

2019 SENATE ENERGY AND NATURAL RESOURCES

SB 2174

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2174
1/18/2019
Job Number 31054

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the election, appointment, terms, and number of water resource board managers.

Minutes:

7 Attachments

Chair Unruh: Opened the public hearing, all members were present.

Senator Myrdal, District 10, introduced the bill. The gist of the bill is a suggestion that local water resource boards are elected in general elections. A quick comment; these are important positions, there's been a consensus over the years that if we get calls out in the rural areas, it's property taxes, and water resource boards and landowners. Many of us on the Ag committee, we trust that your discretion to look into that opportunity. I think landowners don't often have a recourse. A body of people that can assess fines upon your land would be better if it's an elected body. That's the intent behind the legislation.

Senator Piepkorn: There's a consensus among your people that it should be changed?

Senator Myrdal: In the Ag community, related to water issues there's been questions, water doesn't respect political boundaries, we have water sheds. Water is an enormously important issue. This is an ongoing conversation, how to help people if they have no recourse on their property.

Dan Wogsland, North Dakota Grain Growers Association (4:02-5:37) Testified in favor, please see attachment #1.

Senator Cook: Do water boards still having eminent domain, or did we modify that?

Dan Wogsland: I can't answer that.

Senator Cook: Do water districts have a \$4 mill cap on their levy, do they have to have that approved by the County Commission?

Dan Wogsland: I would defer to the folks behind me, my sense is that they have that ability. Also they have the ability to enter in with other counties, and that expands that ability to levy taxes. One of the things that is disturbing is the fact that you can have some of these water boards run amuck and spend that money, and get more money and not get anything done with it. That's something I think this bill can address; if some boards don't do their job in the manner that they should, then we have an opportunity to do something at the ballot box.

Chair Unruh: I believe the checks and balances you are looking for, Senator Cook, are in place, but we do have some folks who know the answers.

Leon Mallberg (8:00-18:55) Landowner, Sargent County, testified in favor. My farm has been in the Mallberg name for 127 years. I have never experienced anything so autocratic as the water board in Sargent County. School board members get elected, water boards handle almost as much money as school boards; but they're appointed by the County Commissioner and they literally answer to no one. A newspaper article from Sargent County paper **(please see attachment #2)** In this article made in July 10, 2015, Mr. Anderson, while County Commissioner, pointed out that while the County Commission appoints members to the water board it is a self-governing entity and does not answer to commissioners. Other commissioners expressed the same sentiments, stating that those who are unhappy with the Sargent County Water Board should work with them directly to find solutions.

I will tell you, someone who doesn't have any compunction to work with you; you get nothing done. The situation I'm working with is called Drain 11 and the watershed for Drain 11. In the bill it talks about how we elect people different areas involved. The watershed for Drain 11 covers several counties and a section of South Dakota. The water board has decided that Sargent County will bear the entire financial burden of maintenance and improvements, even though it has only 60.5% of the land area in the water shed. I have tried contacting all of the county boards, none of them want to talk to me. Drain 11 was constructed in 1917; for 80 years nothing was improved. Starting in 2011, they started a special assessment, the law says they can special assess up to \$4 an acre. \$640 per quarter or \$2560 for a section. In 2011 it was \$1 an acre; in 2017-2019 it's \$4 an acre, the maximum they can allow. It's progressed out based on the distance from ditch. This bill is the first step to getting control of a situation that's just plain unsatisfactory. In June, I wrote a letter to the county official paper, we wanted to decide whether to go ahead with this multimillion dollar project or not. The water board said no, we can finance it with the \$4 levy and we don't need permission. District court judge ruled in their favor, he said the statute had hands tied. **(Please see attachment #3)** "Positions and actions of the Board, subvert the intent of the sunshine laws are morally deficient..." This bill is the first step in correcting a situation that is totally out of control.

Senator Piepkorn: You're not a resident of these counties, you still wouldn't have a vote. What confidence do you have that these elected officials would be more fair than these appointed officials?

Leon Mallberg: I have faith in the people able to vote. If things were discussed properly, this is a positive approach. The law as it is proposed says when it goes into another district, you have to include that district on a board, and proceed from there. In the last 8 years Sargent County has spent \$32,820 on maintenance on Drain 11. The reason they take dollars per acre is for maintenance. In that account, for Drain 11, \$783,925, if \$32,000 is the average annual cost, they have 20+ years of maintenance. Their goal is \$1,072,685; that's 32 years

of maintenance. Their idea is to finance a major construction project, break it into segments, so they don't have to ask for permission. Each segment can be financed with the \$4 per acre.

Senator Piepkorn: What's the problem with Drain 11?

