

2011 SENATE AGRICULTURE

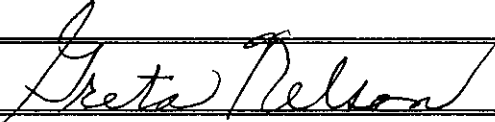
SB 2280

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2280
February 10, 2011
14308

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to subsurface field tile teaching projects.

Minutes:

Attachments: #1, #2, #3

Senator Flakoll; Meeting called to order on this Thursday, February 10, 2011 at 9:00 am SB 2280. Clerk take roll.

Clerk: Roll call. All present (Senator Heckaman will be late...testifying on another bill)

Senator Flakoll; SB 2280 open

Senator Luick; Senator District 25 (Attachment #1; Attachment: Proposed amendment #1) Supportive of SB 2800

Senator Klein: Will you explain what I am going to have to do help me be in compliance with the rules?

Senator Luick; The process is not changing to the point as a producer as it is at 100 acres or above 80 acres, you would still need to go to your local water resource board and get the permit and also approval of the NRCS and through a 10-29 highly routable agreement that you signed that you don't have highly routable land. It is a function of NRCS process. Your application would go to the water resource board. (Has to go to the state engineer's office to get approval of anything over a certain amount of acres.) When it gets to the state water commission's office, they do the clerical work. They don't come out to do the inspection as it would not be practical/logical for distance for travel. Getting the permitting process back to the local boards, time would not be logical for completing the project. Starting your process, needing in 1 or 2 years, if you started today, it would work out. If a tiling is there at the present time and would like to till yours at the same time while they are in the area, you can't have it done as it is a lengthy process. Nothing changes with the at the state or local level unless you have issues that need to be looked at....the local boards have a better knowledge of what the slope of the land is, the soil types, the water flows, all individual's concerns, a neighbor in question. Identifying if a good process.

Senator Klein; Last week we heard the concerns of about the people downstream and in your testimony express there would be landowner downhill protection. Would that resolve the issue that was really a point of discussion?

Senator Luick; I hope so.... (different rules for every state) We are mimicking and keeping it as it is today with the mile downstream awareness of the landowner downstream because if you have the model water that comes out of the tile lines.....once it surfaces and goes to a mile away, there is a lot less concern after that first initial mile.

Senator Klein; Is it true the NRCS rules are different for every state?

Senator Luick; They are very different in every state. Actually it is very different going from county to county within our own state. Had conversations with agencies about wetlands and determinations of wet lands ... it is a county by county determination. Even though it is a Federal program, there are a lot of different opinions of what is and what is not a wetland.

Senator Murphy; Didn't understand the downstream permitting from the neighbor being upset....hope this would improve, but then said it would stay the same? Please clarify.

Senator Luick; There wasn't much bite in anything that was happening before. This provides for a \$100 fine for not permitting #1 and #2 puts this ownership on the individual that is doing the tiling project. It has never been identified that in any loss or written any place.... for tiling that states "I am responsible for that".... I want to make sure it is in place so everyone is protected.

Senator Klein; Give us an explanation of what you would do with a quarter of land you are going to tile. What do you actually do to complete this and how much you disturb the soil? How it gets the water to where you are getting it to.

Senator Luick; First thing done, topography is taken of parcel going to be tiled. It gives the dips, rises, slope of the land, soil texture, type of soil and that determines the spacing of the pipe. Next (after permitting is taken care of) start at the low end of the field because the water under the subsoil water is always going to be running toward you. Start at the outlet end...nice to have a ditch to outlet the pipe into which is called the header pipe. Then start digging with excavator, plow use what works....excavating up hill, continue putting in the header pipe. It can start at out at, depending upon the acreage that you are tiling and the plan is all calculated....depends on the amount of water that is rain water after hits the ground has a number of what ratio of what gets out of that system. The higher the ratio, the faster the water can go out the drain tile pipe. When you start the header pipe and some may be 4 to 20 ft deep, depends on the type of system putting in, the amount of acreage tiling, and the type of outlet you have to work with. Typically in the deeper one, you would come in a lift station which is a huge sump pump. This header pipe is going into this lift, buried reservoir for the pumps to sit in. Gravity feeds into that basin and gets pumped out rather than having the nicety of a grass system which is cheaper to put in. Header and go up hill with less acreage....work away from the outlet and you end up downsizing the header pipe so you don't have less water coming into the header pipe. As it gets further away from that lift station, it gets smaller. The attached 4 – 6 inch laterals on to that

which is plowed in with a tiling plow (farmer plows) puts the laterals in. Back to the soil pipes that you have what the spacing is.....once you start tiling, there is water coming immediately. ... is a rush situation.

Senator Murphy; Would the grid type patterns the way you lay it out, does it look like a feather or a grid?

Senator Luick: In the flatter areas, you would pattern tile most everythingif you have a poor spot, and your field has high salt content or high water table, etc.....elevate the water in that area and think that is the problem area...you would tile that area. Once you tile that area and the best part of your area, then when you tile the poor part of your field, it becomes your best part of your field. Grid pattern tile field is covering all acres of that field. The best way to do it. In a feather plan, you are running up a sub header into an area where you would attach laterals and try to collect water from an acre area.

Todd Sando: State Engineer (Attachment #2)

Senator Murphy; Is it possible to pass a version of these bills out this legislative session and work on it during the interim to refine that?

Todd Sando; I would be in favor of that. With all the issues and all the land impacted by the wet cycle, it is very important to get something through the legislature. We can work on the details....based on the 3 bill that are out there, the resolution....there is a lot of need for getting a process laid out that would be workable. We are supportive of getting something moving and of this bill. Eastern ND needs to have this addressed.

Senator Flakoll; Would it be helpful/better if we had an effective date of July 1.

Senator Heckaman; I understand the rational in RRV, tell me your thoughts in the DVLake basin?

Todd Sando: Major issue for DVLake basin, any closed basin because if you drained water off....it is not going to be receiving river or to the Red River or all the way to the ocean. There has been very little drainage that has been approved. If we start tiling the DVLAKE basin, there will be many issues and spending multi million dollars trying to address the extra water that is entering DVLake. It has been through the court system twice about draining system. It is important we have something in to deal with close face as DVLake basin to deal with state wide inter districts.

