

2009 SENATE NATURAL RESOURCES

SB 2254

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2254

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8083

Committee Clerk Signature



Minutes:

Senator Lyson opened the hearing for SB 2254, relating to maintenance of federal water management projects. All committee members were present.

Senator Tom Fischer, District 46, introduced the bill (see attached testimony #1).

Senator Triplett isn't it the case that when federal projects are built and at the conclusion of the building the federal government generally turns them over to the state or local government for maintenance?

Senator Fischer responded from what I understand when they are turned over they are given to the county. The only thing we don't have is the authority to create an assessment district to maintain them. We are asking for the state to allow water resource districts in the same water shed used to build that project and assess in that same area. Unless of course there was some drainage added during the duration of the project, between the time the federal government built it and the time the assessment district was done.

Sean Fredricks, representing the Red River Joint Water Resource District, Cass County joint Water Resource District and several individual water resource districts, testifying in favor of the bill (see attached testimony #2). Just to comment on Senator Triplett's question earlier. We do have several projects in Cass County where we have been unable to locate the physical

contracts under which the water resource districts are required to maintain the projects. So in those instances we are unable to create these maintenance districts.

Senator Lyson is this a problem throughout the state?

Sean Fredricks yes, a lot of the projects constructed in the 50's were sort of reaching their end of youthful lives unless we do something to maintain them or improve them. We are going to be in some trouble in several counties. The WPA, SCS, and NRCS type projects are exactly what we are focusing on.

Senator Schneider asked, do you have any sense on how much deferred maintenance we are talking about for these federal projects? Can you put a number on it?

Sean Fredricks there is one project that I know of in particular in Cass County that is close to the million dollar mark. We have not done a comprehensive study of all the projects around the state, but if you can imagine one project with that amount you can image there are several more across the state.

Senator Lyson is there any effort at all to try to get the feds to provide any money?

Sean Fredricks we have discussed it with NRCS and their answer was simply that they do not have the funds. They are concentrating more on farm programs and issue similar to that and they lack the funds to do this.

Senator Triplett has it been the case from the beginning of federal water projects that the maintenance has always been turned over to the state?

Sean Fredricks yes that has been the assumption. An example is that when we do have contracts it is clear in the language of those contracts that the federal agencies assume that we can create maintenance districts.

Gary Thompson, President of the North Dakota Water Resource District Association, in our annual meeting, back in December of 2008, we passed a resolution in favor of this bill. We are in favor and urge a do pass.

Jason Segert, Trail County Water Resource District, without this bill Trail County would be unable to maintain any of our federal projects we have, without the ability to set up the assessment areas and our general funds are \$150,000. We do not have the ability to do this and are in favor of this bill.

Senator Lyson closed the hearing on SB 2254.

Senator Triplett moved a do pass on SB 2254

Senator Pomeroy seconds the motion.

Roll call was taken 7 yes, 0 no; motion passed.

Date: Jan 29, 2009

Roll Call Vote #: SB 2254

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Triplett Seconded By Sen Pomeroy

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen. Triplett

If the vote is on an amendment, briefly indicate intent:

Done

REPORT OF STANDING COMMITTEE

SB 2254: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2254 was placed on the
Eleventh order on the calendar.

2009 HOUSE NATURAL RESOURCES

SB 2254

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2254

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 10271

Committee Clerk Signature

Nancy S. Gerhardt

Minutes:

Chairman Porter – Open the hearing on SB 2254.

Senator Tom Fischer – See **Attachment # 1**. The paper work has been lost. The feds don't want to come in and spend the money to maintain these water projects.

Rep. Keiser – Are we sure there was paper work and it was lost?

Sen. Fischer – We're assuming not all of them have been lost. This is an issue where a lot of it has been lost at the county level. Everything is in law, except for the fact we can't do an assessment to maintain it.

Sean Fredricks – Attorney – See **Attachment # 2**.

Rep. Hofstad – As these water resource boards maintain these projects, or reconstruct them, are they then held to the federal standards?

