

2019 HOUSE AGRICULTURE COMMITTEE

HB 1514

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Peace Garden Room, State Capitol

HB 1514
2/1/2019
Job # 32020

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to permitting subsurface water management systems

Minutes:

Attachments #1-10

Representative Headland, Sponsor: This bill repeals the section of code that may inhibit agriculture in a small way. This will not undo previous tiling bills. We need to understand why we need this regulatory permit. Other states that do not require a permit for tiling are Iowa, Missouri, North Carolina, California, Idaho.

Let's find out why the regulators want regulation. Any regulation that holds us back needs to be looked at.

Senator Wanzek, Sponsor: We put in a lot of effort the last few sessions to address the tile issue to make it easier to get land drain tiled. This discussion is also educating about subsurface tiling. Drain tile helps alleviate flooding problems downstream. We are not draining wetlands. We are managing subsurface water and taking it into the soil. You have healthier plants because roots need moisture and oxygen. A healthy corn plant will absorb a significant amount of moisture.

Some states don't require a permit for subsurface tiling.

Levi Otis, Ellingson Water Management Company: Our laws are more restrictive than most states. Trying to get a lot of projects done in a short time is even more difficult if you have to wait for a permit.

I would like to know why we need this law. Bottineau County had a problem. They received 13.5 inches of rain. When we tile highways, they don't call the farmer.

Jim Bahm, North Dakota Ag Coalition: (Attachment #1)

(16:40)

Ed Kessel, 2nd Vice President, North Dakota Grain Growers Association: (Attachment #2)

(19:00)

Doug Zinc, Farmer and Water Board member: If this bill passes, it will take pressure off of water boards. It would be better between farmers. It would speed up the process.

Pete Hanebutt, North Dakota Farm Bureau: In Support.
Described situation in Indiana. Tiling makes soil better for farmers.

Derrik Ellingson, Ellingson Companies: We have been in the business for almost 50 years. Most of the growers are doing the right thing to protect their neighbors. We don't have an issue with permitting. I don't think we need the permitting policy.

Representative Satrom: How do you see the process changing with this bill?

Derrik Ellingson: I would like to see tracking to know the utilities buried in the ground. My solution would be to abolish the permitting process. Everybody needs to know where it is at.

Representative Satrom: Who makes the decision of what water is discharged?

Derrik Ellingson: We suggest a discharge point that makes sense. We have a program that looks at what the farmers are growing. The 3/8ths drainage coefficient is what we are built around. We have gone up to a 1/2 inch to remove more water.

--1/4 inch coefficient is 5 gallons per minute per acre

--3/8 inch is 7 gallons per minute per acre

--1/2 inch is 10 gallons per minute per acre

Representative Satrom: Do you have any parameters that your sales people recommend to develop the relationships between landowners?

Derrik Ellingson: We recommend they reach out to the neighbors and let them know. Now a permit must be applied for anything over 80 acres. Then they have 30 days to send out letters.

Representative Richter: I was under the impression some properties were denied permitting because of the potential for it to become wetlands. If there is no permitting and an area is tiled and the agency would revoke that permit, how do you resolve that dispute?

Derrik Ellingson: There is always a solution. You can always extend an outlet.

Representative Schreiber-Beck: There are rules for wetlands.

Derrik Ellingson: All farmers are required to fill out a Form 1026 with the Farm Service Agency. We discuss the options. The mitigation process starts to move the wetland or buy a credit. The farmers are not restricted. We install non-perforated drain tile to move the water through.

Representative Fisher: Do you have experience to use these systems to re-water an area.

Derrik Ellingson: Subsurface irrigation is getting more popular. We have one east of Devils Lake.

Representative Satrom: The lack of regulating would allow discharge on any land. Can you comment?

Derrik Ellingson: I would like to see damage. It is minimal. We are the experts. With 99.9% of the permits, the discharge point has not been changed.

Philip Hoff, Farm in Southern Wells County: Many of our financial decisions are made the last minute. We had Ellingsons do a job. My neighbor wanted us to go east. Then we were over 80 acres. To keep peace, we knocked off 4 acres from my project. If we don't need a permit for under 80, we don't need one for over 80 acres.

Opposition:

Brian Vculek, Potato and Corn Grower from Sargent County: Don't give up the permitting process. (Attachment #3)

(50:20)

Representative Satrom: Is there any magic with 80 acres?

Brian Vculek: I use the 80-acre exemption. I do appreciate not having to permit for small projects. Current law has worked well for me.

Representative Skroch: Were you able to take segments of the area and permit that?

Brian Vculek: I received my permit this summer and I had time to do only about 50 or 60 acres of the project. After this, the permit for the whole 300 acres would be beneficial.

Representative Skroch: Can you section out 80 acres to stay under the limit?

Brian Vculek: If each 80 acres has its own discharge point, they can be considered separate.

Gary Thompson, Red River Joint Water Resource District Chairman: (Attachment #4)

(1:00:44)

Representative Schreiber-Beck: Do you have amendments that would resolve the problems? What can you offer?

Gary Thompson: This is a bill that is eliminating the permitting process. There is another tile bill in the Senate. SB 2220 covers everything that we are looking for.

Representative Blum: If there is potential damage going on but you have never denied a permit, that is conflicting.

Gary Thompson: Those negotiations have taken place. That is why you don't hear anything.

Jennifer Lindenberg, Secretary/Treasurer, Walsh County Water Resource District: (Attachment #5, pages 1 & 2)

(1:08:54)

Larry Tanke, Walsh County Water Resource District: (Attachment #5, pages 3-9)

Gave examples of problem situations. Water is pumped into the ditch. When the surface water comes, the crop will take the moisture. If the draw is not clean, the water stops on the field which turns salinity.

A rural water system has a 24-foot corridor on each side of their water line. The tile company got inside the 24-foot corridor. Rural water can't find a leak in the system because it goes into the tile line.

We are not against tile. It has to be done in the proper place. In 2017, Richland County had 400 plus tile permits. Out of that there are some bad people.

(1:18:55)

Carmen Miller, Ducks Unlimited: (Attachment #6)

(1:25:22)

Representative Skroch: On page 3 you said the City of Des Moines spends \$7,000 per day removing nitrates from its water. What is the source of that water? Can it be connected to subsurface drain?

Carmen Miller: I have also heard \$1.5 million in a half of year. But the existence of subsurface drainage is the source.

Representative Skroch: Do they have data of water qualities prior to any systems put in place? In my area we have high levels of arsenic. They are natural formations in our water supply that leached out of our soil.

Carmen Miller: Their system is older. Those elements may be naturally occurring. But when you have an underground super highway it brings things to a level that makes it problematic.

Representative Richter: Do you have a study that shows the same with water that runs down a ditch after a heavy rain and then compare it to the numbers you are giving?

Carmen Miller: I can send the NDSU study. They did look at rainfall events. The point is there are still circumstances where you find these high levels of concerning contaminants.

Representative Richter: So the numbers you have here could be the same as water flowing in a ditch after a rainfall?

Carmen Miller: I am not sure. I would have to look back for a comparison.

Representative Schreiber-Beck: The data you provided doesn't have conclusive evidence. You are talking about the high levels of selenium in the 1980s in California and then comparing it to a Fish and Wildlife study that was a 5-year study completed in 2018 in eastern South Dakota. What are the qualities of the soil in eastern South Dakota with or without drain tile?

Carmen Miller: The 80s example in California was used because it is a famous ecological disaster that raised awareness of the impacts of selenium on wildlife.

The study in South Dakota indicated more research is needed. The numbers are concerning.

(1:32:30)

Chad Engels, Civil Engineer: (Attachment #7)

We don't have flash flooding in the Red River Basin.

Soil absorbs water. Tile releases water.

(1:42:25)

Representative Headland: Do you believe the process in statute today works?

Chad Engels: You heard last session about the inconsistency of permitting from one water resource district to another. The last session bill helped but it also had some negative consequences. That bill put handcuffs on water resource districts. The 80-acre exemption is a runaround. You can get around the limit by doing 80-acres in sections or different years. Putting the full burden on the downstream landowner to prove damage is an issue. The applicant needs to take responsibility for what they are doing. The permitting process brings people together to find solutions.

Representative Headland: Collin Peterson is on record saying that if the whole valley was tiled, we wouldn't need a diversion. Do you agree?

Chad Engels: That is inaccurate.

Representative Headland: How long does it take to look at a tile project permit to make a decision? Why does there need to be a 30 to 60-day process for this. It seems it is being used as a tool to delay. Why the request for more time?

Chad Engels: Most reviews take an hour or less. It is the exceptions that need a field investigation. It depends on the downstream situation as to where the water is going.

Representative Headland: How many instances are there where a downstream person can prove damage?

Chad Engels: I can't give a number. There are instances.

Representative Headland: An agricultural state like Iowa doesn't require a permit. It works down there.

Chad Engels: I wouldn't hold Iowa as the example for sound water management. They suffer from frequent flooding.

Representative Headland: In Iowa they have liability issues and if damage is proved, they have mechanisms to compensate. Why wouldn't that work here?

Chad Engels: There is a global effect from a number of projects. Each has a small incremental input. There needs to be oversight and a permitting process to allow for that.

Representative Fisher: Would amendments help make this a good bill?

Chad Engels: I am willing to work with the legislature to make water management better.

Representative Schreiber-Beck: Would you review gated tile vs. non-gated?

Chad Engels: The soil is a sponge. A field is a place where water can be stored. The benefit of tile is it can drain the field in the fall prior to the spring flood. You also remove the ability of water to stay in the soil. The best scenario for flood control is a tiled field with a gate. The second best is no tile. The worst is uncontrolled tile with a dry fall. The snow moisture is taken away. How fast are you releasing it? When you look at a 100-year flood in the Red River Basin, we are talking about 5 to 6 inches of runoff from the landscape.

When you say a drainage coefficient is 3/8ths of an inch, that is 3/8ths of an inch of drainage over 24 hours. With 640 acres, that is an inch of water leaving every two days. With a 100-year flood that is 5 or 6 inches, if the water could have gone in the soil and stayed there it wouldn't create the problem. That is where the gating comes in.

Representative Schreiber-Beck: Would you recommend gated systems vs. nongated? How many instances has Moore Engineering been involved in the permitting process?

Chad Engels: My firm is involved in the permitting process of every Water Resource District that we work for. That is about 250 contracts per year.

Representative Schreiber-Beck: Are floods all the same?

Chad Engels: Every flood is unique. We need to manage what we can.

(1:58:18)

Eric Volk, Executive Director, North Dakota Rural Water Systems Association:
(Attachment #8)

(1:03:50)

Representative Richter: Do you find problems with projects under 80 acres?

Eric Volk: There is nothing binding a land owner to abide by this law if it is not permitted.

Representative Richter: Do you find that most of them still contact you?

Eric Volk: No. We usually get a two-day notice.

Representative Schreiber-Beck: Is there a system that the water lines are mapped? Is that map accessible?

Eric Volk: In the early 70s they don't know where they are. After 2013 everything installed has to be locatable. That is for every underground utility. Most systems have gone back and digitized the old maps. There is a safety issue about posting it online.

Bruce Anderson, Barnes County Water Resource District: I am in favor of tiling. It is better than drainage ditches. The tile gets rid of water when the soil is oversaturated.

When producers come in for permits, we go through a talking process. We send in the applications to the engineering firm. They give recommendations. We haven't had any producers that are upset. There are no downstream landowners that get flooded out. We have mitigated some of the little ponds that are a tenth of an acre and buy wetlands somewhere else. It helps the wildlife and hunting groups.

In opposition to this bill, we do not need a free-for-all that lets anybody dump onto their neighbor without recourse. Some of our quarters that were the last field in the spring to get into are now the first field to get into in the spring with tile. We have increased our production on those fields by 20-25%.

Chairman Dennis Johnson: The way the permitting process is structured now with the 30 days, have you had any problem with turnarounds with the application. Can everything be done in 30 days?

Bruce Anderson: That has been a problem. Most districts meet every month. By the time the process is done, it is more than 30 days. If it is over 80 acres we have to send it to the state for approval.

Representative Headland: You have done projects in a way for no impact on neighbors. Would you say most people installing tile systems don't care about their neighbors?

