

**MINUTES OF SPECIAL MEETING  
RED RIVER JOINT WATER RESOURCE DISTRICT  
PHONE CONFERENCE  
TRAILL COUNTY WATER RESOURCE DISTRICT  
HILLSBORO, NORTH DAKOTA  
JANUARY 18, 2017 ~ 2:00PM**

The Red River Joint Water Resource District Executive Committee held a phone conference on January 18, 2017 at 2:00pm originating at the office of Traill County Water Resource District and the Red River Joint Water Resource District in Hillsboro, ND.

Executive Committee members present were: Chairman Gary Thompson and Secretary Nettie Johnson; and by phone Managers Lance Yohe, Larry Tanke, and Ben Varnson; Sean Fredricks, RRJWRD Attorney; Carol Harbeke Lewis; and those whose names appear on the attached roster.

The Executive Committee met today by phone to discuss legislative issues pertaining to the following bills:

**QUICK-TAKE**

**SB 2047** was heard before the Senate Energy and Natural Resources Committee on Thursday, January 5 regarding Water Resource District “quick-take” Eminent Domain Procedures. This is the bill that was sent forward by the Water Topics Interim Committee to set forth requirements and procedures for the use of quick take eminent domain by water resource districts. By law, water resource districts have a duty to negotiate with landowners as a condition to use of any eminent domain authority. However, the Water Topics Committee’s version of the bill included more specific notice and negotiation requirements, a 75-day timeline before a water resource district can initiate quick-take by depositing the amount of the offer with the district court, and a requirement that the Chair of the WRD seeking to utilize quick-take execute an affidavit confirming the WRD’s compliance with the notice and negotiation requirements. Mike Dwyer indicated that, while this bill only applies to water resource districts, any changes to SB 2047 would likely be extended to other water political subdivisions and agencies. During the Water Topics Committee’s study, the RRJWRD and the WRD Association concluded the negotiation and notice procedures were reasonable and that most WRDs were already following the procedures proposed under SB 2047; the water resource districts ultimately supported SB 2047 before the Water Topics Interim Committee.

Sean Fredricks, Mike Dwyer, Arv Burvee (Richland County WRD), and Roger Zetocha (Sargent County WRD) all testified in support of the bill. Sarah Lovas, private landowner, also testified in support of the bill. Both the North Dakota Farm Bureau and the North Dakota Stockmen’s Association opposed eminent domain, but acknowledged the procedures in SB 2047 provide landowners more protection.

Attorney Fredricks stated that Senator Dwight Cook, a member of the Committee, is insistent that only elected bodies (County Commissions) should have quick-take authority. Mr. Fredricks added that he and others have battled that sentiment in previous sessions successfully. Both Mr. Fredricks and Mike Dwyer have explained that County Commissioners have told us they don't want to inject themselves into the middle of a water project simply to exercise eminent domain. The other members of the Committee seemed to understand.

However, following the hearing and when the Committee met again to discuss SB 2047, Senator Dwight Cook introduced an amendment that would require WRDs to seek approval to utilize quick-take from the County Commission where the right of way is located, and for the Commission to conduct a public meeting regarding the proposed use of quick-take, preceded by notice to the landowners. Mike Dwyer indicated that Senator Cook had clearly sought support for his amendment before the Committee met to consider his proposal, and that Senator Cook will push hard for his language. Senator Cook's amendment received a 'do pass' recommendation by the Senate Energy and Natural Resources Committee. The amended version of SB 2047 later passed easily on the Senate floor.

The Executive Committee discussed the fact that, although seeking County Commission approval will add unnecessary expense and time to the quick-take process, SB 2047 with Senator Cook's amendment retains WRD quick-take authority. The Committee agreed the RRJWRD should support this imperfect bill to avoid the prospect of the bill going to conference committee if we oppose it vigorously in the House; if the bill were to go to conference committee, the WRDs could face additional amendments and could ultimately lose quick-take entirely.

Mike and Sean explained HB 1244 also contains a requirement that WRDs seek County Commission approval prior to utilizing quick-take. The process in 1244 would not require a public meeting; the process is quicker and cleaner, but the Committee agreed attempting to oppose SB 2047 in favor of 1244 could result in conference committee scrutiny.

It was moved by Larry Tanke and seconded by Lance Yohe to support SB 2047. Upon roll call vote, the motion carried unanimously.

