

January 31, 2023

Representative Donald W. Longmuir, Chairman
And Members of House Political Subdivisions

RE: HB # 1462

Today I will offer my support of this proposed amendment to our State's Century Code as landowner **property rights** are being marginalized without it.

In the spirit of brevity, I will reveal a real-life example that an overzealous water board can act without impunity to harm landowners.

In December 2001, I witnessed my water board enter private property with dozens of truckloads of drain spoils from other parts of Drain #11 in Sargent County that apparently was a nuisance to their maintenance of the drain left by 1918 construction. I made inquiries what authority they felt they had to dump their unwanted spoils on our property - which the inquiry alone apparently created animosity.

Over a decade later, their wrath was exposed again. On the same area adjacent to the drain corridor, they determine I had invaded acres by farming that they believed they owned via 1918 documents. These were 2 acres, adjacent to drain, which the county had not used since 1918 installation. When I did not agree to pay them "rent" on these acres that I believe were only subject to the 1918 easement, the Sargent County Water Board sued me for trespass. Eventually, the ND Supreme Court decided that the 1918 document truly was only an easement and dismissed the allegations of trespass this board used to flame rhetoric across my community about my personal stature.

Compensation cannot repair the personal integrity that a public trial imposes, but what about the legal costs to defend oneself from an unprovoked threat to private property by a governmental entity? Tens of thousands of dollars of private monies flowed to defend this aggressive action and same volume of public funds too. All this expended and hours of efforts for 2 acres of unused corridor acres a landowner wasn't paying rent (on what was his own acres.)

This true story is only one of several events I have been challenged with by my Sargent County Water Board. Each event is saturated with legal fees. In this period, I have witnessed other landowner events of equal significance. What I sincerely want Legislative members to realize, that any "sheriff" obligations to keep water boards acting within the confines of ND Century Code essentially are only landowners themselves with only their private monies to defend **property rights**. To leave this supervision only to landowners is burdensome in many ways, but to obligate landowners to defend erroneous board decisions is with their own funds that are not recoverable is without mercy or respect. At minimum, when landowners are reimbursed for this duty, at least financially they are put back into position left unharmed financially by a poor public board decision.

Without legislative correction, instead, the water boards can react though their frustrations by initiating actions that are clothed with retaliation, retribution and without remorse.

Again, **I have more personal stories** to equal this one that are indications of the same reckless behavior. This board was described by a District Court as “morally deficient,” which speaks volumes and perhaps indicates a reason for their behaviors. But if Legislator assumes this is a small, isolated event in North Dakota, I would like to warn Legislators that my board’s consultants, which advise the board are into many ND boardrooms. Its apparent in my board’s reactions to consultant advice is to blindly follow that advice. This was demonstrated in 2016 when consultants advised board members to remove one of their own when that board member challenged them.

To summarize, I am sure many water boards in ND act responsible and act as worthy trustees to special assessment drain funds. But society must remain diligent to the exception (even one aggrieved person is too many) when Boards fail these expectations.

If Legislature determines the landowners are the “sheriff”, I believe we must replenish the private funds the landowner expends to do this duty.

I would suggest Legislators consider why a situation of less than 3 three aggrieved parties is an appropriate condition whereas 3 or more is. Isn’t the price of the harm inflicted the same even though it might be only a single person?

I have attempted numerous times to involve a familiar farm group for aid to advance knowledge of water board activities. Finally, and after decades of no return messages, I have given up my organization’s membership of near 50 years. I sense that they only want to advance drainage at no matter the cost to property rights. Victims of water board abuse are marginalized and separated to left to be alone. I am not against water drainage and utilize drains too.

Currently, existing Century Code leaves **property rights** under threat and I would encourage Legislators amend to protect property rights.

Paul Mathews, landowner

Cogswell ND 701-724-6470

farmerpost@hotmail.com (preferred contact)