

# BOTTINEAU COUNTY WATER RESOURCE DISTRICT

**Written Testimony by Clifford Issendorf**  
**Bottineau County Farmer & Bottineau County Water Resource District Chair**  
**Senate Bill 2208                      Senate Agriculture Committee**  
**January 28, 2021; 10:30 a.m.**

Chairman Luick and members of the Senate Agriculture Committee:

My name is Clifford Issendorf. I am a lifelong farmer in Bottineau County with personal experience utilizing drain tile and subsurface irrigation systems on my farm. In addition, I am the Chair of the Bottineau County Water Resource District, where I have served on the Board for 40 years. I am here today to provide testimony in opposition to Senate Bill 2208.

Our Board manages and operates over 20 legal assessment drains, several of which operate through joint powers agreements with other water resource districts in our basin. Presently, our District has 13 additional legal assessment drain projects in progress. The most recent project spanned Bottineau & McHenry Counties, and passed by 98.74 percent. Assessment drains are popular water management tools in our area.

Water has also provided challenges from the early days of statehood. Much of the glaciated prairie areas of our state include wetlands and other poorly drained lands mixed with drier lands. The first assessment drain in Bottineau County, Gessner Drain, was petitioned in 1904 and constructed in 1906. A second drain was constructed that same year, and two more followed in 1908. The primary purpose of the drainage code at that time was to enable joint, private drainage projects to make land more productive for agriculture, to enable and protect roadways, to protect public health from stagnant waters, and to promote commerce.

SB 2208 is being promoted as having the limited purpose of aligning landowner-petitioned assessment drain projects with water board-initiated assessment drain and general assessment projects so that all water board projects follow the same general procedures and timelines. That is a noble endeavor worth pursuing, but this bill goes much further. The Bottineau County Water Resource District Board believes SB 2208 is a setback for progressive water management and will create unreasonable hurdles for water management in Bottineau County. Here are some examples:

- 1. Sections 5 & 9 of the bill require landowner petitions to state the “practical drainage area” of land to be drained.**

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All 13 pending drain projects in Bottineau County are initiated by landowner petitions. The area to be drained is normally reviewed and objectively surveyed by an engineer appointed after the petition is submitted. This bill puts the cart before the horse and will require petitioning landowners to employ an engineer before the project and bond are even submitted.

**2. Our District’s biggest concerns with the bill are new definitions for “maintenance,” “repair,” and “cleaning and repairing,” and eliminating use of annual levy funds in 61-16.1-45 to make any changes to the original drain’s design.**

- a. Current law allows Districts, within certain annual and total assessment limitations, to maintain drains to their original design and make certain improvements, like deepening and widening.
- b. The bill’s purpose of drawing a distinction between these definitions appears to add hurdles to any changes beyond the drain’s original design. Sections 32, 34, & 35 of the bill prevent water boards from using maintenance assessments for anything other than returning an assessment drain to its original design capacity.
- c. These rigid definitions will add unreasonable and costly hurdles to addressing natural and artificial changes in an assessment drain’s watershed. Examples of natural changes are changes to annual precipitation. Artificial changes are changes in land use, such as conversion of pasture to cropland, installation or improvements to surface & subsurface drains, and modern farming practices.
- d. When the Gessner Drain and others were constructed in 1906 by hand shovels, the water board did not design the drain to accommodate modern farming practices and climate.

Our Board has an appreciation for concerns about using maintenance levies to completely redesign a new assessment drain project; however, we do not support the additional costs and time delay of requiring a landowner vote for modifications like bringing road crossings up to stream crossing standards and flattening side slopes.

- e. There are environmental and economic benefits to keeping the expanded definitional scope of the terms “cleaning out and repairing a drain.” Reconstructing a drain with flatter side slopes is commonly justified because of its ability to preclude future repairs due to soil instability or highflows during spring

snowmelt. The resloped ditch is also easier for the water resource district to inspect and maintain as related to weed and vegetation management, and for grass harvesting operations by private landowners.

f. Reductions in sediment achieved through flatter side slopes improve downstream water quality while reducing the need and costs of future maintenance. For resloped ditches, spoil piles adjacent to the ditch may provide some additional environmental and economic benefit by redirecting water on the field side to nearby side-inlet controls to meter water into a ditch.

3. **SB 2208 repeals the permitting exclusion for drain tile projects that comprise less than 80 acres.** We promote investment into reasonable subsurface water management systems. Drain tile is an effective water management tool that increases the storage profile of water in the soil, reduces erosion caused by surface runoff, and promotes a stronger tax base in our county. We see no reasonable purpose for requiring tile projects of less than 80 acres to require a permit, especially when uncontrolled surface drains with a watershed of less than 80 acres do not require a permit.

4. **SB 2208 creates confusion over the appeals procedure for water resource board decisions.** Section 1 requires appeals of drain permits to the state engineer to be conducted through the costly and time-consuming office of administrative hearing process. Section 38 states that denied permits are appealed to district court for record review. We do not support changing the appeals procedures in existing law.

The Bottineau County Water Resource District is willing to work with the bill’s sponsors to understand how these changes negatively impact our District, its farmers, and the progression of smart water management in our state. In its current form, our District cannot support SB 2208.

This concludes my testimony in opposition to SB 2208. I will stand for any questions from the committee.