

**2013 SENATE POLITICAL SUBDIVISIONS**

**SB 2199**

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Political Subdivisions Committee Red River Room, State Capitol

SB 2199  
January 31, 2013  
18091

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to drainage projects

### Minutes:

You may make reference to "attached testimony."

**Vice Chairman Ron Sorvaag** opened the hearing for SB 2199. Senator Andrist was testifying on another bill and will return soon. We have a quorum.

**Senator Gary Lee:** District 22. Sponsor of SB 2199 brought to you by several water resource districts. The bill intended to improve their ability to cover the escalating construction costs associated with repairing, maintaining and improving legal drains within their jurisdictions. To accommodate those costs a rate change is being requested for benefited property and also the bill includes language to resolve a frivolous complaint and mechanism to recover those costs associated with that complaint. This bill works with the water districts and I think it's something that is desperately needed for them in terms of maintaining those drains.

**Sean M. Fredricks:** Attorney for the Red River Joint Water Resource District. See written testimony #1. Strongly urge your support for SB 2199. (2:20-21:08)

**Vice Chairman Ron Sorvaag** asked so it's projects specific. These maintenance levies are project specific to the affected area?

**Sean Fredricks** replied yes, exactly. **Vice Chairman Ronald Sorvaag** asked if it is ongoing of any nature, there has to be a specific project just like any other assessments?

**Sean Fredricks** replied the way it works is in the general fund we only get 4 mils, and that's not even on the table for this. The maintenance fund is project specific so if 30 landowners vote on a project and they vote it in and we generate maintenance funds through our maintenance levy, annual maintenance funds, we can only use those dollars for that project. So it is not a county wide increase or anything like that. It is only for a project that has already been voted in and we can only use the dollars for that project.

**Senator Howard Anderson** asked him to explain to us the need for the frivolous complaint language in there in addition to the language that you can recover costs.

**Sean Fredricks** replied the frivolous complaint piece. I mentioned the four complaints filed

by two land owners against each other in one year. In that instance there weren't any frivolous complaints but we reviewed them because we felt like this really wasn't about a legal drainage, it not about an illegal dike, it's about land owners who don't like each other and their trying to cause trouble for their neighbors. We feel if somebody just continues to file the same type of complaint three years in a row from the same landowner, we've rendered the same exact decision every time. Once you get a complaint you have to respond to it somehow, then make sure you follow your statutory procedures so there is no liability for you. So, that water resource district has expended dollars each time they've gotten those same complaint. So from our perspective that land owner who is out there just filing complaints to cause trouble for his neighbor when we all know it is not a legitimate complaint. From our perspective in that instance we should be able to recover some of our costs, from that complaining party.

**Senator Howard Anderson** asked whether that party doesn't have the option of appealing that decision to the district court as well? **Sean Fredricks** responded, I'm glad you asked that question because yes the way we do it is we issue an order in that instance, exactly the way we issue an order against the offending party, saying we received this complaint, we've reviewed it, we've investigated it, we've concluded its frivolous and here's why. Explanation was given. Any decision really from the Water Resource district is subject to appeal to the District Court.

**Senator Judy Lee** shared an example of the maintenance fees of the Sheyenne Diversion (24 44- 25.33). **Vice Chairman Sorvaag** replied that is more of an ongoing fee, this is addressing more projects. **Senator Judy Lee** added, but the maintenance fee was part of what Mr. Fredrick's discussed and so I just wanted to describe what it is.

**Sean Fredricks** responded to Senator Lee's example. In terms of the maintenance levy on the diversions that has been significant. The bonds are retired on that, so people are not paying the original construction costs through assessments. They are paying their annual maintenance levy. The diversions are a great example because over the past 4 to 5 years, we've been undergoing some improvements to the diversions because there have been major issues due to the wet cycle we've been in. They've been operating basically continuously except for the last year for 20 years. We have millions of dollars of repairs that we had to construct. Without adequate maintenance funds you can't construct those improvements on them. On the diversion our two dollars per acre wasn't enough. We asked the State Water Commission for cost share and got it, even then, it still was not enough. We had to utilize general funds to build or construct those repairs. This is a good example of why we need an increase.

**Mark Brodshaug**: Chair of the Cass County Joint Water Resource District. In support of SB 2199. Written testimony #2 (27:49- 31:15).

**Gary Peterson**: Represent Trail County Water Resource District., full support of this bill, SB 2199. Example given (32:31-32:40).

**Chairman Andrist** closed hearing on SB 2199.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee  
Red River Room, State Capitol

SB 2199  
January 31, 2013  
18092

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to drainage projects

## Minutes:

You may make reference to "attached testimony."

**Chairman Andrist** asked the committee on how they would like to proceed with SB 2199.

Vice Chairman Ron Sorvagg moved a Do pass on SB 2199

Senator Judy Lee- 2<sup>nd</sup>

Roll call vote 6 Yea, 0 No, 0 Absent

Carrier: Senator Dotzenrod

Committee Discussion (:40-2:08)

Chairman Andrist closed the hearing on SB 2199

Date: 1-31-2013

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2199

Senate Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt  
Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Judy Lee

Senators	Yes	No	Senator	Yes	No
Chairman John Andrist	✓		Senator Jim Dotzenrod	✓	
Vice- Chairman Ronald Sorvaag	✓		Senator John Grabinger	✓	
Senator Judy Lee	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Dotzenrod

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

**REPORT OF STANDING COMMITTEE**

**SB 2199: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2199 was placed on the Eleventh order on the calendar.**

**2013 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2199**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

SB 2199  
March 7, 2013  
Job 19593

Conference Committee

*Kristie Hetzler*

Relating to the drainage projects.

**Minutes:**

Testimony 1, 2, 3

**Rep. Porter:** We will open the hearing on SB 2199.

**Senator Lee:** Introduced the bill.

**Sean Fredricks, Counsel for Red River Joint Water Resource District.** I will discuss the complaint cost recovery, maintenance increase, and seeking fair taxation. Testimony 1 (13:18)

**Rep. Porter:** On page 2, number 7, we are putting a new definition in the Century Code, can you explain these?

**Sean Fredricks:** We found this language in the code and in the rules of civil procedure that is where the language came from. If one needed to be removed, I could understand that it may be redundant. (15:39) Lets move onto the maintenance levy increase (19:19) discusses charts in back of the testimony.

**Rep. Mock:** In 2005, 2008 and 2009 for an average construction cost there are multiple data points, why?

**Sean Fredricks:** There are different types of projects and in different areas; this doesn't demonstrate that very well. The top diamond will identify the actual average cost.

**Rep. Hofstad:** When we have language like "assess its cost" we are talking about the board assessing its cost, which is kind of open ended, could that be tightened up? (24:46)

**Sean Fredricks:** It would not be objectable, in the first page and continuing onto the second page, we are trying to identify that the costs are the reasonable costs.



**Rep. Hofstad:** On page 5, recovering the cost for those obstructions in a drain could also be adjusted.

**Sean Fredricks:** That would be fair.

**Rep. Anderson:** Who makes the assessment of the benefits to the land owner when the land is drained?

**Sean Fredricks:** When we put it out for a vote there is an assessment list and the board goes through the benefit analysis (28:30)

**Rep. Damschen:** The new language starting on line 12, page 5, does the land owner have the appeal process?

**Sean Fredricks:** Yes there is an appeal process, starting in line 9, and on page 4 there is also an opportunity to appeal to the board.

**Rep. Porter:** Are we missing a component that goes back to the State Engineer?

**Sean Fredricks:** In Chapter 61-32 the drainage complaint chapter, any of those decisions can be appeals to the State Engineer.

**Rep. Porter:** The frivolous ones can or cannot be?

**Sean Fredricks:** (30:25) The drainage matter and dike complaint and can be appealed to the State Engineer, the obstruction complaint process for whatever reason is different. There is no appeal through the State Engineer. It could be because the two are dealing with permit issues.

**Rep. Silbernagel:** There is another bill that went through about this, do we need to add an amendment?

**Sean Fredricks:** That is not necessary (32:18).

**Mark Brodshaug, Chairman of the Cass County Water Joint:** Supports SB 2199, Testimony 2. (ended 35:42)

**James Haugen:** Gives testimony 3, and I also have a couple other individuals hear to speak on my behalf as well, we support SB 2199.

**Rep. Hofstad:** What is your mill rate that you tax that the water resource board assesses?

**Sean Fredricks:** The 4 mills are the maximum that a water resource district can assess, of course it is up to the discretion of the County Commission. I believe they are up to the 4 mills.

House Energy and Natural Resources

SB 2199

March 7, 2013

Page 3

**Dan Hendrickson, Farmer and landowner:** I support this bill because we need more resources for repairs. Some of these drains are 30 or 40 years old, and we all know what steel prices have done so the cost has risen.

**Rep. Porter:** We will close the hearing, 2199 is going to go into a subcommittee, which will be done by Rep. Damschen, Rep. Brabandt, and Rep. Mock.

.

Minutes of the

(HOUSE) (SENATE) BILL NO. 2199 SUBCOMMITTEE OF THE

House E & NR STANDING COMMITTEE

Meeting location: Pioneer Room

Date of meeting: 3/15/13

Time meeting called to order: 11:00 AM

Members present: Rep. Damschen, Rep. Brabant, Rep. Mock

Others present (may attach attendance sheet):

Rep. Anderson

Topics discussed:

SB 2199 - p. 2 line 10-11 line 26 public vote for levy increase  
p. 5 lines 12-16 p. 7 lines 17-28  
future mtg. with Jeff Nelson (LC) next Thursday

Motion and vote:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Mark Damschen

Time of adjournment: 11:20 A.M

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

# 2013 HOUSE STANDING COMMITTEE MINUTES

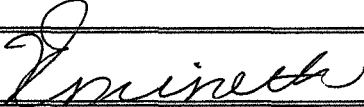
House Energy and Natural Resources

Pioneer Room, State Capital

SB 2199

March 28, 2013  
20650

Conference Committee



Relating to drainage projects

**Minutes:**

"attached testimony."

Rep. Porter: We will open SB 2199 that was in subcommittee they were Rep. Damschen, Rep. Brabant, and Rep. Mock.

Rep. Damschen: Jeff Nelson was here for the second meeting the concerns we had with the definition of frivolous on page 2 those are intended to be broad and interpretable. With that advice we made no change there. We discussed the 2-4 dollar cap change and discussed at the request of a voter about taking it to a vote. We could not agree on any change. We didn't have any motions and it ended up recommending that it be left as is.

Rep. Anderson: Would it be possible to have a petition drive instead of an election to question the assessment?

Rep. Damschen: When the assessment drain is established there are at 2 hearings and a vote and people can protest out of that process if they don't think they are in it.

Rep. Porter: I put this into a subcommittee because these are technical issues and are dealing with lot of components of the law we want to be sure that we review it closely before we do anything with it.

Rep. Keiser: I know what the intent of frivolous is but given the definition was there any discussion about deleting this section?

Rep. Damschen: We did consult the legislative council and if we try to define it then we miss something. It is a common thing to have frivolous complaints and they can be costly.

Rep. Keiser: I am wondering what the discussion was going from 2-4 dollars? Why do we need it?

Rep. Damschen: We didn't have specific documentation except the part of the cost of construction being more expensive.

Rep. Mock: Shaun Fredericks who testified for this bill; in his handout there was a bill that showed the average cost per acre of maintenance and cost construction.