Leon Mallberg: I don't know that there is a problem. It was built in 1917, the engineers say they have to widen the ditch, change the slope of the sides. The ditch runs straight through my land; we don't ever get more than a trickle. I understand it needs to be dredged occasionally, but not this multimillion-dollar project.

Vice Chair Kreun: In this newspaper, Commissioner Anderson indicates they have no control over this particular board, why don't they just not reappoint them?

Leon Mallberg: County commissioners will tell you that this isn't a position that people seek out. In most cases, the easiest way out is to reappoint them. Up until last November, the Secretary Treasurer of the water board was the County Commissioner.

Vice Chair Kreun: Careful what you ask for, we don't know the ins and the outs of that particular situation. These individuals should know what that problem is, they're the ones that should take the bull by the horns. I understand what you're saying; but are we supposed to come and be the ones to determine what happens in those particular situations. Why wouldn't you go to the County Commissioners and ask them to replace that group of people.

Leon Mallberg: Upon calling County Commissioners, I was told, you have to talk to the water board.

Senator Roers: When you're looking at such a large geographical area, and you have one person who represents that, how do you go about electing that person when you've got multiple counties and county boards? Do we need to define watershed regions?

Leon Mallberg: I suggested that as an option, I don't know of very many watersheds that don't slide over county lines. However, the solution was, we will put a water board in each county. Now you have my territory versus their territory. That's what happening right now, I can't believe that our water board would push this situation where 60% of the land area covers 100% of the cost.

Senator Roers: What does happen when you have this Drain 11 that covers three counties? Is there a representative from each county?

Leon Mallberg: Right now, the water board has contacted and met with Ransom, who said we don't want anything to do with you. The water board didn't even contact Dickey County.

Gary Thompson Chairman, Red River Joint Board (30:00-32:40) testified against please see attachment #4. The last appointment in Traill County took three years to fill a board member vacancy due to the fact that nobody wanted the job. When County Commissioners are looking for person to appoint, they first look for experience. Someone that is on, or has been on a township board, e.g. Township members have to deal with water issues as well, when it comes to the protection of their road systems. They are indirectly

involved in the water. The County Commission look at this as a great experience to be on the water board. If water members are to be elected, experience can be an issue, and believe me, you can't get educated overnight. We urge a do not pass.

Senator Cook: It's possible for water districts to combine, correct? You are a joint board, so is it safe to assume people in this joint board are also in another water district?

Gary Thompson: That is correct. The joint board is the way we look at it, through a watershed type organization. We have a joint powers agreement. Any number of counties can join, which is what we've done. There are others out there, not just the Red River Joint Board. Devil's Lake has a joint board as well.

Senator Cook: If you own property in North Dakota, you are in a water district, is that true?

Gary Thompson: I believe so, I'm thinking about North Dakota water resources districts association, and we charge dues, I think they all have yes, but they don't all pay the dues into our organization.

Senator Cook: I don't think this legislation addresses the election of water district officers if you are in multiple districts. I am just thinking out loud, the challenge of electing officers when you are in more than one district.

Gary Thompson: As in the drain? One of the questions asked earlier was, if you have three counties in a drain, you have to ability to form a joint powers agreement for that drain. You do have members from each county, that represent that county for that assessment area.

Senator Cook: What is your mills levy cap as a water district?

Gary Thompson: Our mill levy is a total of 4 mills, that is controlled and approved by the County Commission, we do not approve that, we ask for that in our budget.

Senator Cook: When you increase the mill levy tax, that increase is included in the County tax line, on the property tax statement, and when they send out a truth in taxation letter, any increase you have, they take responsibility for it. Is that correct?

Gary Thompson: Trying to separate the maintenance from the mill levy. There was some discrepancy. If we are talking about the mill levy; it's a we go in and request the mills we need. The County Commission puts it in their budget, advertises, has a hearing, and approves that way.

Senator Cook: There's a section of code that deals with water district assessments policy. Perhaps we could get a print out of that. Explain to us what the process is for levying an assessment.

Gary Thompson: The assessments are the toughest and hardest part of the job, being on a water resource board. Like I said earlier, in a drain project, it is a voted project, it has to pass by a simple majority. We try to look at the assessments along the channel itself, which is 100% assessed. The vote is on the total dollars of your assessment. If you have a \$10,000

per quarter, it's 10,000 votes. So you have the most votes at 100%. That is prorated, could be 90% down 10%, maybe 5%, whatever a water board does. The assessments, there is a protest hearing for those assessments; we as a water board have that hearing to look and see, did we screw up, did we make a mistake, we listen to that landowner and we have changed. What they tell us, we didn't think about. Along the drain itself is a no-brainer, it's when you get further away it really gets tough.

Senator Cook: If I live in Mandan and have land in your water district, would I get a vote?