Bruce Anderson: I held the project up until the downstream neighbors are notified. All of my systems have a pump on the end. There is a lot of benefit to have conversations ahead of time?

Representative Headland: Aren't the people tiling using the same approach? They are not deliberately dumping water on their neighbor.

Bruce Anderson: Not yet. But we have a fear there is a potential to do that.

Representative Headland: The current process works with a water board that allows that.

John Froelich, Barnes County Commissioner: I believe government entities set a direction and are the referee. I am concerned about tile drainage that goes into county road ditches. You can have culverts freeze up if you are running a small amount of water through

them. We have 320 miles of county road. Someone could lay tile right down the ditch. If we work or rebuild the road, we would have to take care of their tile. The taxpayers would be charged.

The Century Code 24-01-42 says now no person may construct within 75 feet of the centerline of any county highway right of way without first obtaining the consent.

Electrical and fiber are allowed because they agree that if work is done on the road, they would have to move it at their own cost.

I am opposed to not having a permitting system.

Additional testimony submitted:

Corwyn Martin, Traill County Highway Department (Attachment #9)

Murray G. Sagsveen, Landowner in Bottineau County (Attachment #10)

Chairman Dennis Johnson: Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1514—Committee Work
2/7/2019
Job # 32385

☐ Subcommittee
☐ Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to permitting subsurface water management systems

Minutes:

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Representative Headland: Moved Do Pass

Representative Blum: Seconded the motion

Representative Skroch: I respect Brain Vculek's testimony. He has fought hard for drainage and subsurface management issues. He feels that what we have now in statute is right. This bill takes it a little too far. For that reason, I am opposed.

Representative Satrom: I am 100% for drain tile. However, my concern is the drain tile people will regret it. The way we have it now is going to save us lawsuits in the future.

Representative Headland: Where did they present evidence that somebody was harmed? It is overland flooding that did the damage from excessive rain. It wasn't the drain tile. I don't have issues with our current law. But we are getting pushback on our law. We have water boards that think they have lost authority.

There are several states that don't have the permitting process. I will withdraw the motion and work on an amendment.

Representative Blum: Withdraws the second.

Chairman Dennis Johnson: The Senate Bill is coming to the floor with a Do Not Pass.

Representative Richter: We need to add that if there is damage done, there should be a fund to mitigate it so it is not on the county or local government to come up with funding.

Representative Headland: There are already liability laws on the books.

Vice Chair Trottier: To the industry people that are here, do we have problems now?

Chairman Dennis Johnson: Who has responsibility now for the erosion that we is shown in the pictures?

Levi Otis, Ellingson Company: The 2017 bill did give water boards the authority to apply conditions such as erosion control. You have the law in place now to require erosion control.

Representative Richter: What are the consequences? What authority do the water boards have to enforce getting the area restored?

Levi Otis: Just because you get a permit, it doesn't protect you from being sued for harming somebody else.

In answer to current law, there are some things that can be tweaked. The window of time is short in spring. If we could give the water board some protections, that would help.

Representative Headland: I will bring some amendments.

Representative Schreiber-Beck: Page 2, lines 6-8 addresses liability.

Chairman Dennis Johnson: continue work at another meeting.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1514—Committee Work
2/15/2019
Job #32853

☐ Subcommittee
☐ Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to permitting subsurface water management systems

Minutes:

Attachment #1

Representative Schreiber-Beck: Amendment #.01001 (Attachment #1) was created in response to the indication that there was now ability for anyone who has a problem with the tile project, there is now a responsible party. It is added in Section 2.

Representative Schreiber-Beck: Moved the amendment

Representative Headland: Seconded the motion

Vice Chair Wayne Trottier: In Section 2 it says “a person that installs a subsurface water management system.” Is that the landowner or drain tile company?

Representative Schreiber-Beck: That would be the installer. It could be a company or individual.

Chairman Dennis Johnson: So the bill stays the same. We would be adding a bond requirement for the installer.

Representative Schreiber-Beck: Correct.

Voice Vote taken. Motion passed. Amendment adopted.

Vice Chair Wayne Trottier: I still think we have problems for landowners. We could stir up problems between neighbors without getting a permit.

Vice Chair Wayne Trottier: Moved Do Not Pass as amended

Representative Satrom: Seconded the motion.

Representative Headland: I understand the position of the committee. We have achieved some things just having the conversation.

Water boards need to understand that the legislature wants tiling to occur. We tried to put regulations forward that work for everybody. The pushback from water boards is the reason why this bill was introduced.

A Roll Call vote was taken: Yes 10, No 2, Absent 2.

Do Not Pass as amended carries.

Representative Schreiber-Beck will carry the bill.

DP 2/15/19

19.0875.01002
Title.02000

Adopted by the Agriculture Committee

February 15, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1514

Page 1, line 1, after "to" insert "create and enact a new section to chapter 61-32 of the North Dakota Century Code, relating to surety for installers of subsurface water management systems; and to"

Page 2, after line 10, insert:

"**SECTION 2.** A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

Surety for installers of subsurface water management systems.

A person that installs a subsurface water management system comprising eighty acres [32.37 hectares] of land or more shall:

1. Maintain a bond for at least five hundred thousand dollars to permit other persons to recover against the installer's surety; and
2. Record the subsurface water management system with the water resource board for the county in which the system is located."

Renumber accordingly

Date: 2/15/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1514**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: 19.0875.01001

Recommendation

- ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Schreiber Beck Seconded By Rep. Headland

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Ruth Buffalo		
Vice Chairman Wayne Trottier			Rep. Gretchen Dobervich		
Rep. Jake Blum					
Rep. Jay Fisher					
Rep. Craig Headland					
Rep. Dwight Kiefert					
Rep. Aaron McWilliams					
Rep. David Richter					
Rep. Bernie Satrom					
Rep. Cynthia Schreiber Beck					
Rep. Kathy Skroch					
Rep. Bill Tveit					

**Voice Vote
Motion Passed**

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2/15/2019

Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1514**

House **Agriculture**

Committee

☐ Subcommittee

Amendment LC# or Description: 19.0875.01002

Recommendation

- ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐ _____

Motion Made By Rep. Trottier Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich	X	
Rep. Jake Blum		X			
Rep. Jay Fisher	X				
Rep. Craig Headland		X			
Rep. Dwight Kiefert	AB				
Rep. Aaron McWilliams	X				
Rep. David Richter	AB				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 10 **No** 2

Absent 2

Floor Assignment Rep. Schreiber Beck

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

REPORT OF STANDING COMMITTEE

HB 1514: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1514 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 61-32 of the North Dakota Century Code, relating to surety for installers of subsurface water management systems; and to"

Page 2, after line 10, insert:

"SECTION 2. A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

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A person that installs a subsurface water management system comprising eighty acres [32.37 hectares] of land or more shall:

1. Maintain a bond for at least five hundred thousand dollars to permit other persons to recover against the installer's surety; and
2. Record the subsurface water management system with the water resource board for the county in which the system is located."

Renumber accordingly

2019 TESTIMONY

HB 1514



P.O. Box 1091
Bismarck, ND 58502
(701) 355-4458
FAX (701) 223-4645

VOTING MEMBERS

Independent Beef Association
of ND
Milk Producers Association of ND
Minn-Dak Farmers Cooperative
ND Ag Aviation Association
ND Agricultural Association
ND Ag Consultants
ND Agri-Women
ND Barley Council
ND Corn Growers Association
ND Corn Utilization Council
ND Crop Improvement & Seed
Association
ND Dry Bean Council
ND Elk Growers
ND Ethanol Council
ND Farm Credit Council
ND Farmers Union
ND Grain Dealers Association
ND Grain Growers Association
ND Irrigation Association
ND Lamb & Wool Producers
ND Oilseed Council
ND Pork Producers Council
ND Soybean Growers Association
ND Stockmen's Association
ND Wheat Commission
Northern Canola Growers
Association
Northern Plains Potato Growers
Northern Pulse Growers
Association
Northwest Landowners
Association
Red River Valley Sugarbeet
Growers
U.S. Durum Growers Association

NON-VOTING MEMBERS

BNSF Railway, Inc.
Ellingson Companies
Garrison Diversion Conservancy
District
ND Association of Ag Educators
ND Association of Soil
Conservation Districts
ND Beef Commission
ND Department of Ag
ND Rural Water Systems
Association
ND Soybean Council
ND State Seed Commission
NDSI Agricultural Affairs

#1
2/1/19

Testimony of Jim Bahm North Dakota Ag Coalition Executive Committee Member In Support of HB 1514

Chairman Johnson and members of the committee, my name is Jim Bahm, and I am here today as a member of the Executive Committee of the North Dakota Ag Coalition. The Ag Coalition has provided a unified voice for North Dakota agricultural interests for over 35 years. Today, we represent more than 40 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, our members seek to enhance the climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on a limited number of issues, brought to us by our members, that have significant impact on North Dakota's producers and agriculture industry. The Ag Coalition supports HB 1514 as re-establishes property rights to the landowner by eliminating the permitting requirements for subsurface water management systems.

Our member groups represent the state's farmers who should be allowed to make timely investments in the use of their land and resources to produce high quality products, without the burden of regulations and extended wait periods. This bill assists in eliminating those roadblocks, therefore we encourage your support and recommend a do pass on HB 1514.



You Raise. We Represent. www.ndgga.com

North Dakota Grain Growers Association
Testimony on HB 1514
House Agriculture Committee
February 1, 2019

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Ed Kessel; I am a diversified family farmer from Dickinson. I am also 2nd Vice President of the North Dakota Grain Growers Association (NDGGA). I appear in both capacities today in support of HB 1514.

HB 1514 removes subsurface water management systems from the permitting process. This is a big step forward not only for subsurface water management in the state but it is a big step forward in water management as a whole in North Dakota. Chairman Johnson, members of the House Agriculture Committee, you are all aware how far behind North Dakota is in relation to other states in subsurface water management. While other states have concentrated on improving agricultural land, North Dakota has been mired in regulations hindering orderly water management on our most precious resource in the state, our soil. This regulatory burden has negatively impacted landowners for decades resulting in decreased soil health and ultimately decreased agricultural productivity.

With HB 1514 we as a state can begin to change all of that. This bill represents deregulation at its finest; this legislation is a needed and necessary step in the right direction.

Therefore, Chairman Johnson, members of the House Agriculture Committee, both the North Dakota Grain Growers Association and myself urge the Committee to give HB 1514 a Do Pass recommendation.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

H 3
HB 1514
2/1/19

Good Morning.

Mr. Chairman Johnson and Committee Members,

My name is Brian Vculek, a potato and corn grower from Sargent County.

My Operation

My son, wife and I, along with a very dedicated team farm in southeast ND. We grow potatoes for frozen process market and the seed to support this. We also grow corn. In addition to farming, we run a tiling operation for our own property. Differ from

Sen Wanzek I am working toward draining wetlands. High water table.

I find myself in a very unusual situation. Friends of Ellingson

Today I come before you supporting continuing regulation.

This is contrary to my character!

I believe we have made great strides in ND tile drainage law.

Before our current law Sargent County WRB would:

Question a permit if it may dewater a wetland shared with a neighbor.

Our local NRCS manager was usually present to have his opinions included.

Downstream landowner concerns were over emphasized.

Permits usually came with stipulations:

Restricted pumping dates

I have yet to see a culvert plugged with ice on or near my projects.

It was like buying a new tractor and turning the HP down

Many of my projects pump at about 20% rate all winter long.

Page 2
3
AB1514
2/1/19

The whole permitting process was a daunting and discouraging task.

I would like to compliment the 2017 Legislature on or current tile drainage law.

I would like to use this visual aid to help explain a project that the current law facilitated.

lag of the land

About 5 years ago I received a surface permit to remove 10,000 gpm from this area.

I offered my neighbor Darrell (school classmate) and his wife free surface drainage in exchange for a flowage easement.

They asked if I would install tile on their land for free.

I said no.

offer to bury non perf pipe

For the next four years I met with Darrel and Paula several times explaining how much this would improve their property. To no avail.

Under the current tile drainage law I applied for a permit to drain 300 acres.

Upon notification Darrel soon called me.

He said he was disappointed.

He had hoped to get money from me for an easement.

The current tile drainage law facilitated discussions that moved us closer to agreement.

Darrel did not supply technical data in opposition to my project.

I received my permit.