Senator Klein; That basin would not be allowed to issue any certificates. You would make sure it would be tiled because of the issue we are currentlydoesn't that explain it in the language?

Todd Sando: The language written. ...it says the water resource district shall return the application proposal state drainage....if we declare DVLake basin...they are going to have to forward it on to state engineers office.

Mike Dryer: ND Water Resource District: (Which is all the water districts in North Dakota) We support and are trying to come up with some mechanism this session would also support the concept of continuing to look at this issue. A senate resolution 4019....it isn't a study resolution but the legislature did create the water topics over the committee which is a standing intern committee on water and appropriate to amend that and have the water overview committee look at the subject. It is intended that all water issues, but that would be helpful as we continue to look at this. There is a house bill that addresses issues Sen. Belter is prime sponsor and is introducing the same amendment as Senator Luick. We have discussed these bills and I will point out what we are trying to come up with a mechanism that would work for now and can tweak it as we move forward. It is 80 acre water shed, in these amendments; it would be 80 acre land area. The person would have to submit the application to the water board, water board may attach conditions, but this language provides that the water board may not deny this application unless, it is state wide significance or flood or adversity affect lands within one mile downstream. That is the limit we suggest for now. Must notify the landowners of downstream one mile and give a 30 notice. Language provides that either the water board or the downstream land owner to demonstrate there is flooding or adverse impact within the one mile. If demonstrates that, then easements would be required within the one mile area. If a tile drain goes into a assessment drain, or natural water course the easements would not be required and also included a pond, sewer, or lake but are thinking that it would better not to have that if a person downstream has a pond and the pond becomes bigger because of the tile drainthat is not fair for the legislature to you don't have to give fogies in that instant but something the committee can address. The first section provides that water resource districts can use their existing authority to set up assessment drains for tile drains. We have established body of law that allows water boards to establish assess the drains the landowner has to vote on it. This clarifies that tile drains can be assessment drains as well.

Senator Miller Don't see any prohibition from somebody in DVLake being able to tile because the first 80 acres is free.....if you are in DVLake, you can tile.

Mike Dryer: You can do that now. The current law is for 80 acre water shed. This is an 80 acre land area.

Senator Miller; There is no tiling going on in DVLake....this would encourage we want to happen. Is that something you want to do?

Mike Dryer: I don't think this would change...doesn't change the current scene.

Senator Flakoll; Could we through amendment all carve out such as listing DVLake basin?

Mike Dryer: You certainly could through legislation....if you wanted to put the words in there.

Senator Flakoll; The one mile affected areado you invision a problem if we took the committee table and cut it down the section line.....one side gets the permit, no problem with downstream....the east side want to come in 5 years later.....they have used up 80%

of the capacity. They can't have their tiling process in place. Is that anything we need to worry about?

Mike Dryer: the water resource board is the regulators and they do get caught in between the up and downstream people. Last week testimony, some easements were denied because they are not getting along with the farmer. We want to come up with a well thought out limit on fogies and that is a reason why the study will be helpful if we find it would be 2 miles...we need to keep looking at it....doesn't have the same impact as surface drainage does, so I can't really answer your question.

Senator Flakoll; Would the water districts have the option if the west side puts theirs in, it takes 80% of the capacity and then the other farm can ratchet both back to say west side can do 50% during a given point ...can you go in and go back and say you are going to limit your outflows at any given time? We talked about some holding ability to keep it out of there.

Mike Dryer: It would be difficult to take someone's investment and been approved to restrict that...don't have the knowledge to know the answer. Water board would have to continue to monitor and see what kind of impacts is happening.

Senator Flakoll: Do we have any preventive a patchwork together? Is there a prohibition on that?

Mike Dryer: You have to pick some number and we talked about 40 acres as it would be less likely to....we settled on 80 acres because from an efficiency from a contractors, investments standpoint, it would make more sense to hire a contractor to come in to do the whole field. There is a practical limitation, no matter what number, people could say they would do 39 acres and then do one every month.

Senator Flakoll; No problem with the 80 number.

Bill Schuh: ND State Water Commission: Here to clarify and answer some questions. It isn't necessarily true you can't tile in the DVLake basin. There are a couple permits in process but on hold. If it is declared to be a state wide and if it is in DVLake basin is automatically is. The process would be an extended process kicked up to the state engineer; they would initiate a process of hearings and further examination of the issue. It isn't prohibited, it is just it has to go through a further examination for the process.

Senator Miller; The reason I said that is the lay out of the bill. It says inflation artificial subsurface drainage amendment comprises of 80 acres or more requires more. ...there is no determination in our districts significance.

Bill Schuh: Original question if they would be allowed in the basin. Just that a process would kick in.

Senator Flakoll; What is a reasonable time for the process through completion? Say a farmer wants to do 100 acres.

Bill Schuh: I really can't answer that. Depends

Roger Ellingson: Ellingson Drainage owner. Can answer questions. A comment on permitting process....our experienceas the permit is sent to the state, we have had them processed from 4 to 6 weeks and as long as 6 months. The 2 to 6 months becomes very cumbersome, once they are approved there, they need to come back to the local water board and spend another 30 – 60 days waiting. Question asked about draining in a ditch and approving the permit now 80% has been use up of the capacityopen drainage ditch, the amount of water coming out of a tile system is so insignificant in comparison to what the ability of that large drainage ditch is capacity wise that will never be an issue. When you think of all the water you are dealing with is rain falls, varies in inches....once you get the tile system in place, most are designed to drain water (1/4-3/8 inch) per day. When you get that significant rain fall happens and flood problem happen, those tile farm will absorb a good share of that inch or two of rain before it starts running off the surface. Without tile, high water table conditions, almost the whole rainfall runs off, so it will never cause a problem with the ditch. If you talk about tile drains will definitely have to be sized if this whole group drains into one tile drain and that's the good thing of having it go through the legal assessment process so it gets sized properly. Everyone gets assessed properly depending upon how many acres you have draining into this large tile. Sometime in the future if everyone doesn't want to tile their farm when it is put in, sized properlythat can happen without any problems.

