

**2023 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2364**

# 2023 SENATE STANDING COMMITTEE MINUTES

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

SB 2364  
2/3/2023

A bill relating to the Garrison Diversion Conservancy District and permanent easements.

10:31 AM Chairman Patten opened the meeting.

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

### Discussion Topics:

- Landowners
- Pipelines
- Fair compensation
- Eminent Domain

10:32 AM Senator Klein introduced the bill and provided written testimony #19084.

10:34 AM Representative Robyn Weisz spoke in favor of the bill.

10:37 AM Duane DeKrey, General Manager, Garrison Diversion, testified in favor of the bill and provided written testimony #18997, 18998, 18999.

10:38 AM Dani Quissel, North Dakota Water Users Association, testified in favor of the bill and provided written testimony #18593.

10:39 AM Fred Richter testified in favor of the bill and provided written testimony #18961.

10:42 AM Larry Rexine testified in favor of the bill and provided written testimony #18972.

10:51 AM Dennis Wallen testified in favor of the bill and provided written testimony #18930.

10:55 AM David Richter testified in favor of the bill and provided written testimony #19023.

10:59 AM Tag Anderson, North Dakota Risk Management Division gave oral testimony opposed to the bill.

11:11 AM Patrick Fridgen, Department of Water Resources, testified neutral on the bill and provided written testimony #18896.

11:31 AM Chairman Patten closed the public hearing.

**Additional written testimony:**

Derick Braaten provided written testimony #18894.

Troy Coons provided written testimony #18905.

Kevin Baumbach provided written testimony #18892.

11:31 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

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

SB 2364  
2/16/2023

A bill relating to the Garrison Diversion Conservancy District and permanent easements.

9:35 AM Chairman Patten opened the meeting.

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

### Discussion Topics:

- Committee action
- Amendments

9:38 AM The committee has discussion on the bill and amendments #20991.

9:39 AM Tag Anderson, North Dakota Risk Management gave oral testimony.

9:41 AM Senator Kannianen moves to adopt amendment LC 23.1091.02002. Motion seconded by Senator Kessel.

9:41 AM Roll call vote is taken.

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

Motion passes 6-0-0.

9:42 AM Senator Kannianen moved to Do Pass the bill as amended. Motion is seconded by Senator Kessel.

9:42 AM Roll call vote is taken.

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

Senate Energy and Natural Resources Committee  
SB 2364  
02/16/23  
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Motion passes 6-0-0.

Senator Kannianen will carry the bill.

This bill does not affect workforce development.

9:43 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

February 8, 2023

AK  
2-16-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 12, after the underscored period insert "If the district ceases operation, all permanent easements must be transferred to the public water system receiving a beneficial use from the water pipelines and other facilities. If no public water system exists, all permanent easements must transfer to the state. The state or public water system shall assume full responsibility for all easement activities and responsibilities, including any environmental remediation obligations."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2364: Energy and Natural Resources Committee (Sen. Patten, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2364 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 12, after the underscored period insert "If the district ceases operation, all permanent easements must be transferred to the public water system receiving a beneficial use from the water pipelines and other facilities. If no public water system exists, all permanent easements must transfer to the state. The state or public water system shall assume full responsibility for all easement activities and responsibilities, including any environmental remediation obligations."

Re-number accordingly

**2023 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2364**



# 2023 HOUSE STANDING COMMITTEE MINUTES

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

SB 2364  
3/9/2023

Relating to the Garrison Diversion Conservancy District and permanent easements.

Chairman Porter opened the hearing at 2:22 PM

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

### Discussion Topics:

- Red River Valley Pipeline
- Cleanup responsibilities

Sen Jerry Klein, District 14, stated he'd be available for questions.

Rep Robin Weisz, District 14, introduced SB 2364 oral testimony

Fred Richter, Sykeston, Testimony #23019.

### Additional written testimony:

- Dani Quissell, Executive Vice President of the ND Water Users (#22924)
- Larry Rexine, 5<sup>th</sup> Generation Farm Owner in North Dakota (#23114)
- David Richter, North Dakota landowner (#23205)
- Todd Jones, Farmer and Landowner in Garrison (#23309)
- Duane Dekrey, Garrison Diversion Conservancy District General Manager (#23329)
- Timothy Soma, 4<sup>th</sup> Generation farmers (#23372)

2:28 PM Chairman Porter closed the hearing.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

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

SB 2364  
3/10/2023

Relating to the Garrison Diversion Conservancy District and permanent easements.

10:12 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, and Roers Jones. Absent: Representative Ruby.

### Discussion Topics:

- Committee action
- Proposed amendment

Rep Dockter moved to adopt the proposed amendment, Testimony 23600, seconded by Rep Ista. Voice vote, motion carried.

Rep Dockter moved a Do Pass as Amended, seconded by Rep Hagert.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
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	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	AB
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	AB

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

10:15 AM Meeting adjourned.

*Kathleen Davis, Committee Clerk*

23.1091.03001  
Title.04000

Adopted by the House Energy and Natural  
Resources Committee

March 10, 2023

DR  
171  
3-10-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2364

Page 1, line 9, replace "water pipelines" with "facilities authorized by this chapter or the Dakota Water Resources Act of 2000 [Pub. L. 106-554, Sec. 1(a)(4) [div. B, title VI]; 114 Stat. 2763, 27931A-281] as amended"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2364, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2364 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "water pipelines" with "facilities authorized by this chapter or the Dakota Water Resources Act of 2000 [Pub. L. 106-554, Sec. 1(a)(4) [div. B, title VI]; 114 Stat. 2763, 27931A-281] as amended"

Renumber accordingly

# 2023 HOUSE STANDING COMMITTEE MINUTES

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

SB 2364  
3/23/2023

Relating to the Garrison Diversion Conservancy District and permanent easements.

9:03 AM

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

### Discussion Topics:

- Committee action

Rep Dockter moved to Reconsider SB 2364, seconded by Rep Ista. Voice vote, motion carried.

Rep Anderson Moved an Amendment (Testimony #26463) to authorize on Line 9 after the word "by" go with "law" and removed the language underneath the next 2 lines, seconded by Rep Dockter. Voice vote, Motion carried.

Rep Anderson moved a Do Pass as Amended on SB 2364, seconded by Rep Dockter.

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

**9-0-5 Motion carried. Rep Anderson is carrier.**

9:07 AM Meeting adjourned.

*Kathleen Davis, Committee Clerk*

23.1091.03002  
Title.05000

Adopted by the House Energy and Natural  
Resources Committee  
March 23, 2023

A  
3/23/23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2364

Page 1, line 9, replace "water pipelines" with "facilities authorized by law"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2364, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2364 was placed on the Sixth order on the calendar.**

Page 1, line 9, replace "water pipelines" with "facilities authorized by law"

Renumber accordingly

**TESTIMONY**

**SB 2364**





*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)

**SB 2364**  
**Testimony of Dani Quissell**  
**Senate Energy and Natural Resources Committee**

Chairman Patten and members of the Senate Energy and Natural Resources Committee, I am Dani Quissell, Executive Vice President of the North Dakota Water Users. I rise today in support of SB 2364.

