

2025 HOUSE AGRICULTURE

HB 1544

2025 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1544
1/31/2025

A BILL for an Act to amend and reenact sections 61-32-03 and 61-32-03.3 of the North Dakota Century Code, relating to drainage permits.

8:28 a.m. Chairman Beltz opened the meeting.

Members Present: Chairman Beltz, Vice Chairman Hauck, Representatives Anderson, Dobervich, Henderson, Holle, Hoverson, Kiefert, Nehring, Olson, Rios, Schreiber-Beck, Tveit, Vollmer

Discussion Topics:

- Upstream benefits
- Downstream notification
- Notification response
- Mediation
- Drainage issues
- Drain tile
- Regulatory
- Drainage development
- 2011, 80-acre rule
- Unreasonable damage
- Cost of regulatory expansion

8:30 a.m. Representative Daniel Johnston, District 24, Kathryn ND, introduced and testified.

8:32 a.m. Rory Gabel, Valley City, testified in support and submitted testimony #33258, and #33273.

8:40 a.m. Samuel A. Wagner, Ag and Food Field Organizer, Dakota Resource Council, testified in favor and submitted testimony #32741.

8:55 a.m. Pete Hanebutt, ND Farm Bureau, testified in opposition.

8:58 a.m. Dan Wogsland, Lobbyist, ND Grain Growers Association, testified in opposition and submitted testimony #33130.

9:03 a.m. Levi Otis, Director of Government Affairs, Ellingson Companies, testified in opposition and submitted testimony #33091.

9:30 a.m. Jack Dwyer, Executive Secretary, ND Department of Water Resource Districts Association (NDWRDA), testified in opposition.

9:37 a.m. Matt Lindsay, Engineering & Permitting Section Manager, ND Department of Water Resources, testified as neutral and submitted testimony #32476.

Additional written testimony:

Erick Larson, Farmers, CLF, Inc., Fullerton, ND submitted testimony in opposition #32723.
Brent Baldwin, President & Farmer, Red River Valley Sugarbeet Growers Association, submitted testimony in opposition #33047

Madeline Luke, Valley City, ND, submitted testimony in favor #33107

Gary Krapu, Valley City, ND, submitted testimony in favor #33110

Barry Borg, Barnes County, Valley City, submitted testimony in favor #33259.

9:55 a.m. Chairman Beltz closed the meeting.

Diane Lillis, Committee Clerk



Testimony Neutral of
HB 1544
House Agriculture
January 31, 2025

TESTIMONY OF

Matt Lindsay, Engineering & Permitting Section Manager, Regulatory Division

Chairman Beltz, and members of the House Agriculture Committee, I am Matt Lindsay the Engineering & Permitting Section Manager of the Department of Water Resources. I'm here today to provide neutral testimony on House Bill 1544.

House Bill 1544, at least the portion related to Department actions in Section 1 of the bill, will require surface drainage permits be obtained by those draining less than 80 acres when the drainage is discharged on to neighboring landowners without first securing permission to do so.

This bill will result in a regulatory expansion of surface drainage law North Dakota Century Code § 61-32-03.

If this bill were to pass as proposed, there would likely be a notable increase of drainage permit applications to both the Department and the county water resource board where drainage is proposed.

Since this bill will result in an increase in regulatory responsibilities for the Department, the Department believes a fiscal note to account for the expected costs to address the new regulatory expansion is necessary, which would include at least one (1) additional FTE to account for an increase in surface drain permit applications.

If it helps provide context to this committee, the Department developed policies REG-2020-3 and REG_02.2024 to both provide more transparency for permitting review considerations as well as address jurisdictional questions regarding surface drain permitting. Those policies are on the Department's Drainage and Water Management webpage [here](#) and are also included in my testimony online.

Thank you for the opportunity to testify, and I'm happy to answer any questions.



DRAINAGE PERMITTING CONSIDERATIONS

POLICY | REG_02.2024

NORTH
Dakota | Water Resources
Be Legendary.

Effective Date 04/01/2024

POLICY OUTLINE

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1 POLICY STATEMENT

In an effort to clarify definitions of “drain” and what constitutes “drainage” or “draining” requiring a permit under North Dakota Century Code (N.D.C.C.) § 61-32-03 and North Dakota Administrative Code (N.D.A.C.) ch. 89-02-01, the North Dakota Department of Water Resources (Department) has developed the following definitions and parameters. This Policy aims to provide transparency to the drainage permitting jurisdictional limits.

1.1 POLICY AUTHORITY OR IMPLEMENTATION

This policy garners authority from N.D.C.C. § 61-32-03 and N.D.A.C. ch. 89-02-01 and will be implemented through drainage permit application and permit requirements.

1.2 ACCEPTANCE OR ENFORCEMENT

The Department reserves the right to change this Policy as necessary to ensure the Department fulfills its statutory duties.

The Department reserves the right to return any application submitted under this Policy to the applicant for correction if, in determination, it does not comply with the Policy’s intent or is insufficient for the Department to make an informed decision.

The Department reserves the right to enforce this policy as per the process outlined in N.D.C.C. § 61-32-03 and N.D.A.C. ch. 89-02-01.

1.3 APPEALS

Decisions may be appealed as per the process outlined in N.D.C.C. § 61-03-22.

1.4 POLICY DEVIATIONS

The Department reserves the right to deviate from policy as deemed appropriate and within requirements outlined in N.D.C.C. or N.D.A.C.

Policy deviation requests from applicants may be considered by the Department if the applicant can justify why requirements of this policy are not necessary or applicable. Such a deviation will not be granted without significant justification. Additionally, a deviation request does not guarantee that a deviation will be granted, and any work performed to pursue such a deviation request will be solely at the applicant’s expense.

