

north dakota
water
resource
districts
association

Michael A. Dwyer, Executive Secretary

May 4, 2015

Governor Jack Dalrymple
600 E Boulevard Ave., Dept. 101
Bismarck, ND 58505-0001

Dear Governor Dalrymple:

You have been a very strong supporter of water during your tenure as Governor, which we greatly appreciate. Your leadership, support, understanding and knowledge of water development and water management have been very instrumental in the progress we have made over the last 4 plus years.

The purpose of this letter is to ask if you would consider a line item veto of Section 33 of SB 2015, the OMB appropriation bill. Section 33 was added by conference committee this past Tuesday, and subsequently approved by the House and Senate prior to adjournment. There are several reasons for asking for your veto of this provision. The amendment (Section 33 of SB 2015) relates to the matter of quick-take authority of water resource districts, and Section 33 of SB 2015 essentially strips the quick-take authority from water resource districts.

First and foremost, this issue was the subject of extensive debate and discussion during the session. This discussion took place as part of a policy bill, HB 1095, a State Water Commission technical amendment bill. The conference committee on HB 1095 considered a number of proposals concerning the quick-take for water resource districts, but in the end, a compromise was reached where the matter was referred to the Water Topics committee for study over the next interim.

Second, the matter never had a hearing in the House. The quick-take provision was not part of HB 1095 as introduced, and the quick-take amendment was added to HB 1095 just prior to crossover. It was discussed thoroughly in conference committee since the House did not concur with the Senate amendments, but there never was a House hearing. The matter did have a full hearing in the Senate, and prior to the Senate hearing the Red River Joint Board, the North Dakota Water Resource Districts Association, and the State Water Commission staff met on the subject and developed language together that we presented to the Senate Natural Resources Committee, which they adopted. You may recall that we presented our proposed language to the State Water Commission at its March meeting, and the Commission concurred with the solution developed by the water resource districts and the Commission staff.

Third, the quick-take authority for water resource districts is essential for us to be able to complete water management projects. Once all permits, litigation, design, and other steps have been completed,

right of way must be acquired, and quick-take is an important tool for completing the process of acquiring right of way. It is rarely used, but occasionally, like in the example of the Maple River flood control project, one landowner could have stalled the project for one or two more construction seasons, after waiting several seasons for all the other steps. That type of delay can result in significant increases in construction costs and, more importantly, additional flood damages to the very landowners who vote to approve these projects.

Fourth, the issue of water management projects, and the right of way authority for those projects, does not belong in the OMB appropriations bill. We realize Legislators can pass amendments of any kind on any bill, but it is a water policy matter that had full discussion in a water policy bill (HB 1095), and only was added to SB 2015 the last day without any knowledge of the water community.

During deliberations by the Conference Committee considering HB 1095, one legislator came forward with allegations of abuse of quick-take authority by the Pembina County Water Resource District, as support for the concept of stripping water resource districts of their quick-take authority. A Pembina County landowner alleged the Pembina County WRD had not negotiated with him in good faith. In response to those allegations, the Pembina County WRD provided evidence they had met with this landowner on thirteen occasions; this landowner had actually voted for the project the WRD was seeking to construct; the WRD met his demands payment before ever initiating their action; the landowner then indicated his intent to ever convey any right of way; and the WRD added a substantial crossing to the project design to accommodate the landowner's farming operation, an additional expense to the project. The Conference Committee recognized the Pembina County WRD had not abused the process and had, in fact, utilized quick-take as a last resort to construct an important water project. This situation was an attempt to suggest WRDs abuse their quick-take process but the facts ultimately demonstrated what we already know, that water resource districts are fair, they negotiate in good faith, they would rather not utilize quick-take, and they will only utilize it as a last resort if a landowner is attempting to de-rail a project by holding out in the right of way phase.

One other issue raised during the limited debate on this topic during the session was how quick-take might impact landowners' due process rights. In short, the quick-take process affords landowners the same due process rights they would have in a normal eminent domain action; quick-take is about timing of access to property to commence construction of a project. Both normal eminent domain procedures and quick-take afford landowners the right to litigate the value of their right of way, and to challenge the public necessity of a project. Landowners retain their due process rights in the quick-take process; the only difference is the timing of when a water resource district can access the right of way to commence construction on a project.

For all of these reasons, we ask that you consider a veto of Section 33 of SB 2015, and let the issue be addressed by the Water Topics committee as provided in HB 1095. Thanks for your consideration of this most important matter for water management in North Dakota.

Sincerely,

A handwritten signature in cursive script that reads "David Ashley". The signature is written in black ink and is positioned above the printed name and title.

David Ashley, Chairman
ND Water Resource Districts Association



— State of —
North Dakota
Office of the Governor

Jack Dalrymple
Governor

May 13, 2015

The Honorable Drew Wrigley
President, ND Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2015

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 24 and 33 of Senate Bill 2015.

Section 24 is vetoed because the new language serves no constructive purpose and is an excessive requirement on the human resources management of the university system. Any new chancellor, when entering office for the first time, has the authority to remove vice-chancellors and hire replacements at their discretion, because the vice-chancellors are not "classified" employees. To require vice-chancellors to resign is likely detrimental to the effective operation of the university system during a period of transition and could have a negative effect on the education of our students. Therefore, section 24 of Senate Bill 2015 is vetoed.

I have also vetoed Section 33 which is an attempt to clarify the extent of quick take authority within the use of eminent domain by water resource districts. However, the language does just the opposite, resulting in greater confusion of this issue. There is no definition provided for the term "specific project" which leaves a wide range of possible interpretations. Quick take authority is a serious public policy decision that should be clearly and definitively prescribed by the legislative assembly. House Bill 1095, which was passed by the 64th legislative assembly, requires a study of the use of quick take authority by water resource districts. This study should provide the clear direction as to what policy changes, if any, are needed.

Sincerely,

Jack Dalrymple
Jack Dalrymple
Governor

Received by: *[Signature]* Date: 5/15/15 Time: 10:31 a.m.
Received by: *[Signature]* Date: 5/15/15 Time: 10:35 a.m.
Secretary of State