S.F. – We have to attempt to locate the original plans and specifications. You're maintaining them, not drastically altering them. You're not turning a drain into a large reservoir or anything of that nature.

Rep. Keiser – This ultimately will result in a property tax increase. The people in that district.

What's the scope of this increase. What's the worst scenario, what's the best scenario?

S.F. – The maintenance districts, there is a cap on these, and if you look at the bill itself there's a cap of \$ 2.00 annually for \$ 500.00 of taxable valuation, non ag. Property, and \$ 2.00 believe per acre. It is not something where boards have any ability to raise significant construction funds. You can borrow ahead at \$ 2.00 per acre and that's the most you can do. You can't construct a brand new project. The idea is simply to maintain and that is why there is a cap of \$ 2.00.

Vice Chairman Damschen – A fairly significant dam has reached the end of its life in our district. I don't think it would have to be rebuilt to federal specifications except that we are using some federal money for it. The \$ 2.00 limit is going to be there for quite a while. Do you not envision that as being contended by things like that happening?

S.F. – I think in terms of situations where there is a federal agency willing to come in and do a cost share and drastically improve projects for tax payers and for the water shed, in that instance I don't think this bill would prevent that. The idea behind this bill is simply to eliminate the need to produce a contract. The statute as it currently exists is in place to place a cap on the amount water resource districts can raise to maintain a project.

Vice Chairman Damschen – I wondered if you envisioned the existing law to pertain to major projects like the dam.

S.F. – No, this doesn't have any impact on that type of project and it wouldn't limit it in any way.

Rep. Hofstad – The statute that deals with the \$ 2.00 per maintenance project within an assessment area those boundaries are defined. When we talk about a project now we likely would have a district defined.

S.F. – It is a fairly similar process. When you create a new assessment district, a brand new project, you submit it to a vote. The water shed votes on it, they give you the outline of the

water shed you propose to access. They vote on, they decide whether or not whether it's proper or not. When you're doing a maintained district you call a meeting of the members of the water shed, the county commission must attend, and you bring in them in and show them the boundaries and tell them what it's going to cost them. If they're not satisfied with the boundaries you've developed, and they're not satisfied with feedback from the members, their probably not going to give you their 2/3 vote. The members of the water shed don't have a vote as you would in a normal assessment district, but the idea meeting and the idea of the county commission input is to pull the water resource district to accountability. Give them accountability in terms of developing the boundaries of the water shed district. And the level of assessment each landowner is going to have to pay.

Rep. Hofstad – That vote of the county commission then established the assessment district.

S.F. – It has to pass by a 2/3 vote of the commission and 2/3 vote of the water resource district, yes, that's right. There is a right of appeal.

Rep. Keiser - For the 2 districts you represent, what would you project the maintenance cost be for the previously federally funded projects.

S.F. – Jeff could give you a better description in terms of monetary value. This bill will not make us any more responsible for federal projects. By statute we already are responsible for projects in our district. This doesn't give us additional ability to create segment districts except that we wouldn't have to produce contracts. We already have that ability.

Gary Peterson – See **Attachment # 3**.

Mike Bruringrud – See **Attachment # 4**.

Joel Halvorson - See **Attachment # 5**.

Jeffery Volk – Did not sign in - I do support the bill and allow any of the questions to continue if you feel I could be of assistance in answering them. More Engineering in West Fargo.

Rep. Keiser – Do you know the \$ amount – ballpark?

Mr. Volk – I'm not prepared to be specific with that, but there are federal projects that were built to provide benefits. The challenge gets to be if the project is providing some benefits that needs maintenance, there needs to be a way to maintain it to continue the benefit of the project. There are other federal projects that don't have contracts or these SCS contracts in our CS now, the useful lives of those projects are over. Their contract may not be levitated but the water resource district wants to continue maintain the project. I can't speak to how many or how much. My experience with how much goes to what the locals want. If they really want that project maintained, they'll come in and tell the water resource district, hay that's important, we need this project to continue to operate and we're willing to pay for it. What I've seen is when the useful life is over and needs to be reconstructed, then you go through a new process and a new vote and create a new assessment district. Then you're outside of this statute and inside another one.