1.5 DEPARTMENT CONTACT

Please contact the Department’s Engineering and Permitting Section at (701) 328-4956 or dwrregpermit@nd.gov for questions regarding this Policy or other water drainage questions.

2 PRE-APPLICATION CONSULTATION

The Department strongly encourages pre-application consultation prior to a drainage permit application submittal. Early consultation between the applicant, the applicant's representative(s), and the Department will support early understanding and compliance with this policy to limit unexpected project costs or delays.

3 GENERAL POLICY CONSIDERATIONS

N.D.C.C. ch. 61-32 and N.D.A.C. art. 89-02 require permits for “drainage of a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty areas or more.” In interpreting codified statutes, rules, and definitions, the Department will use the parameters laid out within this Policy.

The definitions used within this Policy are used by the Department only when reviewing drainage permits and appeals.

3.1 DRAIN

"Drain" is defined in N.D.C.C. § 61-16.1-02 as, “any natural watercourse opened, or proposed to be opened, and improved for drainage, and any artificial channel constructed for drainage. The term includes dikes and appurtenant works and may include more than one watercourse or artificial channel when the watercourses or channels drain land within a practical drainage area.”

In practice, “drain” means a physical feature, such as a ditch, pipe, or pump, constructed or used to accomplish drainage or draining of a pond, slough, lake, or sheetwater, or any series thereof, including appurtenant works.

Other common terms that may be associated with a drain include legal drain, assessment drain, lateral drain, ditch, canal, channel, pipe, or diversion.

3.1.1 ACCEPTED AS ‘DRAINS’:

The Department considers the following items to be “drains”:

- a. A ditch or pipe constructed, installed, or operated to drain by gravity a pond, slough, lake, or sheetwater, or any series thereof.
- b. A mechanical pump or siphon constructed, installed, or operated to drain a pond, slough, lake, or sheetwater, or any series thereof.
- c. Placement of fill, as defined in this policy.
- d. Modifications to a watercourse for the purpose of enhancing, opening, or improving the watercourse, including slope modifications or improvements, deepening, widening, straightening, rerouting, or diverting of watercourses.
- e. Modifications to an existing drain or its appurtenant works for the purpose of modifying how the original drain operates or accomplishes drainage or draining, including slope modifications or improvements, deepening, widening, enlarging, rerouting, or extending existing drains, as well as changes to a drain’s previously authorized or permitted control(s) or operation plan(s).

- f. Municipal or city stormwater management activities that occur within the jurisdictional limits of a municipality or city for the purposes of draining a watercourse, pond, slough, or lake, or any series thereof or constructing or modifying an assessment drain.

3.1.2 UNACCEPTED AS 'DRAINS':

The Department does not consider the following to be drains:

- a. Maintenance of a drain or watercourse, which includes removal of silt and vegetation from a drain or watercourse including removal of obstructions or woody debris, such as the case with snagging or clearing. This is not synonymous with the “cleaning out and repairing a drain” definition in N.D.C.C. § 61-16.1-02(5).
- b. Construction, installation, modification, or removal of a stream crossing that does not involve other drainage activities.
- c. Municipal or city stormwater management activities that occur within the jurisdictional limits of a municipality or city and for the purposes of managing sheetwater runoff. These activities include constructing, modifying, and maintaining storm sewer and appurtenant works to alter the sheetwater flow. It is recommended that such activities be regulated under a stormwater management plan recognized by the municipal or city government, as defined in N.D.C.C. ch. 40-01.
- d. Land use changes, such as the construction, modification, or maintenance of buildings, parking lots, streets, lots, or similar activities, that alter sheetwater flow.
- e. Agricultural practices, such as farming, plowing, or working the soil to prepare soil for planting or seeding agricultural crops.
- f. Temporary dewatering of dam or pond reservoirs or construction sites for inspection, repair, or construction.
- g. Reservoir operation of dam and pond spillways.
- h. Beneficial use of water, as described in N.D.C.C. ch. 61-04, including domestic, municipal, livestock, irrigation, industrial, fish, wildlife, or recreational uses. This includes replacement of baseflow in a watercourse for the purpose of water supply, as is the case under drought conditions.
- i. Highway or road ditch and drainage activities, including constructing, modifying, and maintaining reasonable road ditch drainage for and by federal, state, county, and township roadways within the state. This does not include the following:

- Drainage features constructed, modified, or maintained within a highway or road right-of-way by someone other than the road authority of jurisdiction;
 - Modification of a watercourse;
 - Assessment drains; or
 - Drainage of ponds, sloughs, lakes, or any series thereof.
- j. Subsurface water management, as described and regulated under N.D.C.C. § 61-32-03.1.
- k. Bank stabilization projects, such as hardening the banks of a watercourse with riprap or similar material to inhibit head cutting or bank erosion, that will not deepen or widen the channel or otherwise measurably or intentionally increase the conveyance of the watercourse.

3.2 PLACEMENT OF FILL

“Placement of fill” means material, such as earth, soil, concrete, rubble, or riprap, placed in a pond, slough, lake, or any series thereof, with the intent to accomplish drainage or draining of one of those water features by storage removal.

Placement of fill means or includes more than ten-percent reduction in a pond, slough, lake, or any series thereof as a function of fill volume (acre-feet) versus the pond’s, slough’s, or lake’s existing surface area (acres).

3.2.1 UNACCEPTED AS ‘PLACEMENT OF FILL’

Placement of fill does not mean or include:

- a. Fill placed in “sheetwater.”
- b. Fill placed in an existing drain or watercourse, as that action would either be a modification to or an obstruction of an existing drain or watercourse.
- c. Fill or earthwork to construct or modify a “dam, dike, or other device” under N.D.C.C. § 61-16.1-38 and N.D.A.C. article 89-08.
- d. Fill or earthwork necessary to construct or modify a road or highway embankment otherwise subject to the road authority’s jurisdiction.
- e. Transmission poles, pilings, foundations, or any other infrastructure of a similar footprint.