The North Dakota Water Users has policy, developed and voted on by our grassroots members, supporting the Red River Valley Water Supply project that says, in part:

*The Red River Basin and central part of the state need a dependable and affordable high quality water supply for the cities of Fargo and Grand Forks, smaller communities, rural water systems, industry, ag processing, manufacturing and other purposes, to protect and enhance the economic stability and quality of life.*

This bill will help alleviate a concern from landowners regarding this project and hopefully allow for smooth completion of the project.

I would also note that there have been growing conversations across the state about the need to put North Dakota's allocation of the Missouri River water to beneficial use. There is rising pressure from other states, particularly in the drought ridden southwest, to look to the Missouri River as an additional water source for those communities. The impact on North Dakota of diverting Missouri River water elsewhere is concerning for the North Dakota Water Users. The only way we can ensure our allocation of Missouri River water is to put that water to use for things like irrigation or drinking water. Completion of the Red River Valley Water Supply Project would allow North Dakota to put a portion of our allocation to beneficial use, establishing North Dakota's right to that water and protecting the state's rights in the future.

For these reasons, we ask for a do pass recommendation on SB 2364.

Thank you. I'd be happy to stand for any questions you may have.

2 Feb 2023

To Whom It May Concern:

We are writing on behalf of a very important matter regarding land that is owned by us and our families and that will greatly be impacted by this project. The Red River Valley Water Supply Project, in theory, is a great project that is needed for a reliable water source for the eastern portion of North Dakota.

We are not against the project and the purpose it will fulfill for many but we are against the way us landowners are being treated in regards to the use of our land for this project, the threat of eminent domain, the limitations imposed on what we can do with our land once this project starts and the ongoing care and ownership of the project due to liability concerns during and long after the "100 year life of the line."

In our situation, the plan is to dig a pipeline 15 ft deep x 150 ft wide and over 1.5 miles long. The land is being valued on an estimate taken 10 years ago, offering us less than \$40,000 R/W compensation. This does not even compensate for a good used pickup truck for this amount today and certainly not for 100 yrs from now. We will also be paying taxes on this land, which we will not be able to use as we choose, due to the limits this project will be imposing on it and us.

We do not want to leave all of these concerns and responsibilities to our children, grand children and great grandchildren for this amount of time and compensation. We could get more out of the land by not being involved in this project than we can get by supporting it on the terms that have been presented to us.

Fair compensation would be based on that of current appraised value for the use of our land. Another option would be that the amount of water traveling through the pipeline on our land be an annual water transfer fee, given to the land owners, for the use of that land.

In conclusion, it does not seem fair, nor in the best interest of all landowners, that eminent domain comes into play regarding compensation because we have not been able to negotiate any part of this up to this point. Again, we do support The Red River Valley Water Supply Project and the needs it will fulfill.

Respectfully,

Kevin Baumbach  
Diane Baumbach

Testimony of Derrick Braaten on behalf of  
Red River Valley Water Supply Project impacted landowners  
in favor of  
SENATE BILL NO. 2364  
Senate Energy and Natural Resources Committee  
February 3, 2023

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Derrick Braaten and I am both legal counsel and a registered lobbyist for a group of landowners whose property is being taken for the Red River Valley Water Supply Project.

We support SB 2364 with the proposed amended language requiring the state of North Dakota to accept liability for this pipeline. It is unfair that the landowners are being asked to sign easements or have their property condemned when they do not even know who will be liable for the pipeline on their property or who will be responsible for it if and when it is completed. The compensation for the easements being demanded for this project was also set over a decade ago and has never changed, and Garrison Diversion has indicated that the landowners must sign at that compensation level and it will not negotiate. We would also ask that any future funding for this project be contingent on Garrison Diversion ceasing the use of eminent domain actions. It has filed eminent domain lawsuits against at least one of our members and has indicated it is trying to serve one other landowner at present.

I am attaching a copy of the testimony and attachments we presented to an interim committee on this issue, which indicates that the compensation has never changed and represents a fraction of the overall funding being requested.

Thank you,

Derrick Braaten

*For Red River Valley Water Supply Project impacted landowners*

# Interim Water Topics Committee

September 20, 2022

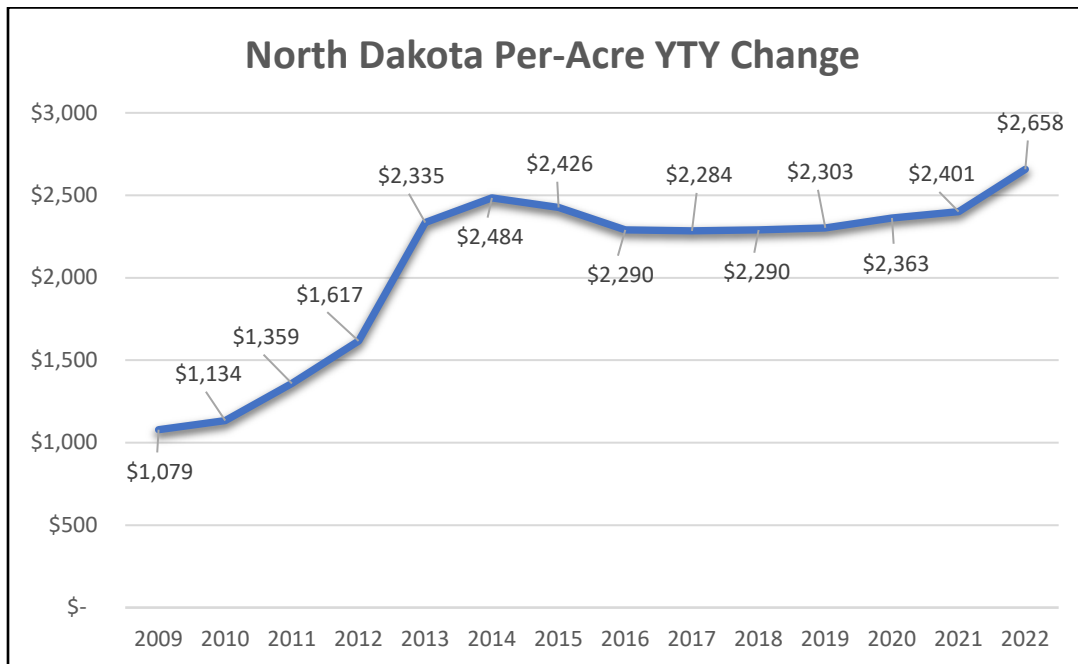
## Testimony of Derrick Braaten

### Red River Valley Water Supply Project Landowners

Chairman Schmidt and members of the committee, my name is Derrick Braaten and I am here to briefly discuss the Red River Valley Water Supply Project. I represent a group of landowners whose land is affected by the project and the pipeline is crossing these landowners' property.

The best way to protect landowners in this project is to have the State of North Dakota own the pipeline. If the State of North Dakota owns the pipeline, landowners will be assured an entity will protect and indemnify them. There is no plan known to landowners as to what happens when the pipeline is abandoned on their property, or if it will be removed.