Rep. Damschen: I Move a do pass on SB 2199.

Rep. Porter: I have a motion from Rep. Damschen and a second from Rep. Silbernagel for a do pass to SB 2199.

Yes 13 No 0 Absent 0 Carrier: Rep. Damschen

Date: 3-28-13  
 Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2199

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number Do pass

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

Motion Made By Rep. Damschen Seconded By Rep. Silbernagel

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) 13 No 0

Absent 0

Floor Assignment Rep Damschen

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

**REPORT OF STANDING COMMITTEE**

**SB 2199: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2199 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2199**



/

**Testimony by Sean M. Fredricks  
Counsel for Red River Joint Water Resource District  
Before the Senate Political Subdivisions Committee  
In Support of SB 2199**

**North Dakota Legislature  
63rd Legislative Assembly  
Bismarck, North Dakota  
January 31, 2013**

Chairman Andrist, members of the Committee, I appreciate the opportunity to testify before you today in support of SB 2199. My name is Sean Fredricks, and I work for the Red River Joint Water Resource District and several individual water resource districts in the State, including several water resource districts in rural counties. Those water resource districts operate with severely limited general funds and tax revenues to finance important water infrastructure for their residents.

Senate Bill 2199 really addresses two separate issues, but they are both critical to the financial survival of water resource districts in North Dakota. The first objective of the bill is to allow water resource districts to increase their annual maintenance levy for assessment projects they own, control, and operate. The second objective of the bill is to allow water resource districts a reasonable opportunity to recover their costs incurred when considering and acting landowner complaints against other landowners. Both issues create significant financial obligations, and serious financial burdens, for water resource districts. SB 2199 simply seeks to equip water resource districts with reasonable mechanisms to ensure their solvency.

**A. MAINTENANCE LEVY INCREASE**

The proposed increase in maintenance levy capabilities from \$2 to \$4 annually is actually quite a modest step, but will certainly be a substantial step in the right direction. A brief explanation of the assessment projects and annual maintenance levies will illustrate the need for the maintenance levy increase requested in SB 2199.

Water resource districts cannot assess landowners without a vote of the landowners who will pay the assessments, the benefitted property owners. For example, if landowners approach a water resource district to request a drainage improvement project or a flood protection project, the water resource district will engage other landowners in the area to ensure there truly is a need for a project. If landowners in the area identify a need for drainage improvements, flood protection, or other water infrastructure, the water resource district may pursue creation of an assessment district under Chapter 61-16.1 or Chapter 61-21 of the Century Code. The procedure under both chapters requires a vote of the landowners who will benefit from the project, and who will ultimately pay the assessments to pay for the project. A majority of the benefitted landowners must vote in favor of the project, based on benefit and proposed assessments, before the water resource district may assess the landowners who will benefit. The process, and assessments paid, is benefit-driven; it is a fair and transparent process; and it does not work without landowner interest and willingness to pay assessments.

If a project passes, the water resource district can issue bonds to finance construction of the project, and landowners who will benefit will pay annual assessments to pay the bonds. Once the water resource district ultimately constructs a project, and begins levying special assessments to pay for the project, the water resource district is obviously responsible for

owning, operating, and maintaining the project. Of course, most water resource districts do not sell potable water, and they do not benefit from water revenues like rural water systems, so they do not have water revenues to pay for maintenance and operation of their projects. Instead, the mechanism for generating maintenance funds is an annual maintenance levy against the benefitted properties. The “maintenance district” is identical to the original assessment district, comprised of landowners who benefit from the project.

By law, a water resource district can currently assess each ag property in the maintenance district up to a maximum of \$2 per acre per year for purposes of maintaining a project. For non-ag property, a water resource district can assess up to \$1 for \$500 of taxable value, or on a benefit basis in proportion to the highest benefitting ag property. Every year, the water resource district will inspect its infrastructure and for each project, will determine if maintenance is necessary or will be necessary (e.g., erosion of a dam occurring may require maintenance). The Board might levy something as small as \$0.25 per acre if there are not significant maintenance needs, or the Board might assess the maximum \$2 per acre if serious repairs or improvements are necessary. The annual maintenance levy generates maintenance funds, and the water resource district utilizes those funds to maintain and operate their water project. Sometimes, if the damages are severe, the maximum levy may not be enough, even if the Board borrows ahead against their maintenance levy (water resource districts cannot borrow ahead more than six years against their maintenance funds).

Of course, the costs of maintaining water projects have increased dramatically over time, especially in the last ten years. The costs of excavation and materials necessary to construct standard water projects increases on a yearly basis, and the maintenance levies generated by

several water projects around the State simply are insufficient to keep up with maintenance needs.

Smaller water resource districts in particular have suffered where, on one hand, they have obligations to maintain and operate water projects while, on the other hand, their maintenance levies do not generate enough revenues to pay for the maintenance. In those situations, some water resource districts have had to make incredibly difficult decisions regarding use of their general funds, most of which are already severely limited. These water resource districts have legal obligations to maintain their projects, but they do not have the maintenance dollars available to properly do so. This is a serious problem and potentially a liability concern for many water resource districts. The increase sought under SB 2199 would resolve some of those issues for some water resource districts in the State.

Attached to this testimony is a brief and simple illustration of a maintenance district and what the maintenance levy increase would mean for water resource districts and for the landowners who benefit from water projects. As you will see, the increase is modest; the need, however, is great. In light of the maintenance needs of water resource districts in the State, we urge the passage of SB 2199, to ensure the financial solvency of water resource districts.

#### **B. COMPLAINT COST-RECOVERY**

The second crucial item contained in this bill relates to water resource districts' rights to recover reasonable costs associated with complaints filed by landowners against other landowners. Under North Dakota law, any party can file a drainage complaint, a dike complaint, or an 'obstruction to drain' complaint against any landowner. Water resource districts must investigate each complaint and must follow a statutory process to consider and ultimately

render a decision on each complaint. The procedures under the relevant statutes (N.D. Cent. Code § 61-16.1-51 for obstruction complaints; N.D. Cent. Code § 61-16.1-53 for dike complaints; and N.D. Cent. Code § 61-32-07 for drainage complaints) are very similar. Of course, each type of complaint incorporates a certain standard, but the steps taken by the water resource districts are virtually identical.

Each complaint requires an investigation, a process that can often require engineering analysis, and proper compliance with relevant legal procedures, a process that often requires legal counsel. The process requires meetings, legal notices, and hearings; procurement of contractors to remove illegal structures, in instances when the landowner will not voluntarily remove the structure; and sometimes court proceedings. Of course, all of these procedures require effort and resources from water resource districts, their staffs, their water managers, and ultimately their budgets. Water resource districts render final decisions on each complaint, and landowners and other parties involved have opportunities to appeal those decisions either to the State Engineer or to District Court. As you can gather, these procedures are often costly for water resource districts, and in virtually every situation there is no statutory mechanism for recovering those costs from any of the parties involved. Rather, the water resource districts must utilize their own general funds, *taxes collected from everyone in the county*, to respond to and properly address complaints between two landowners.

In some instances, these complaints are between feuding landowners, parties with hard feelings that go back generations. In others, well-meaning landowners whose properties are suffering damages have exhausted all other options to resolve a matter, and have no choice but to

file a complaint with a water resource district. In either instance, the violating landowner should be responsible for the costs, not all of the other taxpayers of the county.

The only opportunity under which a water resource district may currently recover costs from one of the responsible parties rarely occurs; under each of the statutes, if a water resource district renders a decision on a complaint, provides proper notice of the decision to the landowner responsible, and after all other proceedings are concluded the landowner ultimately refuses to remove the dike or obstruction or to fill in the illegal drainage, a water resource district must retain their own contractor to complete the work and remove the illegal structure. In that instance, a water resource district may assess its costs, but only the construction costs, against the landowner. In all other situations, including situations where a water resource district follows all of its procedures and potentially incurs thousands in costs, if a landowner ultimately removes the illegal structure in compliance with a directive, regardless of the stage of the procedure, the water resource district does not have a mechanism for assessing those costs back against the landowner.

Of all of the complaints I have encountered, only once have I seen a situation where a water resource district was required to procure their own contractor to remove an illegal structure, a situation that triggered the water resource district's ability to assess its costs. In that case, the Board recovered its costs. But in all other complaint situations, landowners often push the envelope until the very end of the process when the water resource district has exhausted all of its legal requirements and is finally prepared to procure its own contractor; in those instances, landowners often finally realize they have no choice and remove the structure or fill in the illegal

drainage themselves. In that instance, the statute does not currently afford water resource districts any right to collect their costs.

**C. SB 2199: SEEKING FAIR TAXATION**

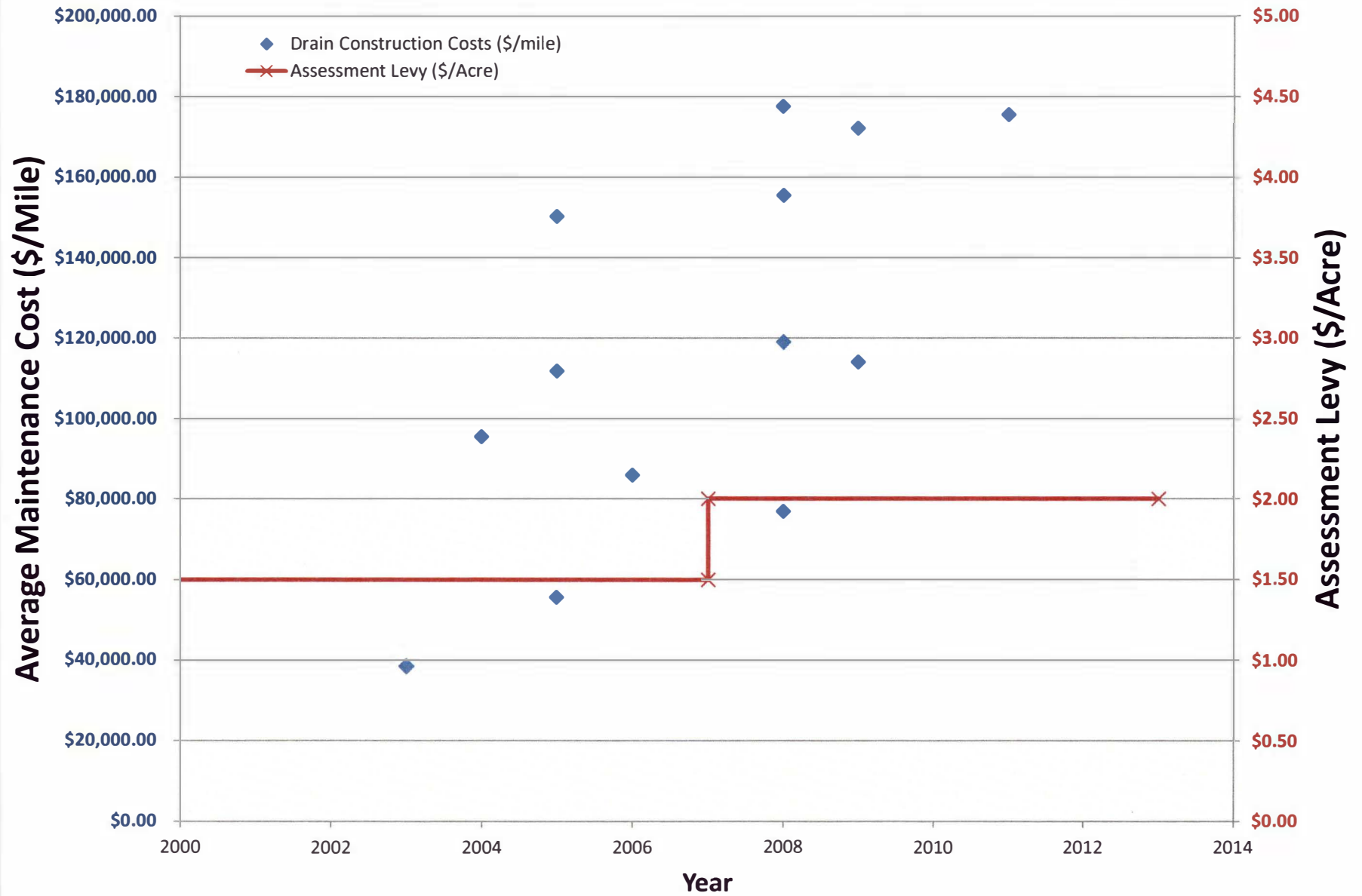
SB 2199 seeks to grant water resource districts the right to collect only their reasonable costs regarding complaint situations, and to provide water resource districts with a modest increase in maintenance funds so they can operate their water projects for the benefit of their residents. Passage of SB 2199 would protect the general funds of water resource districts regarding complaints and regarding maintenance of water projects. Water resource districts have a legal obligation to maintain their water projects, and the landowners who benefit would contribute towards maintenance and improvement costs, for their enhanced benefit. Passage of SB 2199 would help water resource districts pay for their legal mandate to operate their projects, and not at the expense of taxpayers county-wide but rather at a reasonable expense to landowners who benefit from those projects. Similarly, landowners responsible for constructing illegal drains, dikes, or drain obstructions would pay the costs of addressing the complaints against them, as opposed to taxpayers county-wide.