- f. Fill placed above the natural outlet elevation of a slough, pond, lake, or any series thereof, otherwise not removing available volume or storage of those water features.

3.3 ADDITIONAL DEFINITIONS

- a. Appurtenant works to a drain: Drain features that are integral design and function components, including control structures, stream crossings, dikes, and spoil piles.
- b. Control Structure: A pump(s), sluice gate(s), stop-log structure(s), grade or drop control structure(s), or passive weir(s).
- c. Drainage/ Draining: The removal of water from a pond, slough, lake, or sheetwater, or any series thereof by the construction of a new drain or modification of an existing drain. This includes the removal of water volume or storage or the removal of water faster than occurs under existing conditions.
- d. Sheetwater: Defined in N.D.C.C. § 61-32-03 as “shallow water that floods land not normally subject to standing water.” Generally, sheetwater is synonymous with the terms overland flow, runoff, surface water, excess water, and floodwater. Specifically, sheetwater includes water running or flowing over land or the surface of the earth as the result of normal precipitation, such as rainfall or snowmelt, or as the result of water beyond normal runoff or precipitation, such as the case with flooding.

4 POLICY HISTORY

Policy Adopted: 9/21/2020

Policy Version REG_02.2024 Effective: 04/01/2024

Previous Revision(s):

9/21/2020: REG-2020-2



POLICY/GUIDELINES

REG-2020-3

STATEWIDE OR INTERDISTRICT SIGNIFICANCE DETERMINATIONS

REG-2020-3

STATEWIDE OR INTERDISTRICT SIGNIFICANCE DETERMINATIONS

EFFECTIVE: 03/13/2020

POLICY VERSION 1

POLICY OUTLINE

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5. Policy Addendums

1. POLICY STATEMENT

N.D. Century Code (N.D.C.C.) section 61-32-03 and N.D. Administrative Code (N.D.A.C.) chapter 89-02-01 require the State Engineer to determine whether an application for drainage meets “drainage of statewide significance,” such that a more thorough permitting process, commonly referred to as the “Statewide Process,” is followed for the application. While the State Engineer is guided by statewide criteria in N.D.A.C. chapter 89-02-01, there are common projects or scenarios where the application will or will not undoubtedly be determined as proposing drainage of statewide or interdistrict significance.

This policy satisfies the State Engineer’s requirement to consider the criteria in N.D.A.C. section 89-02-01-09, as well as provides an initial review of the evaluation factors in N.D.A.C. section 89-02-01-09.2. Specifically, this policy identifies the applications the State Engineer deems to be drainage of statewide or interdistrict significance under N.D.C.C. section 61-32-03 and N.D.A.C. chapter 89-02-01. Additionally, this policy aims to provide an avenue for certain types of drainage applications to be determined “not drainage of statewide or interdistrict significance.”

This policy harnesses the State Engineer’s mission, which is “managing the water resources of the state for the benefit of its people” by following specific agency goals to “regulate and manage water resources for the future welfare and prosperity of the people of North Dakota.”

1.1. POLICY AUTHORITY AND IMPLEMENTATION

This policy garners authority from N.D.C.C. section 61-32-03 and N.D.A.C. chapter 89-02-01 and will be implemented through drainage permit application and permit requirements.

1.2. STATE ENGINEER ACCEPTANCE OR ENFORCEMENT

The State Engineer reserves the right to change this policy as necessary to ensure the State Engineer fulfills its statutory duties. Additionally, the State Engineer reserves the right to return any application submittal as required or allowed under this policy to the applicant for correction if, in the State Engineer’s determination, it does not comply with the policy’s intent or is insufficient for the State Engineer to make an informed decision. The State Engineer reserves the right to enforce this policy as part of the drainage permit process outlined in N.D.C.C. section 61-32-03 and N.D.A.C. chapter 89-02-01.

1.3. APPEALS

Any decision of the State Engineer may be appealed under N.D.C.C. section 61-03-22.

1.4. POLICY DEVIATIONS

Policy deviations may be considered by the State Engineer if the applicant can justify why requirements of this policy are not necessary. However, such a deviation will not be granted without significant engineering or legal justification. Additionally, a deviation request does not guarantee that a deviation will be granted, and any work

performed to pursue a deviation request will be solely at the applicant's expense. Unforeseen scenarios encountered during policy implementation may require policy changes.

2. PRE-APPLICATION CONSULTATION

The State Engineer strongly encourages pre-application consultation prior to a drainage permit application submittal. Early consultation, whether conference calls, meetings, or correspondence between the applicant, the applicant's representatives, and the State Engineer, will ensure early understanding and compliance with this policy to limit any unexpected project costs, delays, or requirements.

3. GENERAL POLICY REQUIREMENTS

For the purposes of N.D.C.C. section 61-32-03 and N.D.A.C. chapter 89-02-01, the following process applies:

3.1. STATEWIDE OR INTERDISTRICT SIGNIFICANCE DETERMINATIONS. In determining whether the proposed drainage under an application is "drainage of statewide or interdistrict significance," the State Engineer must consider the criteria in N.D.A.C. section 89-02-01-09 (Criteria). Upon an initial, comprehensive review of criteria, the State Engineer must make a determination to classify an application as proposing or not proposing drainage of statewide or interdistrict significance. As a matter of practice, the State Engineer also uses the evaluation factors in N.D.A.C. section 89-02-01-09.2 (Factors) to further inform the State Engineer's statewide or interdistrict significance determination.

