

Testimony with regard to House Bill No. 1391

My name is Leon Mallberg and I am asking for a Do Pass on House Bill No. 1391. I live in Dickinson, North Dakota but I also manage the family farm in Sargent County, North Dakota. The property is located in what is known as the Drain # 11 Watershed, the largest watershed of its kind in North Dakota. I am not a paid lobbyist nor do I represent any special interest or industry group. I am a "run of the mill" citizen.

The Drain # 11 watershed has been highlighted for seven years. That would not be the case if House Bill No. 1391 had been in effect. Two items in the bill are presented for your consideration:

First, the bill states that the minutes of the Water Board meetings must be published and made available within seventy-two hours after the meeting date. This could be amended to state "three business days" which would alleviate the vocal concern that the minutes would be due on Sunday if the Water Board meeting was on Thursday.

On October 20, 2016, the Sargent County Water Board had their monthly meeting and passed a "Resolution of Necessity" with respect to Drain # 11. This action was not published in advance. It passed unanimously. The only people at the meeting were the board members, the board secretary and one land owner who had no interest or concern in Drain # 11. The statute states that if any affected landowner objects to the board action they must do it via the courts within thirty (30) days. Unchallenged it would eliminate any possible vote of approval by the affected landowners. No landowner was notified that there was a window of 30 days. On the 27th day of the 30 day window at 2:30 PM the minutes of the meeting that offered the "Resolution of Necessity" were made available. With the 30th day being a Saturday (November 19, 2016) it left 2 days to come to decision, find an attorney, prepare an objection and present it to the Clerk of Court. One would expect that a "**Public Board**" would notify affected parties that they were subject to a 30 window. After seven years and spending \$100,000.00 in legal fees trying and failing to get a landowner vote, we now have a \$4,100,000.00 4.5 mile ditch without a monetized benefit and no approval from the ones who pay. We are left with 40 miles of remaining ditch in Drain # 11 with no available maintenance money.

In the second suggested change, the bill states that if any project where the projected cost is more than six (6) times the annual maximum dollar assessment for the effected watershed, the project must go to a vote of the landowners of the watershed for approval. It is a simple step to protect and involve the landowners. Present practices by the water board have completely ignored or bent the intent of the law and prevented votes by the affected landowners. The item, as stated on the second page, is self explanatory without detail

Please reading the enclosed letter. You should have received a copy on or around December 26, 2022, via E-mail. It includes additional information.

Respectfully -- Leon L Mallberg

Dear North Dakota Legislator:

December 26, 2022

Sargent County now has 4.5 miles of 90 foot wide ditch costing \$4,100,000.00 where those that pay were excluded. Autocratic actions of Public Boards, at any level, should be questioned and corrected. I refer to the Water Board of Sargent County, ND. This situation has left the affected landowners frustrated and dismayed and questioning the word "Public" in Public Board. A quote from a County Commissioner in the Sargent County Teller on July 10, 2015: ***"(County Commissioner) Anderson pointed out that, while the County Commission appoints members to the water Board, it is a self-governing entity and does not answer to the commission." The question is who do they answer to?*** Over a substantial period of time, they have not seen fit to allowed landowner to be involved. If you are a remote landowner living outside the County you have little standing. In a memorandum prepared for the Water Board for Forum Communication Outlets on March 14, 2019, it states: ***"The District had no legal obligation to take the Project to a vote (of affected landowners), and did not even have any obligation to discuss the Project with the public (taxpayer)."*** Apparently they feel the law allows them the latitude to say that. Reviewing State law, the Water Boards truly do not answer to anyone.

The construction in question is called the Drain # 11 Improvement Project, involving the largest watershed of its kind in North Dakota. The area includes land in Sargent, Ransom, and Dickey Counties in ND and at one time Marshall County, SD. For 106 years, the only land to be assessed for its construction / up-keep was Sargent County. The other Counties were not assessed but contributed approximately 40% of the water in the drain. Sargent County carried the whole load for 106 years!

Several requests were made to include all counties in the watershed and provide a vote of the affected landowners ***to no avail***. A "Resolution of Necessity" by five (5) unelected board members was all that was needed to exclude all landowner in three counties.

The project has progressed with the following result: Drain # 11 has a total of 44 miles of ditch of which 10.5 miles were to be improved. Once a "Motion to Proceed" was passed, the Water Board found they could only afford 3.5 – 4.5 miles of the proposed 10.5 miles. Presently we now have a new 90 foot wide ditch in the middle of nowhere with a 106 year old, 40 foot wide ditch on both ends at a cost \$4,100,000. Presently there is no benefit or return to anyone in the watershed. Not one additional shovel of dirt will be moved for another 6 – 7 years because of the way it was financed. The board committed all of the maintenance money allowed by law for 7 years to secure the construction bonds leaving no money for maintenance of the remaining 41.5 miles of Drain.

There was a solution that only the landowners could provide but the board would not consider it. However there is a Water Board in Bottineau County that seems to work very well but their first priority and concern is the landowner. As a suggestion, the Legislature should consider changing the law so that all land in a watershed is included and water board maintenance or improvement projects over \$100,000.00 are voted on by the effected landowners to make sure they are involved and agreed. Additional details are available upon request.

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