needs were great, federal MR&I funding authorized under the Dakota Water Resources Act of 2000 is nearly tapped, and that MHA Nation was not eligible to apply for state cost share grants from the State of North Dakota, even though Fort Berthold pays a significant amount of oil extraction tax into the State of North Dakota, 20% of which makes up the Resources Trust Fund.

We dug into this to determine if state law or agency policy was driving this issue, and we didn't have to look very deep. NDCC § 61-02-24 and NDCC § 61-02-24.1 authorize the State Water Commission to coordinate and cooperate with:

1. Any state, and with any political subdivision, department, or officer thereof;
2. With the United States or Canada and any agency, department, or officer thereof;
3. And with any political subdivisions in our state.

Note that tribal governments are not included and therefore cannot currently apply to the state for cost share on their water projects.

The North Dakota Water Users has had a policy in its Long-Term Goals and Resolutions supporting development of tribal water projects since before my involvement with the organization, but the policy was silent on whether our organization supported legislation that would make the Resources Trust Fund accessible for tribal governments. At our last goals and resolutions meeting held in December, we proposed the following resolution to our membership:

**TRIBAL RURAL WATER DEVELOPMENT.** We support the supply and distribution of clean, safe, and dependable water to Indian Reservations. We also support efforts of the North Dakota Tribes to access funds which have been authorized by the Dakota Water Resources Act of 2000, which are specifically designated to resolve the critical water shortages and needs on reservations. We also support the addition of tribal governments as an eligible project sponsor to receive cost share from the State Water Commission.

After careful consideration, our North Dakota Water Users, North Dakota Water Resource Districts Association, and North Dakota Irrigation Association passed this resolution unanimously.

The bill before you simply allows our tribal governments to apply to the State Water Commission for state cost share just like other currently eligible entities. No appropriation is attached. Any application by a tribal government would have to comply with existing State Water Commission cost share policy.

Providing this opportunity to our fellow North Dakotans is critical. Thank you for your time this morning. I'd be happy to stand for any questions.



**Eric Volk, Executive Director**

**ND Rural Water Systems Association**

**In Support of House Bill 1385**

**Senate Energy & Natural Resources Committee**

**March 9, 2023**

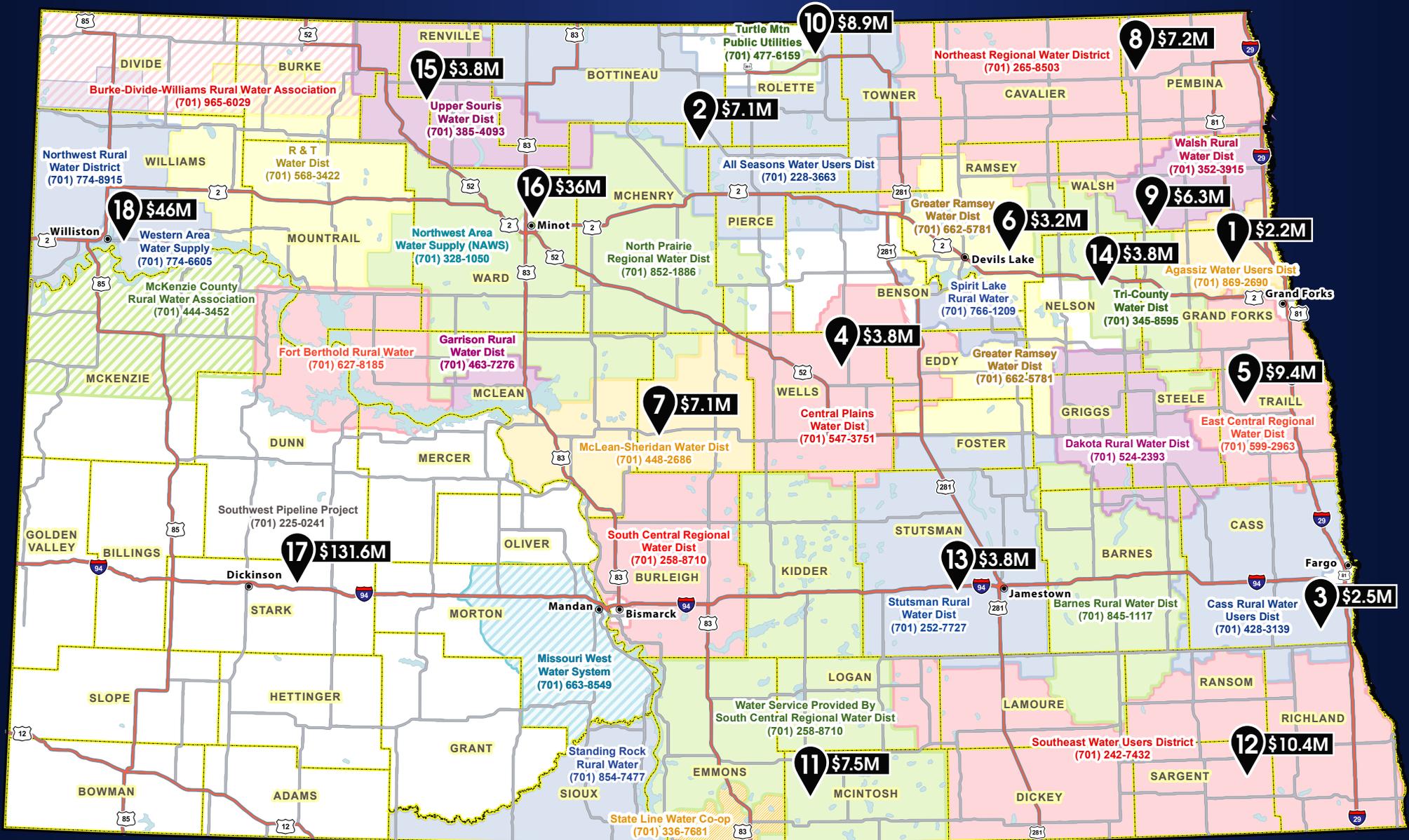
Chairman Patten and members of the Senate Energy and Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in support of HB 1385 which allows for funding opportunities for all water systems to help meet the state's critical drinking water needs.