3.1.1. APPLICATIONS THAT WILL BE DRAINAGE OF STATEWIDE OR INTERDISTRICT SIGNIFICANCE. Based upon review of Criteria and Factors, the following applications, unless a unique or complex situation exists, WILL be considered drainage of statewide or interdistrict significance:

- 3.1.1.1. Drainage of a navigable watercourse or waterbody.
- 3.1.1.2. Drainage from a lake.
- 3.1.1.3. Drainage that results in an inter-basin transfer (HUC8 or larger).
- 3.1.1.4. Drainage that may have a substantial effect on a watercourse or lake with known flooding issues.
- 3.1.1.5. Drainage that will have an unmitigated effect on another district.
- 3.1.1.6. Drainage that has the potential to negatively affect vital public infrastructure, such as existing dikes; medium or high hazard dams; or other flood control or protection systems.
- 3.1.1.7. The State Engineer classifies applications for specific types of water management issues or regions of the state as drainage of statewide significance. Currently, those applications include, until further notice:

- 3.1.1.7.1. Drainage within the Devils Lake Basin.

3.1.2. APPLICATIONS THAT WILL NOT BE DRAINAGE OF STATEWIDE OR INTERDISTRICT SIGNIFICANCE. Based upon review of Criteria and Factors and notwithstanding the requirements of section 3.1.1 or 3.1.3, the following

applications, unless a unique or complex situation exists, WILL NOT be considered drainage of statewide or interdistrict significance:

3.1.2.1. Smaller drainage projects that drain sheetwater only, including:

3.1.2.1.1. Deepening or widening of existing drains

3.1.2.1.2. Small drains that are within a square mile and are not part of a phased drainage project

3.1.3. APPLICATIONS THAT MAY BE DRAINAGE OF STATEWIDE OR INTERDISTRICT SIGNIFICANCE. Based upon review of Criteria and Factors and notwithstanding the requirements of section 3.1.1 or 3.1.2, the following applications, unless a unique or complex situation exists, MAY be considered drainage of statewide or interdistrict significance:

3.1.3.1. New drainage beyond the scope of section 3.1.2.1, including assessment and private drains, that may have a negative effect on a watercourse, pond, slough, or any series thereof with known flooding issues

3.1.3.2. Drainage of a watercourse.

3.1.3.3. Drainage of a slough, pond, or any series thereof.

3.1.3.4. Drainage that results in an inter-basin transfer (HUC12 or HUC 10).

3.1.3.5. Projects with known, special considerations for other state agencies, such as:

3.1.3.5.1. Drainage with the potential of negatively affecting the water quality of the Sheyenne River.

3.1.3.5.2. Drainage with the potential to spread known aquatic nuisance species populations, as identified by the State Game and Fish Department.

3.1.3.6. Drainage that will have an effect on another district, albeit mitigated in some fashion.

3.1.3.7. Drainage affecting public infrastructure, such as roads, highways, or stream crossings.

3.1.3.8. If it is not readily apparent that an application is drainage of statewide or interdistrict significance, the State Engineer will solicit comments from the following entities to help inform the State Engineer's statewide or interdistrict significance determination:

3.1.3.8.1. Comments must be requested from the following entities unless otherwise noted:

3.1.3.8.1.1. The district(s) of jurisdiction;

3.1.3.8.1.2. The Water Development and Planning Divisions of the State Water Commission;

3.1.3.8.1.3. Any district that may be affected by the project;

3.1.3.8.1.4. The State Game and Fish Department;

3.1.3.8.1.5. The State Department of Environmental Quality;

- 3.1.3.8.1.6. The Department of Transportation, if applicable;
- 3.1.3.8.1.7. The State Historical Society, if applicable;
- 3.1.3.8.1.8. The State Department of Trust Lands, if applicable;
- 3.1.3.8.1.9. The State Parks and Recreation Department, if applicable; and
- 3.1.3.8.1.10. Other agencies or political subdivisions as appropriate.
- 3.1.3.8.2. Each entity must submit all comments in writing to the State Engineer. The State Engineer or district is not bound by any comment submitted. The State Engineer must receive comments within thirty days of the date requests for comments were sent.
- 3.1.3.9. Upon completion of the comment period, the State Engineer must conduct a review of the application and the comments submitted and determine if the application meets drainage of statewide or interdistrict significance.
- 3.1.3.10. The State Engineer must send notice and a copy of the State Engineer's statewide or interdistrict significance determination and rationale on the application to the district, the applicant, all entities listed in section 3.1.3.8.1., and anyone who has requested in writing to be notified.
- 3.1.3.11. As part of the State Engineer's notice, the State Engineer will attach conditions to a draft permit, as described in N.D.A.C. section 89-02-01-09.11. The State Engineer's conditions may address any comments received, which in the State Engineer's judgement, will otherwise mitigate the necessity, benefit, or purpose for classifying the application as drainage of statewide or interdistrict significance. In that scenario, upon the State Engineer's notice, the district must follow the procedure outlined in N.D.A.C. section 89-02-01-09.1(2). If the district approves the application, the district's approval must be noted on the draft permit document provided by the State Engineer and must include any draft State Engineer conditions in its approval. By signing the draft permit document, the district agrees to enforce the draft permit conditions therein.
- 3.1.3.12. If the application is deemed to be drainage of statewide or interdistrict significance, the district and State Engineer must follow the process in N.D.A.C. 89-02-01-09.1(1).

4. DEFINITIONS

- 4.1. "Drain" is defined in N.D.A.C. section 89-02-01-02(4) and otherwise in State Engineer policy.
- 4.2. "Lake" is defined in N.D.A.C. section 89-02-01-02(6) and otherwise in State Engineer policy.
- 4.3. "Pond" is defined in N.D.A.C. section 89-02-01-02(10) and otherwise in State Engineer policy.

- 4.4. "Slough" is defined in N.D.A.C. section 89-02-01-02(13) and otherwise in State Engineer policy.
- 4.5. "Watercourse" is defined in N.D.A.C. section 89-02-01-02(15) and otherwise in State Engineer policy.