Rep. Hofstad – When the life of a project is over, when it no longer is a maintenance issue but a reconstruction issue.

Mr. Volk – Either you go to a reconstruction project or simply abandon the project, which probably isn't in the public's best interest.

Vice Chairman Damschen – You don't feel this section applies to reconstruction of one of these projects such as a dam?

Mr. Volk – In my option we've always taken the approach that you can only use this statute to maintain the original constructed project in its original state. It may be a little on the conservative side, but my experience tells me you can't get into a reconstruction mode with this type of revenue string. It isn't generally near enough to get into new construction. \$ 2.00 an acre per year doesn't generate a lot of money to go out and start building.

Chairman Porter - Further testimony in support of SB 2254? Opposition? We will close the hearing on SB 2254.

Additional testimony was handed in – **Attachment # 6.**

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2254

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 10312

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Open the hearing on SB 2254.

Rep. Hofstad – Move Do Pass.

Vice Chairman Damschen – 2nd.

Chairman Porter – We have a motion from Rep. Hofstad and a 2nd for a Do Pass on SB 2254.

Discussion.

Rep. Nottestad – This is an issue that effects some counties a lot more than others. If you live in a county with extremely active NRCS program, in the eastern 1/3rd of the state, you could have dams and this type of things all over your county. Grand Forks County is a fine example of we have 9 dams and we have 5 water sheds, all constructed by NRCS. Our water board is spending 30 to 90 thousand dollars a year in maintenance of these. Two years ago we had a situation on one of the dams where the tower that takes water off the dam started to tilt. We took some bids on it and started checking on it for what it would cost, \$ 175,000.00. Thank goodness the NRCS through the state looked at it and said there might have been faulty construction and we will pick up the tab for it. It turned out to be \$ 190,000 by the time they got it done. Thank God they took care of it, otherwise it would have had to come out of the general budget. There is no other source for that. I see some real problems on how to levy

some of these \$ 2.00. We have one dam in Grand Forks Co., all the protection is in Walsh Co. It would be very difficult. The water ways have to be maintained. It's a start, and records, we have no records of the transference to us. All our water board records were lost in the flood of '97, so we have nothing. A do pass on this I think is extremely important. There are counties that will never look at it.

Rep. Hofstad – It does provide a vehicle. Often these water resource districts do not have the assets to undertake projects like this because they didn't have the general funds levied to them. It does provide a vehicle for them to do that. The down side of this bill is you do enter into a taxation without representation. It's really the county that's giving you the authority. It does place water boards in a precarious situation. Often times they do not have the funds available to maintain these projects and this is a public safety issue.

Rep. Keiser – I kept trying to find out what the magnitude of this is. If you look at the limits at \$ 2.00 per \$ 500 on our chairman's house that could be \$ 2,000 a year he could be assessed. We're not talking that kind of thing are we? Where they could go for the full 2? On agricultural or non agricultural property? It's a huge number. In Bismarck, Mandan, Fargo and other places, I don't think they would do that, but this bill allows that.

Chairman Porter – I think it does allow it, I doubt there is a project that would be able to impact into the city limits of a city. It would be difficult to bring it into the city because when Sean Fredricks was talking about it there was an obligation to the county commission when they set up the assessment district to make sure the assessment district is those individuals directly related to the water shed, not just the county.

Rep. Hofstad – Generally what happens, when you set that assessment district you assign a benefit to everyone – someone might be 100% and another one might be 20% benefit.

Rep. Keiser – To put this into perspective, Bill Clairmont, one of our developers here in Bismarck, developed the NW part of our town. He didn't want to have to pay to have a big storm sewer put in. He wanted to have drainage ponds developed down to a valley and obviously it was a lot more money. The assessment for either one of the proposals was thousands of dollars per house. I mean like \$10,000 per house.

