

Red River Joint Water Resource Board

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*Providing a coordinated and cooperative approach to planning and implementing
a comprehensive water management program in the Red River Valley.*

DATE: August 23, 2016
TO: Chairman Jim Schmidt and Water Topics Overview Committee
FROM: Red River Joint Water Resource District
RE: Water Resource District "Quick-Take" Authority
Water Topics Overview Committee Bill Drafts

The Red River Joint Water Resource District ("RRJWRD") recently submitted a letter to the Water Topics Overview Committee dated August 11, 2016, regarding the Committee's ongoing study of water resource district ("WRD") "quick-take" eminent authority. RRJWRD and our member water resource districts appreciate your Committee's consideration of our comments. More recently, we understand the Legislative Council prepared three bill drafts for your Committee's consideration regarding WRD quick-take authority. RRJWRD has very serious concerns regarding each of those bill drafts and would like your Committee to take our concerns into consideration.

1. **Bill Draft 17.0223.01000.** Bill draft 17.0223.01000 would completely eliminate quick-take authority for water resource districts. As noted in RRJWRD's August 11 letter to your Committee, elimination of WRD quick-take authority would simply kill many important water projects. Alternatively, the best-case scenario for WRDs without quick-take authority would be significant cost increases for water projects since hold-out landowners would be in a position to demand exorbitant compensation for right of way. In those cases, WRDs would have to either consider a one to two-year delay to acquire the right of way through standard eminent domain procedures (at significant cost to the projects), or payment of the exorbitant right of way demands of hold-out landowners. As noted in our August 11 letter, the three largest obstacles to water project development are: 1) funding, 2) permitting, and 3) right of way acquisition. The North Dakota Legislature clearly supports water project sponsors regarding two of those three prongs: cost-share and a reasonable regulatory and permitting framework. If the Legislature eliminates WRD quick-take authority, the Legislature will support water project development in terms of funding and permitting, but will create project obstacles regarding right of way acquisition. Please support all three legs of the water development stool; please reject draft 17.0223.01000.

MEMBER WATER RESOURCE DISTRICTS

Ransom County
Richland County
Sargent County
Pembina County

Walsh County
Grand Forks County
Traill County
Barnes County

Maple River
North Cass County
Southeast Cass County

Rush River
Nelson County
Steele County

2. **Bill Draft 17.0224.01000.** Bill draft 17.0224.01000 would strip WRDs of all quick-take authority for all water projects except water supply projects. For your information, very few WRDs in North Dakota develop water supply projects; rather, rural water systems generally develop and operate water supply projects, and not water resource districts. Most water resource districts in North Dakota develop, construct, and operate surface water projects, including flood protection, erosion control, watershed improvement, surface drainage, and other similar projects (like the Souris River Flood Protection Project). Rural water systems already have quick-take authority for water supply projects under Chapter 61-35 of the Century Code. WRDs, on the other hand, operate under Chapter 61-16.1 of the Century Code, and stripping WRDs of their quick-take authority under Chapter 61-16.1 for all projects but water supply projects would leave most WRDs in the state without quick-take authority for their projects.

Bill draft 17.0224.01000 does contain language in lines 16 through 19 that would ensure WRDs use “every reasonable and diligent effort to acquire the right of way by good faith negotiation.” RRJWRD absolutely agrees that WRDs should make every reasonable effort to negotiate in good faith with landowners before commencing any type of eminent domain action. If your Committee proposed the language in lines 16 through 19 as a separate bill (without the language that limits WRD quick-take to water supply projects), RRJWRD would absolutely support that type of language. However, the modifications in lines 14 and 15 that would strip WRDs of quick-take authority for all projects except water supply projects will strip most WRDs in the State of quick-take authority for all of their projects. Again, please support all three legs of the water development stool; please reject draft 17.0224.01000.

3. **Bill Draft 17.0259.01000.** Bill draft 17.0259.01000 would require WRDs to obtain permission from their respective county commissions before commencing any quick-take action. In principle, this bill draft appears reasonable since the county commissions themselves would not have to step in and actually exercise eminent domain. However, as noted in our August 11 letter to your Committee, most county commissions have no interest in becoming entrenched in controversial and difficult water issues; most commissions prefer that their county WRDs, as their appointed water boards, handle all water issues and water projects. We anticipate county commissions would object to this proposal, and RRJWRD anticipates the scenario under this bill draft would create unnecessary friction between WRDs and the county commissions that appoint them, additional delays, and additional expenses.

In summary, bill draft 17.0223.01000 would completely strip WRDs of their quick-take authority, and passage of this bill would be devastating to water development in the State. The second bill draft, 17.0224.01000, would strip WRDs of quick-take authority for all water projects except water supply projects, which most WRDs do not even construct anyway; this bill would similarly be devastating for water development. There is certainly reasonable language in the second bill draft that would require WRDs to exhaust reasonable good-faith negotiations before commencing quick-take; this is language WRDs would most certainly accept. However, the limitation of quick-take to water supply projects would effectively strip most WRDs of quick-take authority for their projects. The third bill draft, 17.0259.01000, would require WRDs to obtain approval from their respective county commissions before commencing any quick-take actions. If RRJWRD had to choose any of these bills, the third one would be the least objectionable, but recognize this bill would put county commissions in difficult situations and could create unnecessary tensions between WRDs and their county commissions. Further, requiring WRDs to first obtain approval from their county commissions could cause unnecessary delays and cost increases for water projects.

RRJWRD appreciates your Committee's consideration; however, we once again ask why WRD quick-take authority is under scrutiny from your Committee since there is no evidence that any WRDs have abused their authority. Several entities in the State, including other appointed entities, utilize quick-take in a reasonable and thoughtful manner, including WRDs. Water managers prefer to negotiate with landowners in good faith and prefer to arrive at mutually acceptable resolutions to right of way negotiations. Water managers are landowners themselves and support fair treatment of other landowners when developing water projects. Any suggestion that water managers lack the discretion to exercise quick-take authority in a reasonable manner is unfair and unfounded. RRJWRD strongly urges your Committee to leave WRD quick-take authority intact and to reject efforts to eliminate or limit WRD quick-take authority. Please support all three legs of the water development stool for the benefit of North Dakota.

Thank you for your consideration.