### **TILE BILLS**

**SB 2263** would essentially force WRDs to rubber stamp tile applications, without any conditions and without any regard for damages to WRDs' legal assessment drains, downstream township roads, or downstream properties.

The Richland County WRD sent a letter to Senator Larry Luick, one of the sponsors for SB 2263, to outline the Richland County Board's concerns and objections regarding this bill. Mr. Fredricks indicated the letter summarizes WRDs' concerns regarding this bill and encouraged all WRDs and other entities to share this letter with their legislators, and to let them know all WRDs share Richland County's concerns.

## **HB 1390**

- a. Water manager terms would run indefinitely (currently managers serve three year terms)
- b. Prohibits WRDs from making any rules regarding tile or tile permits “unless expressly required or allowed under” Title 61 of the Century Code.
- c. This bill would retain most of the existing tile permitting statute, but prohibits WRDs from requiring copies of an applicant’s “highly erodible land conservation and wetland conservation certification.”

Manager Yohe moved to oppose both Tile Bills SB 2263 and HB 1390. Manager Tanke seconded the motion. Upon roll call vote, the motion carried unanimously.

## **DRAIN IMPROVEMENTS AND RECONSTRUCTION**

**HB 1416:** The intent of this bill is to limit WRDs’ use of maintenance district dollars so WRDs cannot do legal drain reconstructions or improvements without a new assessment district vote. Legal assessment drains experience slope failures, etc., frequently; under this bill, a WRD could not lay back the slopes of a drain to eliminate slides without a brand new assessment vote (cannot use assessment dollars to do anything that would “exceed [a drain’s] original function and design”). WRDs would not be able to maintain their drains properly if this bill passed.

Bill Hejl, Rush River WRD, shared his views on HB 1416. He said this bill is a property rights issue since landowners who vote for a project should have the right to a properly operating and maintained drain. If the slopes of a drain are sliding or eroding and a WRD cannot utilize maintenance funds to modify the slopes, a WRD would only have the ability to use those funds to return the project to its “original design”; that would not benefit the landowners in the assessment district and would be a waste of public dollars. He added that proper operation and maintenance of assessment drains is often a safety issue.

## **ASSESSMENT DISTRICTS**

**HB 1393:** This bill would make creation of new assessment projects cost-prohibitive and would require county approval before proceeding with an assessment vote. Here are the key provisions of this bill:

- a. A WRD’s County Commission would have to approve a proposed project and assessment vote before the WRD could proceed with any assessment district vote for any project.
- b. WRDs would have to “contract with a neutral party to develop an assessment formula” for the proposed assessment district. The bill does not define “neutral party.”
- c. WRDs would have to prepare a *written, separate report for every single parcel* within the proposed assessment district “to verify and ensure no parcel is assessed costs that exceed any benefits received.” This would be a lengthy and expensive undertaking for large projects; even for small projects, spending time and money on preparing written reports for each

property could be a substantial expense in relation to the cost of the project.

- d. WRDs could not asses any land “which has natural drainage...unless the drainage [on that property] has been artificially improved and contributes additional volume” to the drain. We have all heard from landowners who complain their property should not be in an assessment district because they are at the top of the hill and they drain anyway. This bill would prohibit WRDs from including them in an assessment district, despite their clear benefit from a project, unless the landowner constructs new drainage to take additional advantage of the project.

**HB 1339:** This bill adds additional notice and publication requirements for new assessment district votes and for reassessments. All mailings would have to be via certified mail, the notice period extends to 30 days for both procedures. In addition, all landowners would have a right to appeal a project to the State Engineer, to determine benefits, to consider the project in general, etc. The current law allows 25% of the benefitting landowners to file this type of appeal with the State Engineer. We will see many more appeals to the State Engineer’s Office following successful assessment votes if this bill passes; those appeals could result in substantial project delays and additional project expenses.

It was moved by Lance Yohe and seconded by Larry Tanke to oppose HB 1416, HB 1393 and HB 1339. Upon roll call vote, the motion carried unanimously.

**HB 1374:** Randy Gjestvang described HB 1374 which was introduced on 1-16-2017 that contains definitions of types of financial assistance for water projects and the composition and operation of the State Water Commission.

**ADJOURNMENT**

The meeting adjourned at 3:05pm without objection.

APPROVED:

ATTEST:

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Gary Thompson, Chairman

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Nettie Johnson, Secretary