Vice Chairman Damschen – This is at the description of the county commissioners and the water board. We have a situation in district 10 where there is an 8 million dollar dam that's going to be built. One of the big benefactors is the city of Cavalier. They're going to be assessed for it. One of the problems is it is just the county commissioners and the water board that make the decision. Normally when we set up an assessment district the people in the affected area get to vote. In all reality, if you had to try to establish an assessment district with a dam by one of the people, you would probably never establish one. I think that is why this exists in statute right now. The change we are voting on today, the county still has the responsibility of maintaining that project. All we're doing is saying, if they have to set up an assessment district to do that, fund the maintenance, let's not make them come up with the paper work saying the government turned it over to them.

Chairman Porter – One key point to this bill is we aren't creating anything new. All we're doing is covering those federally constructed projects that we can't find the paper work on any more. We aren't creating any new procedure or process or anything. Inside the existing law on the bottom of page 1 it talks about if a project crosses water resource district boundaries and it crosses county lines all those bodies involved do have to have a 2/3 vote to set up the assessment district. The individual landowner has the availability to go to a public hearing but does not have a vote.

Rep. Nottestad - This is exactly the same as the snagging and clearing bill. The procedure and the votes the county commissioner and the water board has –you have to establish a territory—the maximum you can go is \$2.00. You can work it down to 10% of that if you choose to do so. The procedure is exactly the same. I do think on some houses it could be quite a bit.

Rep. Hofstad – We are talking within the spills of those federal projects. If we are going to talk about constructing or building another project you draw your assessment boundaries, you define the project, you get an engineer, you come to the people with that project, and it is done with a vote of the people. We are changing nothing here.

Chairman Porter – Further discussion? Seeing none the clerk will call the roll on SB 2254.

Yes 13 No 0 Absent 0 Carrier Rep. Myxter

Date: 3-5-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2254

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Hofstad Seconded By Damschen

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Myxter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 5, 2009 4:07 p.m.

Module No: HR-40-4161
Carrier: Myxter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2254: Natural Resources Committee (Rep. Porter, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2254 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2254

*Same given
to House.*

SB 2254

**Mr. Chairman, members of the Natural Resources Committee
For the record, I am Senator Tom Fischer, District 46, Fargo.**

SB 2254 is pretty clear cut. It allows Water Resource Districts to form assessment districts and maintain projects that were built and funded by the federal government. There are many of these projects throughout the state that are in disrepair, but the federal government is long gone and unlikely to return to do the repair.

Mr. Chairman, members of the committee 2254 allows the repairs to be made by the water resource districts by using general funds(WRD)) and/or create an assessment district in the same watershed when the project was built. This legislation would provide a vehicle to repair many of the small WPA, SCD and NRCS projects that need attention. There are others who would like to speak to this legislation so I thank you and stand for questions.

**Testimony by Sean M. Fredricks
Ohnstad Twichell, P.C.
Counsel for Red River Joint Water Resource District and Cass County Joint Water
Resource District**

**Before the Senate Natural Resources Committee
In Support of SB 2254**

**North Dakota Legislature
Bismarck, North Dakota
January 29, 2009**

Chairman Lyson, members of the Committee, I appreciate the opportunity to testify in support of SB 2254. My name is Sean Fredricks, and I am an attorney with the Ohnstad Twichell Law Firm in West Fargo. I represent the Red River Joint Water Resource District, the Cass County Joint Water Resource District, and several individual water resource districts, including the Southeast Cass Water Resource District, the Maple River Water Resource District, the North Cass Water Resource District, the Rush River Water Resource District, the Sargent County Water Resource District, the Richland County Water Resource District, and the Dickey County Water Resource District.

