

House Bill 1437
February 4, 2021 – 9:00 a.m.

Testimony of Richard Gramlow
House Agriculture Committee

Dear Chairman Johnson & House Agriculture Committee:

Thank you for the opportunity to speak to you today about House Bill 1437. My name is Richard Gramlow. I am a farmer from Dickey County and utilize subsurface water management systems on my farming operation. I am testifying today in support of House Bill 1437. Specifically, I support the following aspects of this bill:

1. **Permitting Exclusion for Systems Comprising Less Than 80 Acres:** I support that House Bill 1437 preserves the permitting exclusion for subsurface water management systems that comprise less than 80 acres of land area. This is an important provision in current law which I am glad to see House Bill 1437 preserve.
2. **Downstream Lands:** I appreciate that House Bill 1437 separates the affects to downstream lands from the water resource district permitting procedures. Disputes regarding the management of water between upstream and downstream landowners are often very challenging for water resource districts to sort out. The standards for protecting an upstream landowner's right to reasonably remove excess water from his or her property and the rights of downstream landowners to be protected from an unreasonable amount of flooding require weighing of multiple factors, based on the presentation of expert evidence. This is the type of things that courts are designed to address, and I feel the administrative process is not well equipped to settle disputes that arise over the use of property for water management. House Bill 1437 removes these fence-line political disputes from the water resource board's permitting decision.
3. **Confidentiality of Project Designs:** I appreciate that House Bill 1437 protects subsurface water management system project designs from knowing and willful disclosure. These are sensitive records that deserve the same privacy protection that other records, like USDA wetland records on private property, are afforded.
4. **Approval Period:** I appreciate that House Bill 1437 requires the water resource board to make a determination within 3 business days that an application is complete, and make a determination whether to approve a permit with or without conditions within 30 days. This, along with the streamlined permit application requirements, will keep permit decisions from being unreasonably delayed.

Subsurface water management systems are often a small component of the watershed in which they are located. I ask the Committee to look closely at the permit conditions found in Section 1, Paragraph 4(h) and (i) on pages 6-7. It appears these provisions allow the water resource board to attach conditions to permits that require the permit holder to remove silt and vegetation, or repair damages directly caused by the subsurface water management system. Surface drains and surface runoff, not tile systems, are typically the most common source of accumulated silt and overgrown vegetation. What kind of substantial evidence will be required to prove that the silt and vegetation or damages are directly caused by the tile system? How will water resource boards separate out the silt that is attributable to the tile system from accumulated silt that is natural from the watershed or caused by surface runoff from cropland in the watershed? What happens when a downstream landowner presents evidence of accumulated silt in a road ditch, but the road authority does not give permission for the accumulated silt to be removed? I urge the committee to consider removing these subparagraphs from the bill and leaving all disputes between neighbors regarding damage to property to be addressed through the courts.