Gary Thompson: Yes, if you're a landowner, you get a vote. We call absentee landowners; you get a vote.

Senator Cook: So Mr. Mallberg in Sargent County should have had a notice of any assessment and should have been allowed to vote?

Gary Thompson: Correct.

Senator Roers: An earlier presenter talked about up to \$4 per acre assessments, you're correcting that and saying its 4 mills per acre?

Gary Thompson: There is a total of \$4 maintenance on a legal drain. There is a 4 mill we get for general fund, there's your difference. At 100% assessment on a legal drain, it's up to a \$4 per acre maintenance fund, again prorated to your assessment.

Senator Roers: In your district, the Red River Joint Board, have you ever assessed that kind of money? \$4 on the maintenance?

Gary Thompson: That is a different animal again. That is a mill levy again. We go to your County Commission and asks for up to 2 mills. That is what we run the Red River Joint Board on. That is a retention board. The water resource districts of each county can have a project that's retention or a drain project. The Red River Joint Board helps pay for those projects. It's a grant through the joint board, up to the 2 mills. Again, going to ask the County Commissioners for those 2 mills, just like we do for our 4 mills for our general fund through the water resource districts within each county.

Arv Burvee, Richland County Water Resource Board (42:10-46:20) testified in opposition, please see attachment #5.

Chair Unruh: You mentioned previous legislatures, I think every session I've served, we've seen a bill to adjust the authority of a water resource board, whether it's making them elected officials or making sure there's proper checks and balances for the County Commission. If this isn't a solution that is necessary, do you see a solution to those issues that come up every session that is reasonable?

Arv Burvee: I think the current system works. I think the County Commission who are elected, they serve as a pretty powerful oversight group. If they don't like what the water board or individual water manager is doing, they will take steps to correct it locally. As I said in my testimony, I have seen people removed from the water board managership because of

they weren't doing their job, the County Commissioners at that time took the appropriate steps and removed them and sought somebody else out. I think that you are always going to have disgruntled people. I've learned in my 22 years of service on the water resource board, that's my burden for having been a juvenile delinquent. Water can be a contentious issue, you're always going to have people who don't like what's going on, they feel as though they're being cheated. I don't think there is a need for a change to current law.

Senator Roers: Your watershed is one county?

Arv Burvee: Yes. That's by state law, it sets it up so counties as a whole can be a water resource district or they can go by watersheds. I know Cass County has four different water resource boards, because they have four watersheds in our particular case, Richland County is set up so that the whole county is represented by one water resource board.

Vice Chair Kreun: You do feel that the County Commission is the appeals committee to the decisions the water board makes?

Arv Burvee: Oh you bet; if they're doing their job. They're water board reflects on them. In regards to mills vs assessment. The 4 mills that's been talked about, we as a water board ask the County Commission for a mill levy, up to 4 mills, to cover the annual operating cost of the water board. We don't have to ask for the 4 mills, they don't have to give us the 4 mills, they can give us whatever they want to give us, down to zero I imagine. In our case in Richland County, we don't ask for mills, we know what a mill is, and each county has a different mill rate. We ask for the dollars we need to back our budget, and we try to keep it under 4 mills. That seems to work better as a request. The \$4; that's a maintenance levy to maintain a legal drain, by state law, we can assess up to \$4 on an annual basis for drain maintenance, the most that we can collect is 6 years, that's all we can have on hand. \$4 by 6 years. Once we reach that max, we cannot assess anymore for maintenance dollars for a particular drain. We can put that levy on without a vote. We don't have to go to the taxpayers, the property owners for a vote on that. If it's a new drain assessment or reconstruction of a drain or we're looking to raise a large amount of money, that has to go to a vote of the people that are in that drain assessment area. Their vote is on a weighted measure method, the more benefit they get, the more power their vote has. In the case we heard this morning where a water resource board is assessing up to 21 years' worth of assessments, they may be doing it, but that's not legal. I doubt they're doing something illegal like that.

Gary Thompson: I'd like to clear up a little bit of what Arv just said. That \$20 is probably how much it's costing them per year on the brand new drain. It could be anywhere from \$5-\$30. At \$30 they're probably not going to vote for the drain, but the \$20 could be drain cost per year, might be \$250 per acre for 20 years.

Greg Larson, Chairman of the Burleigh County Water Resource District (55:08)
Testified against. I wanted to make two points: you clearly understand water decisions are contentious, and that we make not-friends and friends. I have been around water and water provision for over 27 years. I had been asked by Burleigh County Commissioners to be on the water resource district for at least 10 years before I said yes. I haven't thanked them yet. My point is that because there's so much contention, we go to elections, I promise you the ones who run will have an agenda. If I have to raise money, spend my time campaigning to

run for this office, I wouldn't do it, it's not worth it. I like serving, I wouldn't do that. No one on my board would do that, I've done a straw poll of water resource district managers; not one would run for election. If we do this, we are going to lose a whole lot of institutional memory and people who have bit the bullet and done this.