As you know, water resource districts are political subdivisions that have a statutory obligation to manage the water resources of the State, including all projects for flood control, drainage, watershed improvement, water retention, and other water management devices. Under current law, specifically N.D. Cent. Code § 61-16.1-40, water resource districts have a statutory duty to maintain all federal projects constructed within their geographic jurisdiction. In other words, if a federal agency constructed a dam in the 1930s, and the federal agency no longer maintains that dam, the water resource district where the dam is located is statutorily responsible for maintaining the dam. Many water resource districts around the State house projects previously constructed by federal agencies. For example, the Soil Conservation Service (“SCS”) constructed several dams and other projects in the mid-1900s. The Natural Resources Conservation Service (“NRCS”), the



successor to the SCS, no longer maintains many of those projects, due, in many instances, to lack of sufficient federal funding. However, most water resource districts in North Dakota similarly lack the requisite funding to maintain those projects. As a result, water resource districts are in precarious situations where they have a legal duty to maintain projects, yet they do not have sufficient funding to provide the necessary maintenance.

Water resource districts obtain their operating funds through an annual mill levy, as most of you recognize and understand. Water resource districts utilize that general fund money for administrative matters, including payment of employees, per diem for water managers, maintaining projects that do not have special assessment districts, and other projects that, at the very least, push water resource district general funds to the limit. In fact, utilizing general fund dollars to maintain federal projects simply is not an option for most water resource districts.

In 1987, the North Dakota Legislature recognized the financial dilemma this financial responsibility created for water resource districts, and the Legislature enacted N.D. Cent. Code § 61-16.1-40.1. This statute created a mechanism for water resource districts to create assessment districts to generate maintenance dollars, from benefited properties, to maintain these abandoned federal projects so water resource districts would not have to utilize general fund dollars. The rationale was properties that benefit from these federally constructed projects should share the financial burden of maintaining them.

One of the conditions to the creation of a federal project maintenance district under Section 61-16.1-40 is the existence of a physical "contract" between the federal agency that constructed the project and the water resource district with maintenance jurisdiction. For many of these old projects constructed by SCS or other federal agencies, there are no records of any maintenance contracts. In those situations, water resource districts cannot create federal project maintenance districts to generate assessment dollars from benefited properties to maintain the projects. In the meantime,

Section 61-16.1-40 clearly requires water resource districts to maintain those projects at their own expense, regardless of their ability to create any maintenance districts. If water resource districts lack funds to maintain projects, and projects deteriorate or even fail, water resource districts may face substantial liability.

If there is no maintenance contract regarding a federally-constructed project, a water resource district has no mechanism for creating a maintenance district to raise maintenance dollars to maintain the project, and must instead utilize general fund dollars. Water resource districts already face sometimes insurmountable budget obstacles, and requiring a physical contract with federal agencies simply creates yet another financial obstacle. SB 2254 seeks to eliminate the need for a physical contract between a water resource district and a federal agency before the water resource district can create a federal project maintenance district. This bill will simply eliminate one unnecessary funding obstacle for water resource districts in their efforts to maintain important water projects around the State.

Imagine a water resource district in a county that does not generate sufficient general fund dollars to maintain a dam constructed by a federal agency in the mid-1900s. That water resource district is already struggling to maintain its own projects, to address all of the water management issues around its county, and to otherwise address the water needs and concerns of the residents of that county. If the water resource district cannot physically locate a maintenance contract with a federal agency that constructed that dam, the water resource district will have no choice but to utilize its general fund dollars to maintain the dam. Meanwhile, the water resource district will have to utilize dollars it would otherwise use for other important water projects in an effort to maintain the federal dam. This is clearly a precarious situation.

The passage of SB 2254 will simply eliminate the need for a water resource district to physically locate a maintenance contract with a federal agency. It will not make the creation of

maintenance assessment districts easier; water resource districts will still have to follow the standard statutory procedures to create a maintenance district. But SB 2254 will put water resource districts in a slightly better position to manage these abandoned federal projects.

My clients and I urge the passage of SB 2254. Thank you for your consideration.



