

Testimony with regard to House Bill No. 1462

My name is Leon Mallberg and I am asking for a "Do Pass" on House Bill No. 1462. I live in Dickinson, North Dakota but I manage the family farm in Sargent County, North Dakota. I am a "remote land owner" in the eyes of the Water Board. The property is located in what is known as the Drain # 11 Watershed, the largest watershed of its kind in North Dakota. I am not a paid lobbyist nor do I represent any special interest or industry group. I am just a "run of the mill" citizen.

As you may know, this watershed has been in the spot light for the last seven (7) years. That would not be the case if House Bill No. 1462 had been in effect. Two items in the bill are presented for your consideration:

First, under Section 1, Item one: "The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body has been served on the affected party." On October 20, 2016, the Sargent County Water Board had their monthly meeting and passed a "Resolution of Necessity" with respect to Drain # 11. This action was not published in advance of the meeting in any agenda. It was passed unanimously. The only people at the meeting were five board members, the board secretary and one county landowner who had no interest in Drain # 11. The statute states that if any affected landowner objects to the board action they must do it via the courts within thirty (30) days. Unchallenged it eliminated any possible vote of approval by the landowners. No affected landowner was notified that there was a hard and fast window of 30 days. At 2:30 PM on the 27<sup>th</sup> day of the 30 days the minutes were offered showing the resolution. With the 30<sup>th</sup> day being a Saturday (November 19, 2016) it left 2 days to decide what to do, find an attorney, prepare a legal objection and present the document to the Court. There was not enough time. One would expect that a "Public Board" would notify some affected parties of the 30 window. After seven years and spending \$110,000.00 in legal fees to try and get a landowner vote to no avail, we have a \$4,100,000.00 4.5 mile ditch without the approval from those who pay and 40 miles of remaining Drain # 11 ditch with no maintenance funds.

Second, Section 2, Item 2. "The district court may award costs and reasonable attorney's fees to appellants **when three or more aggrieved individuals** have joined in an appeal from a decision of the water resource board and the court rules in favor of the appellants." (I question the "**three or more**".) This was added to the bill because of the following: (Specific information on this situation will be provided to Committee Members upon request.) A landowner within the Drain # 11 watershed was told that he was trespassing on Water Board land. The landowner denied the actuation and he was then told if he continued to farm the subject land he would have to pay cash rent. The landowner stated that he owned all the land in question. The Water Board then threatened to send the sheriff to evict him from the property. The issue went to District Court and the ruling there was in favor of the Water Board. The landowner appealed it to the North Dakota Supreme Court and it ruled in favor of the landowner stating that the Water Board only had an easement and owned nothing. The total effort cost the landowner over \$28,000.00 in legal fees, time, incidentals and travel.

There is also a similar case from Pembina County where a District Judge saw fit to awarded attorney fees but on appeal to the Supreme Court, the attorney fees were denied because there was no provision for it in the law. (2005 ND 106 – No. 20040299)

Respectfully yours --- Leon L Mallberg

Dear North Dakota Legislator:

December 26, 2022

Sargent County now has 4.5 miles of 90 foot wide ditch costing \$4,100,000.00 where those that pay were excluded. Autocratic actions of Public Boards, at any level, should be questioned and corrected. I refer to the Water Board of Sargent County, ND. This situation has left the affected landowners frustrated and dismayed and questioning the word "Public" in Public Board. A quote from a County Commissioner in the Sargent County Teller on July 10, 2015: ***"(County Commissioner) 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 commission." The question is who do they answer to?*** Over a substantial period of time, they have not seen fit to allow landowner to be involved. If you are a remote landowner living outside the County you have little standing. In a memorandum prepared for the Water Board for Forum Communication Outlets on March 14, 2019, it states: ***"The District had no legal obligation to take the Project to a vote (of affected landowners), and did not even have any obligation to discuss the Project with the public (taxpayer)."*** Apparently they feel the law allows them the latitude to say that. Reviewing State law, the Water Boards truly do not answer to anyone.

The construction in question is called the Drain # 11 Improvement Project, involving the largest watershed of its kind in North Dakota. The area includes land in Sargent, Ransom, and Dickey Counties in ND and at one time Marshall County, SD. For 106 years, the only land to be assessed for its construction / up-keep was Sargent County. The other Counties were not assessed but contributed approximately 40% of the water in the drain. Sargent County carried the whole load for 106 years!

Several requests were made to include all counties in the watershed and provide a vote of the affected landowners ***to no avail***. A "Resolution of Necessity" by five (5) unelected board members was all that was needed to exclude all landowner in three counties.

The project has progressed with the following result: Drain # 11 has a total of 44 miles of ditch of which 10.5 miles were to be improved. Once a "Motion to Proceed" was passed, the Water Board found they could only afford 3.5 – 4.5 miles of the proposed 10.5 miles. Presently we now have a new 90 foot wide ditch in the middle of nowhere with a 106 year old, 40 foot wide ditch on both ends at a cost \$4,100,000. Presently there is no benefit or return to anyone in the watershed. Not one additional shovel of dirt will be moved for another 6 – 7 years because of the way it was financed. The board committed all of the maintenance money allowed by law for 7 years to secure the construction bonds leaving no money for maintenance of the remaining 41.5 miles of Drain.

There was a solution that only the landowners could provide but the board would not consider it. However there is a Water Board in Bottineau County that seems to work very well but their first priority and concern is the landowner. As a suggestion, the Legislature should consider changing the law so that all land in a watershed is included and water board maintenance or improvement projects over \$100,000.00 are voted on by the affected landowners to make sure they are involved and agreed. Additional details are available upon request.

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