

**LETTER OPINION
2003-L-26**

April 14, 2003

Mr. Neil W. Fleming
Pembina County Water Resource District
PO Box 633
Cavalier, ND 58220-0633

Dear Mr. Fleming:

Thank you for your letter requesting my opinion¹ on whether the Pembina County Water Resource District may levy special assessments under N.D.C.C. § 61-16.1-09.1 on land in Cavalier County which would be benefited by a proposed Tongue River snagging and clearing project. You indicate that although approximately 80% of the Tongue River watershed is located in Pembina County, certain Cavalier County lands in the watershed would be benefited by the project which would maintain the natural watercourse. Annual assessments for snagging and clearing projects are limited by law to fifty cents per acre on agricultural lands and fifty cents per \$500 of taxable valuation of nonagricultural lands.² N.D.C.C. § 61-16.1-09.1(1).

Water resource districts are “creatures of statute, and they have no powers except such as are expressly granted by the statute or reasonably implied from the powers granted.” Burlington Northern and Santa Fe Ry. Co. v. Benson County Water Resource Dist., 618 N.W.2d 155, 157-58 (N.D. 2000) (citations omitted). Water resource districts have broad powers under N.D.C.C. ch. 61-16.1 to develop projects for the control and regulation of water.³ In construing the power of a water resource board to construct,

¹ The Attorney General is authorized to render opinions to water resource boards. N.D.C.C. § 61-16.1-58. Water resource boards are also authorized to bring an action in district court to judicially confirm and approve the levying of special assessments. N.D.C.C. § 61-16.1-59.

² Thus, for example, if an agricultural landowner had 160 acres benefited by the project, the annual assessment would be \$80. Similarly, if an adjoining nonagricultural parcel of land worth \$50,000 was benefited by the project, the annual assessment would be limited to \$50.

³ In exercising its authority to construct projects that affect other water resource districts, a water resource board should be mindful of its duty to cooperate with other water resource boards having a common river basin. N.D.C.C. § 61-16.1-10.

modify, maintain, and repair all “water conservation and management devices of every nature and water channels,” found in N.D.C.C. §61-16.1-09(5), the Attorney General determined that this subsection gave water resource boards the authority to develop projects without restricting the projects to the boundaries of the district. N.D.A.G. 84-23 (copy enclosed). See also 14 E. McQuillin, The Law of Municipal Corporations § 38.52 (3d ed. 1998) (land outside a municipality’s limits may be included in an assessment district if authorized by statute).

In N.D.A.G. 84-23, the Attorney General concluded that a water resource board does not interfere with the powers of an adjoining water resource board by levying a special assessment in an adjoining county. The opinion also concluded that a board may establish an assessment district project that includes land in adjacent counties and levy and require the collection of assessments on the land benefited by the project, including the land located in other districts. In reaching this conclusion, the Attorney General found it significant that several statutes governing how assessment projects are established did not confine assessment districts to the geographical boundaries of the water resource district; rather, the statutes referred to establishing assessment districts encompassing lands benefited by the project. Id. As noted in the opinion, “[w]ater management, to be effective, cannot stop at county lines. Water does not respect political boundaries.” Id. See also Freeman v. Trimble, 129 N.W. 83, 87 (N.D. 1910) (“The power to establish drains would often be of no beneficial use whatever, if the drainage boards must stop all work at the boundary line of their districts.”).

The authorizing statute for a snagging and clearing project is N.D.C.C. § 61-16.1-09.1, which provides, in part:

A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debrisment of bridges and low water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises within the watershed benefited by the project. All provisions of this chapter apply to assessments levied under this section except:

....

2. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county

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must approve and levy the assessments to be made by a vote of two-thirds of its members.

(Emphasis supplied.) The statute expressly authorizes the board to collect a special assessment against all land within the watershed benefited by the project. The statute does not limit the assessment area to the geographical boundary of the water resource district.⁴ As noted in N.D.A.G. 84-23, allowing a water resource board to establish a project encompassing all lands benefited comports with the water policy of the state to provide for water management and prevent flood damage “in the watersheds of the state” N.D.A.G. 84-23.

It is my opinion that a water resource board has the authority under N.D.C.C. § 61-16.1-09.1 to assess benefited lands beyond the water resource district’s borders provided the procedures in that section are followed.

Sincerely,

Wayne Stenehjem
Attorney General

mas/pg
Enclosure

⁴ Whether land is correctly included in the special assessment district is appealable to the State Engineer. N.D.C.C. § 61-16.1-23. In the alternative, a water resource board’s decision regarding assessments may be appealed to district court. N.D.C.C. § 61-16.1-54; Investment Rarities, Inc. v. Bottineau County Water Resource Dist., 396 N.W.2d 746, 748 (N.D. 1986).