

January 31, 2023

Dear Senator Luick and Members of  
2023 ND Senate Ag Committee

RE: Senate Bill #2037

First, I would commend the interim Water Drainage Committee's developing SB #2037 as a product of diligent work. Having Chairman Luick and Senator Hogan's already exposure to this bill's drafting is immeasurably important. ND Dept. of Water Resource's Dr. Pool's efforts and contribution should be applauded. **I support this bill as a start to remedy current treatment.**

In our society's use of special assessments, I have come to appreciate the axiom which public special assessments are rest. From State of Minnesota, who has for decades provided landowner protection, we can consider their positions as found at <http://www.house.leg.state.mn.us/hrd/pubs/specasmt.pdf> ) :

*"The assessment amount charged to the property cannot exceed the amount by which the property benefits from the improvement, as measured by the increase in the market value of the land due to the improvement. The assessment must be uniformly applied to the same class of property.*

*In order for a special assessment to be valid:*

- *the land must receive a special benefit from the improvement being constructed,*
- *the assessment must be uniform upon the same class of property, and*
- *the assessment may not exceed the special benefit. **Special benefit is measured by the increase in the market value of the land owing to the improvement.***

**A special assessment that does not meet these requirements is an unconstitutional taking."**

On the following page, we can measure my own county's latest very expensive (>\$200,000 in consultant fees to develop) modeling for assessing drain benefits and one can wonder how their methodology is acceptable when a benefit is not measured in dollars. But this October, they advanced their model going forward after 6 years to develop. At various times, they were determined the interim Water Drainage Committee's work was inferior to theirs (Sargent County's). This October, realizing your proposed legislation was progressing, openly challenged their attorney **"To work his magic** and kill this bill." Please carefully consider the opposition's reasoning as to whether it's based upon sound logical principles or something much less.

It shouldn't be a surprise if a landowner might ask the governmental entity, **"How was my property's benefit calculated?"** only to be mystified by an answer that is stated in a "% of a full benefit" (instead of how much value was his property increased in and stated in dollars). Does Sargent County's new method (Matrix) have any resemblance to answer a landowner's question (increase value in dollars)? Does this very complex methodology comply to current ND Century Code's test to limit special assessments where its levies will not exceed benefits? My Sargent County presumes, by this complex "Matrix", it has computed levies that are less than the properties' increased value after a public drain is installed. That is the answer provided to me on that question, "What is my property's dollar benefit?". **But how do they know?** They don't and don't try to compute.

Perhaps this matrix's answer may have that result upon further computations by utilizing and stating its results in "dollars" too, but until then, we have what one member of the county water explained to attendees of a public meeting on its reassessment, **"Luck of the Draw"**.

The county's conceived "Matrix" is truly a paradox and I hope the Legislature see it for what this complex concept (Matrix) is. It leads to a conclusion that seems senseless and logically unacceptable. Without legislation, this kind of fallacy will continue which harms landowners who expect predictability and fairness from their government rather than **"Luck of the Draw"**.

I would hope your Ag Committee pursue the logic here and instill fairness back into the processes of properly assignment of public drain assessments. I believe we should leave **"Magic"** and **"Luck of the Draw"** behind and codify the bill's language. Currently, some landowners are being left essentially to pay for another property's benefit and are harmed significantly, a situation that I have also faced along with my neighbors. This situation needs to be corrected.

Paul Mathews      landowner      Cogswell ND 58017    701-724-6470    [farmerpost@hotmail.com](mailto:farmerpost@hotmail.com) (preferred contact)

The following (copy /paste) is the new modeling for reassessment for Sargent County Drain # 11 as adopted in October 2022 (a process started in January 2017) with over \$200,000 consultants' fees accumulated to develop. **One should remain alert when reviewing their procedure as whether their calculated "Matrix" ever utilize "benefits" being consider in dollars.** The "Matrix" is a computation that reduces the presumption that all properties in watershed are assessed a full 100% "Benefited". This computation is theorized as being more simple and cheaper to compile than legislation's offer! Is it, or just a continuation of misapplication of society's expectation of fairness? The Sargent County's result only spreads cost and presumes dollar benefits exceed it.

Take note too, their methodology doesn't include all properties. Public benefits are paid and confined only to a watershed landowners. This ignores existing ND Century Code requiring all entities, public and private, share proportionally. This burden harms private landowners paying for benefits of public properties benefited. The two groups are different: watershed and public.

The "**Matrix**" consists of four primary categories which will total 100%:

- A. Proximity .55 %
- B. Land Crop Us .25
- C. Productivity .10
- D. Hydrologic Group .10
- Total 1.00 %

These four categories are further reduced by a revealed a "**Secondary Matrix**" by each categories' own reductions:

Proximity Assessment 55.0%	
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Buffer Distance	Buffer Percent
0.5	100%
1	90%
2	80%
3	70%
4	60%
5	50%
6	40%
7	30%
8	20%
9	10%
10+	10%

Crop Assessment 25.0%	
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Crop Group	Crop Percent
Background	0%
Crop	100%
Developed	10%
Forest	25%
Idle / Barren	50%
Pasture, Shrub & Grass	75%
Water	5%
Wetland	5%

Productivity Assessment 10.0%	
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Range	Productivity Percent
0	50%
10	50%
20	50%
30	50%
40	50%
50	50%
60	75%
70	75%
80	100%
90	100%
100	100%

Hydrologic Group 10.0%	
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Soil Group	Hydrologic Percent
A	10%
A/D	10%
B	70%
B/D	70%
C	85%
C/D	85%
D	100%
U	50%

Once this initial "**Matrix**" calculation determines a preliminary reduction from presumed 100% benefit, this newly determined percentage is adjusted further for "Reductions & Adjustments" as:

- E. Easements (determined % reduced by chart below – revealing even a "**Third Matrix**")
- F. And finally, any Drain Tile permits recorded (primary Matrix % is accordingly adjusted to 100% benefited)

Reductions & Adjustments		
Category	Description	Reduction Percent
Easements	Conservation	-15%
	Grassland	-15%
	Wetland	-15%
	WPA	-5%
	Non-Ease. Water	-20%
	Non-Ease. Wetland	-30%
Drain Tile	Adjustment for Permitted Tile	100%

Just a month after Board motion the above as being the final "Matrix" for assessing benefits, their next drain's re-assessment the Board has added a new "Reduction" for City properties in watershed where to reduce determined calculations above by 90% (apparently a reduction to achieve reasonableness done by a guess?)