The other point to make is that because we are appointed, I think the arm's length is a good thing because of the contentious we make; those decisions are regulatory. The regulatory decisions we make are in century code, we enforce them when there's a complaint, it's no different than the Highway Patrol, no different than The Department of Transportation. None of those positions are elected either, they are enforcing regulatory law. When we undertake a new project, people come to us, they want it, we do our required research to give them informed information so they can make a decision to ask to be taxed to do the project that will benefit them. We don't set it up, we don't impose the tax, it's an assessment, they ask to be taxed. That's how assessments work.

Senator Cook: How many water districts in Burleigh County?

Greg Larson: One. We are also a member of the Lower Missouri Joint Water Resource District. Which encompasses the five counties south of Lake Sakakawea.

Senator Cook: There's a 4 mill cap that you go to the County Commission for approval. If somebody was to end up in two districts, it's possible that they could be paying more than 4 mills for water districts, is that correct?

Greg Larson: You're talking about a landowner? A landowner would be subject to the mill levies in each county.

(Disagreement from the gallery)

Jack Dwyer, North Dakota Water Districts Association: (58:50) Water resource districts can levy up to 4 mills; and any water resource district can form a joint water resource board with a neighboring county along a watershed. The water resource board can levy up to 4 mills, and a joint water resource board can levy an additional 2 mills. So any landowner could be subject to additional levies that exceed 4 mills.

Senator Cook: Is it possible to end up in three water districts?

Jack Dwyer: Yes, it is possible. A piece of land could be subject to a 4 mill levy and another 2 mills for any joint water board that that land is in.

Terry Trainer, Association of Counties (1:01:05) Testified against. You would think that County Commissioners would be pleased to offload it, but they are not. We discussed this last week on their conference call, and they feel that the current structure is most appropriate, and they would be opposed to the bill, just from the discussion and my understanding, which is very superficial, this bill would not accomplish what the sponsors want, because there are so many interrelationships between the water board and the County Commission, just saying we'll elect them is not going to create a separate political subdivision, what it seems is desired here. There is so much more, the taxing authority being one of them.

Chair Unruh: Closed the hearing.

Attachment #6 Testimony against, submitted by Jack Dwyer on behalf of Roger Gunlikson.

Attachment #7 Testimony against, submitted via email.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2174
1/24/2019
Job Number 31385

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the election, appointment, terms, and number of water resource board managers.

Minutes:

No attachments

Chair Unruh: Opened committee work.

Chair Unruh: Is anybody working on amendments or changes for this bill? Do we need more time?

Senator Piepkorn: I don't recall anybody working on any amendments, maybe we just ran out of time.

Chair Unruh: If anybody has a motion they'd like to make, otherwise we can revisit this tomorrow.

Chair Unruh: Closed committee work.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2174
1/31/2019
Job Number 31937

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the election, appointment, terms, and number of water resource board managers.

Minutes:

No attachments

Chair Unruh: Opened committee work.

Vice-Chair Kreun: There's a huge amount of individual this would affect across the state. I'm curious what the numbers would be. We start adding that many more political divisions, I don't know that they would have the effect we would desire. I would much rather see that our county commissioners still the oversight of the people they appoint to these boards, and make sure they're accountable to the people. That's my recommendation.

Chair Unruh: As I look through our testimony, I see there was a specific issue, the Drain 11 issue. There was a district court decision, I had our intern look into this decision in district court which happened just last year in April, which had a quote that was disturbing to me. "Positions and actions of the Board subvert the intention of the sunshine laws are morally deficient and do anything but instill faith and confidence in local government," that's a pretty strong statement to make in a decision, we couldn't get ahold of the whole document, but that's what caused my pause. I'm not sure that's enough to convince me that we need these folks to be elected.

Senator Cook: I move do not pass.

Vice-Chair Kreun: Second

Senator Piepkorn: I don't think that overall the testimony to change to an election from an appointment was compelling enough to contradict the testimony that generally speaking this works pretty well.

Senator Cook: Leon Malberg made the testimony where this quote is quoted. He also stated he never received any notification that his property was going to be assessed. I'm not saying that didn't happen, but they do notify vacant property owners. It should work out there. Maybe he threw it away. They have a vote even if he doesn't live in the county where his land is.

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A roll call vote was taken.
Passes 6-0-0

Senator Piepkorn: will carry.

Chair Unruh: Closed the meeting.

