Good morning Chairman Beltz and members of the House Agriculture Committee

My name is Rory Gabel, and I'm from rural Valley City. I'm here today to testify in support of House Bill 1544 and to share how the current law affects downstream landowners and that HB 1544 helps to address this issue.

Under current law, a landowner can tile and drain up to 80 acres of their land and pump the water onto neighboring land without the downstream landowner having any say, and even the water board has no authority to intervene. This practice allows the upstream landowner to increase the production and value of their land, while simultaneously decreasing the productivity and value of the downstream landowner's land.

I live with my family on a 20-acre farm where we raise a few head of cattle and produce hay to feed them through the winter, making us self-sufficient. A couple of years ago, I learned through the grapevine that the neighboring landowner planned to drain up to 80 acres of lowland directly onto our property without seeking our permission. Concerned, I reached out to our township officer, Bruce, who also serves on our local water board, to inquire about the situation.

Unfortunately, he informed me that, even in his capacity as a water board member, he had no authority to even request the landowner's plans.

I then contacted the landowner, Allen, who I've lived next to his land for over 40 years. While I understood that I couldn't stop his drainage project, I asked if he might consider scraping a shallow ditch to direct the water to a slough on the other side of our property to minimize the damage to our hay land and pasture. He agreed to meet in person to discuss it. During our meeting, I showed him that our hay land is very flat, and when water spreads across it, much of it could be lost to cattails. A shallow ditch might help prevent some of the damage. Allen seemed to agree that this could be a solution, but then he asked me how much I was willing to contribute to his tiling project, he wanted me to help fund a project that would benefit him while causing harm to our property. That ended our discussion.

Despite my objections, the tiling project proceeded. Since the pump was turned on, the water has been continuously flowing onto our property, even through this winter. With the high water table, I don't expect it to stop anytime soon. Since 1993 my sump pump at our house has pretty much ran continually, and our house is higher than the pump in the field.

As a result of this new tiling pump, I've already lost hay, and I'll have to purchase hay to replace what was lost, as the affected hay land has been too wet to harvest. The water also affects both sides of our driveway, making it impossible for me to mow those areas, which will cause problems with snow buildup.

House Bill 1544 would require anyone that want's to drain their 80 acres or less has to notify all the downstream landowners and if there are any objections from downstream landowners they would have to go through the normal permitting process and that would provide a much-needed safeguard for downstream landowners like myself, ensuring that we have a voice in how water is managed and that we are not unfairly burdened by the actions of others. I urge you to support this bill. There is a bill over in the Senate addressing this issue SB 2283 that has some further language that I like and hopefully through the process the best parts of both bills will turn onto one beautiful bill. Thank you.

Attached are photos of the situation.

(1) Hay land/pasture before project
(2) Hay land/pasture after a normal haying
(3) Hay land/pasture after a heavy rain but every year by July/August it dries up to be able to hay.
(4) Hay land/pasture after pump was turned on.
(5) The upstream side of our driveway with the pump's pipe flowing directly onto our property. If you look close you will see the flag that marks the property line. You can also see where driveway can't be mowed and will most likely turn into cattails that will cause snow problems
(6) Here is what up to 80 acres tiled looks like. Slough on the lower left and our hay land/pasture on the upper right of photo. Notice the alkaline (white) on the lower left and scattered all across the land, those alkaline minerals are also being pumped directly onto our land, most likely spoiling much of our land.
(7) Here is a pic of the pump late summer shows just how wet this ground is. The electricians that wired this pump ran much of the wire on top of the ground because the ground was too wet to trench…it is still above ground.

Thank you,
Rory Gabel--Box 301-- Valley City, ND 58072

Amendment to HB 1544

A person sustaining damages as a result of a subsurface water management system of another person shall participate in mediation before filing an action to recover damages. An aggrieved person shall file a mediation request with the board of the appropriate water resource district, and the board shall appoint a mediation board consisting of a hydrologist employed by the state, an engineer employed by the state, and an individual conducting farming or ranching in the county in which the subsurface water management system is located. All mediation costs must be paid by the owner of the subsurface water management system. An opinion issued by the mediation board is not binding, and participation in a mediation session does not preclude a party from commencing a civil action to recover damages after completion of the mediation