Senator Murphy; Did you look at the amendment?

Roger Ellingson; Read the old one....did get a copy just before the meeting. It looks good....something needs to be done to get the process working faster. We have million dollars worth of projects that have been stopped or delayed. Has nothing to do with flooding, etc. causing a significant impacta huge loss.

Senator Flakoll; Hurdles would be a good consistent logical approval process and access to tile, Are they your biggest things that hold you up?

Roger Ellingson: I would say so.....make a recommendation.....if the downstream landholder shows they are going to be damagedif people have to start spending money to prove a problem, it will illiminate all the trivial complaintsbecause personal reasons don't make sense.

Senator Dan Wogsland; Executive Director ND Grain Growers We are here to support the SB 2280. Water management is essential to agriculturetiling is an effective means of water management and provides for better soil health, more orderly release of excess moisture and provides protection downstream. We think this is a forward looking billgood for agriculture and the state. We support the SB 2280.

Jeff Missling: ND Farm Bureau We support the SB 2280 Echo Senator Wogsland.

Senator Flakoll: Oppositions?

Senator Flakoll; Close hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

Committee Meetings: SB 2280
February 11, 2011
14426

Conference Committee

Committee Clerk Signature	<i>Greta Nelson</i>
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Explanation or reason for introduction of bill/resolution:

Committee meetings: SB 2280

Minutes:

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Meeting called to order at 10:30 am this 11th day of February 2011 SB 2280.

Senator Flakoll; Committee turn to SB 2280. Committee, what are your wishes. Anyone else have any amendments pending? Are we ready to act on the bill?

Senator Larsen: Clarification. Where does it fit in herewhat part of the amendment are we adding in section 2.....the new amendment that is going on to this bill?

Senator Flakoll; This is a true Hog House amendment.....so the amendment becomes the bill. The real key indicator on page one, line 1 a bill replaces the remainder of the bill withthen everything is gone.

Senator Klein; Move amendments 11. 0654.03001

Senator Luick; Second

Senator Flakoll: Moved and second Discussion?

Senator Miller; Subcommittee discussion, we felt we put the regulatory side into this bill and pass it out and use the new amendment for the conduit. The bill I introduced, I have some amendments for that and trying to deal with other things related to that.

Senator Flakoll; My opinion, we should not co-mingle the first bill primed by Sen. Miller and then this bill should be kept separate. We may be getting a House bill drafting one very similar to this bill.....we will let them do what they have to do....we do what we need to do. I agree it is best.....it seems like it has no "rub" points.

Senator Heckaman; I understand the importance in the RRV, however my legislative district, I am not able to support the amendment or support the bill. The understanding of the difference of the closed basin and the RRV.

Senator Murphy; We should compliment the prime sponsors of the two different bills....
Senator Luick and Senator Miller; worked well together on this with a good result.

Senator Klein; Understand Senator Heckaman concerns, we get involved with
perception....this issue would not have happened, would not allow any permitting or major
tiling projects in that area. I have a comfort level with that.

Senator Flakoll: Clerk take roll for adoption the 3001 amendments SB2280

Clerk: 6-1-0

Senator Flakoll: Motion carries

Senator Murphy; Move the adoption of SB 2280 as amended

Senator Klein; Second

Senator Flakoll; Clerk to take roll as a Do Pass as amended to SB 2280

Clerk: 6-1-0

Senator Flakoll; Motion carries

Senator Flakoll; Senator Luick carries

Senator Flakoll: Ends this meeting

February 9, 2011

#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2280

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-21-02 of the North Dakota Century Code is created and enacted as follows:

The installation of artificial subsurface drainage systems.

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

Permit to drain subsurface waters required - Permit form - Penalty.

Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. A person seeking to construct an artificial subsurface drainage system must submit an application to the water resource district within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Date: 2-11-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2280

Senate Agriculture Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Klein Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	✓		Senator Heckaman		✓
Vice-Chair Oley Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator

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

Date: 2-11-11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2280

Senate Agriculture Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Murphy Seconded By Senator Klein

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	✓		Senator Heckaman	✗	✓
Vice-Chair Oley Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Luick

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

REPORT OF STANDING COMMITTEE

SB 2280: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEARS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2280 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

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SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 HOUSE AGRICULTURE


SB 2280

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

SB 2280
March 10, 2011
Job #15234

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

Minutes:

Senator Luick, Prime Sponsor: (Handout for information purposes)

SB 2280 takes the process of permitting for agricultural field tiling and puts it back into the hands of the local jurisdiction which is the local water resource boards of the different areas within the state. In the past these permits have been sent to the State Water Commission to get their blessing. This causes the process to be delayed and that causes problems.. Also on the local level, the individuals that are overseeing those permits have a better understanding as far as soil texture, the individuals they are working with, and the problems directly related to the tiling project.

This places the responsibility back in the local hands. It adds more protection for people downstream because if they have an issue they can take it to their local water board. They have the authority to nix that project or give it the OK. It is a way to get farmers and neighbors to work together.

(Referred to an amendment but didn't hand it out.)

John Paczkowski, Chief of Regulatory Section, ND State Water Commission:
(See attached #1)

Representative Schatz: How is this bill different from the House bill?

John Paczkowski: These bills are the same. HB1459 and SB 2280 are the same.

Representative Boe: You seem to have a lot of concerns. Do you have amendments available to address these problems?

John Paczkowski: No. We have been dealing with some of the sponsors and offering suggestions.

Representative Belter: The question of the one-mile limit, that is in code for surface drainage?

John Paczkowski: The water boards are to look at downstream impacts. It is not limited to a given distance. There are some boards that require easements for a distance of one mile downstream. There is nothing in existing code that limits impacts to a given distance at this point.

Representative Belter: On the one mile limit, where do you suggest drawing the line? Ultimately whether you are surface draining or tiling, the person doing the draining is responsible for damage downstream. Somewhere we have to draw a limit. Where ever it is, you are still subject to damages.

John Paczkowski: The downstream landowner, whether they get a permit or not, is responsible for whatever effects they have downstream. Eliminating the one-mile issue would allow the water resource districts to examine the permits and analyze them. The board can work through an issue rather than go to civil action.