**Rural/Regional Water Summary:**

- Serve over 170,000 rural residents (70,000 connections).
- Provide water to 266 (75%) of North Dakota's 355 incorporated cities.
- Furnish water to nearly 300,000 North Dakota residents.
  - Service through over 41,000 miles of pipe.
  - See the [23-25 Project Funding Map](#) for reference.

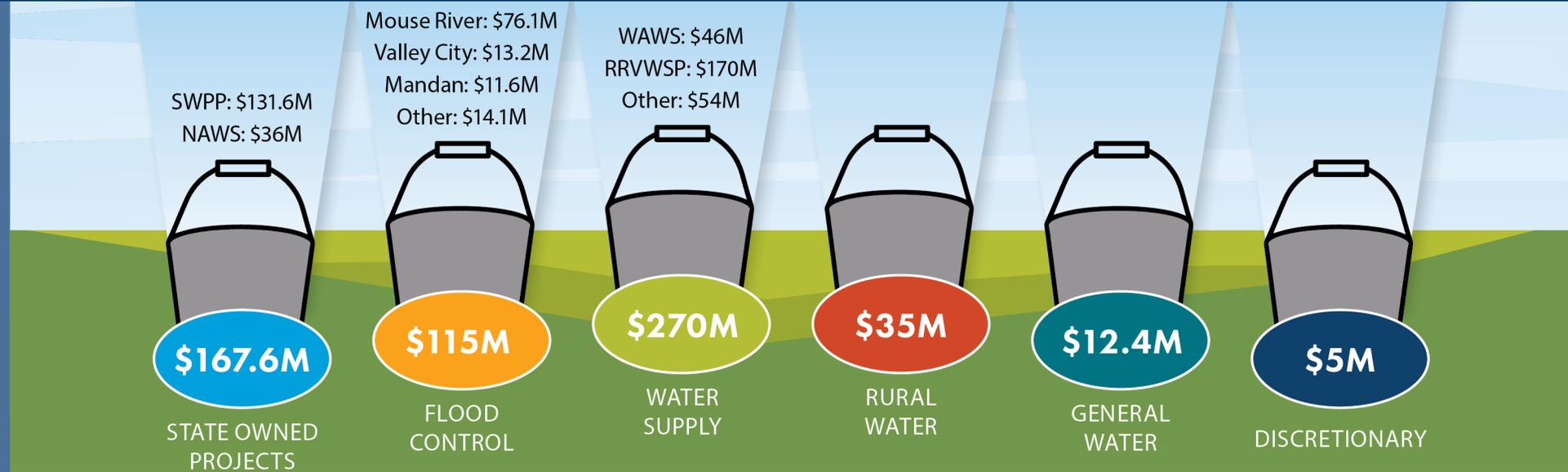
Meeting the demands of repairing & replacing aging infrastructure and complying with rules & regulations are taking its toll on many small and rural water systems. A study completed by the United States Environmental Protection Agency revealed the rates needed to cover future infrastructure repair and replacement for small systems will be four times as high as their larger counterparts. Without significant state grant funding, the cost to the consumer is just too much for the average family to afford.