I feel the current law gave me the leverage needed to move forward on a 300 acre project that I may not have otherwise.

I also feel the current law:

Forces downstream interests to put a little skin in the game by requiring technical data.

The 30 day process facilitates discussion that may lead to compromise.

Prevents future litigation in at least some cases.

Back to my project:

Darrel did not supply opposing technical data.

If for some reason Darrell claims damage in the future

Because Darrell did not supply opposing data before the project started.

I will feel like I am at least "one up" in a court case.

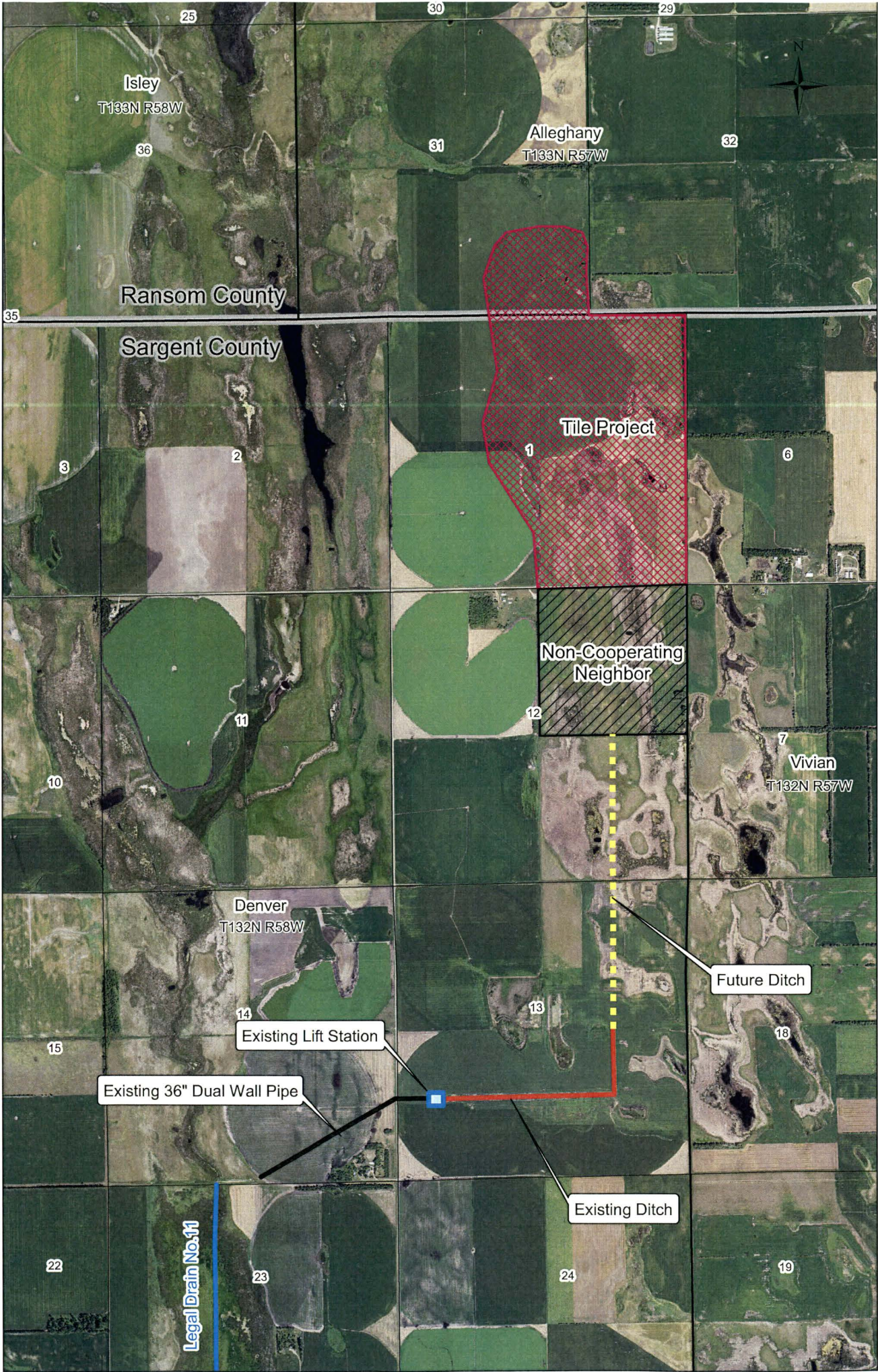
I hope you can see the benefit I feel I received from the current tile drainage law.

I also hope you can leave our current Subsurface Drainage Law as is.

Thankyou Chairman _____ and Committee members

I would be happy to entertain any questions.

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TESTIMONY ON HB 1514

PREPARED AND OFFERED BY GARY THOMPSON

FEBRUARY 1, 2019

Mr. Chairman and committee members, my name is Gary Thompson and I am the chairman of the Red River Joint Water Resource District, a joint water resource district with our home base in Hillsboro, North Dakota. I represent our members that include water resource districts in Pembina, Walsh, Grand Forks, Nelson, Traill, Steele, Cass, Barnes, Richland, Ransom and Sargent. The Red River Joint Water Resource District and all of our member Boards adamantly oppose House Bill 1514. This is a bill that will benefit tile contractors, lawyers, and will initially benefit the landowners installing tile. Ultimately, however, the elimination of all tile permitting will be damaging to downstream landowners, downstream roads ~~and tile~~, and, ultimately, even the landowners installing tile. The permit process is, and always has been, a protection process; permitting protects the landowners installing the tile, but also protects downstream landowners, protects downstream roads ~~and tile~~, and reduces the frequency of lawsuits. Why? Because the permitting process forces people to communicate; neighbors have to approach neighbors to discuss their project, to agree on mutually-acceptable tile discharge routes, to work out issues *before* disputes arise.

Without a permitting process, neighbors will not communicate; instead, tile contractors will rush to install, and they will not be around later when the tile outlet is dumping water on the downstream neighbor. The downstream neighbor's only remedy will be a civil lawsuit. In addition, State, County, and Township road authorities will suffer if tile permitting is eliminated. Without any type of permitting process, those road authorities will lack any meaningful means to protect their infrastructure. If a landowner installs a 400-acre tile project and pumps the discharge into a road ditch, there is nothing the road authority can do to protect their road ditch from constant wetness and, potentially, failure of their

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roads. Again, the elimination of tile permitting will be great for tile contractors and great for lawyers, but not great for North Dakota.

The tile permitting law that passed during the 2017 session eliminated many of water resource districts' abilities to protect downstream parties, but at least it is a permit process that still requires landowners to engage their neighbors before installing the tile (and before damages and, possibly, lawsuits). Recently one of my fellow water managers and I met with a downstream landowner who believes he is being adversely affected by a tile project. Under the current law, that landowner receives, by certified mail, information regarding the tile project. If the landowner believes the tile project will adversely impact his property, he has to hire an engineer to do an impact study of the project. I have talked with an engineering firm that is working on a technical report and they have indicated that the study will cost that downstream landowner anywhere from \$3000 to \$5000. The current law puts the burden on downstream landowner and we disagree with the way the 2017 tile law placed the burden solely on the downstream landowner, but at least the downstream landowner has an opportunity to demonstrate impacts. At least the current tile permitting law requires some communication with downstream interests. With communication comes the possibility of negotiation, and civil lawsuits can be avoided.

Tile companies would love for the Legislature to approve HB 1514, and if you eliminate all tile permitting, that would only give those tile contractors free sailing, no holdups, "damn the torpedoes, full speed ahead," without any ramifications. They get paid and they get out, without having to worry about any potential problems downstream, or for their client for that matter. Different neighbors have different relationships; those relationships can already be fragile and this rush to allow tile unfettered and without any regard for ramifications will strain these relationships even further and, in some situations, will encourage more lawsuits.

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Sure, at first glance landowners might believe the elimination of all tile permitting sounds great, that is until that same landowner sees the other side of the process. What if you are a downstream landowner, and you become the recipient of the tile water, and that tile discharge adversely impacts your property? Downstream interests, downstream landowners, and downstream road authorities need a voice, and eliminating the tile permitting process will completely eliminate their voices. Water resource districts in the Red River Valley support tile, and we understand the potential issues that can arise downstream. Yet nobody, not the tile contractors and not the legislators who promote HB 1514, approached us to explain their concerns or to consider a mutually-acceptable resolution to the problems they see.

Every single tile project that has come to the Traill County Water Resource has been approved and these landowners have permits to protect their tile systems for life; those permits protect them from lawsuits, and protect their heirs from issues in the future. It is passed on from the first owner of that system to the next owner of that same system. Without a permit, it could leave an opening for a lawsuit at anytime in the future. By Taking away the permit process you will be taking away the protection that every landowner deserves.

Mr. Chairman and Committee Members, thank you for allowing me to testify here today and we as the Red River Joint Water Resource District, and our member districts, very strongly urge a DO NOT pass on House Bill 1514.

Gary Thompson, Chairman RRJWRDA

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Testimony on HB 1514 House Ag Committee 2/1/2019

Larry Tanke & Jennifer Lindenberg – Walsh County Water Resource District (WRD)

In Walsh County, we have processed 76 drain tile applications under the new tile law passed in 2017 and 231 since 2010. We have encountered several issues since the new law took effect. The most serious of those was an application this fall in which the drain tile project would outlet into a current legal drain. It so happened that the legal drain in question was in the process of an outlet repair and was scheduled to be voted on. When we learned that the plans included a tile pipe to be run in our right of way along the slope of the outlet, we asked our project engineer to look at the tile plans. He spoke to the drain tile rep who put together the plan. When offered other suggestions for the tile outlet so that it would not interfere with the proposed outlet repairs, he was met with resistance. It was also stated that the tile company would install the tile in the outlet and if the tile was damaged during the repairs, the WRD would be liable for damages. Meanwhile the landowner learned that his tile plans were interfering with the outlet repairs and called the WRD office. He spoke with Jennifer and told her that he did not want to do anything to jeopardize the outlet repairs. He also stated that he had recently had a stroke and the stress over this was affecting his health. He asked what to do as the drain tile rep did not want to change the plans, even per his request. At that point, the Board contacted the drain tile rep and changes were made to the tile plans. Once the tile was installed, the Board requested the drain tile rep to attend a meeting to discuss the ongoing problems with obtaining tile permits and communication with the Board. During this meeting, the Board asked if the tile installation was complete. It was. The Board asked if the plans submitted with the application were what was installed. They were not. So the Board had a tile application on their desk to approve but the tile installation was already completed and not according to the plans they had.

Another instance of downstream impacts was a tile application that would outlet on the quarter line into a neighbor's field drain that ran along a shelter belt line. We brought all parties in to try find some common ground on the outlet of the tile. An option that was discussed was to outlet to the south and east into an existing legal drain. The parcel in question was not assessed to the drain, but we stated it could be added if the outlet was placed there. After the meeting, the applicant chose to move forward with the plan to discharge onto his neighbor. With the strict limitations on the Board's authority to place conditions on the tile permits, they could not stop the tile project from moving forward as planned.

We had a landowner come in to address the Board about two tile applications from other landowners that would outlet into a natural coulee which runs through his land. He stated that other than during spring runoff or a large summer rain event, the coulee is dry and he is able to farm through it. But with tile pumps discharging into it, the coulee bottom would remain wet throughout the farming season. With the constant water, he would not only not be able to farm through it, but cattails would eventually start growing and cause even more issues. He was not able to afford to hire an engineer to prove the downstream impacts at an estimated cost of \$3,000 - \$5,000. Although the Board agreed with his analysis of the possible damage by the tile pumping, their hands were tied as far as disallowing the pumping into the coulee.