These are fundamental fairness issues, and the committee has an opportunity to take a step toward fairness in taxation. We strongly urge passage of SB 2199.

Thank you for your consideration.

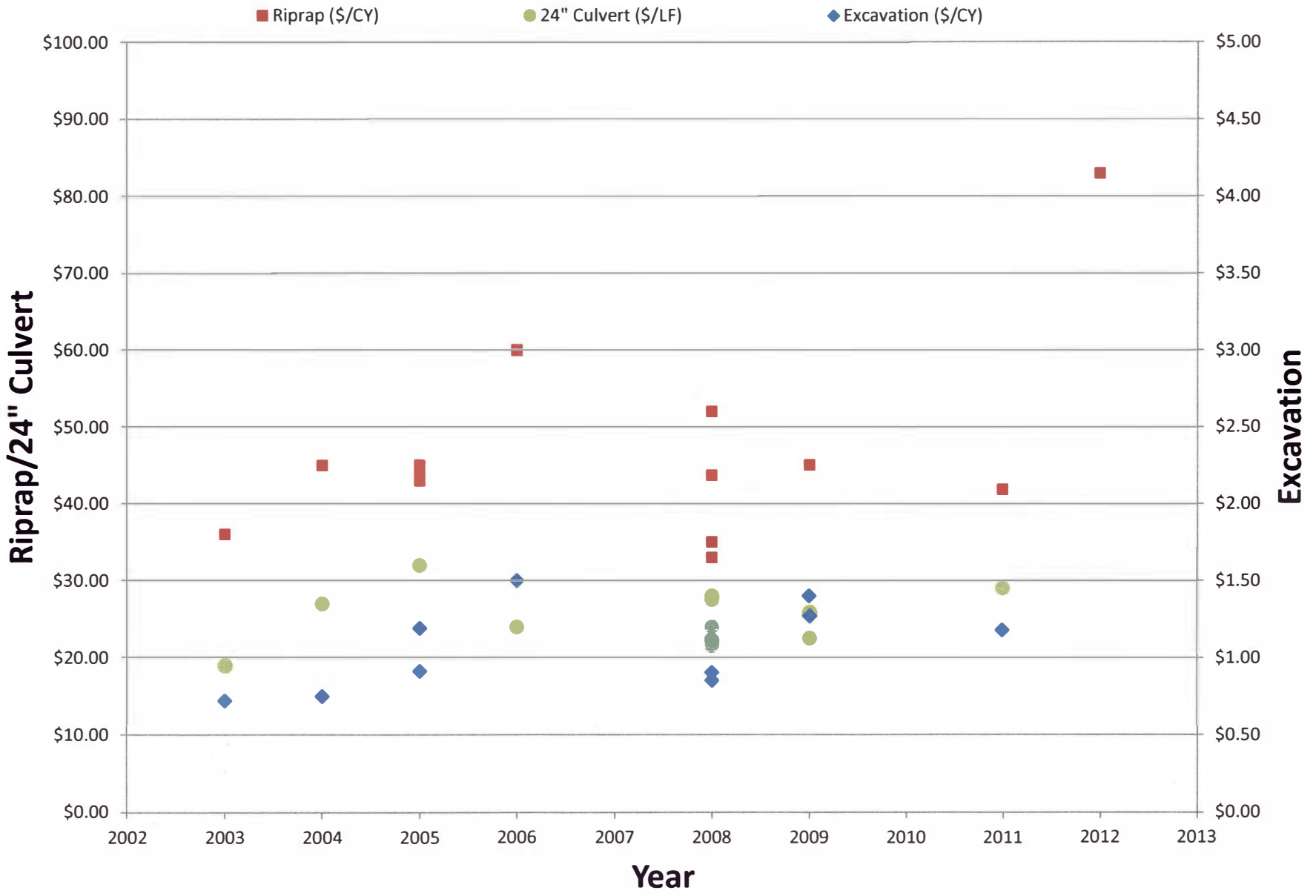


# Average Maintenance Cost vs. Assessment Levy

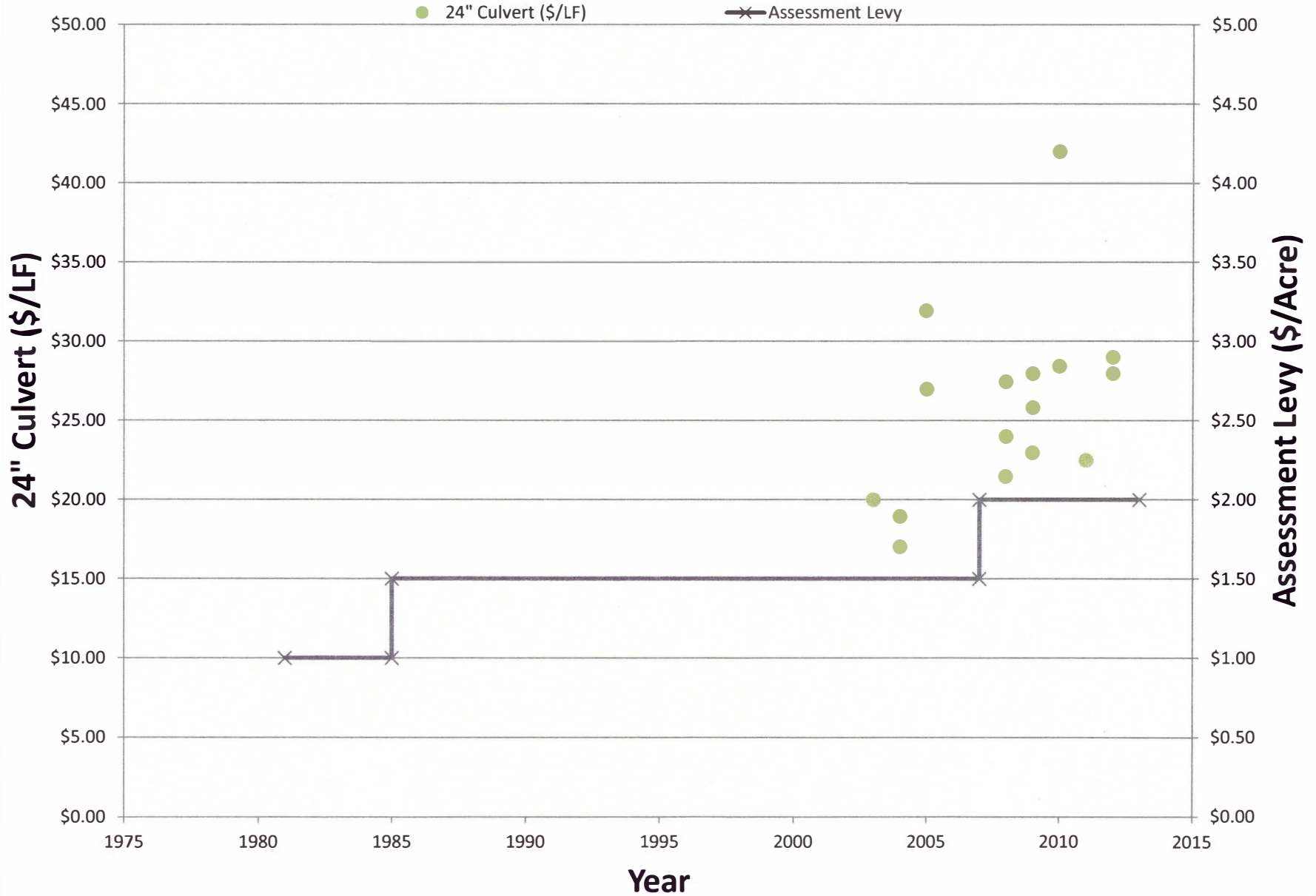




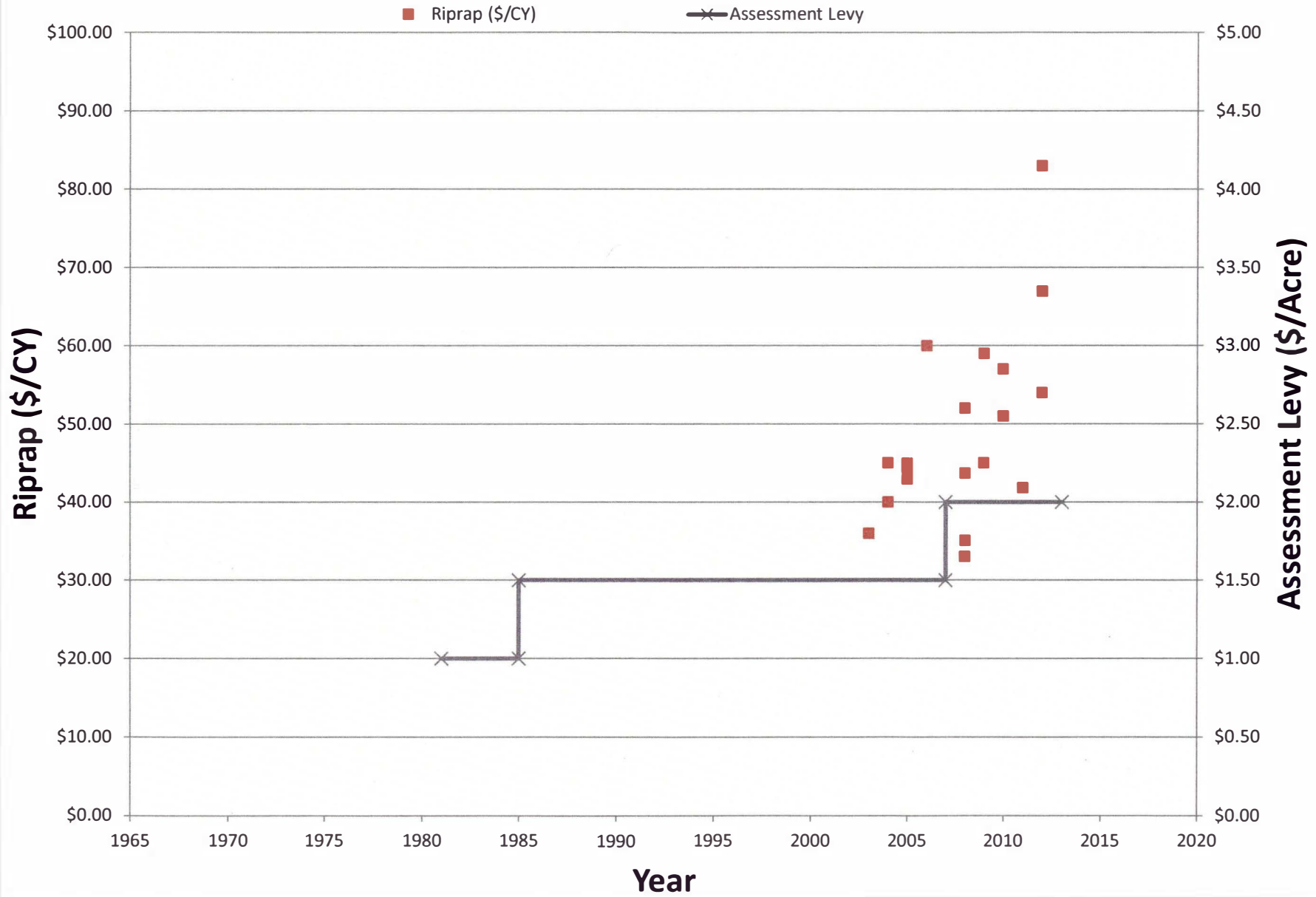
# Construction Costs



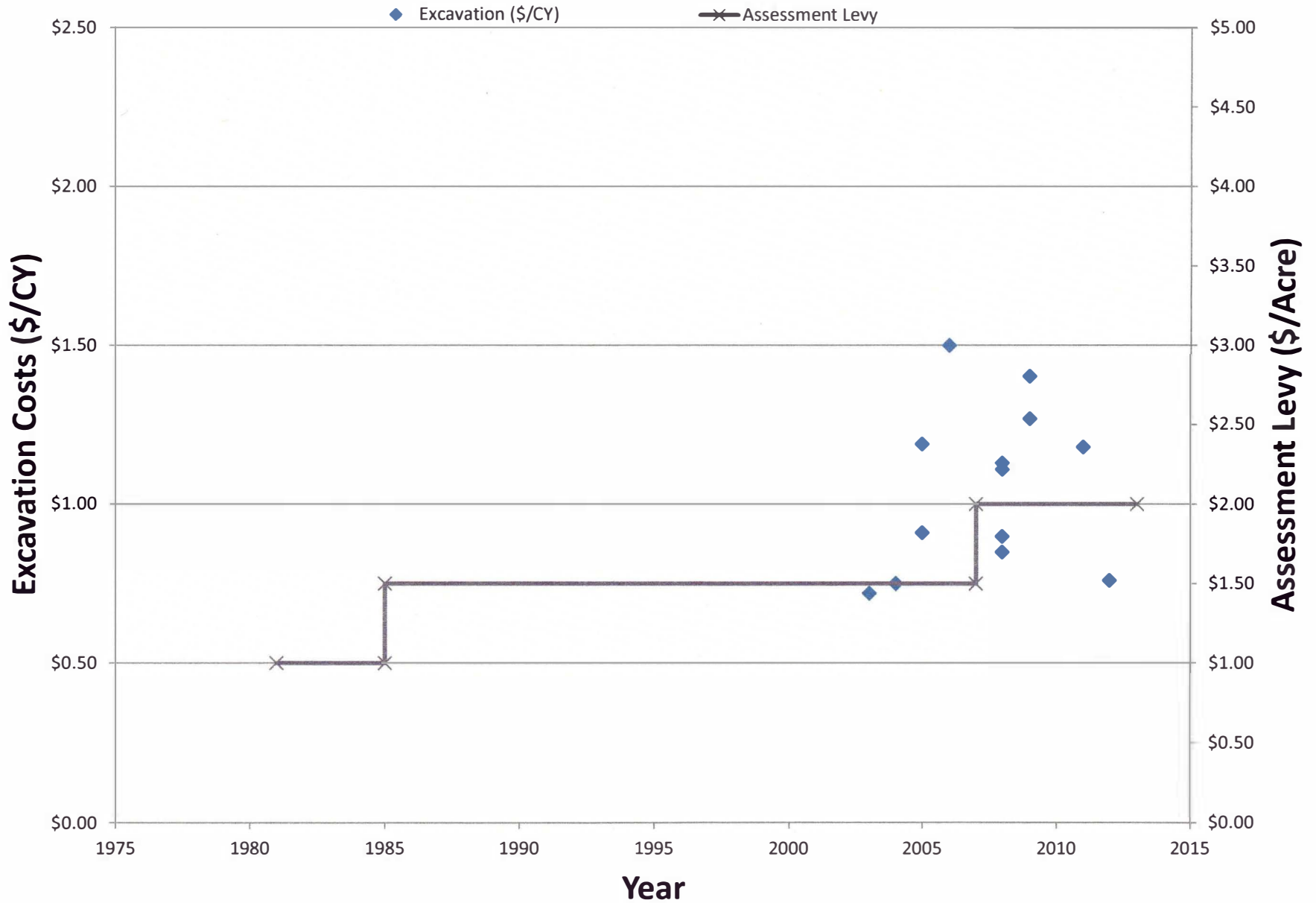
# 24" CMP Culvert Costs vs. Assessment Levy



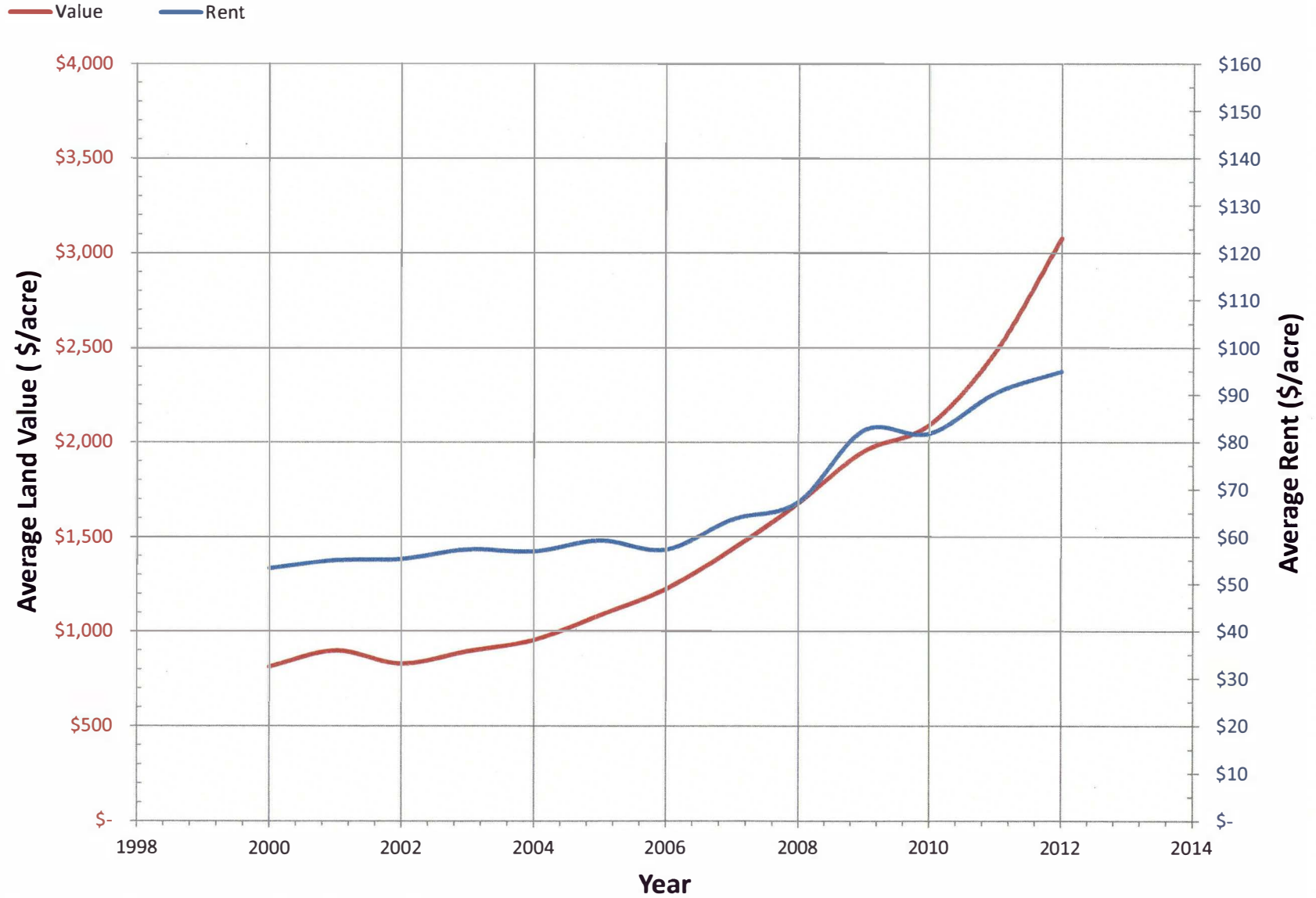
# Riprap Costs vs. Assessment Levy



# Excavation Costs vs. Assessment Levy



# Cass County, ND Land & Rent Values



**Testimony by Mark Brodshaug  
 Chair of the Cass County Joint Water Resource District  
