January 31, 2023

Representative Todd Porter, Chairman
And Members of House Energy and Natural Resources

RE: HB # 1391

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.

I will confine my testimony to the amending language of:

> *"The cost of cleaning and repairing a drain must include the engineer's probable cost or contracted costs, without consideration of any cost-share opportunities, and may not be reduced by general funds, account funds, or any other available funds."*

One may wonder why a definition like this is required. I have witnessed first-hand how as apparently in absence of a clear definition; some water board consultants have defined their own interpretation.

I am a landowner in Sargent County's Drain #11 District which in 2016 eventually alerted to an impending project. Being advised by State Water Commission's office that "cost share had been approved", the SWC answered my question if a landowner vote would occur on a significant project, the SWC suggested I attend a water board meeting to ask them directly. This occurred only a few days before existing law's 30-day appeal period would pass – a law no landowner was aware of. As Board minutes of that meeting reveal, it seems the water board knew our ability to appeal was waning towards expiration.

> *"A request was made to conduct a vote of the assessment district members, but the board explained the vote process would take five months and is very costly to conduct. More importantly, under North Dakota law, a vote of the assessment district is not required as long as the project will not exceed the maximum maintenance levy the Board may assess per acre against the properties within the Drain 11 assessment district in any six-year period. In other words, a vote of the assessment district is only required if the cost will exceed the maximum $4 per acre annual maintenance levy levied over a six-year period. …* ***noted nobody timely appealed****."*

It was only weeks later we understood that ND Century Code included a statute which requires landowner vote to ratify projects that exceed 6 years of maximum levies ($4.00 /ac.) One might expect common sense would alone signal to board members to hold public meetings to inform the landowners who will be obligated to pay for projects, regardless of the statute. This did not occur before the Resolution and District Court Judge's decision labeled their actions as "morally deficient" but dismissed our group's attempt for justice because we missed the 30-day appeal period.

As we demanded an answer why this law wasn't complied to, we then learned of their mathematics used utilized to justify. The following has been repeated several times including answering to State Water Commission's questioning if compliance occurred:

The Project cost estimate as of October of 2016, and the District's funding and financing plan, were as follows:

- *Total project cost: $3.9M*
- *State Water Commission Cost-Share: $1.4M*
- *Sargent County Commission Cost-Share: $200K*
- *Local Share total: $2.28M paid as follows:*
  - *Six-year Bond Amount Max: $1.7M (approx. $283K maximum levy over six years)*
  - *Remainder of local share: Funds on hand*

Today I suggest readers here utilize their 4-grade math and consider if this explanation matches Legislative intent for the codified Landowner Protection from excessive special assessment levies in existence since at least 1955.

Focus on two specific facts: Cost of project = $3,900,000 and 6 years of levies = $1,700,000. Does it pass the 4-grade test?

Does the cost of this project exceed Legislative intent? Sargent County Water Board and their advisors, and in a vacuum of a better definition, they have proceeded forward with absolute conviction on the Drain #11 project and other drain projects with same belief. Using the example above, the "Remainder of local share -Funds on hand $580K" equates to another 2 years of maximum levies expended on a project – **without a vote**. In conjunction with another Century Code limitation limiting only 6 years of maximum levies can be accumulated in maintenance funds, this opens the door to essentially 12 years of maximum levies – **without a vote**.

Just recently, in Sargent County Drain #12's project, advisors explained that they could "borrow from their general funds" to achieve their purpose – **without a vote.** Think about that position, by "borrowing" from general funds can result in a project unlimited in size and obligating landowners well past 6 or 12 years – **without a vote**. A pattern is developing in Sargent County upon consultants' advice.

I sense you will hear water boards' disenchantment with the proposed amendment that "good projects will be stymied" because of limiting unvoted projects to 6 years of maximum levies.

BUT REMEMBER, IF THE PROJECT IS PERCIEVED AS "GOOD", THEN ALL THAT IS NECESSARY IS A LANDOWNER VOTE!

How burdensome is it to have landowners vote on projects they essentially are paying for via special assessments? Or is the issue here water board members don't want to take time to be transparent and let landowners bear the responsibility of deciding the outcome of substantial projects they obligate themselves to?

Today that is a question for the Legislature is whether a clear definition is needed on how to compute this landowner protection is read and applied. Further, shall cost of projects be reduced by other factors such as possible cost share and/or available funds?

Our Century Code currently has numerous mill levy limitations that County Commissioners must adhere and some have been put to a county-wide vote for an excess levy. I would sense past Legislatures saw the wisdom for appointed water boards too (that seemingly are not supervised by County Commissioners nor do landowners have opportunity to vote on water board members who have this power of near unlimited levies.)

From my county water board experiences, it would appear the "guardrails" need a clear definition of what Legislature believes is the "cost of a project". Removing all these other undefined items (only manufactured and produced in the minds of aggressive consultants) of subtraction can dispel all doubt for a clear meaning. If the Legislature conclude the result is too limiting, then consider if 6 years or $4.00 /acre[i] is too constraining. I don't believe ND is ready for this "free for all" letting these undefined subtractions be acceptable to avoid landowner votes. We must have faith in our citizens with their votes. We are a democracy yet.

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

Paul Mathews, landowner

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[ii] For historical perspective, the ND Century Code in 1955 had limited maximum levy to $.50/ac and one year. Therefore, a 48x fold increase from 1955 already exists on these century old drains with prior legislative amendments from 1955 to present.