The Garrison Diversion first started acquiring options in 2009 based on land values at that time. (See 2009 Garrison Easement Pricing Memorandum). Consultants for landowners put together the following graph to illustrate the rise in average land values since that time.



The appraiser who consulted with Garrison Diversion in 2009 was recently quoted in Agweek, which wrote: “When premium farmland is coming up for sale, Kyle Nelson says the bids these days can be ‘astronomical.’ Nelson of Farmers National Company said he underestimated the momentum that was building in farmland sales in 2021 that has continued to roll in 2022.” (<https://www.agweek.com/news/farmland-sees-some-astronomical-sales-results>).

Since 2009, the Garrison Diversion has refused to negotiate compensation despite an overall value increase in average land values of 146.34% based on surveys (and according to Landowner’s consultants). Rather than acknowledge the astronomical markets, in June of 2022 Garrison Diversion sent landowners a letter threatening to file eminent domain actions if landowners did not sign an agreement at its 2009 compensation offer by July 8, 2022. It indicated last week that it is initiating those eminent domain actions now.

Agricultural-use land values and the “before and after approach” are also not the only way to value pipeline easements and this is a common misconception. The federal court in North Dakota recently agreed in a case brought by a ND pipeline developer to condemn pipeline easements. The federal court agreed that other pipeline easements and the amounts paid per rod were relevant comparable sales and admissible evidence. *WBI Energy Transmission, Inc. v. Easement & Right-Of-Way Across*, No. 1:18-cv-078, 2021 U.S. Dist. LEXIS 63744, at \*24 (D.N.D. Apr. 1, 2021). The RRVWSP is also not a typical pipeline project, and requires a double lift of soil and subsoil similar to what is done when strip mining for coal.

Garrison Diversion has obtained less than 10% of the funding needed for the project. Currently, Garrison Diversion has appropriated less than a quarter of 1% of its 1.3 billion-dollar-budget to compensate the hosts of the project (included as part of my testimony is a fact sheet regarding the project budget and project progress). At the current rate of funding, the project will not be completed for another 36-37 years, but Garrison Diversion is paying 2009 prices, which were insufficient even then.

The North Dakota Legislature has the power to authorize additional compensation for the hosts of this project and bring Garrison Diversion to the table to negotiate with landowners and take eminent domain off the table.



# RRVWSP FACT SHEET

The Red River Valley Water Supply Project developer, Garrison Diversion Conservancy District, has instructed its attorneys to use eminent domain on landowners and refuses to even negotiate with landowners on compensation.

## PROJECT BUDGET

- Total project cost started at \$1,220,000,000<sup>1</sup> and is now projected to be \$1,356,000,000.<sup>2</sup>
- Only about **0.22%** of that \$1.356 billion has been set aside for compensating landowners, less than a quarter of a percent.<sup>3</sup>
- While project costs have increased by \$1.36M, the compensation level of \$1,350/acre was set in 2009 and has never changed.<sup>3</sup>
- Despite a \$1.356 billion budget "water would not be affordable at all" if Garrison Diversion had to pay more for easements.<sup>4</sup>

## PROJECT PROGRESS

- Funds have been appropriated during six legislative sessions going back to 2009.<sup>5</sup>
- After 11 years, less than 10% of the funding required has been achieved<sup>1</sup> and the project is "barely affordable now."<sup>4</sup>
- At its current rate, the project is on a 36- to 37-year build.<sup>4</sup>
- Please stop the use of eminent domain for this project. Tell Garrison Diversion it will not receive funding if it uses eminent domain.

### Costs<sup>6</sup>

Transmission Pipeline	\$1 B	82%
Intake, Pumps, Supply	\$70 M	6%
Pump Stations, etc.	\$71 M	6%
Practical Treatment-WTP	\$66 M	5%
Discharge Structure	\$10 M	1%
<b>Landowners (ROW)</b>	<b>\$ 3 M</b>	<b>0.22%</b>

### State Funding<sup>5</sup>

2009	HB1020	\$3,000,000
2013	HB1020	\$11,000,000
2015	SB2020	\$5,000,000
2017	HB1020	\$30,000,000
2019	SB2020	\$17,000,000
2021	HB1020	\$50,000,000

<sup>1</sup> Water Topics Overview Committee Presentation March 22, 2022.

<sup>2</sup> "That's just inflation. Every year we are somewhere presently in a three and six percent inflation factor and the jump from \$1.2 to \$1.356 is just inflation." - Duane DeKrey, <https://www.kxnet.com/news/answers-to-your-questions-revolving-red-river-valley-water-supply-project/>

<sup>3</sup> "The total easement cost...\$3,019,000" Easement Pricing File Memorandum 7-7-09. \$3,019,000 / \$1.365B = 0.223%

<sup>4</sup> Pates, Mikkel. "Red River Water Supply pipe project will sue if landowners don't sign by July 8, 2022" Ag Week, June 27, 2022

<sup>5</sup> Red River Valley Water Supply Project Study – Background Memorandum; Prepared for the Water Topics Overview Committee July 2021

<sup>6</sup> HB 1020 State Water Commission Budget Presentation, Senate Appropriations Committee, March 22, 2021.

June 6, 2022

Derrick Braaten  
 Braaten Law Firm  
 109 North 4<sup>th</sup> Street, Suite 100  
 Bismarck, ND 58501

Sent via email only:  
[derrick@braatenlawfirm.com](mailto:derrick@braatenlawfirm.com)

**Re: Garrison Diversion Conservancy District – initiation of eminent domain litigation  
 Our File No.: 027145.22014**

Derrick:

You have informed me that you represent the following landowners who own property along the easement route of the Red River Valley Water Supply Project:

Company/Trust	Name
Albeana Haluska Life Estate	Albeana Haluska, Kevin and DianeBaumbach
	David Richter
Schaubert Family Partnership	David Schaubert
	Elaine Schaack (Jewel Bittner - Power of Attorney)
	Fred & Debra Richter
	Gary Widicker (Hans & Heathe Widicker)
	James W.Seil
	John & Pamela Kutz
	John Roller
	Judy Winandy
	Karen A & The Estate of Jim Neumiller
	Larry Rexine
Merle Radke & Co.	Merle Radke
	Mike Flick (on behalf of himself, Steven and David Flick)
Marcotte Family Land Trust	Robert J.Marcotte
Leo Widicker Family Trust and Virginia A Widicker	Rod Widicker

Winandy Family Testamentary Trust	Ryan Winandy
Sandra Kunz Life Estate	Sandra Kunz & Toni Rae Yow
	Steven & Kristen Jones
	Timothy & Debra Soma
	Todd & Jackie Jones
	Troy & Erica Jones

Could you please confirm whether you represent all of the owners of the SE/4 of T146, R 69, S27 (Richard and Helga Winandy, Suzanne Heath, Merle J. Radke, and Grant S. and Judith Ann Nelson)?

I understand you previously represented Tom and Ardys Dahl, but that an agreement has been reached to move the easement route across the road from their property.