**Testimony by Sean M. Fredricks
Ohnstad Twichell, P.C.
Counsel for Red River Joint Water Resource District
and Cass County Joint Water Resource District**

**Before the House Natural Resources Committee
In Support of SB 2254**

**North Dakota Legislature
Bismarck, North Dakota
March 5, 2009**

Chairman Porter, members of the Committee, I appreciate the opportunity to testify in support of SB 2254. My name is Sean Fredricks, and I am an attorney with the Ohnstad Twichell Law Firm in West Fargo. I represent the Red River Joint Water Resource District, the Cass County Joint Water Resource District, and several individual water resource districts, including the Southeast Cass Water Resource District, the Maple River Water Resource District, the North Cass Water Resource District, the Rush River Water Resource District, the Sargent County Water Resource District, the Richland County Water Resource District, and the Dickey County Water Resource District.

Background

As you know, water resource districts are political subdivisions that have a statutory obligation to manage the water resources of the State, including all projects for flood control, drainage, watershed improvement, water retention, and other water management devices. Under current law, specifically Section 61-16.1-40 of the North Dakota Century Code, water resource districts have a statutory duty to maintain all federal projects constructed within their geographic jurisdiction. In other words, if a federal agency constructed a dam in the 1930s, and the federal agency no longer maintains that dam, the water resource district where the dam is located is statutorily responsible for maintaining the dam. Many water resource districts around the State have projects previously constructed by federal agencies within their geographical boundaries.



For example, the Soil Conservation Service (the "SCS") constructed several dams and other projects in the mid-1900s. The Natural Resources Conservation Service (the "NRCS"), the successor to the SCS, no longer maintains many of those projects, due, in many instances, to lack of sufficient federal funding. However, most water resource districts in North Dakota similarly lack the requisite funding to maintain the projects; their general funds are simply stretched too thin operating other water projects in their counties, and the districts lack the financial wherewithal to maintain these federal projects. As a result, water resource districts are in precarious situations where they have a legal duty to maintain federal projects, yet they lack sufficient funding to provide the necessary maintenance.

General Fund Limitations of Water Resource Districts

As most of you know, water resource districts obtain their operating funds through an annual mill levy. Water resource districts utilize general fund money for administrative matters, including payment of employees and per diem for water managers, and for maintaining projects that do not have special assessment districts. In short, most water resource districts already face difficult funding challenges, without the added burden of having to maintain abandoned federally-constructed projects. In fact, utilizing general fund dollars to maintain federal projects simply is not an option for most water resource districts.

In 1987, the North Dakota Legislature recognized the financial dilemma this financial responsibility created for water resource districts, and the Legislature enacted N.D. Cent. Code § 61-16.1-40.1. This statute created a mechanism for water resource districts to create assessment districts to generate maintenance dollars. Under the maintenance district process under Section 61-16.1-40.1, water resource districts create assessment districts to assess properties that benefit from federal projects; the process requires a public meeting of benefitted landowners to submit input regarding the project and the potential assessments, and approval by at least two-thirds of the County

Commission. The resulting maintenance dollars permit water resource districts to maintain these abandoned federal projects so they do not have to utilize general fund dollars. The Legislature's rationale in creating this process was sound; properties that benefit from these federally constructed projects should share the financial burden of maintaining them. This system has been a useful tool for boards with limited general funds.

Existing Maintenance Fund Procedures and Necessary Improvements

One of the conditions to the creation of a federal project maintenance district under Section 61-16.1-40.1 is the existence of a physical "contract" between the federal agency that constructed the project and the water resource district with maintenance jurisdiction. For many of these old projects constructed by SCS or other federal agencies, there are no records of any maintenance contracts. In those situations, water resource districts cannot create federal project maintenance districts to generate assessment dollars from benefited properties to maintain the projects. In the meantime, those districts have a statutory obligation to maintain the federal projects at their own expense, regardless of their ability to create any maintenance districts. If water resource districts lack funds to maintain projects, and projects deteriorate or even fail, they may face substantial liability.