 Before the Senate Political Subdivisions Committee  
 In Support of SB 2199**

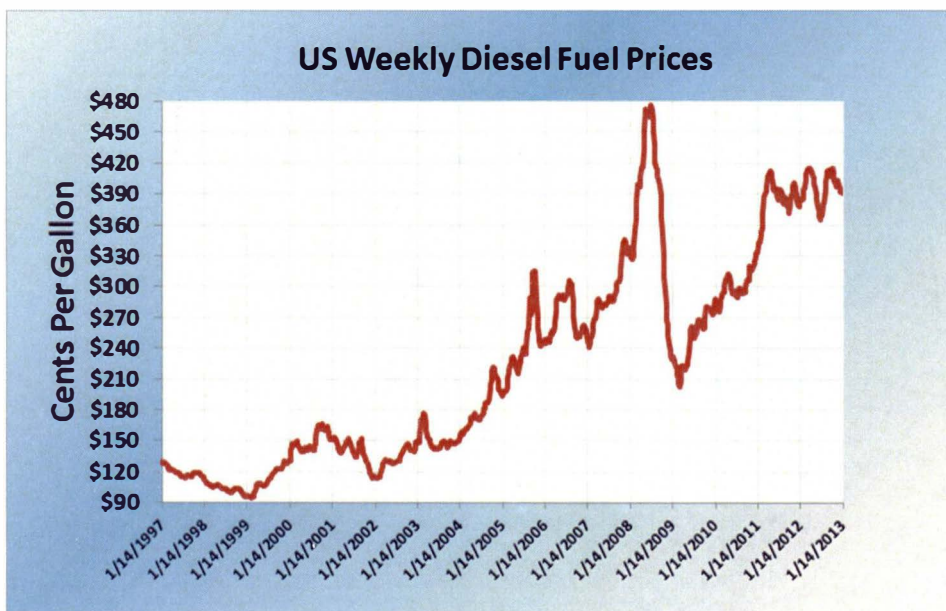
**North Dakota Legislature  
 63rd Legislative Assembly  
 Bismarck, North Dakota  
 January 31, 2013**

Chairman Andrist, members of the Committee, I appreciate the chance to speak today in support of SB 2199. My name is Mark Brodshaug and I serve as Chairman of the Cass County Joint Water Resource District. SB 2199 addresses two issues:

- A. Increase the maximum annual maintenance levy for assessment projects owned by water resource districts from \$2/acre to \$4/acre on ag land.
- B. Allow water resource districts to recover costs when investigating a landowner complaint against another landowner.