Other issues with downstream impacts have included lack of erosion control at the pump outlets. We've included several pictures of outlets showing the minimal effort, if any, put into some outlets and the damage that has occurred. One specific outlet was located 2 miles from a legal drain and the

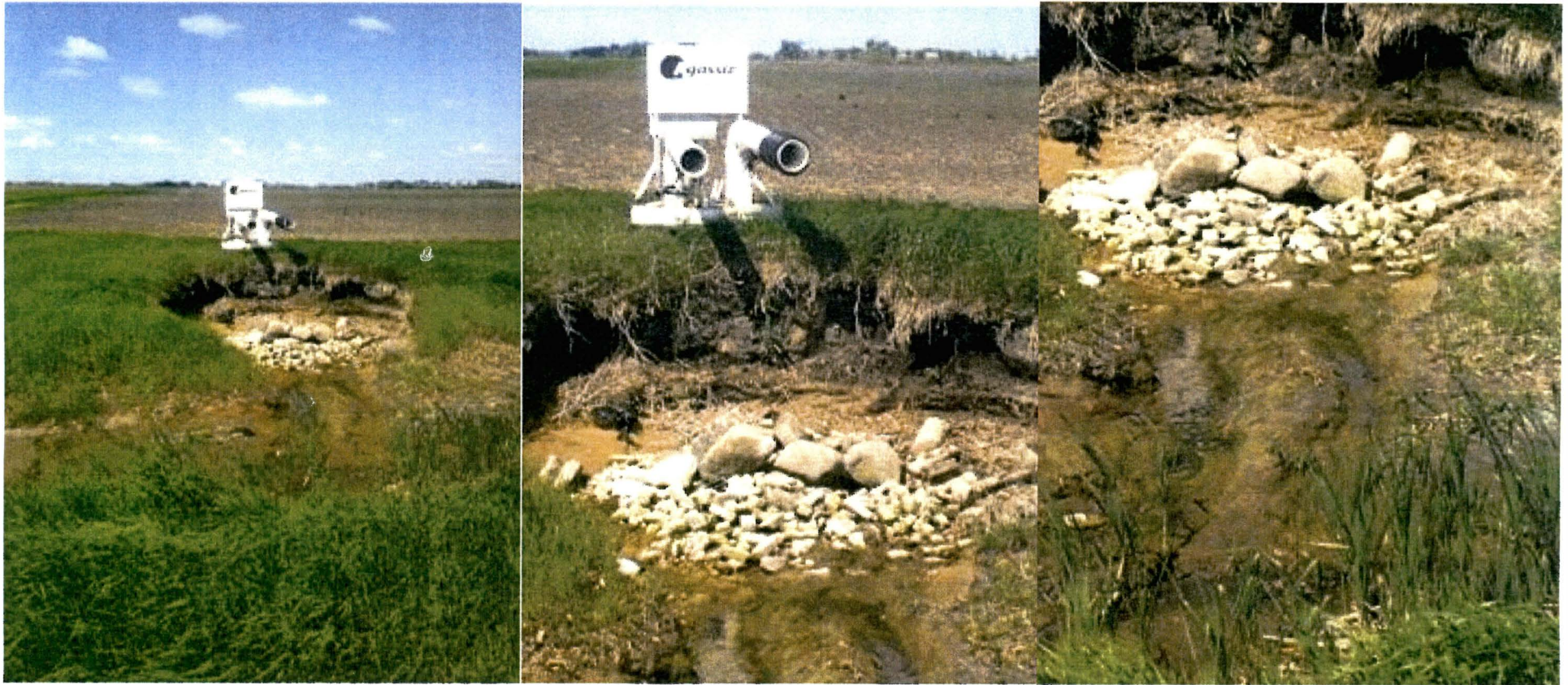
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erosion of dirt downstream was having a huge impact on landowners. In 2017, a legal lateral was passed and as part of the construction, adequate rip rap and erosion control was added to deal with the outlet. Until this legal lateral was passed by landowners, the owner of the outlet had no intention of repairing the damage or installing additional rip rap to prevent further damage. And even though the Board spoke to the owner, the requests fell on deaf ears.

Another issue that will arise from a lack of permitting, is enforcing the water line easements. In 2018 we had a landowner / tiling company install tile header pipes as close as 8' to 9' to the rural water line. The rural water manager had flagged where the water line ran before the tile was installed. He went back after the tile was installed and noticed the scar marks left from the tile machine were very close to his flags. At that point, he hired an engineer to determine how close the tile was to the water line. He brought the information to the Board and at that time the Board suspended the permit to the landowner. An appeal hearing was held in which even the State Water Commission attended as the Board was the first to suspend a permit due to water line easement. It was found that the tile would hinder finding a water line break and the landowner was in violation of the 20' easement condition. The landowner was required to move the tile header pipes to be at least 20' away from the rural water line. Only upon approval of the rural water system manager was the permit reinstated.

Lastly, we have found that the tile installation companies are not following the tile law they wanted passed. We would estimate that approximately 75% of applications turned in by one tile company are either after construction has started or the day they start. Almost 90% are complete before the 30 day waiting period. We've even had a tile rep drop in on a board meeting and expect the Board to approve a tile project that would not need downstream landowner notification. He appeared with a tile map only. No application, no fee payment, no deed copies showing ownership. We've also been told by the tile rep that he didn't think applications were a big deal as the Board just "rubber stamps" them. We take our appointments as water managers seriously and are concerned for downstream impacts. We are all for drain tile. Every manager on our board is either an active or retired farmer and understands the benefits drain tile offers. But on the flip side, tile needs to be installed responsibly. In most instances, we can bring landowners together to discuss options that benefit all. Without any tile permit laws, aggrieved downstream landowners will now just file complaints and take the tile landowner to court.

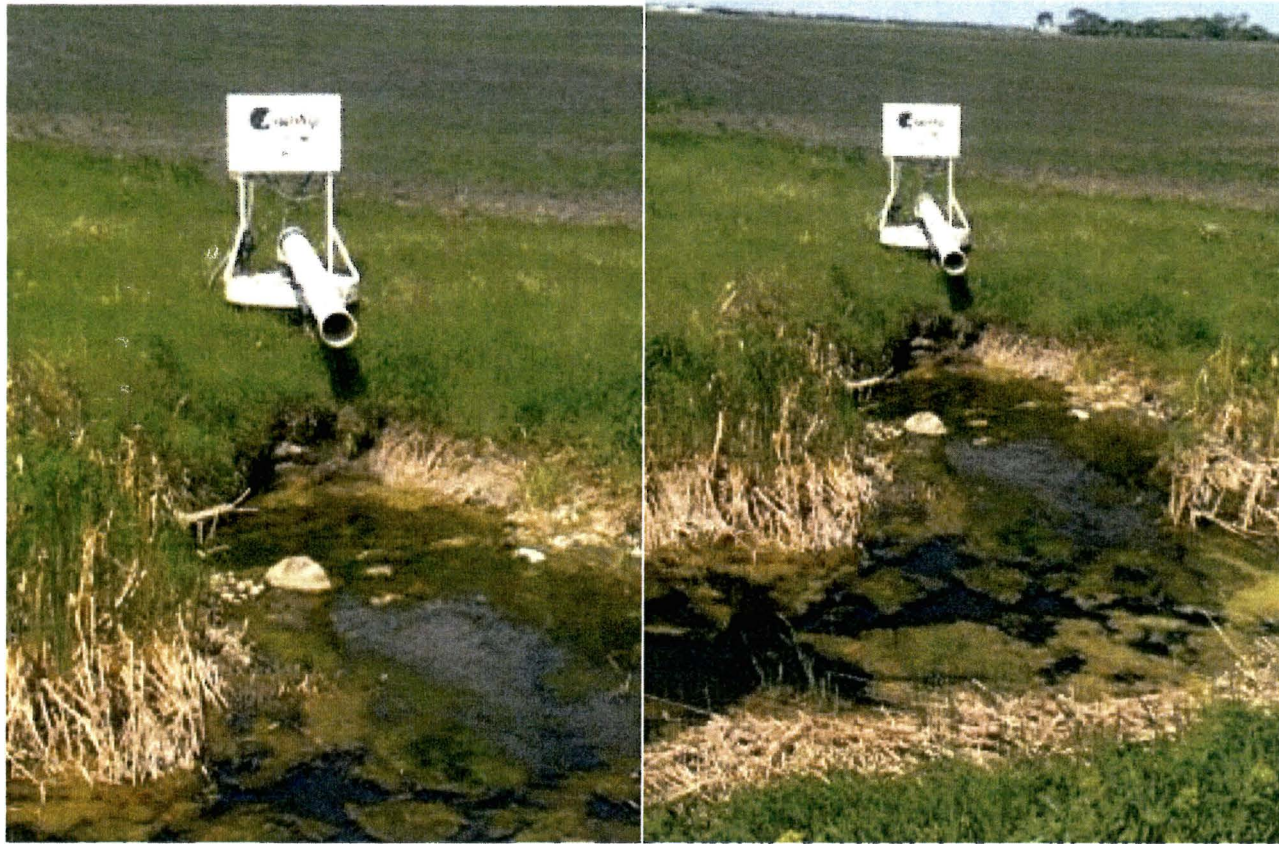
Although the current law limits our ability to mitigate downstream impacts, it still allows some oversight by our Board to make sure erosion and environmental issues are addressed. We ask that you vote "Do No Pass" on HB 1514.



Drain tile outlet with riprap, no fabric used. This tile outlet was installed in 2011. The erosion caused from this outlet clogged neighboring ditches. The outlet was repaired as part of a legal drain lateral that was constructed in 2017.

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Drain tile outlet with minimal riprap, no fabric used. This tile outlet was installed in 2011. The erosion caused from this outlet clogged neighboring ditches. The outlet will be repaired as part of a legal drain lateral that will be constructed in 2019. The landowner has not taken any steps to repair the erosion damages to date. Same landowner as previous page.

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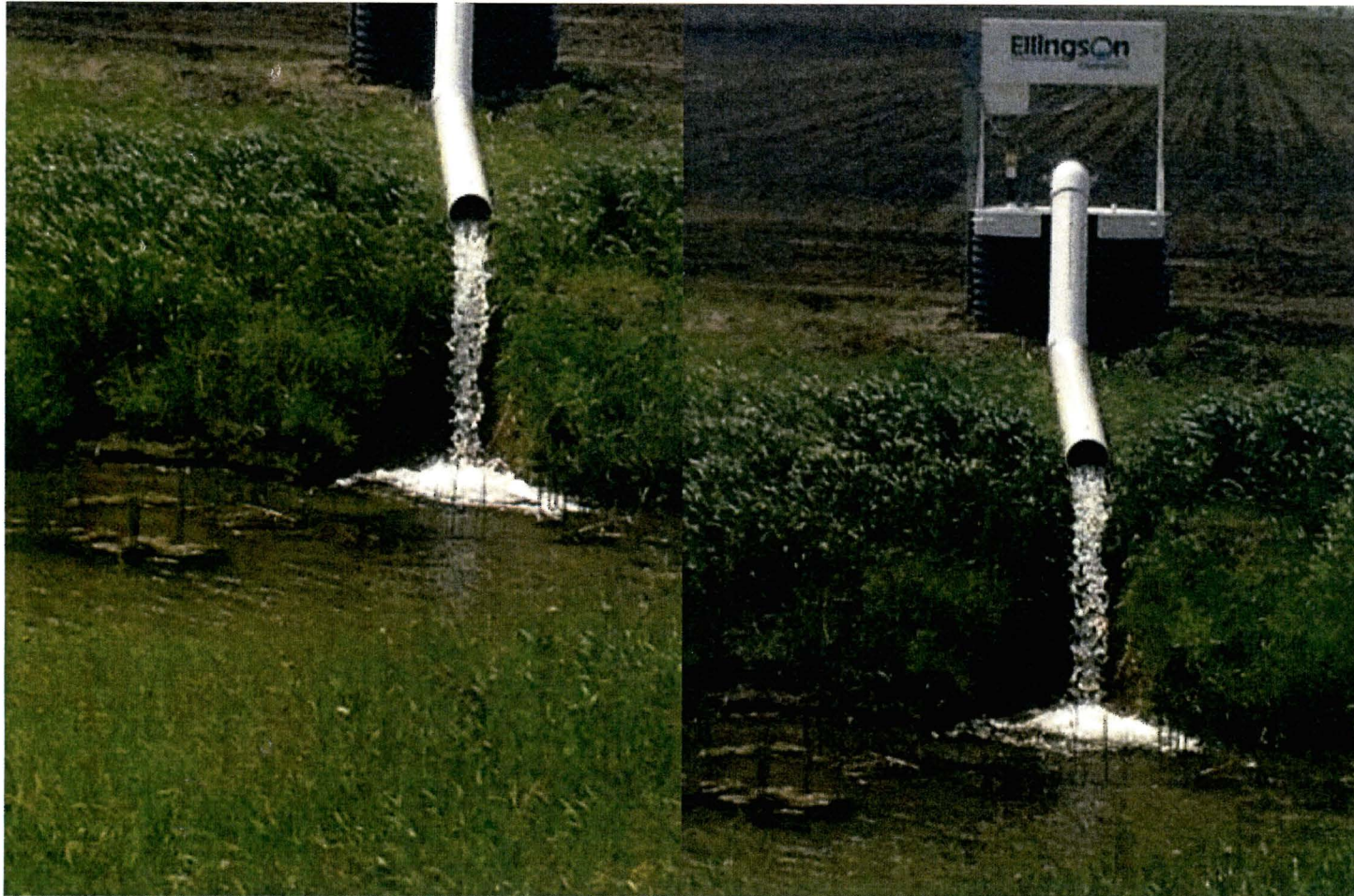
Drain tile outlet with minimal riprap. No fabric was used under the riprap to stabilize outlet. You will see in the first picture the electrical box is tied down to a neighboring pole to make sure the box does not fall into the hole created by 3 years of erosion.

