

**2013 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1398**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1398

February 7, 2013

18523

Conference Committee



Relating to imposition of a water extraction tax to provide a penalty and to provide an effective date

**Minutes:**

1-7 Attachments

Rep. Porter: We will open up the hearing HB 1398

Rep. Keiser: I have brought to you amendments that modify and bring this bill into the real intent that I had and the other sponsors of this bill had. (1-2 attachment)

Rep. Porter: On the first amendment on page 1 line 9 where it says " or any other source" would that bring in WAWS?

Rep. Keiser: Yes we have a lot of people making money off of rural water and the state should have some opportunity to recover some of the expense of operating depots etc.

Rep. Silbernagel: Fracing is occurring the country is another state doing the similar thing with water?

Rep. Keiser: I am almost certain they are not.

Rep. Anderson: How do we keep track of the water if they do sell some of it?

Rep. Keiser: I am sure they do.

Rep. Hofstad: We sell water to other industrial uses. The two impacts are roads and infrastructure. Can you explain that?

Rep. Keiser: There isn't any industry that doesn't impact our roads. On interstate trucking we are collecting money, a lot of the roads that are impacted here dirt roads it the level of impact that is important.

Rep. Skarphol: The roads are a serious issue in North Dakota. This bill addresses the water related issues and needs to formulate a policy that is appropriate to address it. I am

in support of that bill for the reason that we need to make some serious decision and make a recommendation to the rest of us.

Rep. Froseth: If you are going to tax water used to produce a well and then we are putting into context that hauling the water is ruining the roads. Then should we also put a tax on the saltwater that is hauled away from the wells?

Rep. Skarphol: I agree that we should discuss that however I would say the oil taxes should take care of that.

Rep. Froseth: It is a tax on a product there are different companies that are involved.

Rep. Sharphol: Would a solution be to tax only the product that is trucked?

Robert Harms: I am the lobbyist for the Independent Water Providers I am standing in opposition to HB 1398. I am handing some testimony from the Donald Simpson family from Ray. (Attachment 3) I think this is bad policy we would agree with the impacts and trying to address the impacts in western N.D. We have enough revenue to address those local roads and as the legislature is working through that issue there are some redistribution discussions. I like to see that.

Robert Vivatson: Chairman of the N.D. Irrigation Association; We are already paying significant property taxes, income taxes, sales taxes, vehicle taxes, etc. the residents and the small business of N.D. do not need any additional taxes.( attachment 4)

Loran Dewitz: Assessor, of Central Dakota Irrigation District; There seems to be a feeling that some of the water permit holders are exceeding their pumping allocations. I believe these feelings are the reason for the performance audits being conducted on the State Water Commission. (Attachment 5)

Pat Ward: I am an attorney with the law firm of Zuger Kirmis & Smith here in Bismarck; This is an unfair burden on persons using water from underground sources and may be unconstitutional. (Attachment 6)

Dallas Lulum: I farm and ranch at Tioga. (Personal story) I am against the bill for two reasons one it affects only a small group of people, if it affected everybody we would need a bigger room. We don't need this tax. And the other thing is the local people get caught up in and get hurt in some of this stuff because the big companies come they take it back to where they came from.

Rep. Damschen: What is the farthest that the trucks come from and what is the closest?

Dallas Lulum: 20-25 farthest and ½ mile.

EricVolk: Executive Director, N.D. Rural Water Systems Association; (Attachment 7) we understand where you are coming from but we are fearful that this could become something else. The amendments are good those amendments would bring two sides to agree on

something, which are the Independent Users and The Western Area Water Supply would finally agree on something with those amendments.

Rep. Keiser: Have you read the bill? This has nothing to do with the residential use.

Eric Volk: Yes

Rep. Keiser: Are any of your members selling any part of their water for commercial use?

Eric Volk: Yes they do.

Terry Jones: I am an economic refugee in N.D. I have some concerns with this bill the taxing of the water; there is a reason why the other states don't tax the water, all western water law is very similar in that the state owns all of the water. The state of N.D. issues all of the water permits; the Corps. Of Engineers permits only the access to that water through the 404 permits.

Rep. Porter: You are wearing a lobbying badge so you need to identify who you are lobbying for

Rep. Keiser: Are you aware that the business and the residential pay a water tax?

Terry Jones: yes and it is a delivery bill.

Rep. Keiser: the coke plant uses a lot of water and pays a lot of money.

Terry Jones. We have a fee for irrigation water but the fee is to deliver the water and to manage the system.