**WHY INCREASE THE MAXIMUM MAINTENANCE LEVY?**

Costs to perform maintenance on water resource district projects have increased significantly in the past 10 years. The cost of diesel fuel has increased from \$1.488 in 2003 to \$3.899 in 2012 according to the US Energy Information Administration. This directly impacts the rates our contractors charge for moving dirt or hauling materials to maintain our assessment projects and make it very difficult to maintain projects to the expected standard when we are limited to \$2/acre for the annual maintenance levy.



The record setting floods of 2009, 2010, and 2011 strained maintenance budgets as the repeated flooding damaged water resource district projects. FEMA has become less willing to cost share flood damages to water resource district projects. In Cass County, we have determined that it costs more for staff and consultant time to prepare a FEMA claim than what the likely reimbursement from FEMA would be. The ability to increase the maintenance levy would allow a district to better repair a project after a flood event.

Another reason to increase the maximum maintenance levy is the increased value of the agricultural production that is being protected by agricultural drainage systems operated by water resource districts. In 2001, the value of crop production in North Dakota was \$2,445,351.00 according to the USDA NASS Crop Values Summary. In 2010 the total value was \$7,503,696.00. The values likely increased in 2012 but the annual summary will be released later in 2013. My point is that assessed agricultural drains are protecting more value and farmers are willing and able to pay more for annual drain maintenance, if needed, to help protect their crops.

#### **WHY ALLOW WATER RESOURCE DISTRICTS TO RECOVER COSTS?**

Water resource districts are required to investigate and make a decision on drainage complaints, obstruction to drain complaints, and dike complaints against any landowner. These investigations can be costly with engineering and legal consultants needed to make an informed ruling. Water resource districts usually have to fall back on their general funds to pay for these investigations and a small district with several complaints can see their general fund drained. SB 2199 will give districts the opportunity to recover reasonable costs from a landowner in violation, or a landowner filing a frivolous complaint. I urge passage of SB 2199. Thank you.

Mark Brodshaug  
Chairman, Cass County Joint Water Resource District  
[markbrodshaug@gmail.com](mailto:markbrodshaug@gmail.com)  
701-306-1140 (mobile)



March 7  
SB 2199  
Testimony 1

**Testimony by Sean M. Fredricks  
Counsel for Red River Joint Water Resource District**

**Before the House Energy and Natural Resources Committee  
In Support of SB 2199**

**North Dakota Legislature  
63rd Legislative Assembly  
Bismarck, North Dakota  
March 7, 2013**

Chairman Porter, members of the Committee, I appreciate the opportunity to testify before you today in support of SB 2199. My name is Sean Fredricks, and I work for the Red River Joint Water Resource District and several individual water resource districts in the State, including several water resource districts in rural counties. Those water resource districts operate with severely limited maintenance funds to finance adequate maintenance of their water infrastructure for their residents, projects they have a legal obligation to operate and maintain in good working order. In addition, those same water resource districts lack adequate general fund dollars to respond to and address landowner complaints against each other, statutory complaints water resource districts must consider.

Senate Bill 2199 really addresses two separate issues, but they are both critical to the financial survival of water resource districts in North Dakota. The first objective of the bill is to allow water resource districts to increase their annual maintenance levy for assessment projects they own, control, and operate. The second objective of the bill is to allow water resource districts a reasonable opportunity to recover their costs incurred when considering and acting on landowner complaints against other landowners. Both issues create significant financial obligations, and serious financial burdens, for water resource districts. SB 2199 simply seeks to



equip water resource districts with reasonable mechanisms to ensure their solvency, and to protect both their general funds and their drain maintenance funds.

**A. MAINTENANCE LEVY INCREASE**

The proposed increase in maintenance levy capabilities from \$2 to \$4 annually is actually quite a modest step, but will certainly be a substantial step in the right direction. A brief explanation of the assessment projects and annual maintenance levies will illustrate the need for the maintenance levy increase requested in SB 2199.

Water resource districts cannot assess landowners without a vote of the landowners who will pay the assessments, the benefitted property owners. For example, if landowners approach a water resource district to request a drainage improvement project or a flood protection project, the water resource district will engage other landowners in the area to ensure there truly is a need for a project. If landowners in the area identify a need for drainage improvements, flood protection, or other water infrastructure, the water resource district may pursue creation of an assessment district under Chapter 61-16.1 or Chapter 61-21 of the Century Code. The procedure under both chapters requires a vote of the landowners who will benefit from the project, and who will ultimately pay the assessments to pay for the project. A majority of the benefitted landowners must vote in favor of the project, based on benefit and proposed assessments, before the water resource district may assess the landowners who will benefit. The process, and assessments paid, is benefit-driven; it is a fair and transparent process; and it does not work without landowner interest and willingness to pay assessments.

If a project passes, the water resource district can issue bonds to finance construction of the project, and landowners who will benefit will pay annual assessments to pay the bonds. Once the water resource district ultimately constructs a project, and begins levying special assessments to pay for the project, the water resource district is obviously responsible for owning, operating, and maintaining the project. Of course, most water resource districts do not sell potable water, and they do not benefit from water revenues like rural water systems, so they do not have water revenues to pay for maintenance and operation of their projects. Instead, the mechanism for generating maintenance funds is an annual maintenance levy against the benefitted properties. The “maintenance district” is identical to the original assessment district, comprised of landowners who benefit from the project.

By law, a water resource district can currently assess each ag property in the maintenance district up to a maximum of \$2 per acre per year for purposes of maintaining a project. For non-ag property, a water resource district can assess up to \$1 for \$500 of taxable value, or on a benefit basis in proportion to the highest benefitting ag property. Every year, the water resource district will inspect its infrastructure and for each project, will determine if maintenance is necessary or will be necessary (e.g., erosion of a dam occurring may require maintenance). The Board might levy something as small as \$0.25 per acre if there are not significant maintenance needs, or the Board might assess the maximum \$2 per acre if serious repairs or improvements are necessary. The annual maintenance levy generates maintenance funds, and the water resource district utilizes those funds to maintain and operate their water project. Sometimes, if the damages are severe, the maximum levy may not be enough, even if the Board

borrowed ahead against their maintenance levy (water resource districts cannot borrow ahead more than six years against their maintenance funds).

Of course, the costs of maintaining water projects have increased dramatically over time, especially in the last ten years. The costs of excavation and materials necessary to construct standard water projects increases on a yearly basis, and the maintenance levies generated by several water projects around the State simply are insufficient to keep up with maintenance needs.

Smaller water resource districts in particular have suffered where, on one hand, they have obligations to maintain and operate water projects while, on the other hand, their maintenance levies do not generate enough revenues to pay for the maintenance. In those situations, some water resource districts have had to make incredibly difficult decisions regarding use of their general funds, most of which are already severely limited. These water resource districts have legal obligations to maintain their projects, but they do not have the maintenance dollars available to properly do so. This is a serious problem and potentially a liability concern for many water resource districts. The increase sought under SB 2199 would resolve some of those issues for some water resource districts in the State.

Attached to this testimony is a brief and simple illustration of a maintenance district and what the maintenance levy increase would mean for water resource districts and for the landowners who benefit from water projects. As you will see, the increase is modest; the need, however, is great. In light of the maintenance needs of water resource districts in the State, we urge the passage of SB 2199, to ensure the financial solvency of water resource districts.

**B. COMPLAINT COST-RECOVERY**

The second crucial item contained in this bill relates to water resource districts' rights to recover reasonable costs associated with complaints filed by landowners against other landowners. Under North Dakota law, any party can file a drainage complaint, a dike complaint, or an 'obstruction to drain' complaint against any landowner. Water resource districts must investigate each complaint and must follow a statutory process to consider and ultimately render a decision on each complaint. The procedures under the relevant statutes (N.D. Cent. Code § 61-16.1-51 for obstruction complaints; N.D. Cent. Code § 61-16.1-53 for dike complaints; and N.D. Cent. Code § 61-32-07 for drainage complaints) are very similar. Of course, each type of complaint incorporates a certain standard, but the steps taken by the water resource districts are virtually identical.

Each complaint requires an investigation, a process that can often require engineering analysis, and proper compliance with relevant legal procedures, a process that often requires legal counsel. The process requires meetings, legal notices, and hearings; procurement of contractors to remove illegal structures, in instances when the landowner will not voluntarily remove the structure; and sometimes court proceedings. Of course, all of these procedures require effort and resources from water resource districts, their staffs, their water managers, and ultimately their budgets. Water resource districts render final decisions on each complaint, and landowners and other parties involved have opportunities to appeal those decisions either to the State Engineer or to District Court. As you can gather, these procedures are often costly for water resource districts, and in virtually every situation there is no statutory mechanism for recovering those costs from any of the parties involved. Rather, the water resource districts must

utilize their own general funds, *taxes collected from everyone in the county*, to respond to and properly address complaints between two landowners.

In some instances, these complaints are between feuding landowners, parties with hard feelings that go back generations. In others, well-meaning landowners whose properties are suffering damages have exhausted all other options to resolve a matter, and have no choice but to file a complaint with a water resource district. In either instance, the violating landowner should be responsible for the costs, not all of the other taxpayers of the county.

The only opportunity under which a water resource district may currently recover costs from one of the responsible parties rarely occurs; under each of the statutes, if a water resource district renders a decision on a complaint, provides proper notice of the decision to the landowner responsible, and after all other proceedings are concluded the landowner ultimately refuses to remove the dike or obstruction or to fill in the illegal drainage, a water resource district must retain their own contractor to complete the work and remove the illegal structure. In that instance, a water resource district may assess its costs, but only the construction costs, against the landowner. In all other situations, including situations where a water resource district follows all of its procedures and potentially incurs thousands in costs, if a landowner ultimately removes the illegal structure in compliance with a directive, regardless of the stage of the procedure, the water resource district does not have a mechanism for assessing those costs back against the landowner.