As you know, Garrison Diversion Conservancy District has not yet received signed easements from any of the above-named parties.

I write to inform you that Garrison Diversion has instructed Vogel Law Firm to initiate eminent domain litigation on or after **July 8 2022** to obtain easements it is unable to obtain through voluntary negotiations. From now until July 8, 2022, Garrison Diversion is willing to negotiate modified easement terms (other than compensation). As you and I have discussed, Garrison Diversion is open to reasonable modifications to the language of the form easement that has been previously shared with owners. However, Garrison Diversion will only agree to modified terms with owners who agree to sign easements prior to July 8, 2022. Once Garrison Diversion initiates litigation, it will not negotiate on easement language. Instead, it will seek a bare, court ordered easement that allows Garrison Diversion to construct, operate, maintain, and remove the buried pipeline on the property, with no additional terms.

As you are aware, during condemnation litigation, the value of an easement will be determined by the Judge or jury, which may be less than, or more than, Garrison Diversion's offer. North Dakota law dictates that the value of an easement is determined in a condemnation litigation by calculating the fair market value of the overall property before and after an easement is taken. The difference between the two, which is the level of devaluation, is deemed the value of the easement. Overall parcel valuation can be impacted by things like property use, amount of tillable acreage versus wetlands, size of the parcel, etc.

If eminent domain litigation is commenced, both parties will likely hire their own appraisers to determine how much the addition of the easement will devalue the parcel of land. Each appraiser's job will be to look at the value of the parcel before the easement is in place and a hypothetical value



June 6, 2022  
Page 3

after the easement is in place, with the difference in these two numbers being the value of an easement. This is the formula for valuation of an easement dictated by North Dakota law. The Judge or jury will make a determination of the value of the easement; i.e., how much the property reduced in value due to the easement, based upon the testimony of each party's appraiser.

Once Garrison Diversion initiates litigation and obtains an appraisal, it will modify its compensation offer to match the amount of the appraisal. Be advised that if the appraiser identifies an easement value that is less than the offer by Garrison Diversion, Garrison Diversion will only pay the lesser amount after litigation starts. Be advised that past appraisals obtained for this Project have been lower than the amounts offered by Garrison Diversion for easements. If you have an appraisal on the easement value for any of your clients, please feel free to share that with Garrison Diversion for consideration.

I am hopeful your clients will wish to pursue the advantages of a voluntary pre-litigation agreement on easement language and compensation. I know you are working on some proposed modifications to the form easement, which I look forward to receiving.

Sincerely,

A handwritten signature in black ink, appearing to read "R.J. Pathroff", with a stylized flourish at the end.

R.J. Pathroff

RJP:jd

## **Red River Valley Water Supply Project**

### **Easement Pricing File Memorandum**

**7-7-09**

The Red River Valley Water Supply Project (RRVWSP) consists of 123 miles of 66 inch pipeline that stretches from the McClusky Canal to the Sheyenne River, crossing four counties. Staff will negotiate with approximately 192 land owners for pipeline options and easements. This white paper outlines Garrison Diversion's general analysis of easement valuation and offers to land owners. The process described herein is an internal reference document and is not otherwise binding or committing Garrison Diversion to a particular course of action or valuation for a specific property.

The process of setting a price to offer for a pipeline easement is difficult since the pipeline will be underground, will traverse four counties and a variety of types and values of land. In order to establish an easement offer price, Garrison Diversion consulted with Kyle Nelson, of Alerus Appraisals to discuss valuation of pipeline easements and/or general valuation of agricultural properties in the affected counties. The difficulty of proposing an offer for an easement stems from the fact that a pipeline easement really has minimal impact on the long-term value of the land traversed. Typically, the value of an easement is calculated by subtracting the pre-easement value minus the post-easement value of the land. The difference in the before/after land value constitutes the easement value. With an underground pipeline, Alerus Appraisals finds little to no difference in the pre/post-easement value of agricultural land due to the existence of an underground pipeline. There would be no higher payment justified by tilled land versus pasture land, since the underground pipeline does not change the fair market value of either type of property; so the value of the easement is the same regardless of the type of land crossed. Simply put, if Garrison Diversion were required to pay 'fair market value' to landowners as their offer for a pipeline easement, Garrison Diversion may not be paying much, if anything at all based upon the before/after valuation methodology. That said, landowners would receive varying levels of compensation depending on the type and extent of crop damage occasioned as a payment.

Under this scenario, few landowners would voluntarily give an easement to their property without some level of compensation for the easement. As such, Garrison Diversion analyzed payments made to landowners in other pipeline projects as a reference for calculating an attractive price to offer for voluntarily entering into option and easement agreements with Garrison Diversion. It is important to Garrison Diversion to be fair and cordial to the landowners, fostering a strong working relationship that will benefit the RRVWSP as operation and maintenance activities occur in the future.

Garrison Diversion is mindful of the political controversy created by constructing, but not ultimately using the canal systems. Garrison Diversion plans to only purchase options for easement at this stage, so as not to tie up land permanently at this stage. In order to accomplish the goal and gain the trust

level with the landowners, it was decided to complete the negotiations early in the design process and using a three step approach.

The first step is to notify landowners about the project, providing basic information and asking them to return an Access Agreement that would allow our design team to access and investigate the property. The information collected during these investigations will be used to refine the pipeline alignment and to make sure that the alignment meets environmental and cultural resource guidelines while limiting the impact on the landowners.

The second step is to obtain an option for an easement. During this step, an offer of (\$1,350/acre) was conveyed for the easement. Ten percent of the offer would be paid up front for an Option, with the remaining 90% to be paid if/when the option is exercised and the permanent easement taken. During the Option period, Garrison Diversion will talk to the landowners to identify specific concerns that can be addressed during the design. By obtaining an option for an easement, the easement acquisition process should be fairly quick and without controversy or surprise.

The third step is to exercise the option and obtain the permanent easement. This step will be primarily administrative. Landowners will be advised that the easement is being exercised. Final paperwork and the final easement payment will be exchanged and documents recorded. Landowners will also be notified if/when the project construction will begin in their area and on what time schedule.

Based on the input from Alerus Appraisals, along with anecdotal information from other pipeline projects, it was decided that the price offered for the right of way would be one price per acre for all of the cooperating land owners. The price of agricultural land does not vary significantly with or without an underground pipeline, which supports the conclusion that the easements should be uniformly priced regardless of the type of land traversed. If Garrison Diversion only offered the true change in fair market value for the easement, there would be few, if any, property owners who would be willing to sell an easement at such a minimal price (plus a payment of crop loss). Garrison Diversion intends to offer a reasonable amount of compensation to make the offer attractive to property owners. Otherwise, much of the entire pipeline route would have to be taken by eminent domain, which would be a costly and time consuming endeavor that Garrison Diversion certainly hopes to avoid.