With that said, the NDRWSA supports HB 1385 which will allow for state funding opportunities for all water systems to help meet the needs of North Dakota. Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. Eric Volk, [ericvolk@ndrw.org](mailto:ericvolk@ndrw.org).

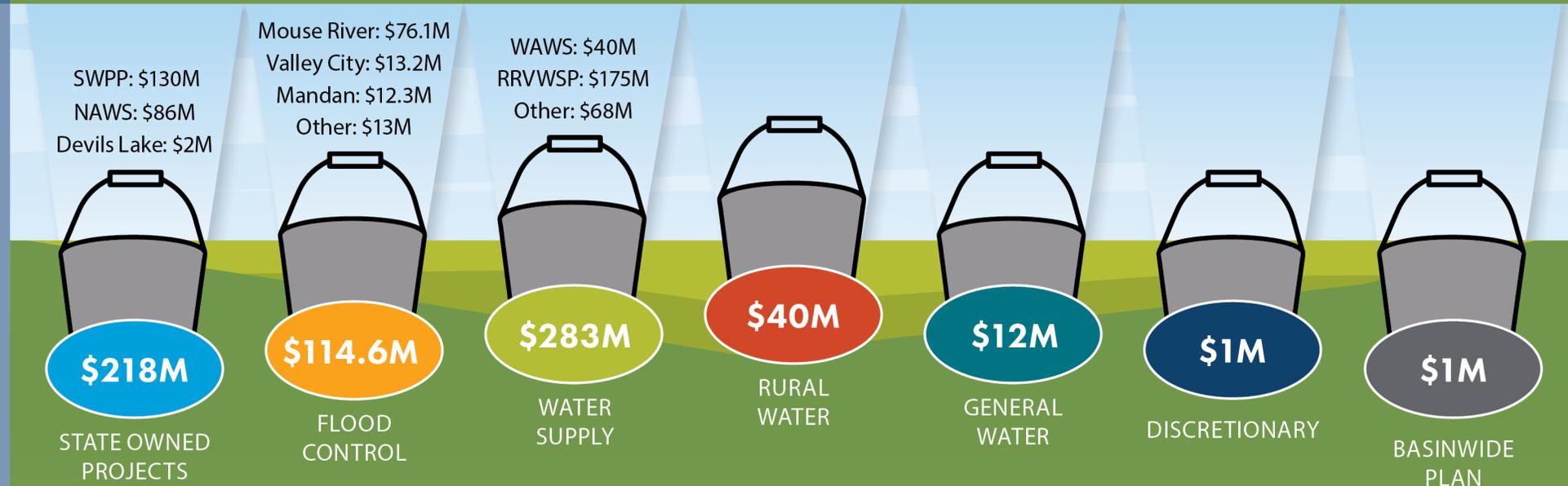


# 2023-2025 PURPOSE FUNDING

Executive  
Rec.



Eng.  
SB 2020



resourceful. naturally.  
engineering and environmental consultants



March 7, 2023

**Re: HB 1385**

Honorable members of the Senate Energy and Natural Resources Committee:

Barr Engineering is firmly in support for House Bill 1385 relating to tribal contracts with the state water commission.

Barr Engineering has offices across the U.S. and Canada. The Bismarck office was opened in 2008 and employs over 30 people. We are honored to serve North Dakotans, providing technical leadership in the fields of engineering and water resources, to the agriculture, education, manufacturing, and energy industries.