Of all of the complaints I have encountered, only once have I seen a situation where a water resource district was required to procure their own contractor to remove an illegal structure, a situation that triggered the water resource district's ability to assess its costs. In that

case, the Board recovered its costs. But in all other complaint situations, landowners often push the envelope until the very end of the process when the water resource district has exhausted all of its legal requirements and is finally prepared to procure its own contractor; in those instances, landowners often finally realize they have no choice and remove the structure or fill in the illegal drainage themselves. In that instance, the statute does not currently afford water resource districts any right to collect their costs.

**C. SB 2199: SEEKING FAIR TAXATION**

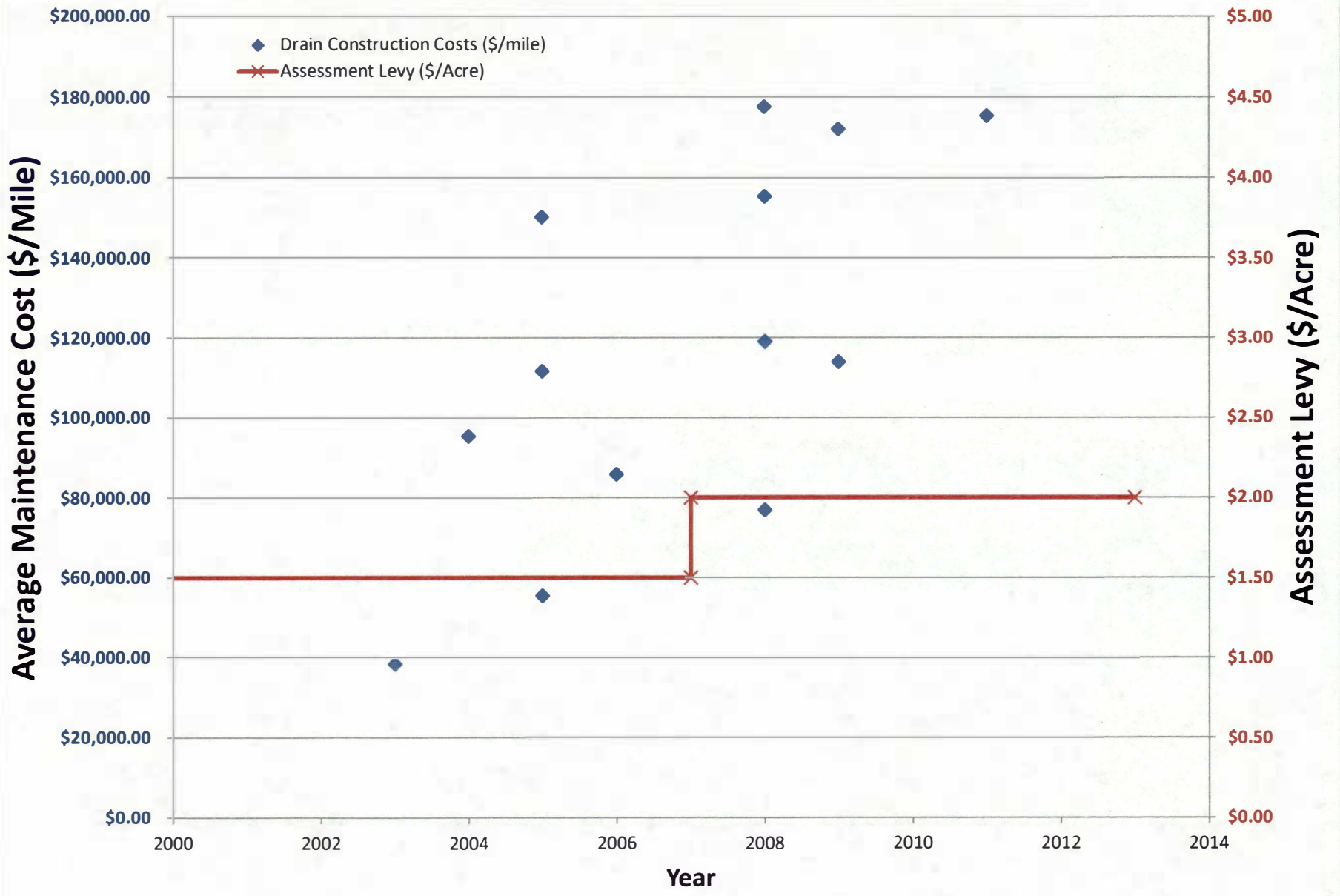
SB 2199 seeks to grant water resource districts the right to collect only their reasonable costs regarding complaint situations, and to provide water resource districts with a modest increase in maintenance funds so they can operate their water projects for the benefit of their residents. Passage of SB 2199 would protect the general funds of water resource districts regarding complaints and regarding maintenance of water projects. Water resource districts have a legal obligation to maintain their water projects, and the landowners who benefit would contribute towards maintenance and improvement costs, for their enhanced benefit. Passage of SB 2199 would help water resource districts pay for their legal mandate to operate their projects, and not at the expense of taxpayers county-wide but rather at a reasonable expense to landowners who benefit from those projects. Similarly, landowners responsible for constructing illegal drains, dikes, or drain obstructions would pay the costs of addressing the complaints against them, as opposed to taxpayers county-wide.

These are fundamental fairness issues, and the committee has an opportunity to take a step toward fairness in taxation. We strongly urge passage of SB 2199.

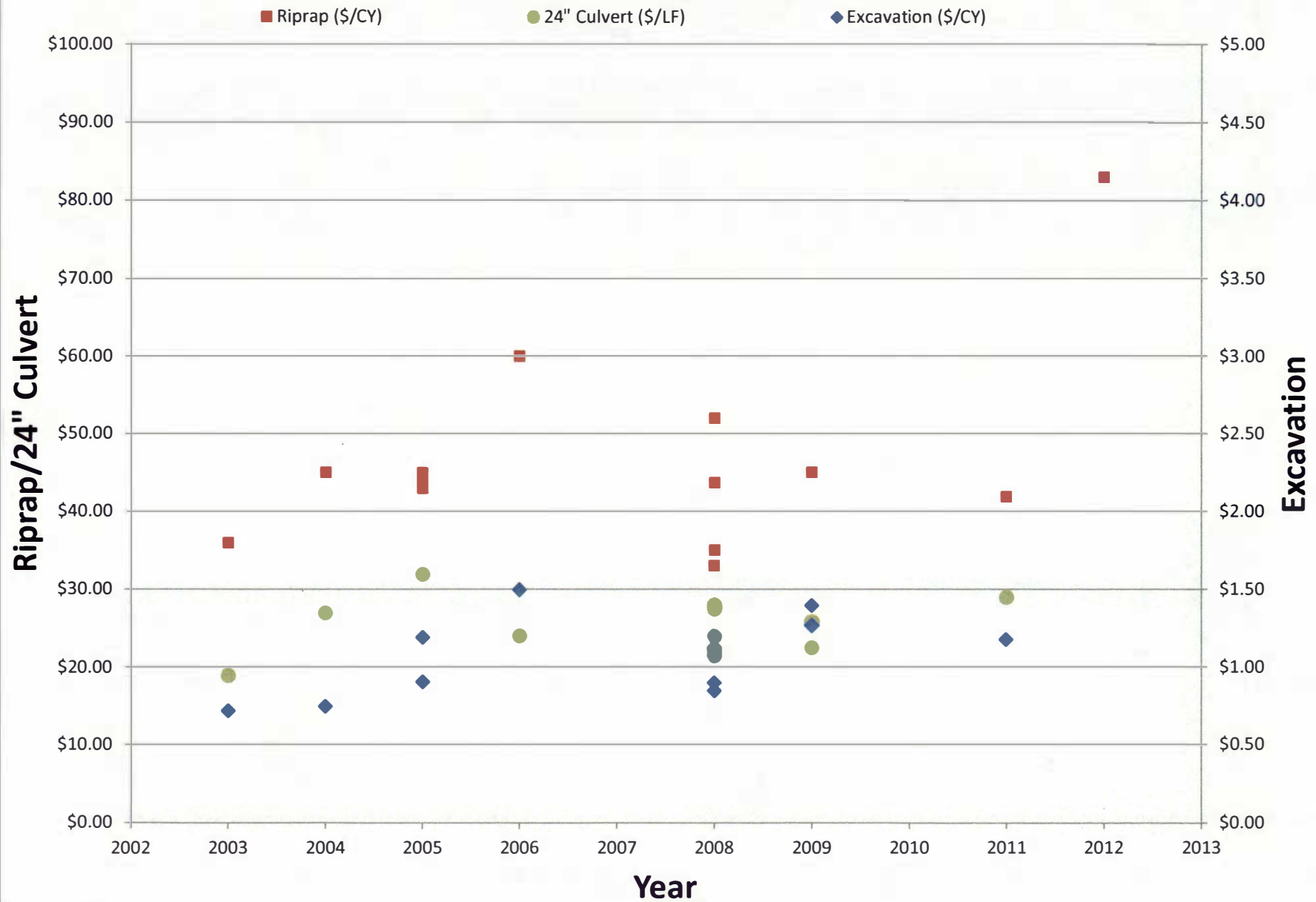
Thank you for your consideration.