As one factor in devising a reasonable amount to offer landowners for voluntarily entering into an option agreement for a pipeline easement, Garrison Diversion asked Alerus Appraisals (based on sales) to advise Garrison Diversion of the general land prices in the counties that are included along the pipeline alignment. In addition, Garrison Diversion consulted with project managers for the NAWS pipeline and the City of Devils Lake to discuss their methodology in setting easement offers. With NAWS, the state typically offered 80% of the fee value of the land as the easement offer price. But in the case of the transmission line they made an offer that equated to approximately 100% of the land value in exchange for a permanent easement. In the case of the Devils Lake water line, the City took the average of the land values, increased them by 50% because of the small tract size compared to average sale size, and added 10 years of potential impacts costs because the soil could not be replaced exactly like it was before.

Alerus Appraisals identified a range of land prices for crop and pasture land in each of the impacted counties. If Garrison Diversion were to follow the methodology for voluntary acquisition followed by NAWS, using the higher property value numbers in the Alerus Appraisals report and 100% of land value offered for transmission lines, the corresponding offer to landowners would be approximately \$1,200 per acre. If Garrison Diversion offered the 80% of land value otherwise offered by NAWS, the corresponding offer would be approximately \$960 per acre. If the Devils Lake methodology is applied to the County Tax Assessor data, the corresponding voluntary acquisition offer would be \$1,350 per acre. The total easement cost for the project using these methodologies range from \$2,146,000 to \$3,019,000.

The losses of agricultural crops will be paid for based on the actual losses. Higher producing lands will be paid more when actual construction occurs.

This document does not ascribe a value to any easement properties, but merely outlines the process and research used to determine an attractive price to offer to landowners for easements. If there is litigation over easement prices, it is likely that an appraiser could find little to no value to the actual easements using a before and after fair market value approach. Nothing in this document impacts the ascribed fair market value of the easements or claims to constitute actual 'fair market value' of a pipeline easement.

**Testimony**  
**SB 2364 - Department of Water Resources**  
**Senate Energy and Natural Resources Committee**  
**Senator Dale Patten, Committee Chair**  
**February 3, 2023**

Chairman Patten, and members of the Senate Energy and Natural Resources Committee – I am Patrick Fridgen, the Planning and Education Division Director for the Department of Water Resources (DWR). I am here today to provide neutral testimony related to Senate Bill 2364. As manager of the DWR’s Cost-Share Program, we thought it would be helpful for the Committee to receive background regarding easement ownership as it pertains to the many projects receiving cost-share assistance from our agency.

As you know, DWR serves as the State of North Dakota’s primary mechanism for providing state cost-share assistance to a broad spectrum of water development project sponsors. The DWR Cost-Share Program is meant to do just that – share costs, with local sponsors, who are responsible for owning, maintaining, and managing their projects. It is not uncommon for project sponsors to acquire permanent easements to advance flood protection or water supply infrastructure. What would be uncommon is for the sponsor to have the ability to assign easement ownership to the state – as proposed in SB 2364.

North Dakota’s Water Commission is the decision-making body when it comes to approval or denial of Cost-Share Program funding through the DWR. And through the Commission’s review of projects, they consider the overall merits of projects within the confines of their policy and law. But in the end, those decisions are to commit the state as a financial supporter only.

Again, Mr. Chairman, and members of the Senate Energy and Natural Resources Committee, our intent for appearing before you today is merely to provide

background regarding how easement ownership has traditionally been handled by our many cost-share partners to date, as well as the DWR and Water Commission's role in the advancement of projects through the Cost-Share Program. With that, I will try to answer any questions that you or other committee members might have.

Testimony of Troy Coons on behalf of  
Northwest Landowners Association  
in favor of  
SENATE BILL NO. 2364  
Senate Energy and Natural Resources Committee  
February 3, 2023

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2364 with the proposed amended language requiring the state of North Dakota to accept liability for this pipeline. We have heard from the landowners being impacted by this pipeline and we stand beside them and support their efforts. It is unfair and unreasonable that Garrison Diversion is only offering the same compensation it set in 2009 and refuses to even negotiate with the landowners. It is even more unreasonable that Garrison Diversion is asking landowners to sign easements to allow a massive pipeline project without any precedent to be constructed on their property without even knowing who will own or have any liability once the project is complete. If this state-funded project is going to require easements and use eminent domain to take property for the project, the landowners should not be the ones with the liability for the project should things go wrong or if the project is never completed. We are asking the state of North Dakota to accept the liability for this pipeline. These landowners are being sued in eminent domain proceedings as we speak because they have not signed easements at 2009 compensation levels with an entity that cannot even guarantee that an indemnity clause from it will have any meaning in ten years. We ask for a do pass on 2364 as amended with the landowners' requested language. We also ask Garrison Diversion to stand down on using eminent domain for this project and negotiate with the landowners, and we request that the members of this Assembly condition any future funding of the project on this requirement.

Thank you,

Troy Coons  
*Northwest Landowners Association*

Good Morning: My name is Dennis Walen and I am here to address mine and other landowner concerns of the Red River Valley Pipeline Project

A major concern we have is for the responsibility and liability of the pipeline. We feel the responsibility and liability of this pipeline should be on the State of North Dakota and not the landowners as the project is being funded by the state of North Dakota.

As landowners we do not feel we should be responsible for any costs associated with the pipeline. Concerns of pipe failure, abandonment, or any other unforeseen costs could have a drastic financial impact to the farmer or landowners.

We have heard Garrison Diversion is telling legislators they are not using eminent domain to get our land but rather trying to work with the landowners on easement and other concerns. On January 24<sup>th</sup>, 2023 the Foster County sheriff served us with Complaint for Condemnation papers to obtain a right-of-way easement for the installation and maintenance of a 72 inch buried water pipeline on our property.

Garrison is not offering us fair compensation for our land. Only .22 percent of their budget is coming back to the landowner. That is less than a quarter of a percent.

This pipeline project will disturb our farmland, making it less productive in years to come. There will be vent pipes placed in our fields making obstructions for us to try farm around. With larger equipment there will be areas we cannot farm creating more wasteland.

Our county and township roads will be greatly damaged by extra amount of truck traffic removing excess soil and bringing in proper fill to compact their pipes.

In closing, I feel that Garrison Diversion is not willing to work with farmers or landowners for a favorable compensation as they will use eminent domain to get our land. This is not fair to us as farmers or landowners.

Garrison Diversion is working for the state. **You** fund them! **They** works for you!

You were elected by us to not only look out for Garrison but us as landowners also.

**You as legislators can make this right for all landowners by stopping the use of eminent domain and resolve a favorable compensation for landowners.**



Chairman Patten and members of the committee.

My name is Fred Richter, my address is Sykeston, ND.

I am here addressing this hearing because I own land that the Red River Valley Water Supply Project is proposing to cross.

I support SB2364 with the proposed amended language that Senator Klein said he would submit today to this committee. This amended language would require the state of North Dakota to accept all liability for this pipeline.

The State of North Dakota should accept all responsibility and liability since this is a state project.

Since Garrison Diversion, in my opinion, is a contractor for the State, and is funded by the State, this seems very reasonable that the State should be liable.

As landowners that do not want this pipeline on their land, there is no reason we should be liable for any consequences of this pipeline.