Rep. Nathe: On the street they ask us why not tax the water, how is this different than oil?

Terry Jones: That's a good question as a farmer and rancher I am tired of taxes; we will be faced with some unintended consequences.

Rep. Nathe: What are some of the unintended consequences?

Terry Jones: What is going to happen if they successfully apply tax here? Somebody is going to come in and justify another tax and then another tax.

Rep. Porter: We will close the hearing on HB 1398.

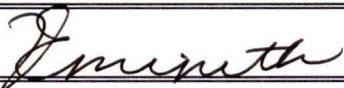
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1398  
February 21, 2013  
19304

Conference Committee



Relating to imposition of a water extraction tax to provide a penalty and do provide for retroactive application

**Minutes:**

*1 Attachment*

**Rep. Porter:** We will open HB 1398.

Rep. Keiser: I have hear a hog house amendment to HB 1398. The principals contained in the 6 pages of HB 1398 are now contained in the hog house amendment of HB 1398 with some relatively important changes except that the principle remains the same. (Attachment 1)

Rep. Froseth: \$. 20 per 100 gallons what would that equate to in comparison to the 11.5%?

Rep. Keiser: It is less but I did ask the water commission to help and find out what is being charged and this does come in at the low end and would be comparable to 11%.

Rep. Hofstad: How would this impact the Western Area Water Projects?

Rep. Keiser: This fee would be assessed to everybody a fee that they would have to collect, submit and pass on to the users of the water in the oil industry.

Rep. Nathe: Do you have any idea how much this would generate in tax money?

Rep. Keiser: Until the amendment would be adopted by the committee we do not have a fiscal note.

Page 2

Rep. Porter: We have a motion to adopt amendment 13.071.01006 to HB 1398 and a second from Rep. Nathe; voice vote carries. We have an amended HB 1398 in front of us and a second from Rep. Anderson for a do pass as amended to HB 1398.

Rep. Hofstad: I am going to resist the motion. If the intent is to take repair the damages that are being caused here; we have always used the water as a right.

Rep. Silbernagel: I also oppose this measure because it is not consistent with how we use irrigation water and other users.

Rep. Nathe: I am going to support this motion. We put tax on the oil and gas industry for the wear and tear on the infrastructure and roads. Why should the water industry that is used for the oil development be excluded?

Rep. Schmidt: I signed on this because I felt with my involvement with the Water Topics Committee and the discussions we had in Williston that this discussion needed to occur.

Rep. Froseth: There would be about \$2.00 for a thousand gallons each well takes about one million gallons would that we \$50,000 per well for water?

Rep. Nathe: I don't think \$5,000 when they spend millions to frac a well.

Rep. Porter: We have a do pass motion to the amended version of HB 1398. Motion fails

Yes 5 No 8 absent: 0

Rep. Porter: We have a motion from Rep. Hofstad and a second from Rep. Damschen for a do not pass.

Yes 8 No 5 Absent 0 Carrier: Rep. Froseth

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/25/2013**

Amendment to: HB 1398

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$18,247,600		\$18,247,600
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1398 imposes a water user fee on fresh water used by the the oil and gas industry.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 imposes a 20 cent per 100 gallon fee on fresh water used by the oil and gas industry and deposits it into the oil and gas impact grant fund.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

We estimated the amount of water used by the oil and gas industry at 14,000 acre feet per year, or 28,000 acre feet per biennium. There are 325,850 gallons in an acre foot of water. The fee is set at 20 cents per 100 gallons or .002 cents per gallon.  $28,000 \times 325,850 \times .002 = 18,247,600$ .

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** David Laschkewitsch

**Agency:** ND State Water Commission

**Telephone:** (701) 328 -2750

**Date Prepared:** 02/26/2013



**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/25/2013**

Bill/Resolution No.: HB 1398

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$19,575,164		\$19,575,164	
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1398 imposes an excise tax on water extracted from below the surface of the earth.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 imposes a water extraction tax of eleven and one-half percent.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The reported calendar year 2011 industrial water use for water depots totals 3315.9 acre feet. An acre foot of water is equal to 325,850 gallons of water. If you use a penny and a half per gallon as the sales figure you arrive at a sales figure of \$16,207,290. (325,850 X 3315.9 X .015) The tax revenue generated would then be 11.5% of \$16,207,290 or \$1,863,838 per year. The reported calendar year 2011 industrial water use for non-water depots totals 14,096.9 acre feet. This is water used for ethanol plants, food processing plants, malting plants and other industrial uses. Although this water is valued differently than water sold by depots, we do not know what to use for market value so we will use the same penny and a half per gallon rate used for depot sales. This would generate an additional \$7,923,744 per year. (325,850 X 14,096.9 X .015) X 11.5%