The passage of SB 2254 will simply eliminate the need for a water resource district to physically locate a maintenance contract with a federal agency. It will not make the creation of maintenance assessment districts easier; water resource districts will still have to follow the standard statutory procedures to create a maintenance district. But SB 2254 will eliminate an unnecessary obstacle of having to produce a physical "contract" with a federal agency. Further, water resource districts will not be in the precarious position of having to choose between: a) using their general fund dollars to maintain abandoned federal projects, often at the expense of other important water projects in their counties; or b) using their limited general funds elsewhere, and simply deferring

maintenance of these federal projects, in hopes that the federal projects will not fail. Passage of SB 2254 will eliminate that difficult decision.

My clients and I urge the passage of SB 2254 to put them in better positions to maintain important federally-constructed water projects in their districts. Thank you for your consideration.

**Testimony of Gary Peterson
Red River Joint Water Resource District**

**Before the House Natural Resources Committee
In Support of SB 2254**

Chairman Porter, members of the Committee, my name is Gary Peterson, and I offer my testimony on behalf of the Red River Joint Water Resource District. The Red River Joint Board is a joint water resource district consisting of fourteen individual water resource districts in the Red River watershed. The Red River Joint Water Resource District previously approved a Resolution of Support for SB 2254. The Red River Joint Board, and its individual member districts, support SB 2254 as a means of eliminating unnecessary obstacles to maintaining the many federal projects in the Red River Valley. We urge a Do Pass on SB 2254.

**Testimony of Michael Buringrud
North Cass Water Resource District
Cass County Joint Water Resource District**

**Before the House Natural Resources Committee
In Support of SB 2254**

Thank you, Chairman Porter and members of the Committee. My name is Mike Buringrud. I am the Chairman of the North Cass Water Resource District, and a member of the Cass County Joint Water Resource District. Both the North Cass and Cass County Joint Boards support SB 2254.

There are several SCS projects in Cass County that require maintenance. In some instances, the maintenance is minimal, but some projects either require significant improvements now, or will in the near future. The annual mill levy for the North Cass Board does not generate the funds we need to maintain these projects. As we consider the possibility of creating maintenance districts, we hope this Committee will support SB 2254 to eliminate the need for a physical "contract" with a federal agency.

The North Cass Water Resource District, the Cass County Joint Water Resource District, and I respectfully request a Do Pass on SB 2254.

**Testimony of Joel Halvorson
Traill County Water Resource District**

**Before the House Natural Resources Committee
In Support of SB 2254**

Chairman Porter, members of the Committee, my name is Joel Halvorson, and I am a Water Manager on the Traill County Water Resource District. The Traill County Water Resource District is concerned about the condition and stability of federal projects in our county, in the Red River Valley, and across the State. SB 2254 will provide financial relief to many water resource districts around the State. The Traill County Board requests a Do Pass from this Committee on SB 2254.

SENATE BILL No. 2254

Testimony by Gary Thompson

President of the North Dakota Water Resource Districts Assn.

Mr. Chairman, Committee Members, my name is Gary Thompson and I would like to thank you for allowing me to testify here today on behalf of the North Dakota Water Resource Districts Assn.

Bill No. 2254 deals with Federally funded projects that have been constructed in North Dakota and that now have been turned over to the Water Resource Districts. These federal projects had no assessments to keep them maintained until 1987 when N.D. Century Code 61-16.1-40.1 was established allowing water boards to assess fifty cents per acre. Since then it has been changed to two dollars per acre. Some of these federal projects have not been assessed at all because the law states, and I quote **"If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction"** end of quote. We would like this to read, and I quote **"With regard to projects constructed by a federal agency, including the soil conservation service or natural resources conservation service,"** end of quote. The reason for this change is to allow water boards to assess these federal projects without having to produce a contract that they can't either find or maybe never entered into in the first place.

Mr. Chairman and Committee Members, the North Dakota Water Resource Districts Assn. at its annual meeting in December of 2008 passed a resolution in favor of this legislation and would ask for a do pass on Bill 2254