

# Testimony In Support of SB2283

by Randy Coon

Chairman Liuck and members of the committee, thank you for giving me this opportunity to testify on this bill. My name is Randy Coon and I farm near Buffalo, ND. I believe this bill is a good start to restoring downstream landowner's property rights that were taken away in previous subsurface drainage bills. The previous bill was written to end "fence line politics". If anything, the bad feelings between neighbors has become much worse. Downstream land owners have become frustrated because their only recourse is to go through the legal process, which is very costly. People call the current situation "the wild west of draining", where anything goes. When I visited with a member of the Maple River Water Resource District Board, he stated that the number one complaint he receives is when people tile and just run their water onto their neighbor's land. I am currently dealing with three of these situations on land I own and rent, and these are not isolated cases.

I would like to describe two of these tiling systems that have infringed on my property rights and my ability to farm the land. In the spring of 2023, I sent my hired man to work up a field for seeding. He called me and said "you better get over here right now". My first thought was, oh no, what has he done now. What I found was a track hoe digging in a large tile for a pumping station across the road from my field. The pump was installed to run all the water through a culvert onto my property. This tile project involved five quarters of land and had to use two pumps to move the water onto my property. This was all done without any notification to me. The current law allows this, but what kind of person does this sort of thing? I believe this is done by a person who knows he is doing someone wrong, but does not have the character to talk to me about it. In the spring of 2024, the tile pumps were started in April and ran until September. I was unable to seed 19.4 acres of wheat, and could not get on that land until October to work up the weeds that had grown up during that time. I do not believe this sort of situation should be protected by state law. I have hired a professional engineer to review the tile project and have turned his findings over to an attorney. This has been at a considerable expense to me.

The second project I want to describe is an example of the abuse of the 80-acre tile rule. A landowner asked my landlord if he could drain "a" pothole onto her land. She denied him permission to run water onto her land because her land already had water issues. The adjacent landowner tiled/draind the half section of land in late fall 2023,

despite the landowner's denial. He installed a tile draining on less than 80 acres. However, he had drained the entire 320 acres including a large wetland by digging ditches to the drain tile. Essentially, he had drained the half section using the 80-acre tile rule. I thought that when my landlord told him she did not want any more water drained onto her land, that would have been the end of it. Imagine my surprise when I went to seed it in the spring of 2024. This water was pumped through a culvert that I have never seen water run through before. In fact, he had to build a pool to pump into so the water would reach a level high enough level to run through the culvert. Even worse, he trespassed on my landlord's land to remove the ditch shoulder so the water would run on her land. This tile pump started in February and continued to pump water until October. This tile project prevented 34 acres of land from being planted. There was so much water pumped onto the downstream land that it effected multiple land owners. The Maple River Water Resource District allowed it because the tile was legal by state law. Again, I do not think this was within the intent of the law. The actions of the person draining the water say I will do what I want to and the heck with anyone else.

These two tiling projects give a good example of what downstream landowners are up against. This bill provides some much-needed help for the person having all the water dumped on them. For the first problem I discussed, I have hired an engineer to evaluate the tile project. He has completed his work and I have turned that information over to an attorney. This has been an expensive undertaking and it is not yet finished. Losing valuable crop acres also adds to my costs. Something needs to be done to restore my property rights and prevent damage to my land. Tiling under the current law creates a zero-sum-game, where the tile project may make money but the downstream landowner probably loses as much or more money. Please give the downstream landowners back their property rights and ability to protect their land by voting for SB2283. Thank you.

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