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** David Laschkewitsch

**Agency:** ND State Water Commission

**Telephone:** (701) 328 -2750

**Date Prepared:** 01/29/2013

12/1/13  
LJC  
1/29

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1398

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 61-41 of the North Dakota Century Code, relating to a fee for industrial use fresh water dispensed for oil and gas industry users; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Chapter 61-41 of the North Dakota Century Code is created and enacted as follows:

**61-41-01. Definitions.**

For purposes of this chapter:

1. "Fresh water" means fresh water drawn from an underground or surface source in this state under an industrial use water permit, whether treated or untreated, and dispensed to an oil and gas industry user.
2. "Oil and gas industry user" means an enterprise engaged in exploration, drilling, or production of oil and gas, and includes businesses that transport water for use in such an enterprise.

**61-41-02. Oil and gas industry fresh water user fee.**

A fee of twenty cents per one hundred gallons [378.54 liters] is imposed on fresh water dispensed to an oil and gas industry user at a water depot or water-dispensing point in this state. The operator of a water depot or water-dispensing point in this state which dispenses fresh water to an oil and gas industry user shall maintain water-metering devices in compliance with rules adopted by the state water commission

**61-41-03. Fee collection and reporting.**

The operator of a water depot or water-dispensing point in this state which dispenses fresh water to an oil and gas industry user shall collect and remit the fee imposed by this chapter to the state water commission under rules adopted by the state water commission.

**61-41-04. Deposit of revenue.**

The state water commission shall transmit fees collected under this chapter to the state treasurer, who shall deposit the fees in the oil and gas impact grant fund.

**61-41-05. Administration.**

The provisions of chapter 57-39.2, pertaining to the administration of the sales tax, including reporting, filing of returns, penalties, liens, rulemaking authority, and any

2/2

other provisions not in conflict with the provisions of this chapter, govern the administration, with the exception that the state water commission shall exercise those powers under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective July 1, 2013."

Renumber accordingly

Date: 2-21-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1398

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Rep. Keiser Seconded By Rep. Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voice carries*

*To adopt Amendment 13.0718.01006*

Date: 2-21-13  
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1398

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Rep Keiser Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor		✓
Vice Chairman Chuck Damschen		✓	Rep. Scot Kelsh		✓
Rep. Jim Schmidt	✓		Rep. Corey Mock		✓
Rep. Glen Froseth		✓			
Rep. Curt Hofstad		✓			
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel		✓			
Rep. Mike Nathe	✓				
Rep. Roger Brabandt		✓			
Rep. George Keiser	✓				

Total (Yes) 5 No 8

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Do pass as amended to H B 1398  
motion fails*

Date: 2-21-13  
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1398

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Rep Hofstad Seconded By Rep Damschen

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter		✓	Rep. Bob Hunskor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt		✓	Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson		✓			
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe		✓			
Rep. Roger Brabandt	✓				
Rep. George Keiser		✓			

Total (Yes) 8 No 5

Absent 0

Floor Assignment Rep Froseth

If the vote is on an amendment, briefly indicate intent:

Do not pass



**REPORT OF STANDING COMMITTEE**

**HB 1398: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1398 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 61-41 of the North Dakota Century Code, relating to a fee for industrial use fresh water dispensed for oil and gas industry users; and to provide an effective date.

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A fee of twenty cents per one hundred gallons [378.54 liters] is imposed on fresh water dispensed to an oil and gas industry user at a water depot or water-dispensing point in this state. The operator of a water depot or water-dispensing point in this state which dispenses fresh water to an oil and gas industry user shall maintain water-metering devices in compliance with rules adopted by the state water commission

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**61-41-04. Deposit of revenue.**

The state water commission shall transmit fees collected under this chapter to the state treasurer, who shall deposit the fees in the oil and gas impact grant fund.

**61-41-05. Administration.**

The provisions of chapter 57-39.2, pertaining to the administration of the sales tax, including reporting, filing of returns, penalties, liens, rulemaking authority, and any other provisions not in conflict with the provisions of this chapter, govern the administration, with the exception that the state water commission shall exercise those powers under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective July 1, 2013."