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Drain tile outlets with little to no riprap or any erosion mat/protection.



Drain tile outlet with no riprap or erosion mat.

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Drain tile outlets left at a higher elevation instead of running elbow pipes to ground level. Even with riprap, large amounts of dirt have eroded. The outlets were raised due to dikes being added. The erosion pictured happened within the first year the outlets were raised.

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Drain tile outlet with proper elbows and arms installed to outlet at ground level. This was just installed in fall 2018. Fabric, riprap and/or an erosion mat should be added to protect further erosion.

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Ducks Unlimited

#6

Testimony in Opposition to HB 1514
Carmen Miller, Director of Public Policy, Ducks Unlimited
North Dakota House Agriculture Committee
February 1, 2019

Good morning, Chairman Johnson, and committee members. My name is Carmen Miller and I am the Director of Public Policy for Ducks Unlimited's Great Plains Region, and I'm here today to testify in opposition to HB 1514. Ducks Unlimited was founded in 1937 and is now the world's largest private waterfowl and wetlands conservation organization, with over 80 years of experience restoring and protecting wetlands and other aquatic habitat. DU has been working in North Dakota for over 30 years, has over 4000 members in the State, has invested over \$100 million in North Dakota, and employs a staff of over 40 in an office here in Bismarck which serves as a regional headquarters for 7 states.

Ducks Unlimited watched closely the efforts of the North Dakota Legislature as it considered the permitting process for subsurface drainage during the 2017 Legislative Session. As the world's largest private wetlands organization, Ducks Unlimited is concerned about the impacts of subsurface tile drainage on North Dakota's wetlands, a globally unique resource and home to 900 different plant and animal species, and a driving force behind ND's \$2.1 billion annual hunting and fishing industry.

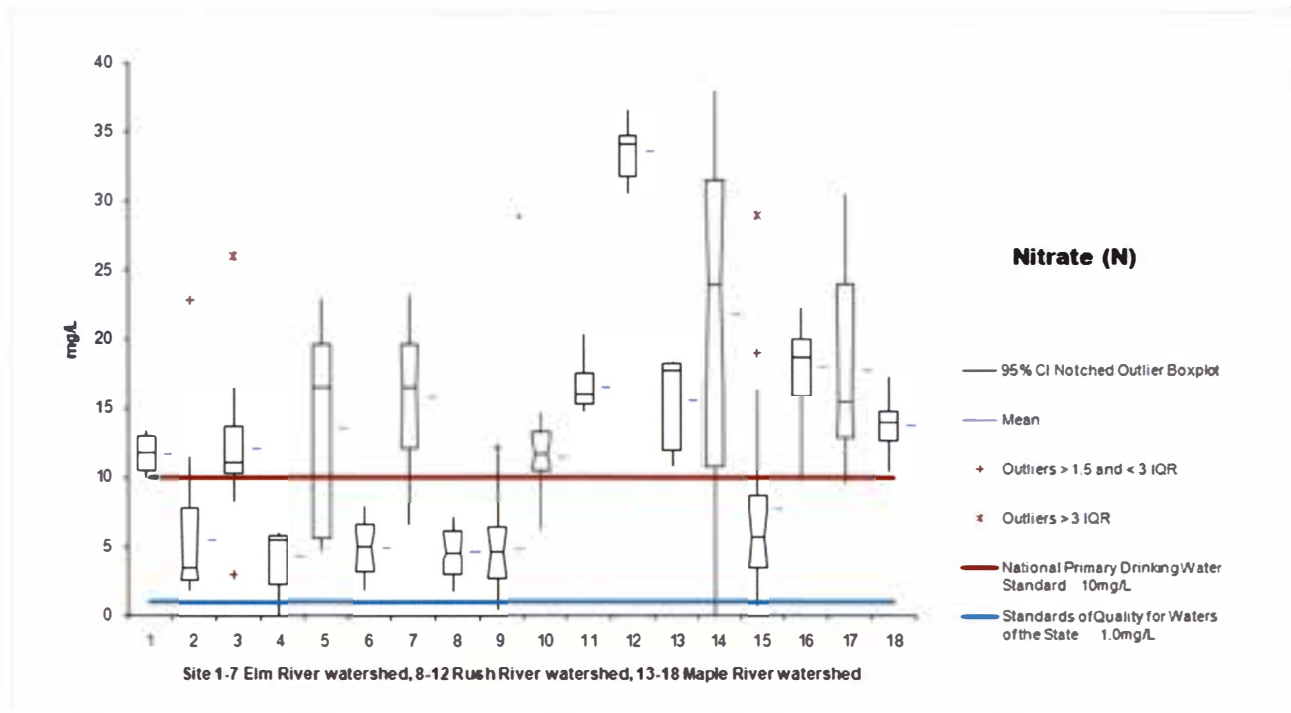
Tile drainage is a part of the agricultural landscape, but can also have serious impacts on wetlands, wildlife habitat, downstream flooding and water quality, and therefore it should not be conducted without permitting and oversight that takes these factors into consideration.

A 2010 study by NDSU researchers who monitored 18 tile outlet sites in Cass and Trail Counties found that all sites exceeded state water quality standards for nitrate levels, and 12 out of 18 sites exceeded federal drinking water standards (see Figure 3 below). According to the Center for Disease Control (CDC), increased exposure to excess nitrates poses serious health risks to humans (e.g., higher risks of cancer, birth and reproductive defects, thyroid disruption, etc.).

<https://www.atsdr.cdc.gov/csem/csem.asp?csem=28&po=10>) Researchers also found elevated levels of sulfates (13 of 18 sites; increased water treatment costs), arsenic (carcinogen; 7 of 18 sites), barium (all sites, may cause increased blood pressure) and selenium (all sites; may cause reproductive failures, birth defects or death in livestock, wildlife and fish; see Johnson 2010).

Figure 3. from NDSU's "Red River Valley Tile Drainage Water Quality Assessment Phase I Final Report"

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"It is well known that nitrogen levels are higher in tile drain water than in surface water. Phase I confirmed higher than recommended levels of nitrate nitrogen were leaving the tile at levels higher than state standards of quality for waters of the state. Best management practices including split application of fertilizer can be suggested to the producers to reduce the amount of $\text{NO}_3(\text{N})$ leaving the fields. Drinking water standards were exceeded at twelve sites. Although this water is not used for drinking purposes it may be reflected in increased costs to remove it at water treatment facilities." (Johnson 2010)

More recently, just in December of 2018, the US Fish and Wildlife Service issued the results of a five-year study of 18 Waterfowl Production Areas in eastern South Dakota which were monitored for water quality impacts to wildlife habitat. The study found that concentrations of nutrients, pesticides and selenium in tile effluent exceeded water quality benchmarks for the protection of aquatic life. (Schwarz.) The selenium levels were particularly concerning - high concentrations of selenium in agricultural tile drainage effluent have been concerning since the 1980's when death and deformities in fish and wildlife in the Kesterson National Refuge in California were linked to selenium. (Id.)

In South Dakota, where this study was conducted, only certain counties have county drain boards issuing tile drainage permits. (Id.) This lack of consistent or uniform permitting and reporting was an additional cause for concern in the report, which also predicted that conditions would continue to deteriorate because tile drainage is not regulated by any federal or state entity responsible for water quality. (Id.) The report includes recommendations that FWS actually increase its involvement in local drain board permitting actions, rather than eliminating permitting requirements as proposed in HB 1514. (Id.) Notably, the report also recommended establishing a database of tile drainage projects in the state, and suggested that the impacts of tile drainage on wetlands are so concerning that regulation of tiling as a point source under the Clean Water Act should be considered. (Id.)

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Iowa is frequently referred to in discussions of tile drainage. There are 500,000 miles of drain tile underneath one quarter of the state of Iowa – enough to circle the earth 20 times. (Jackson.) The City of Des Moines spends \$7000 per day removing nitrates from its water. (Id.) HB 1514 proposes to completely eliminate the permitting requirement for subsurface drainage. This is not the answer for a subsurface water network which is still being studied for serious impacts to flooding and water quality. The current permitting system provides for local control and consideration of impacts to downstream landowners, which is important, because we are all downstream from someone. For these reasons, we strongly encourage you to adopt a DO NOT PASS recommendation on HB 1514.

Thank you for your time, consideration and service to the people of ND.

Literature Cited

Johnson, R., 2010. *Red River Valley Tile Drainage Water Quality Assessment Phase I - Final Report*. Ag and Biosystems Engineering Department, North Dakota State University, Fargo, ND. <https://www.ag.ndsu.edu/waterquality/tile-drainage-1>

Schwarz, Matthew S.; Davis, Drew R.; and Kerby, Jacob.; 2018. *An Evaluation of Agricultural Tile Drainage Exposure and Effects to Wetland Species and Habitat Within Madison Wetland Management District, South Dakota*. U.S. Fish and Wildlife Service, South Dakota Ecological Services Field Office, Pierre, SD.

Jackson, Jeremy B.C., and Chapple, Steve; "Breakpoint, Reckoning with America's Environmental Crises." Yale University Press, 2018.

#7

Testimony in Opposition of:
HB 1514, Elimination of Tile Permitting
House Agriculture Committee of the 66th Legislative Assembly
February 1, 2019
Submitted by **Chad Engels, PE**

Chairman Johnson and members of the House Agriculture Committee. My name is Chad Engels and I live in Fargo North Dakota. I am here today to testify in strong opposition to HB 1514.

I am a registered professional engineer in the States of North Dakota and Minnesota. My field is Civil Engineering and I practice in the area of Water Resources. I hold both a Bachelor of Science Degree and a Master of Science Degree. My Masters Theses resulted in a published scientific paper in the field of hydrology with the principal focus on runoff and infiltration relationships. During my career of nearly 20 years, I have served as the engineer of numerous North Dakota Water Resource Districts and a Minnesota Watershed District. My engineering team and I have served on numerous technical committees of Red River based water management organizations. Technical papers related to both surface and subsurface drainage management were published as a result of these efforts. I encourage you to read these papers. I have also served on the Executive Committee of the North Dakota Water Users. My engineering team and I have been front and center in the development of the region's most significant flood damage reduction projects, including the Maple River Dam, Baldhill Dam raise, Sheyenne Diversion, FM-Diversion, and countless urban levees and rural flood control projects up and down the Red River valley. We have also developed nationally recognized hydrologic and hydraulic models of numerous Red River tributary watersheds and rivers. The Red River model developed for use by the FM-Diversion project has been called one of the most sophisticated river models in the nation by the Army Corps of Engineers. In 2009 and 2011 I was actively engaged in flood preparation and emergency response efforts for numerous communities. In summary, my team and I are recognized as leading technical authorities in the field of water resources, hydrology, hydraulics, and watershed management. I am here today to share my expert opinion with you and why it is important that you vote NO on HB 1514.