As a company Barr has embraced and sought to advance Diversity Equity and inclusion in all that we do. We are proud to have the opportunity to work in States that demonstrate this shared commitment. House Bill 1385 is a positive step toward fostering the necessary cooperation and coordination to solve complicated problems in water resources. We fully support its passage and implementation.

Respectfully,

A handwritten signature in black ink, appearing to read "Jason Westbrook".

Jason Westbrook, PE  
Vice President

House Bill 1385

Turtle Mountain Band of Chippewa Indians

Tribal Chairman Jamie Azure

Senate Energy and Natural Resources Committee

Senator Dale Patten Committee Chairman

March 08, 2023

Chairman Patten and members of the Energy and Natural Resources Committee, I regret that I am unable to appear in person today. I am Tribal Chairman Jamie Azure of the Turtle Mountain Band of Chippewa Indians and I stand in support of House Bill 1385, which pertains to allowing the Department of Water Resources to cooperate and coordinate with federally recognized Indian tribes .

As we know the natural resources enjoyed by the State of North Dakota and the Turtle Mountain Band are intrinsically interwoven. Water does not recognize the jurisdictional limits devised by governments. The state has long sought to encourage and even incentivize cooperation among the many political subdivisions of the state, to create efficiency while putting resources to beneficial use. At times the state has even taken active roles in the construction, and operation of systems that serve multiple jurisdictions, such as the Northwest Area Water Supply (NAWS) Project. These collaborations have resulted in improved services and a better quality of life for many people.

The Federally recognized Indian Tribes are not political subdivisions of the State. The current law provides for the DWR to cooperate with other states and even Canada. This demonstrates the understanding that government to government relationships are necessary when addressing this vital resource, WATER. It does not currently allow for enjoyment of that benefit for Tribes and their agencies within the boundary of the state. This bill is a significant opportunity for the state to participate in meaningful ways as an ally to the many tribal citizens within the state boundary.

The Turtle Mountain Band has 32,910 enrolled members, of which 13,383 reside in Rolette County, on or around, our Reservation that was first established by Executive Order in 1882, seven years prior to statehood for North Dakota.

You may know that the Turtle Mountain Band is the owner of a public utility that draws water from the Shell Valley Aquifer (SVA) to provide for the needs of these individuals living on and around our Reservation. In addition, we service others who are not enrolled members of our tribe.

We, like the other tribes in the state, have not yet adjudicated our federally reserved Indian Water rights, and as such, we have utilized state appropriation permits for the water drawn from our Aquifer. The State has now deemed the SVA to be fully appropriated. This presents new and unique challenges. Had TMBCI been invited to cooperate and coordinate on the development of the NAWS project, there would have been an opportunity for the project to fully provide an appropriate quantity of water to serve as a secondary source sufficient for the future needs of the Tribe. As this project, and others by various political subdivisions, continue to be built out without ongoing cooperation and coordination, we continue to lose opportunities to secure and protect a water source that could be vital to future needs that extend far beyond the needs of our tribe.

Let us take the first step together on establishing a culture of cooperation.

Thank you very much for the opportunity to testify in support of House Bill 1358. I am also submitting TMBC 66-01-23 a written Resolution of Support from the Turtle Mountain Tribal Council, and Resolution Number 02-07-23-1 from the Trenton Indian Service Area Council for the record. Miigwetch.

RESOLUTION NUMBER **TMBC66-01-23** OF THE DULY ELECTED AND CERTIFIED GOVERNING BODY OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

- WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-Laws empowers the Tribal Council with the authority to represent the Band and to negotiate with Federal, State, and Local Governments and with private persons; and
- WHEREAS, Title 30 the Tribal Water Act Section 30.0103 Findings declares " *Water has cultural, spiritual, social, environmental, health, and economic values that require protection and we must guide the appropriate use and management of all resources affecting the watershed and drainage basins of the reservation and its allotted lands*"; and
- WHEREAS, the Tribe bears a right and a responsibility to protect and provide a healthy water supply to all forms of creation within our area of responsibility based on our federal reserved water rights dating back to the Treaties and the Agreements with the United States; and
- WHEREAS, it is the policy of the Tribe to preserve and protect in perpetuity the quantity and quality of tribal water resources and to exercise the self determination of the tribe through the use, administration, protection and management of Tribal water resources; and
- WHEREAS, it is the Tribes intent to provide long term planning and investment to enable the delivery and use of water to individual water users both on Reservation and on Tribal lands bordering the Reservation; and
- WHEREAS, unfunded needs for water infrastructure exist and the Tribe, in certain defined instances, supports efforts by the Tribe or its designated agency to cooperate and coordinate with the State Water Commission to investigate, plan, conserve, utilize, develop and handle water; now