Renumber accordingly



**2013 TESTIMONY**

**HB 1398**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1398

- Page 1, line 7, after "use" insert "in the oil industry"
- Page 1, line 9, after "water" insert "for industrial use in the oil industry"
- Page 1, line 9, after "earth" insert "or from any other source"
- Page 1, line 10, after "well" insert "or extraction point"
- Page 1, line 11, after "use" insert "in the oil industry"
- Page 1, line 13, after "well" insert "or extraction point"
- Page 1, line 20, after the first "aquifer" insert "or extraction point"
- Page 1, line 20, after the second "aquifer" insert "or extraction point"
- Page 1, line 21, replace "production" with "extraction"
- Page 2, line 1, after the first "aquifer" insert "or extraction point"
- Page 2, line 1, after the second "aquifer" insert "or extraction point"
- Page 2, line 11, after "earth" insert "or from any other source"
- Page 2, line 26, after "On" insert "taxable"
- Page 2, line 28, after "extracted" insert "for industrial use in the oil industry"
- Page 2, line 29, after the first "producer" insert "for industrial use in the oil industry or for future sale for use in the oil industry"
- Page 3, line 2, replace "production" with "extraction"
- Page 3, line 12, after "of" insert "taxable"
- Page 3, line 14, after "well" insert "or extraction point"
- Page 3, line 15, after "well" insert "or extraction point"
- Page 3, line 18, replace "production" with "extraction"
- Page 4, line 4, after "in" insert "taxable"
- Page 4, line 11, after the first "of" insert "taxable"
- Page 4, line 11, after "well" insert "or extraction point"
- Page 4, line 17, after "the" insert "taxable"
- Page 7, line 9, replace "general" with "oil and gas well plugging and site reclamation"
- ReNUMBER accordingly

**Total Acre-Feet of Industrial Water  
Approved from Ground Water Sources in 2011**

<b>Permit Grouping</b>	<b>Industrial Permit Count</b>	<b>Total Approved Acre-Feet</b>
Has Depot	59	5,928.4
No Depot	316	56,478.8

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**Total Acre-Feet of Industrial Water  
Used from Ground Water Sources in 2011**

<b>Permit Grouping</b>	<b>Industrial Permit Count</b>	<b>Total Reported Acre-Feet of Use</b>
Has Depot	59	3,315.9
No Depot	316	14,096.9

# CROWN WATER LLC

PO Box 695, Ray, North Dakota 58849 | (701) 641-2550 or (602) 568-4449 | crownwater@live.com

February 5, 2013

## Re: **OPPOSITION to PROPOSED HOUSE BILL NO. 1398**

Dear Members of the 63<sup>rd</sup> Legislative Assembly of North Dakota

We are writing to you to express our strong opposition to proposed HB 1398 introduced by Representatives Keiser, Kreun, and Schmidt. We feel this proposed tax on ground water is not warranted, ill-conceived, and unfairly targets small businesses and family farms, while excluding similar businesses and government organizations from the tax because their water source is different.

We have been successfully operating our water depot since 2010 to provide critical water to the oil and gas industry. We have worked closely with regulatory agencies to ensure compliance with applicable laws and have invested over \$1,000,000 of our money to permit, construct, and operate this depot on farm land owned by our family for 100 years. Under definition of the water laws in North Dakota, we have been "*putting to beneficial use*" groundwater for industrial use as allocated under our permit issued by the State Water Commission.

As a small business and long-time landowner, we have been supportive of the oil and gas development activities in Northwestern North Dakota and have played a vital role supplying necessary water that is critical to the success of the industry. Along with many other small businesses, we have facilitated the economic development that has allowed the State of North Dakota to prosper and hope to do so well into the future. Development and operation of our business has allowed us to hire many local contractors, as well as purchase equipment and supplies from local retail businesses further contributing to the economic vitality of our State. Moreover, we have been able to donate money to several local community organizations including the fire department, ambulance, and church to assist them in meeting the increased demand for services they provide. A tax on water will be detrimental to our small business, our families, community organizations, and many of our other business associates throughout this region.

We have not been able to identify any state that taxes residents and businesses for ground water use. This substantial 11.5% tax would, without a doubt, be precedent setting and will affect far more people than you anticipate and will be difficult to implement and regulate. Consider your other constituents involved with oil and gas development, power generation, coal mining, manufacturing, and agriculture that may get their water from ground water sources. Do you believe any of them would support such a tax? I believe the answer would be a resounding NO!

