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**Testimony of
Matt Perdue
North Dakota Farmers Union
In Opposition to SB 2325
House Energy and Natural Resources Committee
March 20, 2025**

Chairman Porter and members of the committee,

My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members. NDFU is concerned SB 2325 may negatively impact wetland mitigation banking.

NDFU is one of six organizations that worked together to establish North Dakota Agricultural Mitigation (NDAM) in 2021. NDAM is a nonprofit organization with the mission of developing wetland mitigation banking alternatives for farmers facing Natural Resource Conservation Service (NRCS) wetland compliance challenges. NDAM has established the Ag Wetland Trade, a program that allows landowners who have voluntarily established wetlands to sell credits to individuals who are looking to mitigate impacts to wetlands.

As a member of the NDAM executive committee, I have the opportunity to work with partners from across the state to provide an important water management option to North Dakota farmers and landowners. NDAM also contracts with a technical consultant and attorney to assist with the development of wetlands and wetland easements. Following discussions with our partners, NDFU is concerned SB 2325 would make the wetland mitigation process more complex, costly and time-consuming.

SB 2325 requires the determination of an "Ordinary High-Water Mark" (OHWM) for any nonfederal wetland easement within the state. However, OHWM elevations do not readily translate to delineating seasonal or semi-permanent wetlands, which make up most wetland mitigation easements. Wetland mitigation bank sponsors like NDAM design wetlands with a "maximum pool elevation" or "maximum ponding depth," rather than defining an OHWM. The U.S. Army Corps of Engineers uses a specific methodology to define OHWM, which differs from the design consideration when delineating a wetland or establishing an impounded pool elevation. It is already the responsibility of engineers and technical consultants to conduct topographic surveys to ensure the proposed wetland mitigation water elevations do not pool water on upstream adjacent property.



We agree holding water within one's own mitigation bank is warranted and believe existing water law and property rights protect individuals from such circumstances. Charging the Department of Water Resources with making OHWM determinations on all wetland easements within the state would be a challenging and complicated task.

We respectfully request a "Do Not Pass" recommendation on SB 2325. Thank you for your consideration. I will stand for any questions.