Representative Belter: This law doesn't preclude the board from looking at any potential damage beyond one mile. They have that authority to do that. The only thing the one mile does is it requires the person asking for a permit to notify the person one mile downstream.

John Paczkowski: Line 1, page 2 "If an investigation by a water resource district or a downstream landowner within one mile shows that the proposed drainage will flood or adversely affect the lands of a downstream landowner, the water resource district may require . . . easement."

Representative Boe: What do the laws in the surrounding states look like?

John Paczkowski: I'm not knowledgeable with the other states.

Representative Holman: Are there any situations in drainage where public notice is part of the process of a pending project?

John Paczkowski: I'm not aware of a public announcement. Boards of Water Resource Districts do hold hearings. The meeting is announced but I don't know that they address individual items within that meeting.

Tom Bodine, ND Farm Bureau: We are in support of SB 2280. Drain tiling is a good management practice. Drain tiling increases the agriculture productivity of the land. This practice can also alleviate downstream flooding by providing subsurface water storage. Soil salinity has become a serious problem in North Dakota. Since this bill is similar to HB 1459, we support both.

Gary Knutson, ND Ag. Assn: Our membership consists of 425 dealerships, distributors, and service providers for crop production. We think it is critical that these acres we are losing to salinity will get solutions.

Tom Lilja, ND Corn Growers Assn: We are in favor this bill. The soil salinity issue is a critical issue. In reference to Brian Hefty's presentation, we are losing over a billion dollars with the soil salinity problem. The downstream landowners will eventually form a system of tiling. It does become a cooperative effort.

Michael Schnell, Ellingson Companies: This is a step forward in the permitting process.

In answer to the question of permitting in different areas? In Southeast Minnesota where our main headquarters is, no permit is required. The upstream landowner who is tiling is responsible for all damages to downstream landowners. It is important to put a limit on to get an idea where the responsibility lies. Notifying landowners one mile downstream allowing them to come in if they have concerns so they can talk to the local water board is a step forward. We suggest a **Do Pass**.

Representative Holman: If I want to tile a quarter, tell me about the process and how long it takes.

Michael Schnell: Now in ND you have to get a permit from the State Water Commission. That takes from one month to three months. Then it goes to the local water board. The board may not meet for another month. Anything they put on could take another month or more. This streamlines those issues. Downstream landowners know when a project is in their area and they can go to their local water board and express their concerns.

You remove the process of getting that permit from the state unless it has statewide significance.

Representative Boe asks question to John Paczkowski, Chief of Regulatory Section, ND State Water Commission

Representative Boe: What is the penalty for not getting a permit?

John Paczkowski: There is not a penalty in law.

Representative Boe: Would you care to estimate how much unpermitted tiling is done now?

John Paczkowski: No

Dan Wogsland, Executive Director, ND Grain Growers Assn.: (See attached #3)

Opposition:

Mike McEnroe, ND Chapter of the Wildlife Society: (See attached #2)

Vice Chairman Kingsbury: Closed the hearing.

Representative Belter: Moved Do Pass

Representative Schatz: Seconded the motion

A Roll Call vote was taken. **Yes: 11, No: 0, Absent: 3,**
Representatives Johnson, Headland, and Mueller)

DO PASS carries

Representative Boe will carry the bill.

Date: 3/10/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2280

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended

Rerefer to Appropriations _____

Motion Made By Representative Belter Seconded By Representative Schatz

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	AB		Tracy Boe	X	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter	X		Richard Holman	X	
Craig Headland	AB		Phillip Mueller	AB	
David Rust	X				
Mike Schatz	X				
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	X				

Total Yes 11 No 0

Absent 3

Bill Carrier Representative Boe

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

REPORT OF STANDING COMMITTEE

SB 2280, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)
recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).
Engrossed SB 2280 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2280

1

Mr. President and agriculture committee; for the record my name is Senator Larry Luick, District 25.

SB 2280 is a bill to place the responsibility of the process to complete subsurface tiling permit applications into the hands of a local water resource district board. The amendment you have been given is basically a hog-house amendment and has added some additional informational and protective measures to the bill. It cleans up language and provides some downhill land owners' protection. It requires that anyone looking to tile 80 acres or more needs to secure a permit to do so and provides for a fine if they don't.

The local water district office board would still have the option of forwarding an application for a permit request onto the state water engineer if they are not comfortable in exercising the permit. Areas that have been deemed as having statewide significance will need to be permitted by the state engineer.

Mr. chairman I am asking for a do pass recommendation on SB 2280 as amended, and I stand for any questions you may have.

#2

TESTIMONY ON SENATE BILL 2280

Senate Agriculture Committee

**Todd Sando
North Dakota State Engineer
North Dakota State Water Commission**

February 10, 2011

Chairman Flakoll and members of the Senate Agriculture Committee, my name is Todd Sando. I am the State Engineer and am testifying in support of the primary intent of Senate Bill 2280. First let me say that the intent of Senate Bill 2280 and the other bills attempting to streamline the process for obtaining a permit for tile drainage, and the critical problems of high water tables and soil salinization that have motivated them are clearly understood by my staff and I. I believe that the objective of this initiative is to establish a procedure for permitting tile drains that assures a coherent and effective regulatory process, which includes due diligence while avoiding unnecessary loss of time. My staff and I are willing to assist in fulfilling this intent.

It is my understanding that Senate Bill 2280 and House Bill 1459 are being amended and consolidated, therefore, addressing the specific language of Senate Bill 2280 as it currently stands would likely be counter-productive. My staff and I have reviewed the proposed amendments and believe that the amendments, as presented, can provide a reasonable foundation for establishing a coherent regulatory process for permitting tile drainage. Some further adjustment and working through of details will likely be necessary. We believe that an interim study resolution would be very helpful to identify and work through these issues.

In conclusion, my staff and I are willing to assist in any way we can to achieve a coherent, effective, and streamlined process for permitting tile drainage.

I would be happy to answer any questions you might have.



#3

Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association
Testimony on SB 2280
Senate Agriculture Committee
February 10, 2011

Mr. Chairman, members of the Senate Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. I appear before you today in support of SB 2280.