Date: 1/31/19
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2174**

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: _____

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 Sen. Cook Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Jim Roers	X	
Senator Curt Kreun	X		Senator Merrill Piepkorn	X	
Senator Donald Schaible	X				
Senator Dwight Cook	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Piepkorn

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

REPORT OF STANDING COMMITTEE

SB 2174: Energy and Natural Resources Committee (Sen. Unruh, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2174 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

SB 2174



**North Dakota Grain Growers Association
Testimony on SB 2174
Senate Energy and Natural Resources
Committee
January 18, 2019**

Chairwoman Unruh, members of the Senate Energy and Natural Resources Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council NDGGA engages in domestic policy issues on the state and federal levels on behalf of North Dakota wheat and barley farmers. I appear before you today on behalf of NDGGA in support of SB 2174.

Chairwoman Unruh, members of the Senate Energy and Natural Resources Committee, you are very aware of the North Dakota tradition of state elected officials. It is this tradition that sets North Dakota apart from virtually any other state in the nation. That said, North Dakota counties hold elections for virtually every county office. SB 2174 seeks to add to those elected offices by electing those responsible for the water management of the county, the water resource board managers. This is a change that the North Dakota Grain Growers Association supports.

Chairwoman Unruh, members of the Senate Energy and Natural Resources Committee, you are keenly aware of the responsibilities of water resource board managers in North Dakota. While these managers do answer to the County Commissioners in the state they do not answer directly to those whom they serve i.e. the voting public. Adding the accountability contained in SB 2174 adds to transparency to the county water management process. Water resource board managers spend taxpayer monies and hold a tremendous responsibility to the public. That said, the public should have a say at ballot box in who represents their interests.

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.

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1.18.19
#1
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Therefore the North Dakota Grain Growers Association is in support of SB 2174 and would respectfully request the Senate Energy and Natural Resources Committee's favorable recommendation on the legislation.

Sargent County Teller

\$1.00

July 10, 2015

5 - ISSUE NUMBER 18 • USPS 482-100

MILNOR, ND 58060

All School Reunion and Gwinner Days promise entertaining weekend

By Paige Cary

The weekend of July 17-19 will be a busy one in Gwinner and Stirum this year. Not only is it the annual Gwinner Days festivities but several hundred people will also be gathering for the all school reunion. The weekend will celebrate former students of the Stirum School (the Pirates), the Gwinner School (the Green Waves) and the consolidated North Sargent School, formerly the Continentals and now the Bobcats. The reunion is held every five years and gives alumni a chance to reconnect with former classmates and view their old stomping grounds. This year the reunion is held in conjunction with Gwinner Days, providing even more options for entertainment and enjoyment.

The reunion activities will get under way on Friday, the 17th. From 2:00 to 4:00 p.m. attendees

can mix and mingle over coffee while they register at the North Sargent Activity Center. The Stirum Community Hall will host a social with music and hors d'oeuvres beginning at 6:00 p.m. A live band and other entertainment will be available at local bars following the social.

Saturday kicks off early with sign up for the 5K run/walk at 7:00 a.m. with the 9th annual Gwinner Fun Run commencing at 8:00 a.m. The Gwinner Municipal Airport will be holding a fly-in breakfast from 8:00 to 10:30 a.m. The meal will be served at the new hangar on the east side and include a silent auction. A new alumni event this year is a social at the Main City Park, in Gwinner. "We haven't had the social in the park at previous reunions," Reunion President Chris Mathias says. Those attending can enjoy coffee, lemonade and music

from 10:00 a.m. to 2:00 p.m. Something else new this year will be providing more opportunities for children. Hoping to see some younger alumni join them for reunions, the committee is making sure kids are included in the events.

Also beginning at 10:00 a.m. at the Main City Park is a co-ed sand volleyball tournament held as part of Gwinner Days. Anyone interested in participating can contact Heather Vincent at 308-0443. Beginning at 11:00 a.m. there will be a community wide BBQ and carnival games at the park. Lawn mower races at Cat-Tales bar also begin at 11:00 while swimmers can enjoy pool games and free admittance to the North Sargent Pool from noon to 2:00 p.m. The parade at 3:00 p.m. rounds out the afternoon events.

Alumni will gather at 5:30 for class photos followed by a dinner

at the NS Activity Center at 6:30. Everyone is invited to attend the street dance beginning at 9:00 p.m. featuring country rock band 2 Mile Final. On Sunday there is golf scramble at The Springs, open to everyone. Registration goes from 10:00 a.m. to noon with tee off following registration.

There are currently over 200 people signed up for this year's all school reunion. The reunion not only brings classmates together but it also furthers the education of a new generation. "All the proceeds from the reunion goes to alumni scholarships," Mathias shares. If you haven't yet gotten your registration in it's still not too late to attend. You can register by calling Kris Beck at 678-2444. If you're not an alumni of one of the three schools, be sure to join in the community festivities during Gwinner Days.