It is vitally important to understand that the Red River watershed is distinctly different than the vast majority of developed agricultural watersheds. The Red River flows from south to north. The Red River watershed has a basin, a geologic lake bed that is exceptionally flat. From Wahpeton, ND to Emerson Manitoba the Red River has a gradient of about 1 foot per mile. Our largest floods are always spring snowmelt floods. During extreme floods, rural roads essentially function as dams. The extent of flooding is often dictated by how many Sections of land fill to the lowest road elevation and overtop to fill the next Section of land. The more water there is, the greater the number of Sections that fill with water, and the larger the flood footprint. Therefore, the extent of flooding in the Red River basin is heavily influenced by the amount or "volume" of water that runs off the landscape. Further, in many of the flattest areas, the extent of flooding is influenced far more by the volume of runoff than the rate of runoff. This reality can be a difficult concept for the lay person to understand. Flash flooding is not a typical phenomenon in the basin. At the end of the day, both runoff rate and runoff volume implications need to be fully understood when designing water management projects.

Tile drainage is not new. However, it is relatively new to the Red River watershed and it is therefore new to the unique characteristics of the Red River basin. Unlike tile, surface drainage has been used as a means of ag water management and rural flood damage reduction in the Red River basin for over a century. Surface drainage has the potential to increase both the rate and volume of runoff. Therefore, surface drainage is regulated by both the State Engineer's Office and local Water Resource Districts through a permitting process. Both private and public projects are reviewed and conditions are placed on permits to mitigate potential downstream impacts. In my experience, all surface drainage projects that have the potential to increase the volume of runoff are heavily scrutinized and these projects typically require a gate and operation plan. The most typical example would be a project that drains a closed basin that currently does not contribute to downstream flooding. Many of these projects are deemed to be of Statewide Significance and are therefore subject to the most intense permitting scrutiny, including a public hearing. Unlike private drainage projects, public drainage systems have the

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advantage of larger budgets that allow for extensive study and designs that mitigate downstream impacts. Modern public drainage projects typically consist of a channel that will convey the peak flow generated by a 10-yr 24-hr summer rainfall. For these modern designs, road crossing culverts are sized to match the channel capacity, therefore, when flows exceed the channel capacity, the culvert forces the excess water out of the channel and into the adjacent field. This excess water goes into temporary floodplain storage and is held back by the adjacent road as the culvert meters the flow out of the flooded Section. These drainage designs actually have the potential to reduce downstream flows. One of the wisest water management investments that can be made is to modernize or retrofit old public drainage systems using current channel and culvert sizing methods that mitigate downstream flooding. A significant number of these projects have already been completed, however, funding has not been available the past two years. There is much work to do.

Like surface drainage, tile drainage also has the potential to alter the rate and volume of runoff. There are many variables to consider, but it is the potential change to the volume of runoff that is of greatest concern with tile. Currently, the vast majority of the Red River watershed landscape is not tiled. One of the most heavily tiled areas is located in the extreme southern portion of the Red River watershed in Minnesota. This area is under the jurisdiction of the Bois de Sioux Watershed District. Like other Minnesota Watershed Districts, the Bois de Sioux District requires a permit for all drainage including tile. They also have the most detailed record keeping system for permits in the region. Within the Bois de Sioux Watershed, exactly 25% of the landscape has been tiled as of January 1, 2019. The amount of tile installed in the Red River watershed generally decreases as you go north. The point of this information is to state that at this time the vast majority of the Red River watershed has NOT been tiled. The floods that we experienced nearly 10 year ago were generated by a predominately un-tiled watershed.

The volume or amount of water in a flood is grossly that portion of precipitation which does not infiltrate into the soil, evaporate, or become held in surface depressions. Therefore, reducing soil storage increases the runoff volume. Increase the runoff volume and you increase flood intensity. Water that is retained by the soil does not contribute to the flood at any point. Water held in the soil is perfect storage, it is removed entirely from the flood event. Under the existing predominately un-tiled Red River landscape, there are very few outlets for water held in soil storage. In un-tiled fields, the water held in soil storage remains in storage, there is no outlet. This is the way it has always been, it is nature's sponge, and it is nature's dam. Pattern tiling drastically changes the existing natural condition because it now provides an outlet for soil held water that previously did not exist. Water that was previously removed from the flood, can now contribute to the flood. Tile allows water to be released from the sponge, rather than remain in the sponge. In some situations, tile will increase runoff volume and therefore exacerbate flooding. Projects that have the potential to increase runoff volume and therefore intensify flooding are exactly the kinds of projects that should be reviewed under a responsible permitting process. Surface drainage that has the potential to increase runoff volume is always heavily reviewed through the existing permitting process, why would any responsible public leader propose no review at all for subsurface drainage that does exactly the same thing.

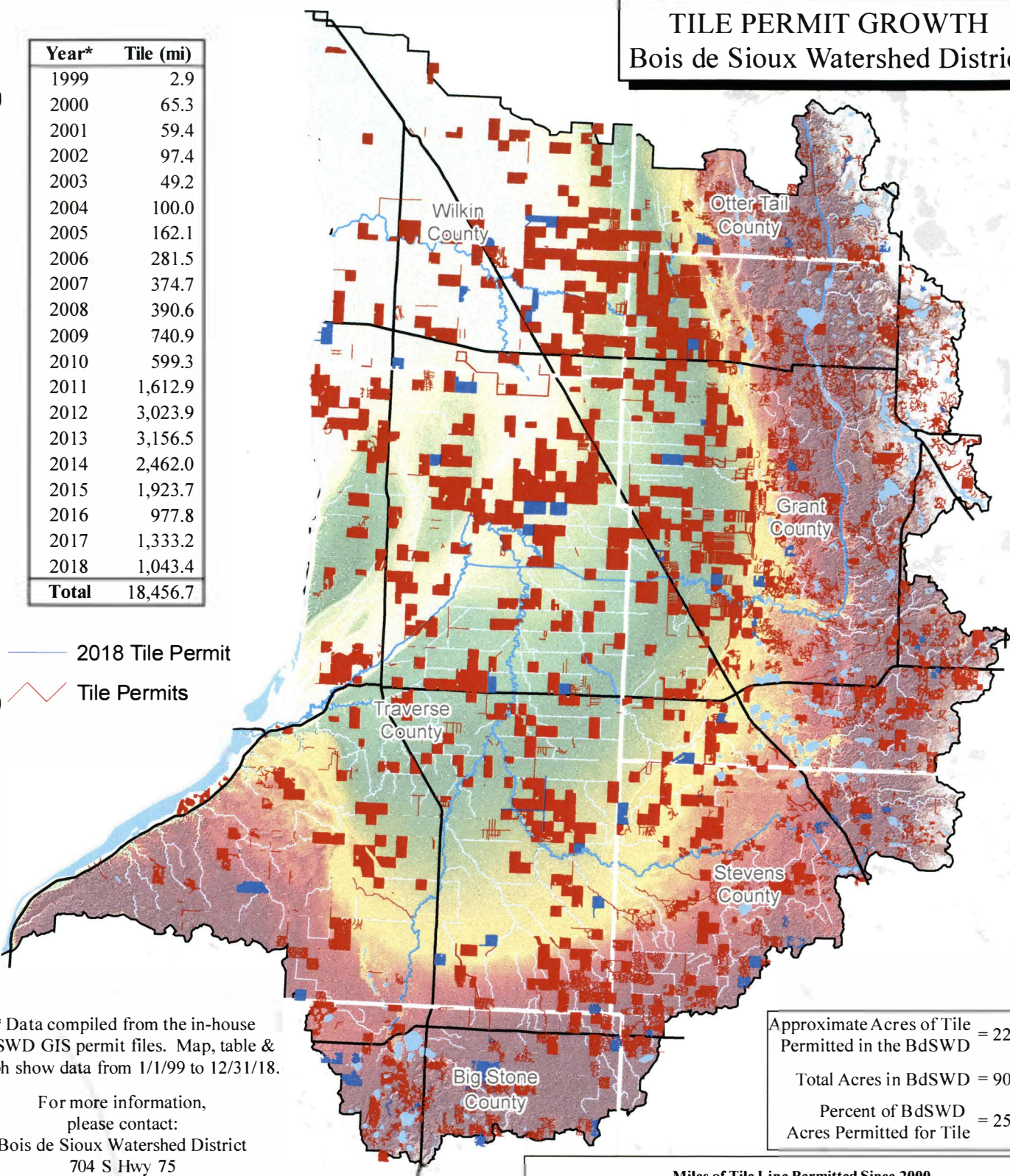
The wholesale altering of the Red River watershed landscape with tile has significant implications that will only be realized by future generations. It is vital that these projects are constructed in a responsible manner that provides the landowner the agricultural benefits they seek while having designs and controls that allow these projects to operate in a responsible fashion. Only a responsible, well-coordinated, permitting process can assure this outcome. We owe this much to our residents and our children. As I previously stated, I am a registered professional engineer in the State of North Dakota. I am one of a small group of Water Resources professionals that works and lives in our great State. I am here today with a sense of duty and because I am compelled by my professional obligation to assure that water management infrastructure is designed in a manner that safeguards the public's life, health, property, and welfare pursuant to Chapter 43-19.1 of the North Dakota Century Code. Therefore, I strongly urge you to vote NO on HB 1514 and work with the North Dakota Water Resource Districts Association and State Engineer's Office to develop a responsible and workable subsurface drainage permit. I thank you for hearing my testimony.

2/1/19 #7 HB 1514

TILE PERMIT GROWTH Bois de Sioux Watershed District

Year*	Tile (mi)
1999	2.9
2000	65.3
2001	59.4
2002	97.4
2003	49.2
2004	100.0
2005	162.1
2006	281.5
2007	374.7
2008	390.6
2009	740.9
2010	599.3
2011	1,612.9
2012	3,023.9
2013	3,156.5
2014	2,462.0
2015	1,923.7
2016	977.8
2017	1,333.2
2018	1,043.4
Total	18,456.7

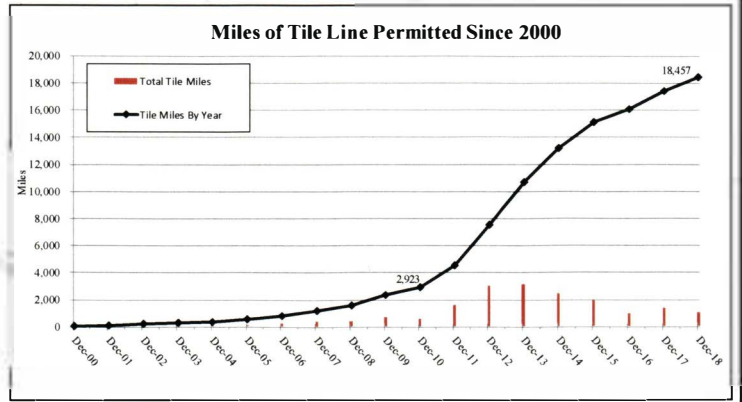
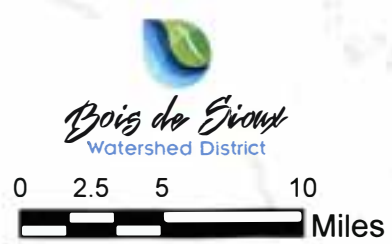
— 2018 Tile Permit
 Tile Permits



* Data compiled from the in-house BdSWD GIS permit files. Map, table & graph show data from 1/1/99 to 12/31/18.

For more information,
 please contact:
 Bois de Sioux Watershed District
 704 S Hwy 75
 Wheaton, MN 56296
 320-563-4185

Approximate Acres of Tile Permitted in the BdSWD = 224,480
 Total Acres in BdSWD = 904,680
 Percent of BdSWD Acres Permitted for Tile = 25%



Testimony of Eric Volk, Executive Director**ND Rural Water Systems Association****House Bill 1514****House Agriculture Committee – February 1, 2019**

Chairman Johnson and members of the House Agriculture Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. Today I am submitting testimony in opposition of HB 1514.

Rural Water Facts:

Rural Water Systems are in all 53 counties

Serve over 150,000 rural residents (50,000+ connections)

Serve 100,000+ city residents, that is 263 of the 357 Incorporated Cities

Provide service through over 40,000 miles of pipe

For the record, I want to say that we fully understand the importance of the organized construction and maintenance of any subsurface water management system in today's agricultural world. A large percentage of farmers who are managing subsurface water are served by a Rural Water System (RW System). The bill draft eliminates the permitting process of subsurface water management systems, which eliminates a Water Resource District's ability to attach reasonable conditions to permits regarding minimum distances from rural water supply lines. Current law states: *Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.*

The following are some other conditions that RW Systems seek when dealing with drain tiling within areas of potable water lines:

- #8
#B 1514
2/4/19
- RW Systems would love to be contacted early in the process of designing a drain tile project. More times than not, the RW System finds out about the project when they receive a one-call notice 48 hours before the digging begins.
 - RW System water line crossings with drain tile will be seamless, solid, non-perforated pipe and will extend no less than X feet either side of the water line. Crossings shall be at least eighteen inches (18") above or below RW System lines. All crossings need a RW System employee to be present when excavation of crossing to ensure proper support and bedding of water line is to the RW System standards.
 - RW System receives an updated set of plans after installation is completed to account for any changes made to the original plans. This will protect both sides.