Orderly water management is essential to today's agriculture; the use of subsurface field tile across the U.S. and in North Dakota has been proven time and again to be an effective means in the control of water on the agricultural landscape. North Dakota can make an even more efficient use of tiling as a method of water management in the state by streamlining its permitting process. SB 2280 attempts to do just that.

Local control is an essential; giving local water resource districts the ability to permit tiling projects in the state will place the permitting authority in the hands of those who know the water management needs of a particular watershed the best. It will also serve to expedite the process; all too often paper barriers have become a hindrance to the tiling process to the detriment of all. The provisions of SB 2280 reduce paper barriers, allow for local control of projects and best protect watershed interests.

As stated previously orderly water management on agricultural lands is a top priority in today's agriculture. Streamlining the permitting process in tiling projects is a good first step in accomplishing this goal. Tiling is an effective means of water management; tiling provides for better soil health, a more orderly release of excess moisture from agricultural land while providing better protection for downstream interests.

Mr. Chairman, members of the Senate Agriculture Committee, SB 2280 is the right step in the right direction in regards to tiling regulations. The North Dakota Grain Growers supports SB 2280 and would hope that the Senate Agriculture Committee would give it 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.

Reasons To Consider Tiling

Handout for
information
SB2280

By: Larry Luick
Phone: 701-474-5959

1. **Increased net profit** - It costs virtually the same to farm 120 bu/acre farm land as it does 170 bu/acre. Why not "net" the extra yields?
2. **Removes harmful toxins** - By improving aeration with the removal of excess water, certain toxic substances and disease organisms are removed from the soil. (Such as iron and manganese.)
3. **More consistent seed stands** - By improving the seedbed environment there is less rotting of seeds before germination and a decreased chance of needing to replant. The seeds need to germinate uniformly to receive top yields. Perfect stands are more likely when seeds are planted into warm, dry soil and not into mud.
4. **Post-harvest maintenance** - Because tiled fields are usually harvested earlier, there is more time for field maintenance such as surface ditch maintenance and rock picking for the next year's field preparations.
5. **One-Time Expense** - A one-time expense that begins paying itself back the first year. Payback could take 3-10 years depending on system, weather, crops, etc.
6. **Better soil structure** - Promotes better soil tilth since the soil is not worked when it is wet. Increased soil granulation allows better water and air interaction with the roots.
7. **Increases yields in dry years** - Deeper root development helps plants withstand summer droughts better. Roots usually penetrate to within 15 inches of the water table. High water tables in spring due to poor drainage cause shallow root development which in turn decreases the soil volume from which plants can obtain moisture and nutrients throughout the remainder of the summer. Tiled crops tend to be planted earlier, grow more quickly, and mature before late summer stress sets in.
8. **Allows earlier planting** - A longer growing season allows early planting for higher yields. Crop varieties with longer growing seasons for optimum production may become a possibility.
9. **Faster soil warm-up** - The soil temperature in tiled fields can be as much as 5-15 degrees warmer. A wet soil is a cold soil, which hinders seedling development.
10. **Larger, deeper roots** - By lowering the water table in the spring the roots continue to go down seeking moisture. Tiling creates air and water channels to encourage better root growth and soil penetration. A large fast growing root mass relates directly to yield performance.
11. **Less yield variation for a more dependable cash flow** - In a university study, yields varied 46% on non-tiled soil versus 18% on tiled soil - yields were consistently higher on tiled fields.
12. **Lowering of salt content in soil** - Salt is carried with the water through the tile and away from the growing root zone. Barren areas can regain productivity.
13. **Total field farming** - by lowering the amount of excess water in the field, fields can be farmed from end to end. No waiting for wet areas to dry up or the need for replant travel.
14. **Better livestock production** - By giving the root zones of pasture grass more air and the benefit of aerobic bacteria, plant growth improves.
15. **Water retention** - Because of the sponge effect created by tiling, fields become a reservoir during a large rainfall. The field now has storage capacity to lessen the initial run off and spread the excess flow over the next few days instead of all at once.
16. **Less compaction** - By drying out faster so the ground is not worked when wet, fields experience fewer compaction problems.

17. **More favorable environment for beneficial soil micro-organisms and earthworms.** - Opening the soil to breathe allows microorganisms and earthworms to thrive. These aerobic organisms make the nitrogen and sulfur in the soil more available.
18. **Allows more days of machinery operation** - With faster dry-up and warmer soils, farmers can get in the field earlier in the spring and perform fall operations later in the year when cool temperatures slow down soil drying.
19. **Dry soils allow more timely chemical applications** - With chemical costs rising, apply herbicides and pesticides at the optimum time.
20. **Less erosion** - Soil erosion is reduced by increasing the capacity to hold rainfall and let it percolate through the soil instead of running off. This allows the fertility level and soil structure that has been built-up to stay intact, and allows for less runoff of nutrients such as phosphorus.
21. **Lower drying costs** - Tiled field crops grow and mature faster allowing Mother Nature to dry the crop.
22. **Lower machinery costs** - Tiled fields are workable for more days throughout the year allowing farmers to get more done with less equipment.
23. **Lowers breakeven price per bushel** - With the same input and fixed costs, the breakeven costs per bushel are lowered. If the market should retreat a little, the profit margin is still there.
24. **Better soil aeration** - Tiled soil percolates better allowing water and air to reach the root zone. The channels created from water and air moving down through the soil let it breathe.
25. **Higher yields and improved crop quality** - Yields from field to field will vary. However, drainage experiments have shown some impressive yield improvements such as: Corn up 34%, Alfalfa up 42%, Soybeans up 29%, Wheat up 79%. These increases are dependent on location, soils, growing conditions, etc. and are bound to differ from one area to another.
26. **Lessens the need to farm more acres** - By creating farmland that can grow a more substantial yield consistently, the need to "volume" farm is lessened, freeing up capital to give to Luick Backhoe Service, Inc. for tiling more acres of your farm.
27. **Raises farmland values** - In areas where tiling is "old business," farmland values increase because of the previous installation of tile.
28. **Wider selection of crops** - Because of a more favorable root zone, high value crops or new crop choices may become a possibility. For example, edible beans and potatoes do not like wet soil but do well on tiled ground.
29. **Higher rental rates are possible for "Owners"** - Rental rates should increase since the tiled land results in higher production for the renter.
30. **Health** - Lessens stress for the farmer and banker from spring planting to post-harvest fieldwork.
31. **Possibility of subsurface irrigation** - Depending on elevation differences within the field, it may be possible to establish a tiled field system that doubles as an underground irrigation system. This type of system is called controlled drainage, which reduces the loss of nitrates into downstream waterways.