We believe that until these issues are rectified, Garrison Diversion should be reigned in by the state and should be stopped from using Eminent Domain.

I hope that you will give these concerns an honest review.

Thank for your time.

Any Questions?

SB 2364

Testimony of Larry Rexine

Concerned 5th generation farmer and landowner

Chairman Patten and members of the senate energy and natural resources committee. I want to thank you for allowing me to participate in the discussion concerning SB 2364. I am in full support of water being moved to the red river valley but am against the way the landowners have been treated by the agency in charge. From day one I was told that we don't have to negotiate with you people as we will use eminent domain to get what we want and that's what they are doing. All we have asked is to be treated fairly in this process as we will be losing our god given right to do as we see fit on this land. I want my son to be a 6th generation farmer and that's why we are asking you to sit down and negotiate a fair settlement. It is an absolute joke that I must take \$13.50 an acre for the next 100 years as we are told that's not negotiable. I want to see the water flow to the eastern part of the state but let us not forget that all people need to be treated fairly, treat us right and the water will flow.

Respectfully,

Larry Rexine

**Testimony of Duane DeKrey**  
**Garrison Diversion Conservancy District General Manager**  
**Senate Bill 2364**  
**Senate Energy and Natural Resources Committee**  
**Bismarck, North Dakota – February 3, 2023**

Chairman Patten, members of the Committee. Thank you for the opportunity to explain the reason for this legislation and our proposed Amendment. During conversations between landowners affected by the Red River Valley Water Supply Project (RRVWSP) and Representative Weisz, the landowners expressed fears the Garrison Diversion Conservancy District (Garrison Diversion) could cease to exist.

As background, Garrison Diversion was created by the ND Legislature in the 1950s, existing now for 70 years. Garrison Diversion could only cease to exist by legislation and signature of the Governor. However, if this were to happen, the landowner wanted to know what happens to the easements and the pipeline on their property. While seen as a remote possibility Garrison Diversion would cease to exist, an easy way to remove that fear is with simple legislation.

Currently, if Garrison Diversion ceases to exist, the responsibilities can be assigned to the State of ND or another political subdivision. The bill, as submitted, would assign those responsibilities to the State of ND.

The RRVWSP is a joint effort between Garrison Diversion and Lake Agassiz Water Authority (LAWA). LAWA is a public water authority created by the legislature in 2005, to be the local government entity consisting of, and representing, local public water

systems in the RRVWSP. Therefore, it would make sense to assign the easement and responsibility to LAWA before the State of ND.

Including the option for LAWA or the State of ND to become the responsible party keeps the option open for the State of ND to become the ultimate responsible party if both Garrison Diversion and LAWA ceased to exist due to being deauthorized by law.

Please give this bill, with the proposed amendment, a DO PASS to allay the fear held by the affected landowners and clarify the language of who absorbs the RRVWSP easement and Garrison Diversion's authorized facilities in the event Garrison Diversion and LAWA should no longer exist.

Thank you for your consideration.

Prepared by Garrison Diversion

**PROPOSED AMENDMENT TO SB 2364**

Page 1, line 9, replace "water pipelines" with "facilities authorized by this chapter or the Dakota Water Resources Act, Public Law 89-108, as amended"

Page 1, line 11, after "North Dakota" insert "or another public water system"

Page 1, line 12, replace "a public water pipeline" with "authorized facilities"

[SB 2364](#) clarifies what happens to Garrison Diversion's easements in the instance that Garrison Diversion ceases to exist.

On behalf of the Garrison Diversion, I've attached a proposed amendment for your consideration. Currently, the Diversion holds easements for more than just water pipelines, (i.e. access, pump stations, accessory structures, irrigation equipment, etc.) so the first change in the amendment would cover those additional items.

The second change would grant Garrison Diversion the right of assignment to the state *or another water system*. This is important because the current version of the Project Participation Agreement between Garrison Diversion and the users (Lake Agassiz Water Authority) has the right to assign the pipeline to LAWA for continued operations, so it would be important to reflect the same option in this section of code.

The final change relates back to the new proposed language in the first sentence of the bill language.

Senate Bill #2364

I am in favor of Senate Bill #2364 with the New Section 61-24.7-06 added into the Bill. Without this new Section included there is no liability protection for landowners in the Bill.

23.1091.02001

Sixty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2364**

Introduced by

Senators Klein, Luick, Sorvaag

Representatives Nelson, Weisz

1 A BILL for an Act to create and enact a new section to chapter 61-24 and a new section to  
2 chapter 61-24.7 of the North Dakota Century Code, relating to the Garrison Diversion  
3 Conservancy District ~~and~~ permanent easements, and liability for claims.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 61-24 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Permanent easements - Limitations.**

8 The district's use of the permanent easement property is restricted solely to the  
9 construction, operation, and maintenance of water pipelines. The district may not rent, sell, or  
10 assign the rights to a permanent easement, except may reserve the right to assign the  
11 permanent easement to the state of North Dakota if necessary for the operation and  
12 maintenance of a public water pipeline.

13 **SECTION 2.** A new section to chapter 61-24.7 of the North Dakota Century Code is created  
14 and enacted as follows:

15 **Liability for claims.**

16 1. For purposes of this section, "landowner" means a landowner on whose property the  
17 Red River valley water supply project is constructed or operated.

18 2. A landowner may bring a claim against the state of North Dakota, in the manner  
19 provided by chapter 32-12.2; the Garrison Diversion Conservancy District, in the  
20 manner provided by chapter 32-12.1; or both for a breach of easement contract for the  
21 Red River valley water supply project and for property damage, including failed or  
22 incomplete reclamation.

23 3. A claim under this section must be processed when filed under chapter 32-12.1 or  
24 32-12.2.



- 1     4. The state of North Dakota shall:
- 2     a. Accept liability for the wrongful acts and omissions of the Garrison Diversion
- 3     Conservancy District and is responsible for any claims against the Garrison
- 4     Diversion Conservancy District.
- 5     b. Indemnify a landowner on whose property the Red River valley water supply
- 6     project is located for all third-party claims arising from the construction,
- 7     maintenance, operation, reclamation, and removal of the project from the
- 8     property, not proximately caused by the landowner's negligence or wrongful
- 9     intentional acts or omissions.

23.1091.02002

Sixty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2364**

Introduced by

Senators Klein, Luick, Sorvaag

Representatives Nelson, Weisz

1 A BILL for an Act to create and enact a new section to chapter 61-24 of the North Dakota  
2 Century Code, relating to the Garrison Diversion Conservancy District and permanent  
3 easements.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 61-24 of the North Dakota Century Code is created  
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8 The district's use of the permanent easement property is restricted solely to the  
9 construction, operation, and maintenance of water pipelines. The district may not rent, sell, or  
10 assign the rights to a permanent easement, except may reserve the right to assign the  
11 permanent easement to the state of North Dakota if necessary for the operation and  
12 maintenance of a public water pipeline. If the district ceases operation, all permanent  
13 easements must be transferred to the public water system receiving a beneficial use from the  
14 water pipelines and other facilities. If no public water system exists, all permanent easements  
15 must transfer to the state. The state or public water system shall assume full responsibility for all  
16 easement activities and responsibilities including any environmental remediation obligations.

