

Date Issued: March 12, 1986 (AGO 86-12)

Requested by: Alfred A. Thompson  
Burleigh County Water Resource District

- QUESTIONS PRESENTED -

I.

Whether the responsibility for construction or reconstruction of a revetment lies with the water resource board or with the board of county commissioners.

II.

Whether a water resource board may finance a project to reconstruct a revetment work by special assessments.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that, the responsibility for construction or reconstruction of a revetment lies with either the water resource district or the board of county commissioners depending upon the circumstances of each case.

II.

It is further my opinion that a water resource district may finance a project to reconstruct a revetment work by special assessments.

- ANALYSES -

I.

A revetment is defined as a "facing, as of masonry, used to support an embankment." The American Heritage Dictionary (New College Ed. 1981) at 1112. Such facings are used along the banks of streams and rivers to support the stream or riverbank by protecting the bank from erosion. The Legislature has placed the responsibility to construct revetment works on both the water resource district and the county commissioners.

A.

The water resource district's responsibility to construct revetment works arises under N.D.C.C. sections 61-16.1-02(7) and 61-16.1-15. N.D.C.C. section 61-16.1-15 authorized a water resource district "either upon request or by its own motion, to acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project. . . ." N.D.C.C. section 61-16.1-15. A "project" is defined by statute as "any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement. . . ." N.D.C.C. section 61-16.1-02(7) (Emphasis supplied). Since the purpose of revetment works along a riverbank is protection from bank

erosion maintenance and construction of revetment works would be considered as an authorized water resource district project under N.D.C.C. section 61-16.1-15.

In this case, the revetment works have been constructed by the United States Army Corps of Engineers (Corps), a federal agency. Reference has been made to N.D.C.C. section 61-16.1-40. That statute provides that a water control device which has been constructed by a federal agency, but which is not maintained or operated by any federal agency, shall become the responsibility of the district where it is located. That statute further provides that the "district may take any action concerning this dam, dike, or other water control device it deems feasible or necessary." Thus, while a water resource district is the entity responsible for an abandoned federal water control device, the determination of what course of action to take is within the water resource board's discretion.

That discretion must be exercised in the public interest, however, and the public interest in each case will depend upon the facts. The board could therefore attempt to establish an assessment area for a project for revetment maintenance. It could make a determination that the public interest would be best served by removing the abandoned federal water control device. Finally, the board could take other actions regarding the water control device if those actions were in the public interest.

B.

The county commissioners are also authorized to construct and maintain revetment works. N.D.C.C. chapter 61-19. This responsibility arises only if the commission is petitioned in writing by the owners of two-thirds of the land which will be benefited by the construction. N.D.C.C. section 61-19-03. The petition must be accompanied by cash or a bond. Id

In determining whether revetments should be constructed or maintained, the county commissioners must consider if "the construction is necessary for the welfare of the owners of the land sought to be protected and is for the public good. . . ." N.D.C.C. section 61-19-04. If both those criteria are met, the commission "shall enter a resolution to that effect and shall appoint a competent engineer. . . ." Id

The engineer reports his findings to the commission in the form of plans and specifications including the "probable cost" of the project. If owners of two-thirds of the land to be assessed object to further proceedings, the commission must discontinue those proceedings and has no responsibility to construct the revetment work. N.D.C.C. section 61-19-06. If a sufficient number of landowners do not object, however, the commission must proceed and the project is eventually built.

Based upon the foregoing discussion, it is my opinion that either the water resource board of the county commissioners may be responsible for construction or reconstruction of a revetment work depending upon the facts of each case.

II.

As discussed above, a revetment work could be a water resource board project. N.D.C.C. section 61-16.1-15 authorizes a water resource district to finance a "project with funds raised in whole or in part through special assessments. . . ." N.D.C.C. section 61-16.1-15 (1985). It is, therefore, my opinion that a water resource board may finance reconstruction of a revetment work by special assessments.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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