5. POLICY ADDENDUMS

State Engineer Technical Memo – dated March 13, 2020

No Policy Revisions available

1/29/24

Subject: HB1544

Chairman Beltz and Members of the House Ag Committee:

It has come to my attention that HB1544 is a bill for consideration.

I strongly urge a DO NOT PASS on HB1544.

My reason for this opinion is that if enacted it would require water boards or the DWR to get involved in personal disputes **whether they have merit or not**. The water boards and DWR have enough on their plate as is and should not get more involved in personal disputes.

IF ONE PARTY FEELS AGRIEVED BY ANOTHER PARTY, SETTLE IT IN CIVIL COURT.

Thank you for your consideration of my request for a DO NOT PASS on HB1544.

Respectfully,

Eric Larson

Testimony HB1544

Sam Wagner
 Ag and Food Field Organizer
 Dakota Resource Council
 1902 E Divide Ave
 Bismarck ND 58501
 Testimony in Support for HB1544

To the Honorable Chairman and the members of the Committee. We submit these remarks on behalf of DRC.

Mr Chairman,

We understand that water rights have been a big issue for this committee for some time. With permits in 2021 the legislature passed a bill that would require a project with under 80 acres to notify the local water board before installing it with a sunset in 2023 to see how it would work. In 2023 the legislature removed the sunset and made it a permanent law. This year we are asking for one more crucial step to ensure fairness and that our landowners can be good neighbors to each other. Many members of our organization have dealt with drainage issues and have had many litigation cases in the past. HB1544 wants to ensure that our landowners notify downstream residents and mitigates disputes before we litigate disputes.

How the process is now:

1. Notify your water board about your project
2. Build your project
3. Get sued because someone downstream didn't like your project and will likely win because there was no notification.

Our only complaint on this bill would be that there is no mediation on this bill as there is SB2283

Under mediation, the process would go as follows:

1. Notify the water board about your project
2. Notify landowners downstream about your project within 30 days
3. Landowners then have 30 days to respond upon receiving the letter.
4. If they have no response build the project
5. If they respond with problems, schedule a mitigation meeting
6. If mitigation is successful, build the project as prescribed by the mediation
7. If mitigation is unsuccessful, apply for a permit with the water board
8. If the water board approves the permit, then you can build the project.
9. If the landowner affected then sues you, you at least have much more standing to defend your project.

If there was a way to settle disputes before litigation, that would ultimately be what we are aiming for with this legislation. The problem is often that no one is made aware of these projects and then lawsuits happen because landowners fail to communicate with each other. I'm sure many people on the committee have been on the receiving end of a drainage ditch at one point or another and understand this problem.

Differences between 1544 and 2283

1. **The notification requirements.** Either one is good, but we believe 30 days was sufficient enough to get a response from the land owner because this is mediation rather than preparing a full-blown rebuttal to their project.
2. **Details on projects** HB1544 also has a more detailed description of watershed projects and clearly defines if the project doesn't flow on anyone else's property the landowner can just notify the waterboard. This language is more acceptable
3. **Mediation Language** SB2283 has the language for mediation before a lawsuit, 1544 doesn't. Mediation would be a far better alternative.

We recommend DO PASS or combining this language with SB2283.



1401 32nd Street SW • Fargo, ND 58103 • Phone: 701-239-4151 • Fax: 701-239-4276

email: information@rrvsga.com

January 29, 2025

Chairman Beltz and members of the House Agriculture Committee,

Thank you for the opportunity to submit testimony in opposition to HB 1544. My name is Brent Baldwin, I am a Farmer and President of the Red River Valley Sugarbeet Growers Association. A lot of good work has gone into water management in the last few sessions, this issue included. This bill introduces unnecessary regulatory hurdles, increased costs, makes an unfair shift in control over individual landowners' rights and reintroduces a lot of red tape that was removed in previous sessions.

We have several major concerns with this bill. First are the excessive bureaucratic delays. This bill will require landowners to notify all downstream landowners and wait 60 days to begin a water management project. This added time is extremely costly with our short summers as we have a limited number of days to get a project done before freeze up or additional rain fall.

Next is the increased costs and unnecessary burden on landowners by requiring now certified mail notifications to all the downstream landowners. Additionally, this bill is then blanket mandating of erosion control measures at all outlets, we already are required by water sheds to apply such conditions, and it is working.

Next is the unfair shift in control to downstream landowners. We all know water flows downhill, and yet this bill will effectively allow downstream landowners to delay or completely prohibit a water management project simply by filing an objection. Additionally, many downstream landowners will be extremely hesitant to sign off on a project as they feel it will prevent them for any potential future claim of damages.

Our last concern is the overall negative impact on agriculture in North Dakota. Water management is key to our success, and the negative and unnecessary restrictions that HB 1544 will impose on effective water management.

We strongly encourage this committee to provide a DO NOT PASS recommendation on HB1544.

Brent Baldwin
St. Thomas, ND
President – Red River Valley Sugarbeet Growers



1/30/2025

House Agriculture Committee
North Dakota Legislative Assembly
600 E Boulevard Ave
Bismarck, ND 58505

Subject: Opposition to House Bill No. 1544 – Negative Impacts on Landowners

Chairman Beltz and members of the House Agriculture Committee,

I am writing to express my strong opposition to House Bill No. 1544, as it imposes significant burdens on landowners seeking to manage drainage on their property. While I understand the need for responsible water management, and have worked hard with this committee and many of its members over the last 10 years to make sure we have it right; this bill introduces unnecessary regulatory hurdles, increased costs, and an unfair shift in control over landowners' rights, making it impractical for many farmers and ranchers, and reintroduces red-tape that we removed years ago.