Compiled From A Variety Of Sources By Larry Luick Of Luick Backhoe Service, Inc. February 4, 2003

#1

TESTIMONY ON ENGROSSED SENATE BILL 2280

House Agriculture Committee

**John Paczkowski, Chief – Regulatory Section
North Dakota State Water Commission**

March 10, 2011

Chairman Johnson and members of the House Agriculture Committee, my name is John Paczkowski and I am the Chief of the Regulatory Section for the State Water Commission. I am here testifying on behalf of the State Engineer in support of the primary intent of Engrossed Senate Bill 2280. First let me say that the intent of Engrossed Senate Bill 2280 and the other bills attempting to streamline the process for obtaining a permit for tile drainage, and the critical problems of high water tables and soil salinization that have motivated them are clearly understood by the State Engineer and his staff.

Engrossed Senate Bill 2280 provides a reasonable foundation for establishing a coherent regulatory process for permitting tile drainage, but we do have some concerns:

- Existing administrative rules allow the State Engineer the latitude to consider any drainage to be of statewide significance for good cause. One example of this is that since 1995 the State Engineer has determined that all drainage in the Devils Lake Basin is of statewide significance due to the ongoing flooding situation within the basin. As Engrossed SB 2280 is currently worded, the State Engineer would no longer be able to make such a determination within the Devils Lake Basin or any other area where a large-scale concern may arise.
- The bill calls for the State Engineer to make a determination on the issuance of a permit application within 30 days for any application determined by the water resource district (district) to be of statewide significance. The process as outlined in N.D. Admin. Code ch. 89-02-01, the chapter dealing with drainage, does not lend itself to meeting the 30-day timeline. In order to meet the deadline a new set of administrative rules would need to be developed and approved. N.D.C.C. § 28-32-07 sets a nine-month deadline for rules to implement statutory change, which could leave an application found to be of statewide significance in limbo until the rules process was completed.
- The one-mile limit for "damage to others" prevents the district from dealing with potential serious problems beyond that mile. Of greatest concern is a terminal wetland beyond the one-mile limit. If a drainageway terminates on the land of another, say a mile and a half from the draining party, the

district would not be authorized to protect that landowner through requiring an easement or through denial of a permit. Since one of the major purposes of tile drainage is desalinization, and initial salt loads are often very high, this would result in one landowner depositing their soil salt load on the land of another, with no regulatory protection of the downstream landowner.

- The issue of not needing a flowage easement if the drain project discharges into an assessment drain, natural water course, or pond, slough, or lake. We are not concerned with water flowing into an assessment drain or natural watercourse, but are concerned with water entering a terminal wetland located on the property of a downstream landowner. This practice may prove harmful to the downstream landowner as it would not allow the wetland opportunity to evaporate so the area could be farmed, and could result in downstream property impacts from solids dissolved in the drain water. The district would not have the ability to protect the downstream landowner as the bill is written.

In conclusion, my staff and I are willing to assist in any way we can to achieve a coherent, effective, and streamlined process for permitting tile drainage.

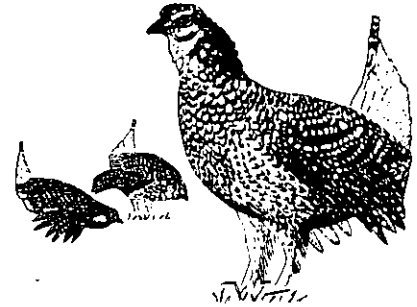
I would be happy to answer any questions you might have.



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
ON SB 2280
HOUSE AGRICULTURE COMMITTEE
MARCH 10, 2011**

Chairman Johnson and members of the House Agriculture Committee:

My name is Mike McEnroe and I represent the North Dakota Chapter of The Wildlife Society. The Chapter is a professional organization made up of over 320 biologists, land managers, university educators, and law enforcement officers in the wildlife and natural resource field.

The Chapter supports legislation which would regulate the subsurface drainage or pattern tile drainage systems, and require a permit from the State of North Dakota for the installation of an artificial subsurface drainage system.

The scientific literature on tile drainage is extensive, often contradictory in conclusions, and to date very little has been done in North Dakota. In other words, one can find a study from somewhere that claims benefits or impacts for almost every aspect of tile drainage. Each tile drainage proposal has a unique set of circumstances; soil types, slope and topography, climate and weather, cropping history, existing surface drainage, and receiving streams. Sorting it all out and predicting either the beneficial or detrimental outcome of a proposed project takes a lot of technical expertise.

For that reason, the Chapter opposes SB 2280, which proposes that the County Water Resource Districts approve the tile drainage permit process. We suggest that the State Water Commission and the State Health Department jointly review and approve permits for tile drainage. These agencies have the science-based staff to conduct the necessary analyses of water quality and quantity impacts to determine permit approval or denial for tile drainage projects. It may also be advisable to have the State Agriculture Department play a role in project review.

Generally the scientific literature would support that tile drainage will increase yield or productivity of at least some crops, would remove water from saturated or water-logged soils, and would result in a desalinization of soils. Tile drainage seems

to yield less phosphorous, pesticide residue, and sediment when compared to lands without tile drainage systems. This is largely because phosphorus and pesticides are tied to soil particles or sediment, and soil movement is less likely to occur through subsurface drains.

On the other hand, tile drainage generally increases levels of nitrates (usually in concentrations greater than 10 mg/l), salts, and trace metals in the effluent and downstream receiving waters. Nitrate levels over 10 mg/l cause drinking water problems, blue baby syndrome, and are difficult or expensive to remove from municipal drinking water supplies. Studies are being conducted in six counties in eastern North Dakota by NDSU Extension and the State Health Department, and preliminary results are similar to these other studies.