I will say it again, we are not against drain tiling. RW Systems want to work with landowners on this issue. Communication is the key. Early communication is the best! I will stand for any questions. Thank You! EV, ericvolk@ndrw.org



THE SPIGOT

from the NORTH DAKOTA RURAL WATER SYSTEMS ASSOCIATION

#8 HB1514

2/1/19

Drain Tiling Safely Around Buried Utilities

By Brad Carlson
University of Minnesota Extension
Mankato Regional Office

Artificial drainage of soils has been an important aspect of agriculture in some parts of the country for nearly a century. The rate of installation increased markedly in the 1990s due to many factors. Some of these include the ability to evaluate return on investment because of the advent of combine yield monitors, the overall economic environment in agriculture, and a significant decrease in the cost of installation due to changes in installation processes and machinery. This last factor has led to a trend toward farmers installing their own drainage systems. Previously, this was largely the domain of professional contractors.

While many public utilities run parallel to roadways or within road rights-of-way, there are some exceptions that cut through areas of a field, the most common of which are pipelines. The installation of artificial drainage tile in these situations may present a challenge. Most professional contractors have lots of experience dealing with this issue, while farmer installers may not have encountered this in the past.

Farmers that do their own installation should strongly consider having a professional contractor design and install the drainage system if there is a utility present in the farmed area.

Drainage installation presents a unique challenge in this regard, as drainage systems are not simply designed and installed on site (like a fence or a road culvert). In the case of drainage, the entire system is designed and planned before ever going out to the field. This means simply calling 811 before you dig is not enough. Information regarding buried utilities needs to be gathered during the planning or design state as well as the installation phase.

All planned drainage systems must be checked for the presence of utilities by seeking information from your state's One Call Center by requesting a "Design" or "Engineering" ticket if your state allows. In this instance, it is important you talk to a professional drain tile rep to discuss your plans, rather than simply

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requesting to have the site marked, because the time lag between design and installation is frequently weeks to months. Rather, you need to find out whether there are pipelines or other utilities in the field you plan to tile.

In instances where there are utilities present, your state One Call Center will connect you with the buried utility owner, and they will share important information about the location and depth of the pipeline or underground utility.

The science of drainage design starts with the amount of water the system is designed to remove in a 24-hour period. The design then takes soil properties into consideration. The hydraulic conductivity of the soils determines the appropriate space between the lateral, the long runs of drain tile that constitute the majority of the drainage in a field. Engineering calculations determine the amount of water that will be conveyed through the tile and the size of the drain tile needed. Planned tile lines are drawn to scale on a map (most computer aided now) and take the contour of the land into consideration, and therefore, the natural flow pattern of water through the field. The potential outlet locations for the system are always considered as primary design criteria.



A drain tile being installed into an agricultural field.

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The number of times drain tiles cross buried utilities should be minimized. When a buried utility bisects a field, the simplest solution is to design separate systems on each side. This, obviously, requires separate outlets for each side. Consider working with neighboring landowners to achieve this. It is entirely possible it will be less costly and less inconvenient to pay for an outlet through someone else's property than to cross a pipeline. In cases where there is only a single outlet for a field and the utility must be crossed, you will want to design collector lines that run parallel to the utility and have these empty into a single main or submain that crosses the utility. There are private consultants who specialize in drainage system design that can be employed should the necessary design prove to be complicated.

After you have your design worked out, it is necessary to reconnect with the utility owner to review the design and verify the utility depth. It is essential a drainage system maintain grade to function. There are some instances where a buried utility may be closer to the surface than expected. If there is a conflict

between the desired depth of the drain tiles to be installed and the buried utility, it will be necessary to redesign the system to take this into consideration. This is best done during the planning and design phase.

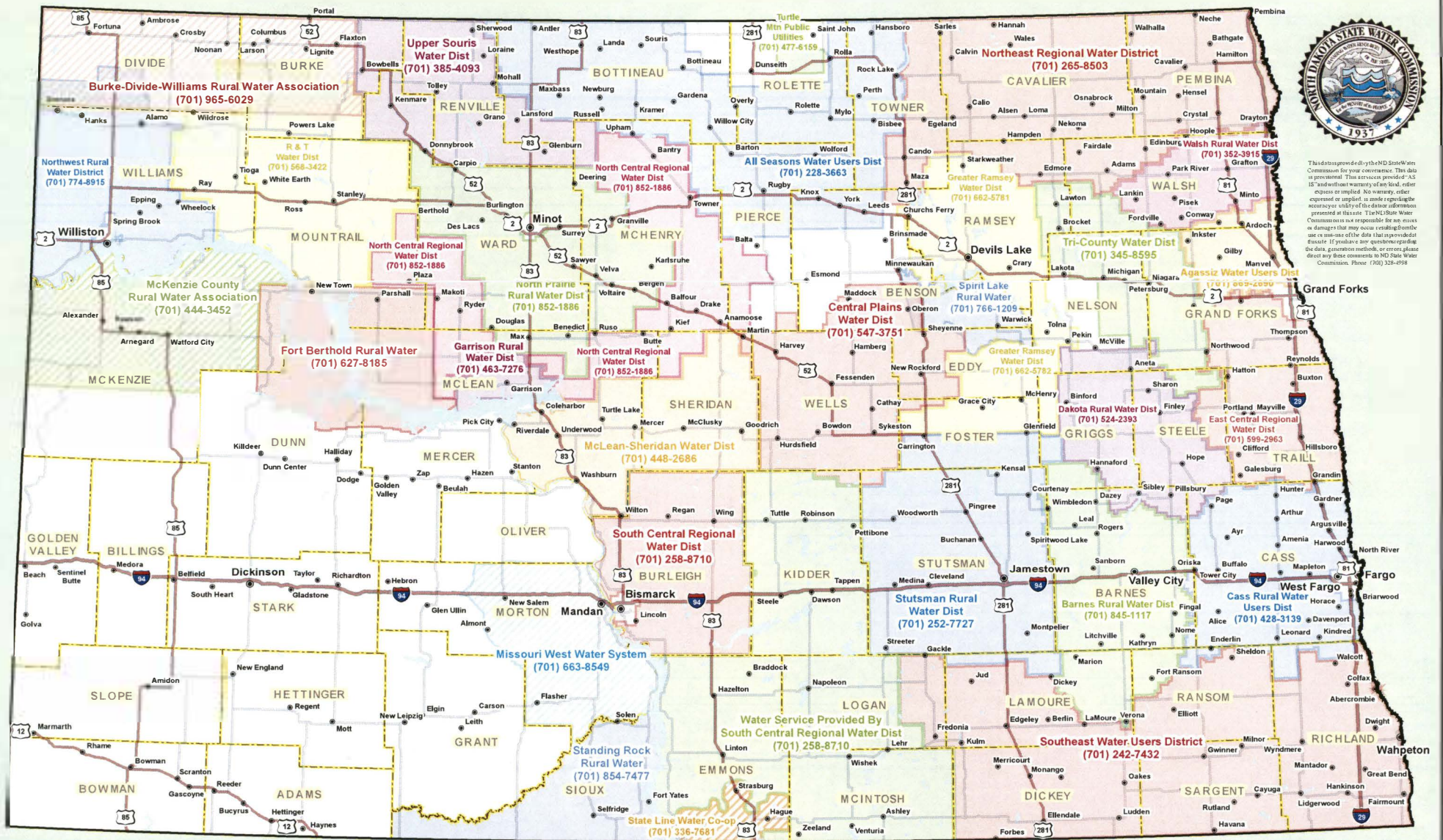
When the time nears for installation, at least two to three business days before the work is to commence, be sure to call 811 again to have all utilities marked on site. In some cases, you cannot dig within 50 feet of a buried pipeline without a qualified pipeline company representative present to ensure the safety of excavators, the community, and the pipeline. When this is required, the utility owner will send a person to be with you to direct activities around the buried utility. They will tell you when you need to stop digging mechanically. Usually the utility owner will allow mechanical digging to be within a few feet of the buried utility, provided it has been located precisely and exposed. If you need to get closer than that, you will need to dig by hand to ensure the excavation does not damage the utility. Remember to practice trench safety. When a person is working in a trench over four feet in depth, it should either be benched to widen the top of the trench and therefore sloping back the walls, or you must use wall reinforcement. Check OSHA or local regulations to be sure.

The presence of a pipeline or utility does present a challenge to drainage system installation, but by using proper planning and design, the amount of extra time and difficulty can be minimized. For more information, or to identify local resources of assistance, contact your state's One Call Center or the closest Extension office of your state's land grant university.

Brad Carlson is Extension Educator-Crops Systems at the University of Minnesota Extension, Mankato Regional Office. He can be reached at bcarlson@umn.edu.

The 2016 Excavation Safety Guide & Directory, Pipeline Ag Safety Alliance/Infrastructure Resources LLC, Bloomington, MN





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North Dakota Rural Water Districts & Associations

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#8

TRAILL COUNTY HIGHWAY DEPARTMENT

P.O. Box 116
Hillsboro, North Dakota 58045-0116

319 2nd Avenue Southwest
701-636-4341
Fax: 701-636-5281



House Ag Committee,

I am writing to oppose HB 1514. The subsurface drains must be included in the permitting process. We use these permits to inform land owners downstream and calculate hydraulics of bridges and culverts in the area. It also makes the subsurface drain owner, responsible for maintaing of the water outlet. At the Highway Department, we require a permit to drain onto County Right of Way, this permit is free, but the information is very valuable in determining roadway damage, do to water leeching into the roadway.

A handwritten signature in black ink, appearing to read "Corwyn Martin".

Corwyn Martin
corwynm@nd.gov
Traill County Highway Department
(701) 636-4341
(701) 430-0321 cell

Testimony Concerning Senate Bill 1514

by

Murray G. Sagsveen

to the

House Agriculture Committee

February 1, 2019

I am a resident of Bismarck and our family owns farmland in Bottineau County. Unfortunately, I am unable to testify in person to the Committee.

I am requesting that the committee recommend an amendment to delete section 2 this bill.

Section 61-32-03.1 of the North Dakota Century Code, drafted with the assistance of an attorney representing a Minnesota tile drain contractor, does not provide much protection (if any) to downstream landowners. However, repealing 61-32-03.1 would leave downstream landowners without any options except an expensive, time-consuming lawsuit against the draining neighbor.

Our family's situation is explained below. Hopefully, my proposed amendments to Senate Bill 2220 will correct existing problems with section 61-32-03.1.

In September 2017, an owner of adjacent farmland applied to the Bottineau County Water Resource District for ten permits to install a 4000-acre subsurface water management system. Four of the applications were designed to drain about 1000 acres of the neighbor's farmland onto a quarter-section of family-owned farmland. The Water Resource Board was required by N.D.C.C. § 61-32-03.1 to give notice to our family *and* delay action on the application for at least 30 days so that our family could provide "written, technical evidence" concerning the negative impacts to our farmland. However, the Water Resource Board, without providing any notice to us, summarily granted the applications.

The contractor, Ellingson Companies, promptly commenced work, and our neighbor began pumping water onto our farmland the following month. I later learned that the District's general counsel was also the attorney for the Ellingson Companies.¹

I also later learned that the District's general counsel assisted the applicant and the contractor to prepare the applications (at least one time billing the district). One email from the District's general counsel to the contractor stated: "is there anything to show that the area [on the Sagsveen land] is a slough all the way to the road?" The neighbor's project would be discharging water through a culvert under a county road; if the District's general counsel and

¹ The attorney, Kyle Van Bruggen, admitted this fact when testifying on Senate Bill 2263 on January 26, 2017 (page 18/246 of the committee minutes). He had assisted with the drafting of that bill, which became section 61-32-03.1.