**CROWN  WATER**

PO Box 695, Ray, North Dakota 58849 | (701) 641-2550 or (602) 568-4449 | [crownwater@live.com](mailto:crownwater@live.com)

We are asking each of you to consider whether an additional tax is necessary at this time when the State of North Dakota has unprecedented revenues and a budget surplus. Moreover, consider whether this tax is even fair to those parties that will be negatively impacted (i.e., small business and landowners), while contributing insignificantly to the revenues of the State. We are already paying significant property taxes, income taxes, sales taxes, vehicle taxes, etc. The answer is clear, the residents and small businesses of North Dakota do not need any additional taxes. **Please vote NO** for proposed HB 1398 or any variation of such a bill that comes before you! Thank you!

Sincerely,



Donald N. Simpson



Randall L Simpson



# North Dakota Irrigation Association

Dedicated to strengthening and expanding irrigation to build and diversify our economy.

P.O. Box 2254  
Bismarck, ND 58502  
701-223-4615, 701-223-4645 (fax)  
e-mail: ndirrigation@btinet.net

## Testimony on House Bill 1398 House Committee on Energy and Natural Resources

Robert Vivatson, Chairman, North Dakota Irrigation Association  
2:30 p.m. February 7, 2013

Mr. Chairman and members of the House Committee on Energy and Natural Resources my name is Robert Vivatson, Chairman of the North Dakota Irrigation Association.

House Bill 1398 proposes to levy an extraction tax on ground water sold by one party, purchased by another and used for an industrial purpose. Extraction taxes are typically levied on natural resources such as petroleum, natural gas, and other mineral resources because the mining or production process depletes the resource to the point where it is either exhausted or no longer economical. However, with only a minor exception, aquifers in North Dakota are recharged and managed so the resource is sustainable. Thus, over time the net change in the availability of water is small and water is available to authorized users. The resource is not depleted.

In the 1970s it was proposed that agricultural and industrial water uses be taxed. The idea was that revenues were being earned from the use of the water and should be taxed. The proposed tax was rejected because the industrial and irrigation opportunities developed using North Dakota's water provides significant economic growth, job creation, tax revenue, and other economic advantages that benefit all citizens. Even though irrigation use is not mentioned in the bill, an extraction tax would set a precedent for other uses.

The U. S. Army Corps of Engineers is proposing to levy a charge on surplus water pumped from Lake Sakakawea and Lake Oahe. The State of North Dakota is strenuously fighting the imposition of this charge. Levying an extraction tax on the industrial use of ground water would parallel what the Corps of Engineers is trying to do by charging for water from the two Missouri River reservoirs. Passing this bill would be counter to our fight with the Corps of Engineers.

Several cities use ground water as their source of supply and sell a significant volume of water to industry. Those cities include Jamestown that provides water to the Cavendish Farms, Incorporated french fry plant; Minn-Dak Farmers Cooperative sugar beet plant obtains water from Wahpeton; Hankinson furnishes water to the Hankinson Renewable Energy, LLC ethanol plant; and the Dakota Growers Pasta Co. buys water from Carrington. The proposed tax will raise the cost of water to these plants that add value to North Dakota crops.

We have found no other states having an extraction tax on water. The first law of this type should not be in North Dakota.

Therefore, it is requested that the Committee give House Bill 1398 a "do not pass." recommendation.

Testimony on House Bill 1398

House Committee on Energy and Natural Resources

Loren DeWitz, Assessor, Central Dakota Irrigation District  
2:30pm February 7, 2013

We understand that House Bill 1398 does not apply to water used for irrigation, but it does open the door to move in that direction. A water extraction tax will affect several of the industries where we do business. As an example, in Kidder County we would not want anything to jeopardize the potato market.

Over the past few years, North Dakota has put a lot of time and effort into fighting the U.S. Army Corps of Engineers' proposal to charge for water stored in Lake Sakakawea and Lake Oahe. If we start taxing for water usage, we will be playing right into their hands, for them to start charging for water use from the reservoirs.

I believe that HB1398 was not introduced to raise revenue, but as an answer to some of the problems in Northwestern North Dakota. There seems to be a feeling that some water permit holders are exceeding their pumping allocations. I believe these feelings are the reason for the performance audits being conducted on the State Water Commission.

I am not familiar with the amount of water aquifer monitoring in that part of the state, but I am familiar with Kidder County. Below is a comparison of Kidder County to a similar county in South Texas, just west of San Antonio.