Commissioners hear reports and grievances

By Paige Cary

The Sargent County Commissioners met on Tuesday, July 7, at 9:00 a.m. at the Sargent County Courthouse. Those present were commissioners Mike Walstead, Bill Anderson, Dave Jacobson, Sherry Hosford, Jerry Waswick, County Auditor Pam Maloney and Assistant States Attorney Jayne Lewandowski.

County Road Supervisor Sparky Engquist met with the commissioners to report on the hiring process for a new county maintenance employee. There were four applicants but those interviewed all had issues with the pay, Engquist explained. The commissioners reviewed a survey of what other area counties are paying for the same job. It was decided to re-advertise the position over a larger region in order to find more applicants.

Engquist also told the commissioners there is an opportunity to replenish gravel stock piles at a couple of pits at a discounted rate as a crusher is going to be in the area. There is a 25,000 ton minimum for the crushing. The gravel would last through this year and next and probably need to be replenished again in the spring of 2017. Engquist explained that about 1,600 tons of gravel is used per mile, depending on the traffic on the road. A

motion was made and passed 3-2, with Hosford and Jacobson voting no, to proceed with obtaining the gravel.

Hosford asked for an update on the graveling work being done in the county. She also requested more information from Engquist about a culvert concern on some property in Jackson Township. Engquist explained that springs send water to the area which freezes and floods a local landowner's driveway. A hydraulic study is being done to find some options for solving the issue. Discussion ensued about the location, and which entity, the county or the township, should be involved.

Mid-morning saw two Milnor area residents, Emeric Erickson and Tom Mund, along with Sargent County Water Resource Board member Roger Zetocha appear before the commissioners. Erickson reviewed a letter he had previously sent to the commissioners outlining issues he has with the SCWRB. He expressed his displeasure with the acceleration of costs for permits and frustration with many of the board's billing practices and decision making processes. The issues included individuals being billed by attorneys and engineers for discussions held at public meetings, inconsistencies with how bills are sent

and the involvement of the board's attorney and engineer.

Hosford, who also serves as the secretary for the SCWRB, spoke to several of Erickson's points. She noted that engineers often do research following a meeting to answer questions brought up in the meeting. Zetocha explained that the board makes use of their lawyer and engineer to avoid putting the county in problematic situations. He pointed out that there are processes in place that must be followed in order to keep everything legal and fair. "We're just trying to follow the rules that have been laid out to use," Zetocha said. He added that he would look into the practice of billing from attorneys or engineers to the county residents.

Mund said he also felt the costs are a problem. The current system seems to be causing undue expense for some landowners applying to make changes. Further conversation ensued about how billing is done and the number of other individuals who have ceased to pay bills sent out by the SCWRB. Erickson gave some ideas for changing the process for permit application to the SCWRB. He suggested an interview between the requestor and the water board's engineer prior to it being submitted. Zetocha said the board

is open to ideas and always wants to work with people. Erickson said he felt that the projects being presented to the board benefit the county and not just the individuals.

Anderson pointed out that, while the county commission appoints members to the water board, it is a self-governing entity and does not answer to the commissioners. Other commissioners expressed some of the same sentiments stating that those who are unhappy with the SCWRB should work with them directly to find solutions.

Cindy Klapperich and Melissa Blawat, of the NDSU Extension Office, gave their quarterly report to the commissioners. Blawat outlined some of her recent activities including a crop management discussion, 4-H activities and programs, horticulture feedback for area residents and many meetings. Blawat also attended a grazing management workshop and agronomy training in June. Klapperich shared some of her latest tasks and accomplishments including giving presentations on health, food and nutrition topics and 4-H youth development. She explained that she had

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← NOTE

This a letter that was sent to the Sargent County Teller, the Official County Newspaper, in June of 2018 as to the operations of the Sargent County Water Board with respect to "Drain 11".

To the Editor: Open Letter to the Citizens of Sargent County

Government must earn our trust each and every day. Local Government entities ability to faithfully and diligently represent us is a corner stone of our democracy. Over the past three years my respect for, and faith in Sargent County Government has been shaken and diminished.

I inherited a deep sense of faith in local government. Persons who serve are our neighbors and they were raised with the same instincts that formulated my own belief. I am a product of Sargent County and a member of the last graduating class of Cogswell High School. My parents, Harold and Agnes, were born and raised in Sargent County and lived there all their lives. As I was growing up I felt I knew everyone in the County or at least one member of every family. With County 4_H events, the annual Sargent County Basketball Tournaments or track meets, six-man High School football games with Havana, Rutland, Delamere and Forman, how could you help not knowing everybody? I truly felt that everyone in the County was my neighbor and I feel a kinship to this date.