Key Concerns:

1. Excessive Bureaucratic Delays

- The bill requires landowners to notify all downstream landowners and wait 60 days before proceeding with a drainage project. This creates significant delays in critical drainage efforts, especially during urgent situations like excessive rainfall or soil saturation. In North Dakota, we have a tremendously short growing season, 60 days does not work.
- Increased state and local oversight may lead to inconsistent application of rules, further delaying necessary drainage improvements.

2. Unfair Burden on Landowners

- The requirement to send certified mail notifications to all affected downstream landowners increases costs to the Watershed, the landowner and ultimately the taxpayer.
- The bill also mandates erosion control measures at all outlets, placing an additional financial strain on landowners with no clear funding support. The process the way it is allowing water sheds to apply conditions such as "erosion control" is already working the way it should. Blanket regulations DO NOT WORK.

3. Loss of Property Rights & Increased Legal Risks

CORPORATE OFFICE

56113 State Hwy 56, West Concord, MN 55985
507.527.2294 | Fax 507.527.2296

HARWOOD OFFICE

500 Ellingson Rd, Harwood, ND 58042
701.893.9030 | Fax 701.893.9040

EllingsonCompanies.com

888.527.2294

- Downstream landowners effectively gain veto power over an upstream landowner's drainage project simply by filing an objection, even if no direct harm is proven. This unfairly limits the ability of farmers to manage water on their own land. If you read Homestead Deed, draining water is specifically written into it.
- Many downstream landowners hesitate to sign off on upstream drainage projects because they fear it will waive their right to compensation if damage occurs later. This creates a hostile and uncertain environment for landowners attempting to follow the legal process.
- In the past when this was part of the drainage law, most downstream landowners would say "I don't care if you do the project, but I am not signing anything in case I am damaged later". Water boards then did not feel they could approve the projects.
- The bill provides no clear definition of what constitutes "adverse effects" on downstream lands, making permit approvals subjective and unpredictable.

4. Negative Impact on Agriculture and Rural Development

- Farmers and ranchers rely on efficient drainage to prevent soil degradation, saline buildup, and crop loss. The restrictions in HB 1544 will make it harder to implement necessary water management solutions, reducing agricultural productivity. I used to wonder if the state wanted to get into the Crop Insurance business for not allowing farmers to manage water on their property. We have since corrected many of those issues.
- Overregulation of drainage discourages landowners from investing in improvements, slowing economic growth in rural communities. If projects don't get done, on wet years, much of the land is put into Prevent Plant. Taxpayers paying Farmers not to farm, when they could have planted if they were allowed to tile.
- The bill disrupts landowners' ability to adapt to changing environmental conditions, which is crucial for sustainable farming and conservation efforts.

Conclusion

House Bill No. 1544 places an undue burden on landowners, making obtaining drainage permits more expensive and complicated, and unfairly shifts control over

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701.893.9030 | Fax 701.893.9040

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private land use to downstream property owners. These restrictions will harm North Dakota's agricultural economy and undermine the rights of landowners to manage water on their own property.

I think there are ideas within the Ag Groups, Agribusinesses and Landowners on how to fix some of these downstream issues, but this bill does not do it.

For these reasons, I strongly urge you to vote against HB 1544 and instead work toward solutions that balance responsible drainage management with practical, fair, and landowner-friendly policies.

Let's not go backwards in North Dakota Agriculture.

Thank you for your time and consideration.

Sincerely,
Levi Otis

CORPORATE OFFICE

56113 State Hwy 56, West Concord, MN 55985
507.527.2294 | Fax 507.527.2296

HARWOOD OFFICE

500 Ellingson Rd, Harwood, ND 58042
701.893.9030 | Fax 701.893.9040

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Dear House Agriculture Committee Members:

I stand in favor of HB 2283.

Under present statute, a person wanting to install a tile drain project under 80 acres must notify the water resource board. The board has the authority to specify erosion control, pump installation and operation but cannot prevent the project. The downstream landowners do not have to be notified.

A person wanting to install a surface drain involving a watershed of less than 80 acres does not need to notify anyone or apply for a permit.

In this country, we take the right to own property seriously. There are laws that determine who can own, sell and buy land. We have consequences for people who would say, damage your home. Unfortunately, however, there are no meaningful rules that apply to small drainage projects, and this results in small or large transfers of unwanted water onto sometimes unsuspecting downstream neighbors. If a farmer divides his tile drainage area into a series of under 80 acre projects, the unpermitted water transfer can be huge.

*Farmers make their living from their most valuable asset, their land- I hope you will read the testimony of Arlen Huber that was submitted in support of SB 2283. This is stealing

*Retired people may live on land rent- this came up in a conversation with one of your Senate colleagues, who spoke of a widow who lost some of her income because a neighbor drained on her pasture. This is stealing.

*Too much water in the wrong place can cause habitat loss which is valuable to hunters and wildlife lovers. The taking of the enjoyment of the use of dumped on property without compensation is also stealing.

This bill makes requires written consent of the downstream landowner mandatory for a surface drain that drains a watershed under 80 acres if the water goes directly onto his/her property. If this is not obtained or there is an objection, the drainer must apply for a permit.

This bill requires notification of downstream owners whose lands are affected by a tiling project under 80 acres. The downstream owners have 60 days to file an objection. If an objection is filed, a drain permit is required.

This bill will remind landowners who would drain that somebody always lives downstream and their rights need to be respected.

SB 2283 also addresses this issue of small drain projects and includes the option of mediation. No one likes going to court; the money, emotional energy and embarrassment are all expensive. Mediation is a way of trying to get neighbors to talk to each other and come to a successful outcome.

I hope the best elements of this bill (notification for both surface and tile drainage) and SB 2283 (option for mediation)can be forged together to close a much- needed loophole in our state water laws.