February 8, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 12, after the underscored period insert "If the district ceases operation, all permanent easements must be transferred to the public water system receiving a beneficial use from the water pipelines and other facilities. If no public water system exists, all permanent easements must transfer to the state. The state or public water system shall assume full responsibility for all easement activities and responsibilities including any environmental remediation obligations."

Renumber accordingly



*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)

**SB 2364**  
**Testimony of Dani Quissell**  
**House Energy and Natural Resources Committee**

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Dani Quissell, Executive Vice President of the North Dakota Water Users. I rise today in support of SB 2364.

The North Dakota Water Users has policy, developed and voted on by our grassroots members, supporting the Red River Valley Water Supply project that says, in part:

*The Red River Basin and central part of the state need a dependable and affordable high quality water supply for the cities of Fargo and Grand Forks, smaller communities, rural water systems, industry, ag processing, manufacturing and other purposes, to protect and enhance the economic stability and quality of life.*

This bill will help alleviate a concern from landowners regarding this project and hopefully allow for smooth completion of the project.

I would also note that there have been growing conversations across the state about the need to put North Dakota's allocation of the Missouri River water to beneficial use. There is rising pressure from other states, particularly in the drought ridden southwest, to look to the Missouri River as an additional water source for those communities. The impact on North Dakota of diverting Missouri River water elsewhere is concerning for the North Dakota Water Users. The only way we can ensure our allocation of Missouri River water is to put that water to use for things like irrigation or drinking water. Completion of the Red River Valley Water Supply Project would allow North Dakota to put a portion of our allocation to beneficial use, establishing North Dakota's right to that water and protecting the state's rights in the future.

For these reasons, we ask for a do pass recommendation on SB 2364.

Thank you. I'd be happy to stand for any questions you may have.

Good afternoon,

Chairman Porter and members of the committee.

My name is Fred Richter, my address is Sykeston, ND.

I am here addressing this hearing because I own land that the Red River Valley Water Supply Project is proposing to cross.

I support SB 2364 as it was passed on the senate floor.

This would require the state of North Dakota to accept the liability as stated in SB 2364 for this pipeline.

The State of North Dakota should accept all responsibility and liability since this is a state project.

Since Garrison Diversion, in my opinion, is a contractor for the State, and is funded by the State, this seems very reasonable that the State should be liable.

As landowners that do not necessarily want this pipeline on their land, there is no reason we should be liable for any consequences of this pipeline, now or in the future.

I hope that you will give these concerns an honest review, and I would like to see a do pass recommendation from this committee.

Any questions?

Thank you for your time.

Larry Rexine

The North Dakota House of Representatives Energy and Natural Resources Committee

The testimony of Larry Rexine a 5th generation North Dakota family farmer and landowner.

In consideration of SB 2364

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Larry Rexine a 5th generation North Dakota family farmer and landowner whose property the Garrison Diversion and Red River Valley Water Pipeline must cross. I want you to know I am in full support of eastern North receiving this proposed fresh water supply and in return we want to be treated fairly by Garrison Diversion and the State of North Dakota.

Since 2009-2010 we have been asked to sign easements not knowing who will own or have liability for this massive 72 inch pipeline after completion or in the event it does not get built like some past projects. This bill SB2364 is a step in the right direction as it will alleviate one of the major concerns we land owners have. Therefore I would ask that your committee support SB 2364 and I thank you for your service and time.

I would also like to thank Senator Jerry Klein and Representative Robin Weisz for helping pass this bill on the senate floor 47 yes 0 no.

Respectfully,

Larry Rexine

Chairman Porter and members of the committee

My Name is David Richter from Sykeston North Dakota, and I am a landowner that the Red River Valley Pipeline is crossing. Up until this point, the landowners do not have any answers as to who actually has ownership of the pipeline and who would have liability of the pipeline. I think this Bill #2364 addresses some of those issues. I am in favor of Bill # 2364 and hopefully you will give it your consideration.

Thank You  
David Richter

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Todd Jones from Bowdon, ND.

I am providing testimony in support of bill 2364 because I am a farmer and own land that Garrison Diversion and the Red River Valley Water Pipeline project is proposing to cross.

Ever since this process started back in 2009, we have dealt with a lot of deceit and dishonesty from Garrison Diversion. We as landowners have always wondered how we would be protected from liability in the event of a number of things that possibly could happen, as we don't feel Garrison Diversion would assume responsibility given their past track record. We as landowners should not be liable for any of the possible consequences that could arise during the construction or the lifetime of this massive pipeline. This bill would help to alleviate some of our concerns relating to who would actually have ownership and liability of the pipeline.

Therefore I ask for your support and thank you for your time.

Thank you,  
Todd Jones



**Testimony of Duane DeKrey**  
**Garrison Diversion Conservancy District General Manager**  
**Senate Bill 2364**  
**House Energy and Natural Resources Committee**  
**Bismarck, North Dakota – March 9, 2023**

Chairman Porter, members of the Committee. Thank you for the opportunity to explain the reason for this legislation and our proposed Amendment. During conversations between landowners affected by the Red River Valley Water Supply Project (RRVWSP) and Representative Weisz, the landowners expressed fears the Garrison Diversion Conservancy District (Garrison Diversion) could cease to exist.

As background, Garrison Diversion was created by the ND Legislature in the 1950s, existing now for 70 years. Garrison Diversion could only cease to exist by legislation and signature of the Governor. However, if this were to happen, the landowner wanted to know what happens to the easements and the pipeline on their property. While seen as a remote possibility Garrison Diversion would cease to exist, an easy way to remove that fear is with simple legislation.

Currently, if Garrison Diversion ceases to exist, the responsibilities can be assigned to the State of ND or another political subdivision. The bill, as submitted, would assign those responsibilities to the State of ND.

The RRVWSP is a joint effort between Garrison Diversion and Lake Agassiz Water Authority (LAWA). LAWA is a water authority created by the legislature in 2005, to be the local government entity consisting of, and representing, local public water systems

in the RRVWSP. Therefore, it would make sense to assign the easement and responsibility to LAWA before the State of ND.

Including the option for LAWA or the State of ND to become the responsible party keeps the option open for the State of ND to become the ultimate responsible party if both Garrison Diversion and LAWA ceased to exist due to being deauthorized by law.

Please give this bill, with the proposed amendment, a DO PASS to allay the fear held by the affected landowners and clarify the language of who absorbs the RRVWSP easement and responsibilities in the event Garrison Diversion and LAWA should no longer exist. Thank you for your consideration.

## PIPELINE EASEMENT

### Parcel #

THIS EASEMENT AGREEMENT, is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between, \_\_\_\_\_ who is \_\_\_\_\_ [EX: *married couple, single, corporation, partnership*], with a post office address of \_\_\_\_\_

\_\_\_\_\_ (“Owner”), and the Garrison Diversion Conservancy District, a North Dakota political subdivision, with a post office address of P.O. Box 140, Carrington, North Dakota 58421 (“Garrison Diversion”). Owner, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which Owner hereby grants a permanent easement 150 feet in width across the Owner’s property, as is legally described on the attached exhibit(s), which are incorporated herein by reference.

