

**MINUTES OF SPECIAL MEETING  
RED RIVER JOINT WATER RESOURCE DISTRICT  
PHONE CONFERENCE  
TRAILL COUNTY WATER RESOURCE DISTRICT  
HILLSBORO, NORTH DAKOTA  
JANUARY 31, 2017 ~ 10:00AM**

The Red River Joint Water Resource District Executive Committee held a phone conference on January 31, 2017 at 10:00am 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: Gary Thompson and Secretary Nettie Johnson; and by phone: Lance Yohe, Larry Tanke, Robert Rostad, and Ben Varnson. Also present by phone were: Sean Fredricks, RRJWRD Attorney; Treasurer 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:

**DRAIN IMPROVEMENTS AND RECONSTRUCTION**

**HB 1416:** This bill is dangerous. 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. For example, if a predecessor Board constructed a legal drain in 1920 with very steep slopes, and the slopes continue to erode and fail, under 1416 a WRD could not use maintenance district dollars to lay back those slopes. Similarly, if a culvert washes out during a flood event and you have to replace it, but have to go with a larger culvert to meet stream crossing standards, you could not use maintenance district dollars to do that. Under this bill WRDs would have to go through a lengthy and expensive assessment vote process just to ensure our drains function properly. The bill says we cannot use assessment dollars to do anything that would "exceed [a drain's] original function and design." WRDs have an obligation to operate and maintain their drains to ensure adequate drainage for the landowners that benefit from a drain; this bill would inhibit our ability to ensure those landowners get that drainage.

**ASSESSMENT DISTRICTS**

**HB 1393:** This is a dangerous bill. This bill would make creation of new assessment projects cost-prohibitive and would require county approval before proceeding with an assessment vote. *In short, this would make new drainage projects and new flood protection projects incredibly difficult.* 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," but one of the bill sponsors has suggested WRDs could not use their consultant engineers. In other words, each project would require members of a proposed assessment district to pay for the WRD's consultant engineer to design a project; then to pay for the WRD to hire a second consultant

engineer to study the project from scratch and conduct benefit analysis/preparation of assessment list (for a project they didn't design). That would be an expensive endeavor.

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 assess 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. This isn't as dangerous as 1393, but still would add considerable expense and delays to new assessment projects. All mailings 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 for anything or any reason. The current law allows 25% of the benefitting landowners to file this type of appeal with the State Engineer. Landowners already have the ability to appeal to the State Engineer to determine if they will benefit from a project, and to appeal to District Court. This bill would encourage many more frivolous appeals to the State Engineer's Office following successful assessment votes if this bill passes, just to delay a project or to oppose a project, and without the need for any legitimate challenge to a project's design, location, benefit analysis, anything. This would be an expensive and incredibly time-consuming process for members of an assessment district to shoulder.

### **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.

Mike Dwyer described draft revisions to SB 2263 that he has been working on and described the amendments. He said that the plan would be to forward it to Ellingson's attorney and start a dialogue after the Red River Joint Board has agreed, in whatever method that requires or happens. Mr. Dwyer spoke with Senator Wanzek and Senator Luick, and Senator Wanzek was favorable to us working with Ellingson's attorney, Kale Van Grubben, to offer amendments. Mr. Luick said he has five meetings with various groups on SB 2263, so it has become a bill a lot of people care about.

As for the statewide significance, it is addressed that tile drainage with a surface intake that drains a watershed of greater than 80 acres requires a surface drain permit. That is where statewide could then come into play. But it is also something the state can worry about. There are only 9 statewide tile permits that have been statewide, out of almost 800 that have been approved, and those are all held up. It helps WRDs if the State can be involved in the fight.

Pembina County Attorney Robert Fleming reported on the progress he is making with Ellingson Company Attorney Kale Van Bruggen on negotiations for tile drainage permit conditions, application fees, review periods, and downstream easement requirements.

The Ag Committee has postponed Tuesday's committee meeting regarding SB 2263 until further notice.

**ADJOURNMENT**

The meeting adjourned at 10:50am without objection.

APPROVED:

ATTEST:

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Gary Thompson, Chairman

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Nettie Johnson, Secretary