However, about two years ago, I received a postcard and letter requesting that I attend a meeting in Cogswell to sign papers authorizing the Water Board to take family land and spend several million dollars on proposed maintenance of a project that was built in 1917, called "Drain 11". Current Water Board members individually probably have sound principles, but as a group, they seem to hold no regard for the taking of private land.

In response to the request to attend this meeting, I made a number of calls to Water Board members to find out more information. The County Auditor suggested I call the Board secretary, who also happens to be a member of the County Commission who appoints the Water Board members! Not one phone call was returned! I then called the Chairman of the County Commission. He told me the Commission only appoints Water Board members. After that they have no control over them as they operate under a separate set of State Statutes. I have gotten the impression that the Water Board is controlled by three people, none of who are appointed members. They include the secretary, the Water Board Attorney and the Water Board Engineer.

The land grab by the Water Board without a public hearing lead to a lawsuit by a group of property owners in the Drain 11 area. We wanted notification of county residents and a vote on the project. April 2, 2018, ND District Court Judy B. Cruff outlined in his decision language which cumulates what I am trying to briefly express:

"... position and the actions of the (Board) subvert the intent of the sunshine laws, are morally deficient, and do anything but instill faith and confidence in local government."

Since this strongly worded decision was handed down, the Board has not adjusted their approach by submitting the ENTIRE project to a vote of the citizens. By breaking the project into smaller segments, they do not have to provide a timely notice, a hearing and a validating vote for a project of this size.

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The Water Board is allowed to asses up to #4.00/acre per year for up to 25 years for each project!

This action subverts the intent of the ND Legislature related to protection of property owners from this kind of Board activity.

I hope readers of this letter also share a deep respect for property rights. Since Water Board members are not elected, we should expect our Commissioners to communicate these concerns to them along with the expectation of Sunshine on their processes.

In this event I am relating County Drain #11 property owners' exposure. The next event could be yours! I urge you to express your concerns and expectations to the County Commissioners, Water Board Members and state representatives.

Leon L. Mallberg
Sargent County Land Owner Drain 11 Area
941 – 13th Street West
Dickinson, ND 58601
(701) 483-8338 Cell: (701) 590 9370

TESTIMONY ON SB 2174
PREPARED AND OFFERED BY GARY THOMPSON
JANUARY 18TH 2019

Mr. Chairmen and committee members, my name is Gary Thompson and I am the chairman of the Red River Joint Board with the home base in Hillsboro North Dakota. Counties that I represent are Pembina, Walsh, Grand Forks, Nelson, Traill, Steele, Cass, Barnes, Richland, Ransom and Sargent. I have been asked by representation of these counties to oppose senate bill 2174 on the grounds that it is unnecessary for many reasons. One of which is the fact that we are a none political entity and should stay that way. We are not appointed under a party as legislators are. We do not and should not be a negotiating entity as legislators are and should be. Our job is to work with people when they have a project in mind such as a drain project or a retention project. In both cases it takes a vote of the local benefited area to pass such a project. Another reason is that elections come with a cost that are unnecessary. Appointments have worked for many years and come with no cost to the tax payer.

Water Boards do not make laws, we follow the laws. If for some reason a manager or managers do not follow these laws a dismissal process is in place by County Commissioners. The Commissioners are elected by the district they represent and therefore appoint accordingly in Traill County where I live. This gives a good representation for the County as it does for the Commissioners. It is unclear in this election process that the same can hold true. In other words, will it be possible that all water managers can come from City or one corner of a County. Representation is key in any given County in my opinion.

Thank you for allowing me to testify here today and we as the Red River Joint Water Resource Districts Association strongly urge a do not pass on Senate Bill 2174.

Thank you.

Senate Bill 2174
Senate Energy & Natural Resources

I am here today to speak in opposition to Senate Bill 2174.

In my view, the current Water Resource Manager appointment process by County Commissioners that is allowed by ND State Statute works well for the following reasons.

Water Resource Districts cannot run amok with taxpayer money because the County Commissioners maintain a high level of oversight over Water Resource Districts. The County Commission can, and many times do, question the efforts and activities of their Water Resource Board. The County Commission can remove water managers who are not doing their jobs, which I have seen and the County Commission can obviously choose not to re-appoint water managers, which I have also seen. The County Commissioners also do a pretty good job of screening those individuals who they have serving on their Water Resource Boards. If you stop and think about it, the water resource managers are actually all standing for election at every election, because the Water Managers overall board of review is the County Commission and the saying that "if the County Commissioners ain't happy, ain't nobody happy!" is pretty true. If the County Commission is catching heat from the citizens because of the actions of their Water Resource Board, you can believe that the County Commissioners are going to take appropriate steps to resolve the issues.