Thank you for accepting my comments

Madeline Luke

Valley City, ND

1/31/2025

31 January 2025

Dear Committee Members:

I voice my strong support for HB 1544.

The North Dakota Legislature by removing meaningful regulation of tile drainage in the state has created serious problems for many farmers in the state. With little regulation we now have a Wild West scenario where drainers can do whatever they want without any consequences from regulators whether it be from local water boards or the State Water Commission. Tile drainage in the current regulatory environment allows dumping water onto neighbor property without the neighbor's awareness or permission which is patently wrong and needs to stop. Lack of regulation causes widespread economic costs and dislocation to farmers that are being dumped upon often surreptitiously without their knowledge until the neighbor notices a low area in his/her field that used to crop in most years no longer being farmable in any years and the water keeps expanding flooding other cropland. Drainers have learned to use gravity very effectively to discharge on a slope ensuring the water will not stop until coming to reside on a neighbor's field.

Many of the problems associated with tile drainage would cease to exist if the person doing the drainage had to get a permit in all instances before undertaking tile drainage and in cases where tile drain water is to be discharged at a location that will move water onto a neighbor would require the neighbor(s) get permission and where the existing uses of land of neighbor(s) are adversely affected, neighbors would be entitled to flowage easements or other payments. Any time a drainer is moving the water onto a neighbor who is facing economic or other distress the drainer should be liable for damages.

In my case, I own a farm in Dickey County and a neighbor tile drained 2 quarters onto my property without any notifications. He did this by dividing the land into a series of under 80 -acre projects. While it was obvious I would suffer major damages the neighbor seeing my farm being flooded simply said to me "It is not my problem" and walked away. Sadly, without laws regulating drainage, individuals insensitive to their neighbors' plight are getting away with grave injustice. The tile drain water first went into a 25-acre slough that was originally 2-3 feet deep and went dry every third or fourth year. Now the slough depth is never less than 10 feet deep and extends has nearly an extra half mile in each direction to the north and south, has destroyed a township road cutting my farm in two parts, and requiring a 6 – 8 mile trip to get to half of the farm that was only 400 yards from the farmstead before his drainage started. In addition, when the water is high, it flows onto another quarter leading to that quarter becoming almost unfarmable because rising water levels lead to that quarter being split into 3-4

parts by standing water. Yet, I have not received one dime of compensation from the neighbor for all the harm caused. Had he been required to get a permit and permission, the project could only have occurred with me being reimbursed for all the damages caused.

Sincerely,
Gary Krapu



**North Dakota Grain Growers Association
Testimony in Opposition to HB 1544
House Agriculture Committee
January 31, 2025**

Chairman Beltz, Members of the House Agriculture Committee, for the record my name is Dan Wogsland representing the North Dakota Grain Growers Association (NDGGA). NDGGA respectfully submits this testimony in opposition to House Bill 1544. NDGGA believes the proposed changes could have unintended consequences, placing undue burdens on agricultural producers and potentially harming North Dakota's agricultural economy.

Concerns and Potential Negative Impacts:

a. Increased Regulatory Burden

- Expanding the scope of drainage permits under this legislation introduces additional administrative requirements for farmers.
- These regulatory hurdles could cause delays in critical drainage projects, which are often time-sensitive to prevent crop loss and field damage.
- The added requirements, such as obtaining consent from downstream landowners and detailed notifications, create complexities that may disproportionately affect smaller farming operations.

b. Potential for Increased Litigation

- Requiring written consent from downstream landowners introduces a new source of conflict and the possibility of protracted legal disputes.
- Disagreements between landowners over drainage systems may delay necessary projects, compounding the risks of flooding or waterlogging.

c. Negative Impacts on Agricultural Productivity

- Proper and timely drainage is essential for maintaining optimal growing conditions. Without it:
- Excess water can delay planting and harvesting, damage crops, and increase input costs.

- Saturated fields contribute to soil erosion, nutrient loss, and long-term degradation of farmland.
- By imposing excessive restrictions, the bill risks undermining the very productivity that sustains North Dakota's agricultural economy.

d. Financial Strain on Farmers

- The provisions for subsurface water management systems, including notifications and potential inclusion in assessment districts, could impose new financial burdens.
- Farmers may be required to pay for investigations, permit applications, or assessments without clear benefits, adding stress to already tight margins.

e. Administrative Overload and Uncertainty

- Water resource districts may face significant administrative burdens under the proposed system, potentially leading to inefficiencies and delays in processing permits or resolving disputes.
- The lack of clear guidelines for standards like erosion control and flood-period regulations could create inconsistencies in enforcement.

Conclusion

NDGGA recognizes the importance of addressing drainage concerns and protecting water resources. However, NDGGA believes that House Bill 1544, as written, imposes undue burdens on North Dakota's farmers and risks undermining the success of our agricultural sector.

Therefore, Chairman Beltz, Members of the House Agriculture Committee, NDGGA respectfully requests a Do Not Pass recommendation from the House Agriculture Committee on HB 1544 and would hope that the full House concur.

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Good morning Chairman Beltz and members of the House Agriculture Committee

My name is Rory Gabel, and I'm from rural Valley City. I'm here today to testify in support of House Bill 1544 and to share how the current law affects downstream landowners and that HB 1544 helps to address this issue.

Under current law, a landowner can tile and drain up to 80 acres of their land and pump the water onto neighboring land without the downstream landowner having any say, and even the water board has no authority to intervene. This practice allows the upstream landowner to increase the production and value of their land, while simultaneously decreasing the productivity and value of the downstream landowner's land.

I live with my family on a 20-acre farm where we raise a few head of cattle and produce hay to feed them through the winter, making us self-sufficient. A couple of years ago, I learned through the grapevine that the neighboring landowner planned to drain up to 80 acres of lowland directly onto our property without seeking our permission. Concerned, I reached out to our township officer, Bruce, who also serves on our local water board, to inquire about the situation.