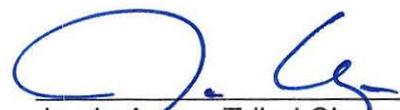
THEREFORE BE IT RESOLVED that the Tribe supports proposed legislation in the State of North Dakota that provides for the State, through the Water Commission to cooperate and coordinate with federally recognized Indian tribes, or any agency, department, or officer thereof.

CERTIFICATION

I, the undersigned Tribal Secretary of the Turtle Mountain Band of Chippewa Indians, do hereby certify that the Tribal Council is composed of **nine (9) members** of whom **seven (7)** constituting a quorum were present at a meeting duly called, convened and held on the **24<sup>th</sup> day of January, 2023**, that the foregoing resolution was adopted by an affirmative vote of **six (6) in favor**-Representatives Elmer Davis Jr., Jon Jon Keplin, Ron Trottier Sr., Lynn Gourneau, Kenneth Malaterre and Craig Lunday; two (2) absent Representatives-Blaine Davis and Chad Counts; none (0) opposed; with the Tribal Chairman not voting.

  
Jolean A. Morin, Tribal Secretary 1/31/23

SIGNED INTO LAW/Dated this 31<sup>st</sup> day of January, 2023  
 VETOED/Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

  
Jamie Azure, Tribal Chairman



# TRENTON INDIAN SERVICE AREA

P.O. Box 210  
Trenton, North Dakota 58853-0210  
Telephone: (701) 572-8316  
Fax: (701) 572-0124

**Resolution Number 02-07-23-1 of the Duly Elected And  
Certified Governing Body of the Trenton Indian Service Area**

**Whereas**, the Trenton Indian Service Area, (TISA) pursuant to the Act of April 21, 1904, 58 P.L. 125 (1904); Snyder Act, 25 U.S.C. §§ 452-457 (1934); S. Rep. No. 93-1069, at 16 (1974); 25 U.S.C. § 1680e (1976) Indian Self Determination and Education Assistance Act, 93 Pub. L 638, 88 Stat. 2203 (1975); 25 U.S.C 450b (e) & (l) organized & authorized to contract for funds the Secretary receives to be administered to Indians because of their status as Indians;

**Whereas**, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-Laws empowers the Tribal Council with the authority to represent the Band and to negotiate with federal, state, and local governments and with private persons: and

**Whereas**, Title 28 allows for the Trenton Indian Service Area (TISA) to be managed by a Board of Directors and provides for the Board to exercise powers subject to limitations; and

**Whereas**, The TISA Board of Directors acting as provided for in Title 28, bears a right and a responsibility to protect and provide a healthy water supply to all forms of creation within the TISA area; and

**Whereas**, it is the policy of TISA Board of Directors' to preserve and protect in perpetuity the quantity and quality of Tribal water resources and to exercise the self determination of the Tribe through the administration, protection, and management of Tribal water resources; and

**Whereas**, it is the TISA Board of Directors intent to provide long term planning and investment to enable the delivery and use of water to individual water users on TISA owned lands and allotments; and

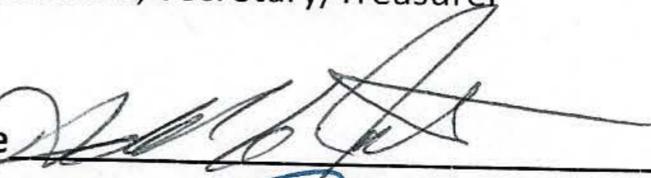
**Whereas**, Unfunded needs for water infrastructure exist and the Tribe, in certain defined instances, supports efforts by the Tribe or its designated agency to cooperate and coordinate with the State Water Commission to investigate, plan, conserve, utilize, develop and handle water, now

**Therefore Be It Resolved**, the TISA Board of Directors supports proposed legislation in the State of North Dakota that provides for the State, through the Water Commission to cooperate and coordinate with federally recognized Indian tribes, or any agency, department, or officer thereof.