More importantly, the longstanding appointment process currently in use removes

partisan politics from Water Resource District business. Water is not a partisan issue, however, water management is often a source of controversy and finding good people who can handle the heat and public scrutiny that sometimes surround water projects and water disputes is not easy. The saying that "whiskey's for drinking and water's for fighting" is sometimes pretty true! Finding capable water resource managers is not an easy task as it is and forcing people to campaign for these positions would make water boards even more difficult to fill with quality people. I honestly believe that if Senate Bill 2174 were to become law, you could very easily have people running for election to Water Resource Boards whose goals are self-service, not community service.

The people who serve on water boards do not do so for the money (our per diems are low), nor for the public notoriety and adoration. In fact, water managers face possible scrutiny about their water resource efforts every time they go out into the public. So as a practicing Water Board Manager, I'm always working to make sure that the business of my Water Resource Board is conducted properly and if I have to take some heat, so be it.

I would not be afraid to say that historically, North Dakota water managers are public service minded people whose only interest is serving their neighbors and communities to the best of their abilities and I feel that subjecting these water manager positions to elections could very well convince the type of qualified people that you would want to have on these water boards, that it's no longer worth the headache and trouble. I have been told that there have been similar efforts in the past to make Water Resource

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Managers an elective position and fortunately, previous legislatures have seen the folly of those efforts. In closing, I thank you for the opportunity to give testimony to you today. I'll be happy to answer any questions that you might have.

Arv Burvee
Member
Richland County
Water Resource Board

acburvee@rrt.net
701-640-3703

North Dakota Water Resource Districts Association

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Memo

TO: Senate Natural Resources Committee

FROM: Roger Gunlikson, Chairman

DATE: January 18, 2019

RE: SB 2174 Election of Water Resource District Managers

Dear Senator Unruh and the Senate Natural Resources Committee:

My name is Roger Gunlikson, and I currently serve as the Chairman of the North Dakota Water Resource Districts Association. I also serve as Chairman of the Williams County Water Resource District. Our Board has reviewed the language proposed in SB 2174, which will require water managers of water resource districts to be elected, rather than appointed.

The North Dakota Water Resource Districts Association opposes SB 2174 out of concern for finding qualified water managers to run for election. Many water managers are reluctantly recruited to serve on their local water boards, and over time, they learn the duties and details of managing water resources at the local level. Many water managers would not be willing to run for office.

In Williams County, when we have a vacancy, the county advertises the open position to allow anyone who is interested to contact us. If no one responds, the water board managers and the county commissioners will typically ask around until we find someone willing to serve.

Thank you.



Roger Gunlikson

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NDLA, S NAT - Johnson, Marne

From: Unruh, Jessica K.
Sent: Thursday, January 17, 2019 2:17 PM
To: NDLA, S NAT - Johnson, Marne
Subject: FW: Please Oppose SB 2174

From: Walsh County Water Resource Board
Sent: Wednesday, January 16, 2019 4:49 PM
To: Unruh, Jessica K. <jkunruh@nd.gov>; Kreun, Curt E. <ckreun@nd.gov>; Cook, Dwight C. <dcook@nd.gov>; Piepkorn, Merrill <mpiepkorn@nd.gov>; Roers, Jim <jroers@nd.gov>; Schaible, Donald G. <dgschaible@nd.gov>
Subject: Please Oppose SB 2174

Ms. Chairman and Senators,

On behalf of the Walsh County Water Resource District, I am writing to ask for you to vote no on SB 2174 that would require water managers to be elected rather than appointed. Water is a very volatile subject and the people that sit on the water boards do so to help the counties they live in. The board members are subject to extreme scrutiny by the members they serve. Our board members have been approached during church services, out at supper with their families, and I myself was even contacted on my personal cell phone this week and I am only the secretary. The board members make difficult decisions that inevitably will in favor of one person and against another. The amount of time they end up spending on water issues can add up quickly to the same hours as a full time job. It is far from a glamorous position and the right type of person needs to serve on the board.

Those who want to serve because they have an agenda or one specific project they want passed, will most certainly find that with the laws the board must follow, they will be facing an uphill battle. So if these individuals were elected on to the board and then find out 6 months later the job is not what they envisioned, we are back to the County Commissioners reappointing an individual to serve. Our county commissioners did their due diligence when we had an open position on our board a couple years back. The position was advertised in the county, individuals interested were invited to apply and received interviews with the water board and a county commissioner present. We believe this process has led to board members who are versed in water, truly interested in serving their communities and are willing to make the difficult decisions that are required in this office.

We urge you to please **vote no on SB 2174**.

Thank you for your time.

Jennifer Lindenberg
Secretary/Treasurer

*Walsh County Water Resource District
Forest River Joint Water Resource District
Park River Joint Water Resource District
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Grafton, ND 58237
(701) 352-0081 - Office*