# Average Maintenance Cost vs. Assessment Levy

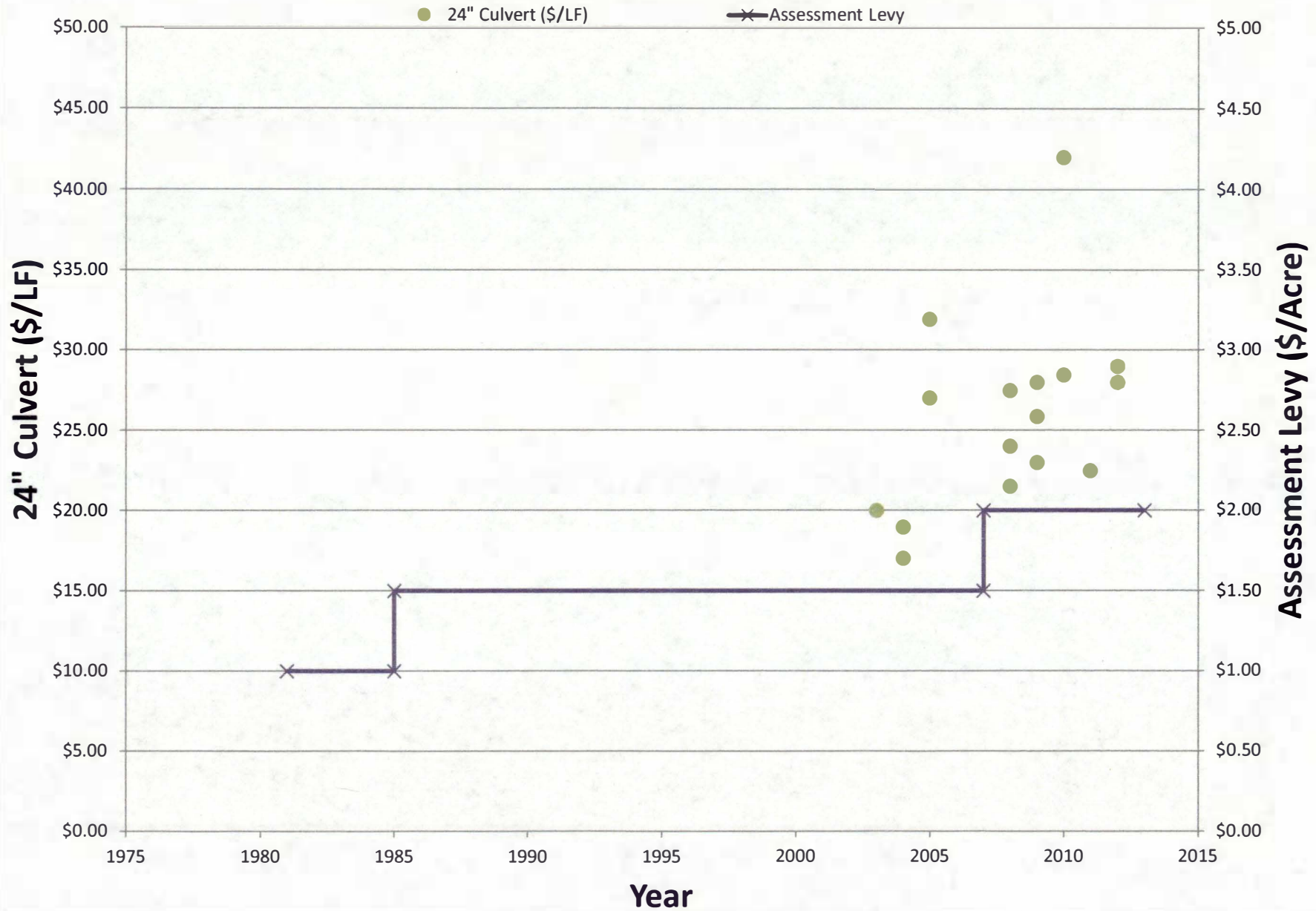


# Construction Costs

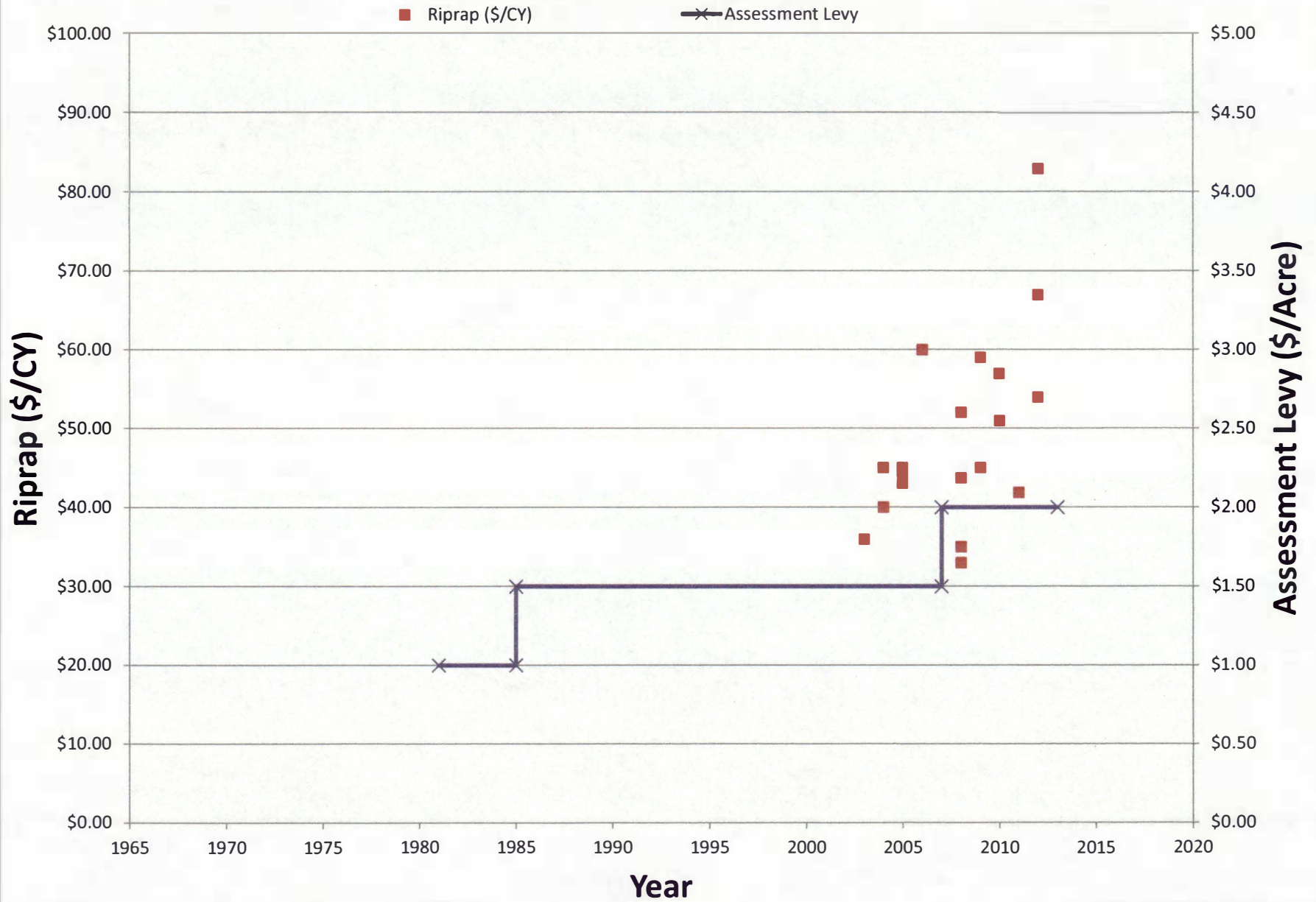




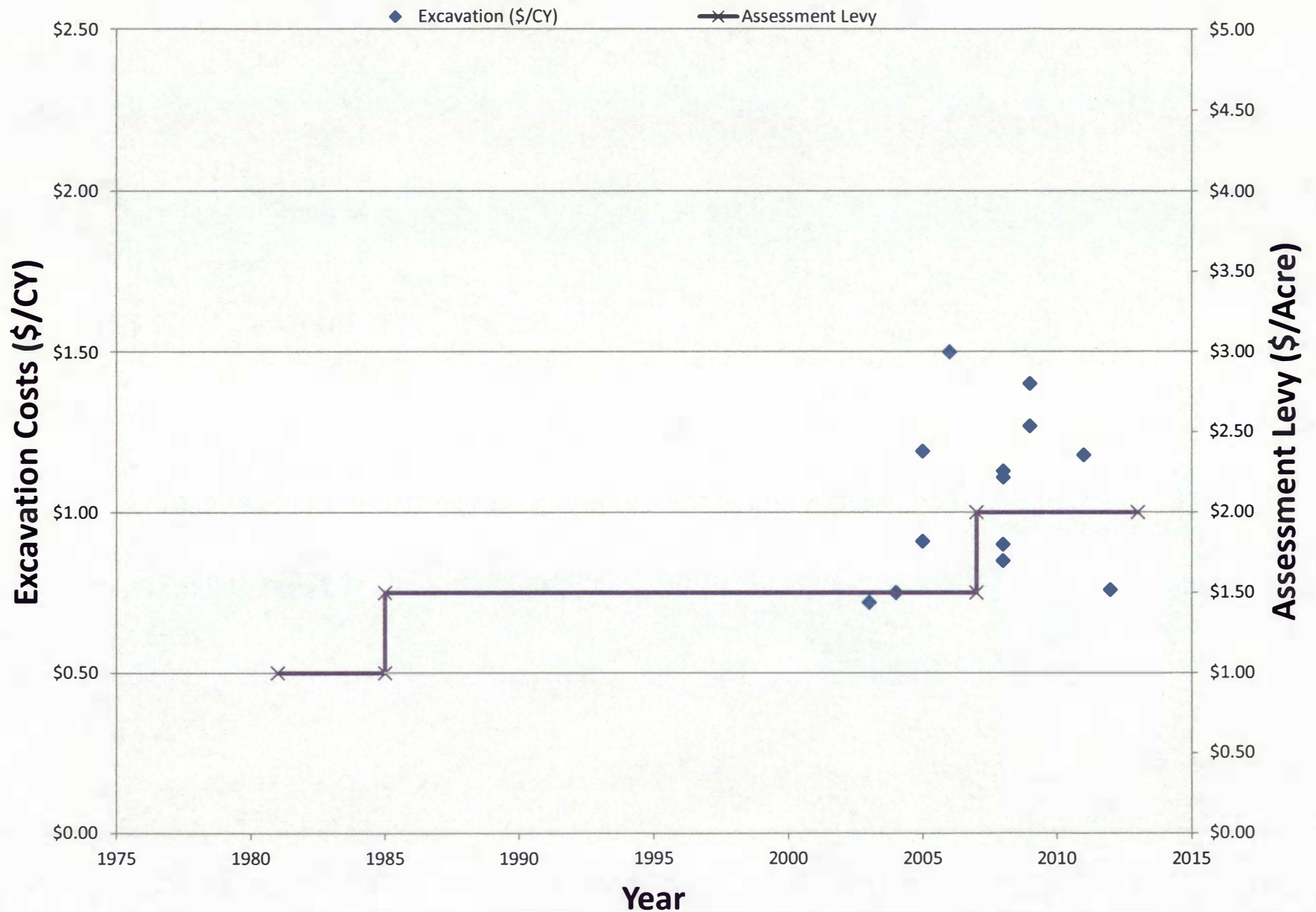
# 24" CMP Culvert Costs vs. Assessment Levy