**CERTIFICATION**

I, the undersigned Secretary/Treasurer of the Trenton Indian Service Area, do hereby certify that the Board of Directors is composed of seven (7) members of whom 6 constituting a quorum were present at a meeting duly called, convened and held on the 7<sup>th</sup> day of February, 2023 that the foregoing resolution was adopted by an affirmative vote of 6 members in favor, to 0 members opposing, and the Chairperson (voting, not voting).

2-7-23  
Albert Zaste, Secretary/Treasurer

Date 

CONCUR: 

Duane Rabbe, Chairperson  
Trenton Indian Service Area

Date 2-7-23



**MANDAN, HIDATSA & ARIKARA NATION**

Three Affiliated Tribes \* Fort Berthold Indian Reservation  
404 Frontage Road New Town, ND 58763  
Tribal Business Council

Office of the Chairman  
Mark N. Fox

**HOUSE BILL 1385  
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE  
MARCH 9, 2023**

**TESTIMONY OF MARK N. FOX, CHAIRMAN  
MANDAN, HIDATSA AND ARIKARA NATION**

Chairman Patten and members of the Committee, My Name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara (MHA) Nation. The MHA Nation supports House Bill 1385, which will allow North Dakota Indian Tribes to be eligible for Water appropriation funds through the ND Department of Water Resources (DWR). Together, we have established a number of agreements, legislation and policy that benefits both North Dakota and the MHA Nation. This Bill paves the way toward continued cooperation and success.

As we know, the natural resources enjoyed by the State of North Dakota and the MHA Nation are intrinsically interwoven. Water does not recognize jurisdictional boundaries. The state has long sought to encourage and even incentivize cooperation among its many political subdivisions, to create efficiency while putting resources to beneficial use. At times the state has even taken active roles in the construction, and operation of systems that serve multiple jurisdictions. These collaborations have resulted in improved services and a better quality of life for many people.

Federally recognized Indian Tribes are not political subdivisions of the State. The current law provides for the DWR to cooperate with other states and even Canada. This demonstrates the understanding that government to government relationships are necessary

when addressing this vital resource, WATER. Current law does not allow for enjoyment of that benefit for Tribes. This bill corrects the omission and provides the opportunity for the MHA Nation to participate in meaningful way with the State of North Dakota regarding water projects on our Reservation.

Mr. Chairman and members of the Committee, I urge you to support HB 1385.

Thank you.

House Bill 1385

April Walker P.E., C.F.M

Water Resources Engineer and Enrolled Member of the

Turtle Mountain Band of Chippewa Indians

Senate Energy and Natural Resources Committee

Senator Dale Patten Committee Chairman

March 09, 2023

Chairman Patten and members of the Energy and Natural Resources Committee, I have had the great pleasure of testifying before various North Dakota legislatures through the years as April Walker a Water Resources Engineer working on the development of projects such as the FM Diversion. Today I wish to introduce myself with my spirit name. Ozhaawashkozi Binesi ndizhinikaaz. I am called Blue Thunderbird.

I appear here today to provide testimony in support of House Bill 1385, which pertains to allowing the Department of Water Resources (DWR) to cooperate and coordinate with federally recognized Indian tribes.

I am a tribal member who has had the unique perspective of assisting in the development of major water projects in the state and on the development of water policy at multiple government levels. Throughout my career I have learned the importance of engaging stakeholders and bringing multidimensional perspectives to the table to work through complex problems. It can be the difference between having a solution to a problem and having an implementable solution to a problem.

As you heard in Chairman Azure's testimony, there have been significant state investments made in projects that could have provided broader benefits, had the projects been inclusive of tribal perspectives. The addition of language that allows the DWR the opportunity to work with Tribes makes room for better solutions. As an engineer I understand that cooperation can eliminate the need for duplicative infrastructure. It just makes sense to eliminate any barriers to common sense, mutually beneficial solutions. I hope you will approve the proposed addition of Federally Recognized Indian Tribes as entities that DWR can cooperate with.

Miigwetch (Thank you) for the opportunity to testify in support of House Bill 1358.