Owner grants to Garrison Diversion, its officers, contractors, agents, and employees, a permanent and perpetual easement for the longest period by law over, upon, in, through, and across the Permanent Easement Property to lay, construct, inspect, maintain, alter, repair, replace, operate, and remove water pipeline(s) and all associated appurtenances and accompanying electrical or communication systems relating to current or future components of the Red River Valley Water Supply Project together with all necessary and reasonable rights of access to the Permanent Easement Property. The duration of this Permanent Easement shall be perpetual or to the maximum duration allowed by North Dakota law.

Garrison Diversion’s use of the Permanent Easement Property is solely restricted to the construction, operation and maintenance of water pipeline(s). Garrison Diversion will not rent, sell or assign its rights to the Permanent Easement, except reserving the right to assign the Permanent Easement to the State of North Dakota or another political subdivision if that is ever necessary for operation and maintenance of a public water pipeline(s).

As part of the Permanent Easement, Owner grants to Garrison Diversion the right to temporarily move, store, and remove construction equipment and supplies on the Permanent Easement Property; the right to erect and remove temporary structures on the Permanent Easement Property; the right to remove trees, underbrush, obstructions, and any other vegetation, structures or obstacles on the Permanent Easement Property; the right to temporarily excavate, pile, store, deposit, and spread excavated dirt, silt, or other materials on the Permanent Easement Property; and to perform any other work necessary and incident to the construction and installation of the pipeline(s). The parties acknowledge that Garrison Diversion’s work may result in permanent alterations of the Permanent Easement Property for which consideration has been paid.

Garrison Diversion, at its own expense, shall leave the Permanent Easement Property in as good condition as possible, taking into consideration the nature of Garrison

Diversion's work. All property that was farmable prior to taking the easement will be returned to farmable condition after construction. Garrison Diversion will remove construction debris and large rocks from the Permanent Easement. Garrison Diversion will haul away excess spoils that are not deemed appropriate to spread on the Permanent Easement Property, or that are otherwise requested to be removed by the Owner. No spoil piles will remain on the Owner's property without Owner's consent. Garrison Diversion agrees to replace soil if there is unreasonable settling and depressions along the pipeline route. If the parties cannot agree regarding the reasonableness of the soil settlement, an arbitrator will be selected to resolve the dispute. Garrison Diversion will require its contractors to follow the construction specifications for the project regarding construction practices, rock removal, and remediation requirements. Upon notice by a landowner, Garrison Diversion will contact the contractor for follow up work in the event the contractor leaves the property in a condition inconsistent with the contract specifications.

Garrison Diversion will undertake restoration efforts as soon as practicable after the pipeline has been installed. If Garrison Diversion is precluded from finishing the restoration work in the late fall in a manner that impacts spring planting, the Policy on Crop Damage Payments established by Garrison Diversion, which is incorporated herein by reference allows for preventative planting payments to accommodate that situation.

Owner, and Owner's successors and assigns, agrees not to disturb, injure, or in any manner interfere with Garrison Diversion's pipeline(s), systems, or any associated appurtenances. Owner expressly warrants that no buildings, structures, trees, power lines, or other obstacles of any kind shall be placed upon the Permanent Easement Property, for the term of the Permanent Easement that could interfere with Garrison Diversion's project. Garrison Diversion agrees that any, to the extent possible, fixture or appurtenance (i.e., pipes, hydrants, valves, etc.) located above or near the surface will be placed at locations to minimize the impacts associated with farming the property, such as at the edge of fields, roadways, fences, or other existing above-ground utilities. Garrison Diversion agrees that, in addition to the amount paid for the easement identified herein, that Garrison Diversion will pay the Owner the sum of \$1,000.00 for each general location where above-ground fixtures or appurtenances are installed.

Owner owns the Permanent Easement Property and all co-owners of this property are signators to this Permanent Easement. Owner further covenants Owner has authority to grant the Permanent Easement. Owner warrants that Owner has disclosed the existence of any liens or encumbrances in its abstract or otherwise in writing to Garrison Diversion. Owner will warrant and defend title to the Permanent Easement Property against all claims, and will release, hold harmless, and defend Garrison Diversion regarding Owner's representations above.

Garrison Diversion agrees to pay any damage done to the growing crops of Owner during the construction, installation, repair and maintenance of said water pipeline. This compensation shall be paid pursuant to the Policy on Crop Damage Payments.

Garrison Diversion will indemnify the Owner and hold Owner harmless for any



Good afternoon my name is Tim Soma from Griggs county My wife Deb and I are fourth generation farmers on the family farm we are in support of SB2364 . We were planning on coming out to testify but the weather was not in favor . We would like to have the state take ownership of the red River pipeline if it should be abandoned or needs to be dug up or anything else that could come up. With eminent domain and permanent easement we are concerned that the liability will fall on the next generation or the ones proceeding. As for eminent domain we have been served papers, we were hoping that they would go away but they haven't so we are hoping just to be treated fairly

**NDLA, Intern 01 - Sra, Kanwar**

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**From:** Porter, Todd K.  
**Sent:** Friday, March 10, 2023 8:27 AM  
**To:** NDLA, Intern 01 - Sra, Kanwar  
**Subject:** Amendments

**PROPOSED AMENDMENT TO SB 2364**

Page 1, line 9, replace "water pipelines" with "facilities authorized by this chapter or the Dakota Water Resources Act, Public Law 89-108, as amended"

23.1091.04000

Sixty-eighth  
Legislative Assembly  
of North Dakota

**FIRST ENGROSSMENT  
with House Amendments  
ENGROSSED SENATE BILL NO. 2364**

Introduced by

Senators Klein, Luick, Sorvaag

Representatives Nelson, Weisz

1 A BILL for an Act to create and enact a new section to chapter 61-24 of the North Dakota  
2 Century Code, relating to the Garrison Diversion Conservancy District and permanent  
3 easements.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 61-24 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Permanent easements - Limitations.**

8 The district's use of the permanent easement property is restricted solely to the  
9 construction, operation, and maintenance of facilities authorized by <sup>Law.</sup> ~~this chapter or the Dakota~~  
10 Water Resources Act of 2000 [Pub. L. 106-554, Sec. 1(a)(4) [div. B, title VII]; 114 Stat. 2763,  
11 ~~27931A-281~~] as amended. The district may not rent, sell, or assign the rights to a permanent  
12 easement, except may reserve the right to assign the permanent easement to the state of North  
13 Dakota if necessary for the operation and maintenance of a public water pipeline. If the district  
14 ceases operation, all permanent easements must be transferred to the public water system  
15 receiving a beneficial use from the water pipelines and other facilities. If no public water system  
16 exists, all permanent easements must transfer to the state. The state or public water system  
17 shall assume full responsibility for all easement activities and responsibilities, including any  
18 environmental remediation obligations.