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the contractor could show the culvert would discharge water directly into a slough on the Sagsveen land, the District could avoid providing notice to us.

Shortly before the applications were submitted to the Water Resource Board, the District's general counsel consulted with an employee of Ellingson Companies, and they decided that the water drained from the neighbor's tile drain project would directly discharge into a slough on our family's farmland. There are no records showing that the District's general counsel or the Water Resource Board ever consulted the District's engineer, who has decades of experience with such matters.

When I learned about the proposed project, I sent an email to each member of the Water Resource Board to explain that our farmland would be flooded by the proposed project. The email included maps that clearly showed the proposed project would not discharge into a slough on our farmland. No board member responded to my email. Instead, the Water Resource Board unanimously approved all ten permits the following day.

The photograph below (taken on July 10, 2018) shows that the neighbor's tile drain project did NOT discharge directly into a slough on the Sagsveen farmland. Instead, the drained water eroded a channel across tilled and seeded farmland, then ponded in the center of our tilled field.



Denied of an opportunity to testify about the proposed applications, our family appealed to the State District Court in October 2017. In July 2018, the Court rejected the arguments of the

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District's general counsel, ruled against the District, and vacated the four permits that allowed drainage on our farmland. The opinion is enclosed.

After the court decision (and spending more than \$20,000 for legal and engineering fees), our family was faced with a dilemma: do we present testimony to the Water Resource Board knowing that:

- the Water Resource Board would know that our neighbor likely invested \$1 million in the tile drain project;
- the Water Resource Board had previously ignored information that we submitted to it;
- the District's general counsel was likely still the attorney for the contractor; and
- A second adverse decision by the Water Resource Board to grant the four permits would result in continued flooding of our farmland, likely prevent us from renting or selling the flooded farmland at a reasonable price, and require additional legal fees to appeal to the State District Court (and, if necessary, the State Supreme Court).

Our family gave up – we sold the quarter-section to the neighbor who drained on our farmland. We did not recover any damages to the crops damaged in 2018 before the sale.

We will not financially recover our expenses related to the actions of the Bottineau County Water Resource District – and its general counsel.

However, in an effort to prevent other landowners from being victimized by a water resource boards (as explained above), I have requested the Senate Agriculture committee to approve the following amendments to Senate Bill 2200:

1. Clarify that a permit is required if a subsurface water management system drains eighty acres or more.
2. Require notification to all downstream landowners within one mile of the outlet unless the discharge is directly into an assessment drain.
3. Require the applicant to provide, with the application, a written technical report that describes potential downstream impacts. The current law allows an applicant to submit an application without any analysis of downstream impacts, which shifts the burden and expense of providing "technical evidence" to downstream landowner.
4. A water board should be liable if it violates the law, which causes harm to a downstream landowner

My Request to this Committee

I request that this committee approve an amendment to House Bill 1514 that would delete section 2. The existing law (section 61-32-03.1) is better than no law at all.

If possible, I would appreciate an opportunity to testify by telephone so that the committee members could ask questions.

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Murray G. Sagsveen
1277 Eagle Crest Loop
Bismarck, ND 58503-8849
701-426-1905
MGSagsveen@gmail.com

MGS:20180129

STATE OF NORTH DAKOTA
COUNTY OF BOTTINEAU

IN DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT

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Murray G. Sagsveen, Kristi K. Sagsveen,)
and Sagsveen Family Partnership,)
Appellants,)

vs.)

Water Resource Board, Bottineau County)
Water Resource District,)
Appellees.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER VACATING PERMITS,
REVERSING DECISIONS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

Case Number: 05-2017-CV-00127

[¶1] The above captioned matter comes to this Court's attention pursuant to an appeal of Appellee's decision to grant three subsurface drain permits (2017-003, 2017-004 and 2017-005).

[¶2] Having considered the briefs and exhibits, the Court makes the following Findings of Fact, Conclusions of Law, and Order Vacating Permits, Reversing Decisions and Remanding for Further Proceedings:

FINDINGS OF FACT

[¶3] Most of the pertinent facts for this decision are undisputed by the parties. On September 18th, 2017, Jay Abernathey and Donald Abernathey filed ten applications with Appellees to install subsurface water drainage systems. Less than a mile from the proposed outlet for the subsurface water drainage system, water from three of the systems drains into a ditch which then empties via a culvert onto Appellants' land, upon which is located a slough.

[¶4] No notice was sent to Appellants and no notarized statements of approval by downstream landowners were submitted with the three applications. Appellees approved all three applications at a hearing held the same day the applications were received, September 18th, 2017. Appellees sent a letter to the Abernathys on September 20th, 2017, indicating approval of the three permits. The letters did not include an explanation or conclusions related to the approval.

CONCLUSIONS OF LAW

[¶5] A local government decision "must be affirmed unless the local body acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision." N.D.C.C. § 28-34-01. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation." Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 72, ¶ 5, 788 N.W.2d 354.

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[¶6] Appellants argue approval of the permits was unlawful for three reasons: 1) Appellees failed to give notice to Appellants as downstream landowners, 2) Appellees failed to adhere to a requisite 30 day wait period before holding a meeting on the applications, and 3) Appellees' failure to adhere to the process outlined by law unlawfully deprived Appellants of their property without due process.

[¶7] **Notice Requirement.** Under N.D.C.C. § 61-32-03.1(2)(b), notice is required to be given to landowners within one mile downstream of a proposed subsurface system outlet, unless the distance to the nearest assessment drain, natural watercourse, slough or lake is less than one mile. If that distance is less than one mile, notice is only required for landowners "between the outlet and the nearest assessment drain, natural watercourse, slough or lake." *Id.* Prior to the 2017 legislative session, the statute only had a one mile downstream notice requirement.

[¶8] Appellees argue notice was not required, as the slough into which water from the drain system ran was right on the edge of Appellant's property line so there was no "land" owned by anyone that fell between the applicant's own land and the slough into which the drain system emptied. Essentially, Appellees argue the words "land between" should be interpreted as requiring a piece of land between a slough and proposed outlet in order to require notice to a landowner. Appellees argue that because the slough owned by Appellants is directly on the edge of their property and outlet water does not cross land, but instead flows into the slough, no notice was required.

[¶9] "A statute is ambiguous if it is susceptible to different but rational meanings." Northern X-Ray Co., Inc. v. State By and Through Hanson, 542 N.W.2d 733, 735 (N.D. 1996). There are no guiding definitions and the meaning behind the provision is ambiguous and could be interpreted to include land containing a slough. When a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters, the object sought to be attained, the legislative history and the consequences of a particular construction. N.D.C.C. § 1-02-39.

[¶10] A review by this Court of over 500 pages of legislative history on the amendments to this section does not support the narrow interpretation proffered by Appellees. Instead, it indicates the notice provision was intended to provide landowners impacted downstream to be aware of an application and have an opportunity to be heard. See Legislative History of 65th Assembly – 2017, HB 1390 and SB 2263, <https://www.legis.nd.gov/research-center/history>. The legislative history shows an intent to limit notice only to those who would be *impacted* downstream, thus not

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requiring notice further out if draining water reaches its assessment drain, natural watercourse, slough and lake in less than one mile.

[¶11] If this Court were to adopt Appellees' construction, it would result in notice to a landowner who has land that the water crosses while draining, but not a landowner who owns land with a slough that eventually would hold the drainage at its final destination and, in all likelihood, be impacted most by the drainage system. Such a construction flies in the face of the legislative history, the objective to be attained and would not achieve the goal of notice to downstream landowners *impacted* by the drainage system.

[¶12] Appellants were entitled to notice of the three applications for permits as owners of land containing the slough into which the proposed outlet drains.

[¶13] **Wait Period Requirement.** Under N.D.C.C. § 61-32-03.1(3)(a), the period for consideration of a permit application by a water resource board is laid out, depending on whether an application includes notarized letters of approval or not:

If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. **Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application.**

Emphasis added.

[¶14] Appellees argue that because there was no downstream landowner entitled to notice under the applicable statute, they "had no basis in delaying consideration of the permit applications." Even if Appellants weren't entitled to notice, the statute clearly requires "otherwise," i.e. in situations where there are not notarized letters of approval, there is a thirty day wait period before a meeting can be held on an application. Appellees failed to follow statutory requirement of acting on the application at its next meeting that is "at least thirty days after receipt of the application."

[¶15] Even if the statute were ambiguous, legislative history shows an intent for a wait period. Kale Van Bruggen testified: "The proposed bill states that you file your permit application with the water board and you file it currently with those downstream landowners and then thirty days has to pass before anything else can happen . . . I expect it would not be unreasonable to interpret that if I go file my permit application and I do not show proof that I also filed notice with the downstream landowners, that that thirty-day time period has not yet kicked in." Legislative History of 65th Assembly – 2017, SB 2263, Senate Agriculture Committee Hearing 01/26/17, <https://www.legis.nd.gov/research-center/history>. Representative Headland said, "This

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amendment says that if the State Engineer doesn't address it within 30, it is deemed approved. Downstream landowners would still have that opportunity to stop the project." Id., HB 1390, House Agriculture Committee Hearing 02/16/17. Senator Klein indicates: "It has to be at least thirty days after receipt of the application." Id., SB 2263, Senate Agriculture Committee Hearing 02/17/17. As Representative Headland explained, "The letter is to inform the water resource board that the downstream person has been notified." Id., HB 1390, House Agriculture Committee Hearing 02/17/17. Finally, Kale Van Bruggen testified: "This bill says unless you have signed waivers from downstream landowners, the permit application doesn't come up until the next meeting after 30 days have expired." Id., HB 1390, House Agriculture Committee Hearing 03/16/17.

[¶16] As Appellants were not provided notice as required, and Appellees did not comply with the statutory requirement that a hearing take place at a meeting "at least thirty days after receipt," the permits for 2017-003, 2017-004 and 2017-005 are vacated, the decisions are reversed, and these matters are remanded for notice and hearing in compliance with N.D.C.C. § 61-32-03.1.

[¶17] **Unlawful Taking of Property without Due Process/Motions Regarding Paper Copies/Motion to Add Parties.** The paper copies and other evidence which Appellees argue were not in the original record were not considered by this Court in reaching this decision. In view of the Court's decision to vacate the permits, reverse the decisions and remand for further proceedings, the above listed issues are now moot. "Matters which are not necessary to a determination of a case need not be considered." Luger v. Luger, 2009 ND 84, ¶ 23, 765 N.W.2d 523.

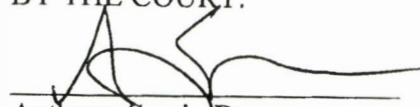
[¶18] **Lack of Findings of Fact/Conclusions of Law in Decision Letters.** Under N.D.C.C. § 61-32-03.1(3)(e), a water board "shall include a written explanation of the reasons for a denial of a completed application . . ." There is no such requirement for a decision to *grant* an application. Nonetheless, review of appealed water board decisions requires a determination of whether the board decision is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. An explanation within the decision granting an application would be helpful in this regard.

[¶19] **IT IS HEREBY ORDERED** that permits 2017-003, 2017-004 and 2017-005 are vacated, Appellees' decisions regarding these three permits are reversed, and the applications are remanded for further proceedings in accordance with N.D.C.C. § 61-32-03.1.

Dated: July 19, 2018

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BY THE COURT:



Anthony Swain Benson
District Court Judge

Copies to:

S/A Plaintiff Defendant Sheriff Def Atty ✓

Pl Atty ✓ Probation IV-D Other _____

I certify that this document was mailed/emailed/ filed & served
hand delivered to the above parties on 7-22-18

By: Kap _____

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19.0875.01001
Title.

Prepared by the Legislative Council staff for
Representative Schreiber-Beck
February 11, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1514

Page 1, line 1, after "to" insert "create and enact a new section to chapter 61-32 of the North Dakota Century Code, relating to surety for installers of subsurface water management systems; and to"

Page 2, after line 10, insert:

"**SECTION 2.** A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

Surety for installers of subsurface water management systems.

A person that installs a subsurface water management system comprising eighty acres [32.37 hectares] of land or more shall:

1. Maintain a bond for at least five hundred thousand dollars to permit other persons to recover against the installer's surety; and
2. Record the subsurface water management system with the water resource board for the county in which the system is located, in compliance with requirements established by the water resource district."

Renumber accordingly