Increases in water flows in receiving streams are a mixed bag. Tile drains in the north typically flow during April through June. From July through October, crop production removes most soil water through evapo-transpiration. During November through March, drains operate very seldom because the soil and the moisture above the tile is frozen. However, in some years, it is possible for drain tiles to operate throughout the winter months if the soil is insulated by heavy snow cover.

Also, in North Dakota where subsurface drainage is being proposed, i.e., the Red River Valley, there already is an extensive system of surface drainage. The tile drainage will be additive to the existing surface drainage. Research shows, that when combined with surface drainage, the addition of subsurface tile drainage will increase the total annual water output from the drained lands.

Given the eutrophic nature of Devils Lake and Lake Ashtabula, and the dependence of cities on the Red River for drinking water, it makes little sense to add more nitrates to these waters. Given the flood situation at Devils Lake and along the Red River, it also makes no sense to artificially add any water to these basins.

We would recommend that any subsurface or surface drainage project proposed in the eastern seventeen counties of North Dakota be declared of "statewide significance."

An individual tile drainage project would likely have minimal or negligible impacts on downstream residents or landowners. However, as more and more tile drainage systems are installed, there are likely to be downstream cumulative impacts to landowners and municipalities. The combined state agencies have the expertise to analyze the impacts of proposed tile drain projects; the County Water Resource Districts do not.

Analysis of the efficacy and impacts of proposed tile drain projects will take time. A thirty-day time frame is not sufficient to consider the data and the downstream impacts. In addition, notification of downstream interests should not be restricted

to those located within 1 mile of the proposed project. Notification should be required for all downstream interests that will be affected as the effluent moves downstream.

For all these reasons, we would urge a "do not pass" vote on SB 2280.

Thank you for the opportunity to comment on this bill. I would try to answer any questions the committee may have.

Attachments:

State Water Commission article, "Tile Drainage Gaining Popularity in State in Recent Years", ND Water Magazine, July 2006.

Cover of State Water Commission report, Response to SB 2020, section 11 of the 60th Legislative Assembly of North Dakota, 95 page report.

Email letter to Editor on Fargo Forum Inforum, March 5, 2011.

Tile Drainage Gaining Popularity in State in Recent Years

By Michael Noone

In North Dakota, where large portions of the state have been in a wet cycle for over a decade, agricultural land has been frequently inundated with standing water, either from snowmelt, or from frequent storms. Standing water on land delays planting, and can kill crops that have been planted.

Unfortunately, areas throughout North Dakota that have been wet are also areas with clay-rich soils that have poor water infiltration, leading to standing water for prolonged periods of time. It is understandable that farmers want to get standing water off of their land as soon as possible, to improve their chances of higher yields in the fall.

A practice that has gained popularity in North Dakota in recent years is called tile drainage. Perforated polyethylene tubing is buried in a field, generally at a depth of three to six feet. The pipe takes in surrounding ground water that is saturating the soils, and transports it away from the field. From there, the water is discharged into a waterbody such as a large wetland or lake, ditch, or into a natural watercourse.

Tile drainage can help a landowner farm land that might otherwise be lost to flooding for that season. It is called "tile" drainage because up until the 1970s, most drainpipes were made from short, cylindrical sections of concrete or clay called "tile."

The positive aspect of using tile drainage in agriculture is that it allows for timely fieldwork and crop growth on soils that would otherwise be marginal for agriculture. The downside of this practice is the potential for increased flooding

downstream, negative effects on water quality due to sedimentation, and leaching of fertilizers, herbicides, and pesticides in the waterbodies into which the drain tile discharges.

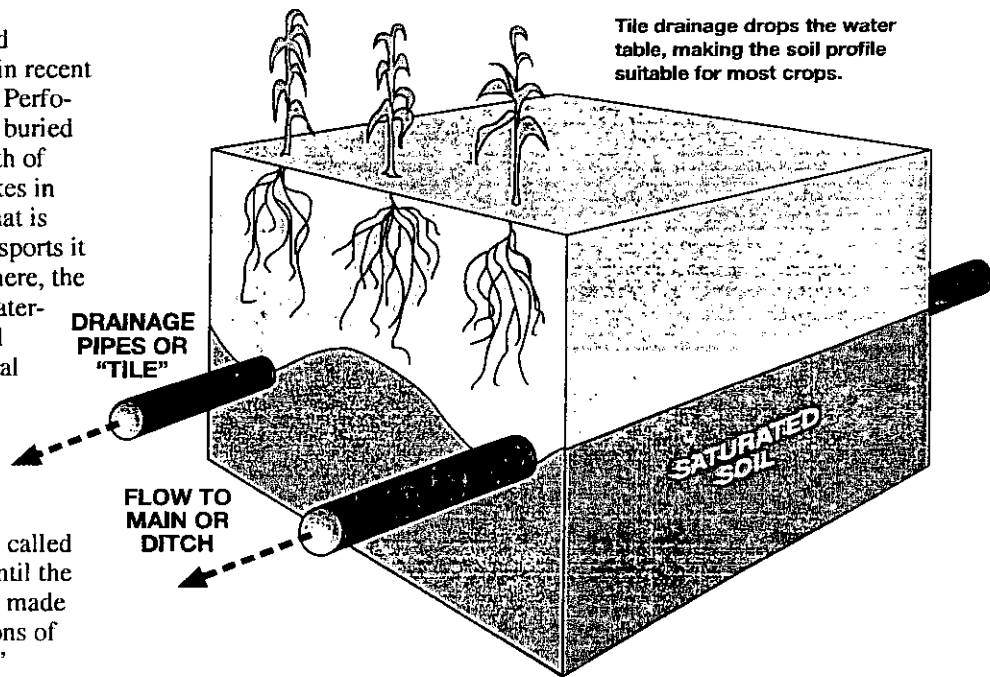
Draining, filling, or pumping of an area that has a watershed, or contributing area of more than 80 acres requires a permit from North Dakota's Office of the State Engineer. However, there has been a significant amount of confusion in our state about whether drain tiling also requires a permit from the State Engineer.