	<u>Kidder County, ND</u>	<u>Medina County, TX</u>
Irrigation Permits	252	107
Irrigated Acres	29,210	16,000
Permitted Water (in acre feet)	45,620	35,300
Annual Precipitation (in inches)	13	30
Number of Observation Wells	379	8

I know the State Water Commission is doing an excellent job of monitoring the ground water aquifers in Kidder County and believe they are meeting the same standards throughout North Dakota.

I would ask you to give House Bill 1398 a "do not pass" recommendation.



6

House Energy and Natural Resources Committee  
February 7, 2013, 2:30 p.m.

**TESTIMONY IN OPPOSITION TO HB 1398**

Good afternoon Chairman Porter and members of the House Energy and Natural Resources Committee.

My name is Pat Ward. I am an attorney with the law firm of Zuger Kirmis & Smith here in Bismarck. I represent Ames Savage Water Solutions LLC in opposition to HB 1398.

Water is a renewable resource. Aquifers naturally replenish themselves. This is a major difference between the other minerals such as oil and gas which are depleted and subject to an extraction tax. Aquifers replenish themselves during each winter and spring season. We believe the State Water Commission does an admirable job of managing the state's water resources.

The State of North Dakota is not in need of additional revenue. HB 1398 limits the so-called water extraction tax to water taken from an aquifer and not water drawn from rivers, lakes, or other streams. This is an unfair burden on persons using water from underground sources and may be unconstitutional.

We strongly urge a DO NOT PASS.



**Testimony of Eric Volk, Executive Director, ND Rural Water Systems Association**

**House Energy and Natural Resources Committee – HB 1398 - February 7, 2013**

Chairman Porter and members of the committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA) which serves a membership of more than 250 cities, 28 rural/regional water systems, and four tribal systems. The NDRWSA is committed to ensuring North Dakota's residents receive affordable drinking water of excellent quality and sufficient quantity. NDRWSA is committed to completing North Dakota's water infrastructure for economic growth and quality of life. Today I am submitting testimony in opposition of House Bill 1398, relating to the imposition of a water extraction tax.

As written, House Bill 1398 currently plans to impose an extraction tax on industrial permitted users whose source of water is groundwater. We fully understand the basis and the intent of this bill. We fully understand that selling water for industrial purposes can be a very lucrative business. Our rural and regional water systems, who provide water to nearly 200,000 residents across the state, fear that this water tax could eventually be placed on them and their users. An average rural residential household already pays approximately \$70/month for water. Add on another 11.5% and that same household will roughly pay an additional \$100/year for the same service. Also, we have to be careful of treating water extraction like oil extraction. Groundwater, under sustained development, is a renewable resource and should not be treated the same as oil.

With that said, the NDRWSA and its members oppose House Bill 1398. Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1398

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create an enact chapter 61-41 of the North Dakota Century Code, relating to a fee for industrial use fresh water dispensed for oil and gas industry users; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Chapter 61-41 of the North Dakota Century Code is created and enacted as follows:

**61-41-01. Definitions.**

For purposes of this chapter:

1. "Fresh water" means fresh water drawn from an underground or surface source in this state under an industrial use water permit, whether treated or untreated, and dispensed to an oil and gas industry user.
2. "Oil and gas industry user" means an enterprise engaged in exploration, drilling, or production of oil and gas, and includes businesses that transport water for use in such an enterprise.

**61-41-02. Oil and gas industry fresh water user fee.**

A fee of twenty cents per one hundred gallons is imposed on fresh water dispensed to an oil and gas industry user at a water depot or water dispensing point in this state. The operator of a water depot or water dispensing point in this state which dispenses fresh water to an oil and gas industry user shall maintain water metering devices in compliance with rules adopted by the state water commission

**61-41-03. Fee collection and reporting.**

The operator of a water depot or water dispensing point in this state which dispenses fresh water to an oil and gas industry user shall collect and remit the fee imposed by this chapter to the state water commission under rules adopted by the state water commission.

**61-41-04. Deposit of revenue.**

The state water commission shall transmit fees collected under this chapter to the state treasurer, who shall deposit the fees in the oil and gas impact grant fund.

**61-41-05. Administration.**

The provisions of chapter 57-39.2, pertaining to the administration of the sales tax, including reporting, filing of returns, penalties, liens, rule making authority, and any other provisions not in conflict with the provisions of this chapter, govern the

administration, with the exception that the state water commission shall exercise those powers under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective July 1, 2013."

Renumber accordingly