

## Testimony in support of SB 2037

Senator Larry Luick, Chairman and members of the Agriculture Committee

RE SB2037

Thank you, Mr. Chairman and members of the Committee, for giving me the opportunity to speak in support of SB 2037. My name is Bob Banderet from Cogswell, ND and a landowner in the infamous Drain 11 watershed. In my opinion, this legislation is the most important to be proposed by the Interim Drainage committee.

In a letter to Senator Wardner, dated March 31, 2020, from then State Engineer Garland Erbele, Mr. Erbele states that, according to Century Code, costs cannot exceed benefits:

**Senator Rich Wardner**

**March 31, 2020**

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**In multiple other references (N.D.C.C. 61-21-15 & 61-21-1g among others) benefits are mentioned in comparison to cost which would require benefits to be determined in monetary units in order to be practically compared to costs to meet the requirements of those sections- The OSE's economic analysis tool focuses on a statewide perspective of the overall project in monetary terms. The economic analysis was not designed, nor directed, to partition individual, parcel -level benefits.**

Mr. Erbele further states that WB's currently are not determining benefits in monetary units:

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**Additionally, we do not believe WRBs consistently denote the dollar-value of benefits on a specific parcel, but instead choose to define benefits (indirect or direct) as a uniform, distance based, negotiated, or arbitrary percentage of costs. The WRBs then assume these assessment drains have monetary benefits that equal or exceed the project costs without having performed monetary comparison calculations- For a WRB to quantify benefits on all landowners in an assessment district at a dollar-of-benefit level would require additional work not currently being completed.**

Over the last 4 years, I have watched my local WB attempt a reassessment of Drain 11 using, as Mr. Erbele describes, a distance based, negotiated, or arbitrary percentage assignment of costs. After many years and hundreds of thousands of dollars, the WB is still not determining benefits in monetary units, thus it is

impossible to determine if they are following Century Code that costs can't exceed benefits. A glaring example of negotiated or arbitrary determination of percentage of benefit is my pasture, under the recently completed reassessment of Drain 11, is determined to be 80-90% benefit because of its proximity to the drain. In the neighboring assessment district of Jackson drain, all pasture, regardless of distance from the drain is at 12.5%!! This is not a determination of benefit but rather an arbitrary distribution of cost.

Not available at the writing of Mr. Erbele's letter, the Department of Water Resources now has the economic analysis tool available to calculate individual parcels' benefits in dollars. The Department of Water Resources uses this benefit analysis to determine cost share decisions on projects, thus ensuring sound economic uses of taxpayer money. Shouldn't individual landowners, who bear the majority of the costs for these projects, be entitled to the same analysis and assurance that their costs haven't exceeded benefits?

You will hear much from the opponents of this bill that it costs too much and they will be giving up local control. Remember that the recently completed Drain 11 reassessment cost over \$200,000 and local control did nothing to ensure that costs did not exceed benefits. The US Supreme Court over one hundred years ago ruled that a government entity didn't have to physically take land to be a "taking". Costs in excess of benefits received amounted to an unconstitutional "taking" also.

In closing I would ask this committee to thoughtfully consider recommending passage of this bill so that current Century Code will finally be adhered to and that landowners will no longer be subject to a possible economic "taking" by their local WB.

Bob Banderet  
Cogswell, ND

[bobnlori@drtel.net](mailto:bobnlori@drtel.net)  
701-680-9738