In fact, installing drain tile does require a permit from the State Engineer, when the contributing watershed is more than 80 acres. It is

important to understand and account for the fact that the contributing area may be larger than the perimeter of the drain tile. In areas of the state where projects have been deemed to be of statewide significance, such as the Devils Lake basin, tile drainage systems are also subject to those orders.

For questions regarding drain tile permits, contact John Paczkowski, North Dakota State Water Commission at 701-328-3446, or by e-mail at jpaczowski@nd.gov.

For more information on drain tile, contact Gary R. Sands with the University of Minnesota Extension Service at 621-625-4756, or by e-mail at grsands@umn.edu.



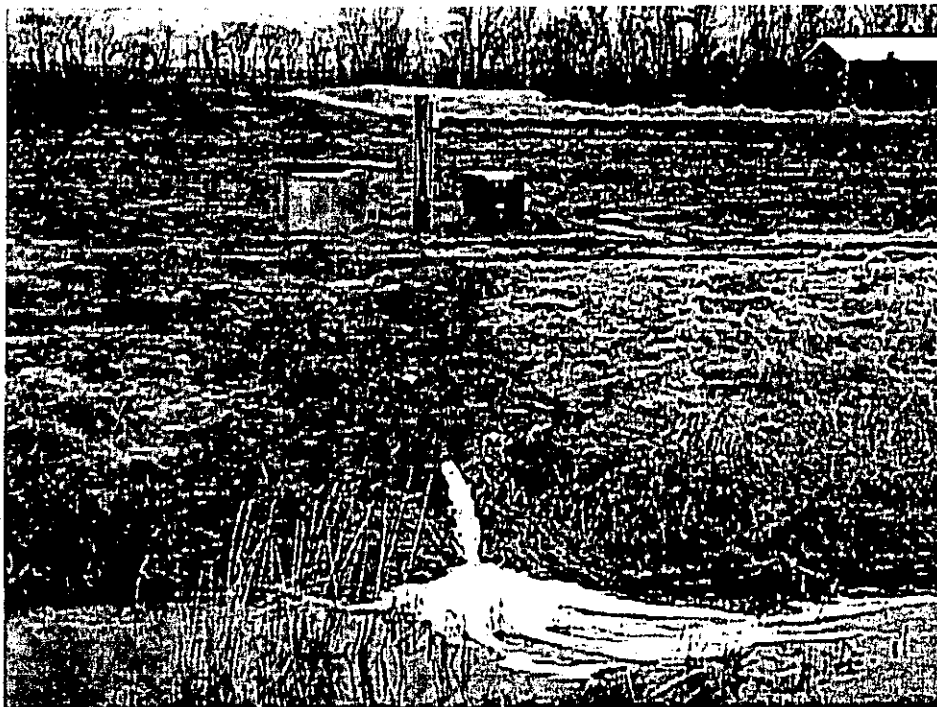
North Dakota State Water Commission
Dale L. Frink, State Engineer
900 East Boulevard Ave. • Bismarck, ND 58505
(701)328-2750 • <http://www.swc.state.nd.us/>

Patrick Fridgen, Editor

The State Water Commission does not discriminate on the basis of race, color, national origin, sex, age, or disability in employment or the provision of services.

Potential Effects of Subsurface Drainage on Water Appropriation and the Beneficial Use of Water in North Dakota

RESPONSE to SENATE BILL No. 2020, Section 11
of the 60th LEGISLATIVE ASSEMBLY of NORTH DAKOTA



By
W. M. Schuh
(Cartography by Rod Bassler)



Water Resources Investigation No. 45
North Dakota State Water Commission

2008

Sent: Saturday, March 05, 2011 8:13 AM

To: jeffprintz@bis.midco.net

Subject: article from INFORUM / *FARGO Forum*

You have been sent this article from jlp

Field tile worsens flooding

Ron Gilmore - 03/05/2011

I am a longtime resident of North Dakota with more than 20 years of living in the Red River Valley. I am the son of a farmer, and owner of farmland as well. I support farming and farmers, but I take great exception to the claims of Sen. Joe Miller, R-Park River, that tiling will reduce flooding (Forum, Feb. 26). First is the claim that tiling does not contribute to flooding because it moves water away during nonflooding times to allow for water to be stored. This may be true during summer heavy rains, as tiling does help control water content in the soil. However, it doesn't help coming out of winter into spring. The depth of the tile is at levels that normally are frozen along with the ground. Thus, no benefit to tiled ground is captured during spring flooding. Just the opposite actually occurs, especially during times of high moisture in the fall as we have seen in recent years. Tiled water is dumped into either manmade drains or natural waterways. What happens when the water is artificially drawn off the land is that these waterways freeze up at levels they normally would not or, in many cases, the waterways would be void of water. A dry or normally running waterway allows for water to start flowing in the spring in a way nature intended. When these waterways are subject to artificial drainage, they freeze up solid because most are not over 3 to 5 feet deep. This creates an ice block plugging the drain. Now water is prevented from moving slowly and normally to the rivers. Instead, what you get is backup and then a big bang when the water cuts through the ice jams. This results in washed out roads, higher crest levels, etc. Let's look further at tiling. Tiling has a negative effect upon wetlands by stopping water from getting to them. Wetlands are nature's filters of our water, allowing slow percolation of water down to the aquifers as they recharge them and removing many of the pollutants along the way. While North Dakota has seen wet years, water levels in many of our aquifers have been dropping as demand for that water increases. Now Miller and others are proposing speeding up the permitting of the most destructive thing to aquifer recharging that we can do. I am for a balance, but this bill tips this balance too far and too fast. and they are trying to do it with smoke-and-mirrors claims about flood control when the state is facing increased flooding in the Devils Lake Basin, three years of flooding along the Red, Sheyenne and many other rivers and streams across North Dakota. Flooding is going to occur, but there is no reason to increase the risk. We all need to think long term on this issue instead of short term. For guidance on what to avoid, all we need to do is look to the areas in South Dakota and Minnesota that have been heavily tiled to see the negative impacts as I stated regarding wetlands and aquifers. Gilmore lives in Fargo.

3/7/2011

#3



Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association
Testimony on SB 2280
House Agriculture Committee
March 10, 2011

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