# Riprap Costs vs. Assessment Levy

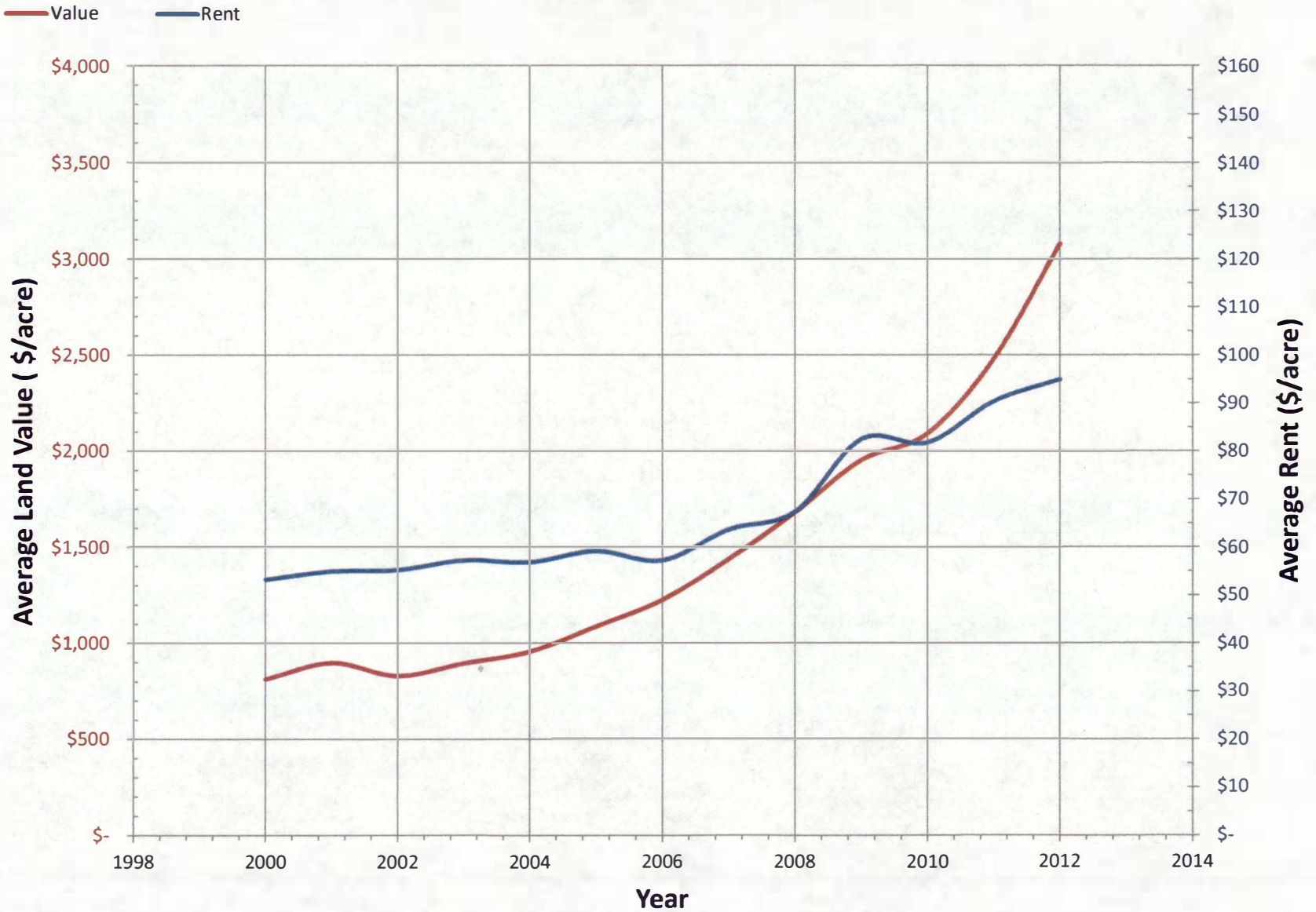


# Excavation Costs vs. Assessment Levy





# Cass County, ND Land & Rent Values



SB 2199  
March 7  
Testimony 2

**Testimony by Mark Brodshaug  
Chair of the Cass County Joint Water Resource District**

**Before the House Energy and Natural Resources Committee  
In Support of SB 2199**

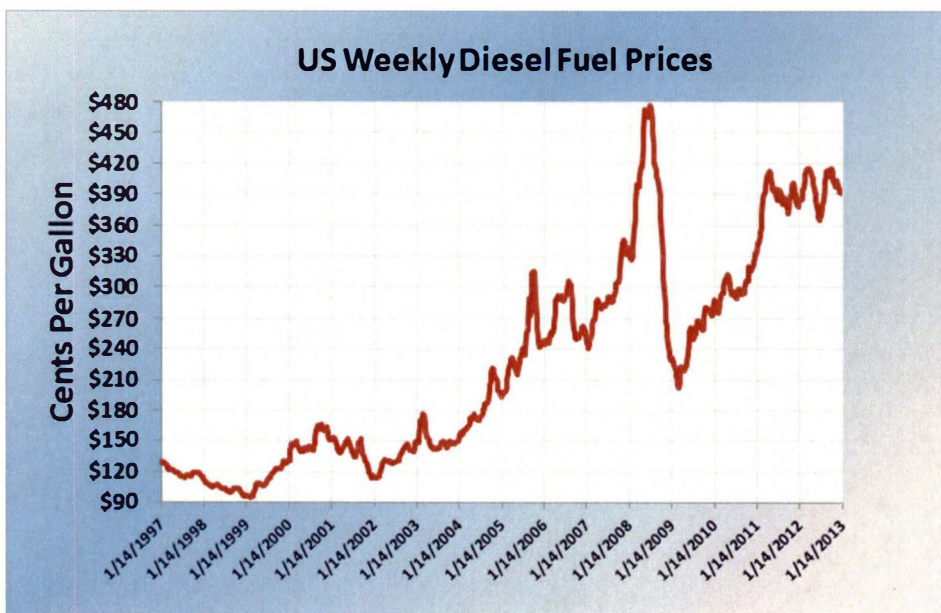
**North Dakota Legislature  
63rd Legislative Assembly  
Bismarck, North Dakota  
March 7, 2013**

Chairman Porter, members of the Committee, I appreciate the chance to speak today in support of SB 2199. My name is Mark Brodshaug and I serve as Chairman of the Cass County Joint Water Resource District. SB 2199 addresses two issues:

- A. Increase the maximum annual maintenance levy for assessment projects owned by water resource districts from \$2/acre to \$4/acre on ag land.
- B. Allow water resource districts to recover costs when investigating a landowner complaint against another landowner.

**WHY INCREASE THE MAXIMUM MAINTENANCE LEVY?**

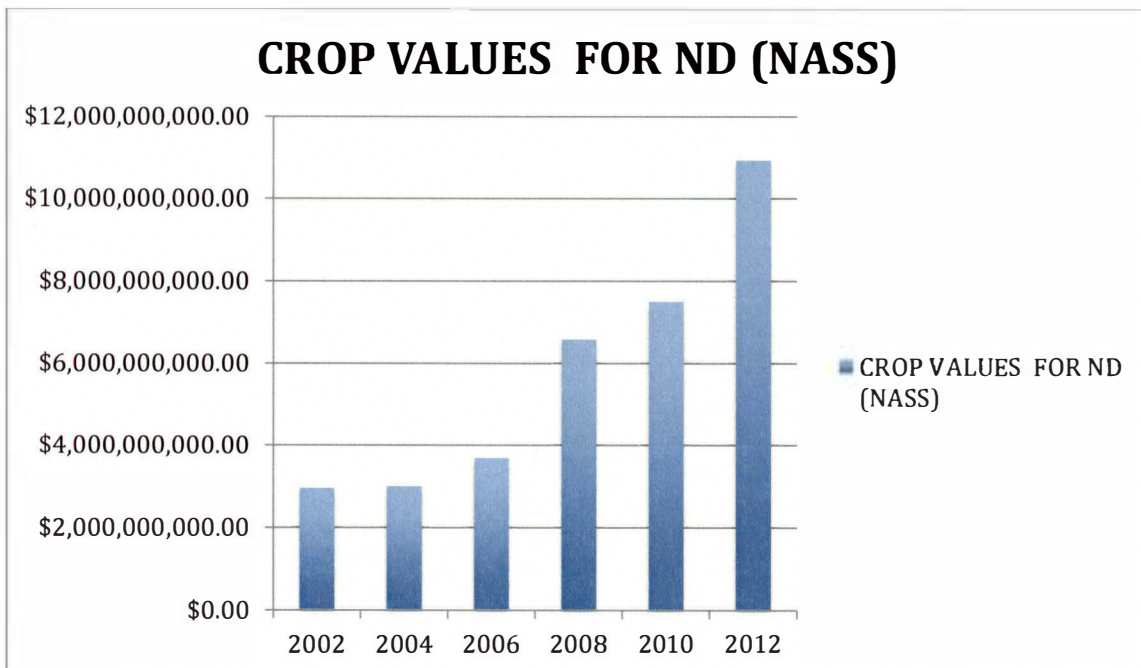
Costs to perform maintenance on water resource district projects have increased significantly in the past 10 years. The cost of diesel fuel has increased from \$1.488 in 2003 to \$3.899 in 2012 according to the US Energy Information Administration. This directly impacts the rates our contractors charge for moving dirt or hauling materials to maintain our assessment projects and make it very difficult to maintain projects to the expected standard when we are limited to \$2/acre for the annual maintenance levy.



SB 2192  
#2  
892

The record setting floods of 2009, 2010, and 2011 strained maintenance budgets as the repeated flooding damaged water resource district projects. FEMA has become less willing to help repair flood damages to water resource district projects. In Cass County, we have determined that it costs more for staff and consultant time to prepare a FEMA claim than what the likely reimbursement from FEMA would be to repair an agricultural assessment drain. Cass County Drain 21C drains a large area of farmland west of Horace where I farmed. The record Sheyenne River flooding in 2009, 2010, and 2011 washed out culverts in the drain, caused erosion and slumping along the banks of the drain, and caused silt deposits in other parts of the drain. Repair costs for these flood repairs drained the maintenance accounts of the drain. In those three years there were emergency flood repairs to Drain 21C that cost over \$68,000.00 while the maximum assessment on the drain raised only \$44,000.00 over the three year period. There are other urgent maintenance needs in Drain 21C that will not be completed unless we have several years without further Sheyenne River flood damages or until we can increase our maintenance levy beyond a \$2 per acre level.

Another reason to increase the maximum maintenance levy is there is increasing value in the crop production that is being protected by agricultural drainage systems operated by water resource districts. In 2002, the value of crop production in North Dakota was \$2.95 billion according to the USDA NASS Crop Values Summary. In 2012 the total value was \$10.93 billion. In other words, the value of ND crops have more than tripled in the past 10 years. There are more dollars at risk for farmers. Ag assessment drains reduce the risk of summer flood damages to growing crops. My point is that assessed agricultural drains are protecting more value and farmers are willing and able to pay more for annual drain maintenance, if needed, to help protect their crops.



SB 2199  
# 2  
Pg 3

### **WHY ALLOW WATER RESOURCE DISTRICTS TO RECOVER COSTS?**

Water resource districts are required to investigate and make a decision on drainage complaints, obstruction to drain complaints, and dike complaints against any landowner. These investigations can be costly with engineering and legal consultants needed to make an informed ruling. Water resource districts usually have to fall back on their general funds to pay for these investigations and a small district with several complaints can see their general fund drained. SB 2199 will give districts the opportunity to recover reasonable costs from a landowner in violation, or a landowner filing a frivolous complaint. I urge passage of SB 2199. Thank you.

Mark Brodshaug  
Chairman, Cass County Joint Water Resource District  
[markbrodshaug@gmail.com](mailto:markbrodshaug@gmail.com)  
701-306-1140 (mobile)

R

Gaugher

SB 2199

SB 2199  
March 17  
Testimony 3

Richland County W.R.D.

We currently have 43 drains in Richland County. At the end of 2012 we had 5 Drains that were in the RED.

Drain #95, which was built around 1995, is 14 miles long and has an assessment Area of 31,300 acres. We have been assessing that drain @ \$2.00 across the board, Which generates \$62,600 per year. In the last 7 years we have spent in excess of \$875,000 for repairs and maintenance. Fema funds for this drain have been around \$440,000. Today we have a \$65,000 negative balance in this drain's account.

We would like to have a culvert study done on this drain so as to cut down on the flow And reduce damages.

Reconstruction costs in our area ran about \$130,000 per mile in 2011. Every year Costs rise about 20-30 %. At this pace, it's impossible to keep up the maintenance that Our area farmers would like to see done. We need the ability to levy up to \$4.00 an acre As needed.

FOR THESE REASONS WE URGE YOU TO SUPPORT SENATE BILL 2199!!

Because of costs incurred in considering and acting on complaints of illegal Drainage, neighbor against neighbor on obstruction complaints, legal fees, hearings, And engineering, in 2012 we spent over \$45,000 with no way of recouping our Expenses. These costs must then come out of the General Fund which doesn't seem Fair to the rest of the taxpayers in the county. I feel that those responsible for the Complaints should bear these costs.

ON BEHALF OF THE R.C.W.R.D. I URGE YOU TO SUPPORT SENATE BILL 2199.

James Haysen RC W.B