Unfortunately, he informed me that, even in his capacity as a water board member, he had no authority to even request the landowner's plans.

I then contacted the landowner, Allen, who I've lived next to his land for over 40 years. While I understood that I couldn't stop his drainage project, I asked if he might consider scraping a shallow ditch to direct the water to a slough on the other side of our property to minimize the damage to our hay land and pasture. He agreed to meet in person to discuss it. During our meeting, I showed him that our hay land is very flat, and when water spreads across it, much of it could be lost to cattails. A shallow ditch might help prevent some of the damage. Allen seemed to agree that this could be a solution, but then he asked me how much I was willing to contribute to his tiling project, he wanted me to help fund a project that would benefit him while causing harm to our property. That ended our discussion.

Despite my objections, the tiling project proceeded. Since the pump was turned on, the water has been continuously flowing onto our property, even through this winter. With the high water table, I don't expect it to stop anytime soon. Since 1993 my sump pump at our house has pretty much ran continually, and our house is higher than the pump in the field.

As a result of this new tiling pump, I've already lost hay, and I'll have to purchase hay to replace what was lost, as the affected hay land has been too wet to harvest. The water also affects both sides of our driveway, making it impossible for me to mow those areas, which will cause problems with snow buildup.

House Bill 1544 would require anyone that want's to drain their 80 acres or less has to notify all the downstream landowners and if there are any objections from downstream landowners they would have to go through the normal permitting process and that would provide a much-needed safeguard for downstream landowners like myself, ensuring that we have a voice in how water is managed and that we are not unfairly burdened by the actions of others. I urge you to support this bill. There is a bill over in the Senate addressing this issue SB 2283 that has some further language that I like and hopefully through the process the best parts of both bills will turn onto one beautiful bill. Thank you.

Attached are photos of the situation.

- (1) Hay land/pasture before project
- (2) Hay land/pasture after a normal haying
- (3) Hay land/pasture after a heavy rain but every year by July/August it dries up to be able to hay.
- (4) Hay land/pasture after pump was turned on.
- (5) The upstream side of our driveway with the pump's pipe flowing directly onto our property. If you look close you will see the flag that marks the property line. You can also see where driveway can't be mowed and will most likely turn into cattails that will cause snow problems
- (6) Here is what up to 80 acres tiled looks like. Slough on the lower left and our hay land/pasture on the upper right of photo. Notice the alkaline (white) on the lower left and scattered all across the land, those alkaline minerals are also being pumped directly onto our land, most likely spoiling much of our land.
- (7) Here is a pic of the pump late summer shows just how wet this ground is. The electricians that wired this pump ran much of the wire on top of the ground because the ground was too wet to trench...it is still above ground.

Thank you,

Rory Gabel--Box 301-- Valley City, ND 58072

Amendment to HB 1544

A person sustaining damages as a result of a subsurface water management system of another person shall participate in mediation before filing an action to recover damages. An aggrieved person shall file a mediation request with the board of the appropriate water resource district, and the board shall appoint a mediation board consisting of a hydrologist employed by the state, an engineer employed by the state, and an individual conducting farming or ranching in the county in which the subsurface water management system is located. All mediation costs must be paid by the owner of the subsurface water management system. An opinion issued by the mediation board is not binding, and participation in a mediation session does not preclude a party from commencing a civil action to recover damages after completion of the mediation

Testimony to the House Agriculture Committee on HB 1544*January 31, 2025*

Good morning, Chairman Beltz and members of the House Agriculture Committee

My name is Barry Borg, and I reside just west of Valley City in Barnes County, North Dakota.

I am writing about the growing issue of field tile drainage projects in North Dakota. These projects, particularly when land is surface-drained or tile-drained, do more than just transfer water—they also carry salt, excess fertilizer, alkali, and nitrates. These pollutants accumulate in the water and affect the downstream land.

There have been four tile drainage projects in recent years located south and east of my property, which lies on the east Bay of Hobart Lake, west of Valley City. Three of these projects involved less than 80 acres, but when combined, they exceed 100 acres. The first project was over 100 acres by itself. In total, these four projects cover over 200 acres of land.

These drainage projects bring water and pollutants onto my property, which is already burdened with flooding and alkali contamination. Large-scale farmers who control significant acreage can carry out tile drainage projects under 80 acres with no restrictions. However, smaller-acreage producers like myself cannot afford to implement these systems, and we bear the brunt of the negative consequences.

An example of the unchecked nature of these drainage projects occurred last June, 2024. While I was observing my land, I noticed a four-wheeler driving through my alfalfa field. Upon investigation, I discovered that Ellingson Drainage was conducting elevation surveys on my property, assessing where they could install a ditch or tile line to drain land directly south of my field. This was standing alfalfa, ready for harvest. The contractor was marking lines and flags in my field, and when I confronted him, he informed me that they regularly perform such work, telling me I should "call their lawyer" if I had concerns.

This situation highlights the urgent need for change as 3 of the 4 four tile drainage projects diverting water and pollutants onto my land without any restrictions or oversight. This is a growing problem, and it must be addressed.

Thank you for your time and consideration. I urge you to give this bill HB 1544 a do pass that will ensure proper oversight and protect small landowners like myself from the harmful effects of these drainage practices.

Sincerely,
Barry Borg
11164 33rd St SE
Valley City, ND 58072















2025 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Room JW327C, State Capitol

HB 1544
2/13/2025

A BILL for an Act to amend and reenact sections 61-32-03 and 61-32-03.3 of the North Dakota Century Code, relating to drainage permits.

11:16 a.m. Chairman Beltz opened the meeting.

Members Present: Chairman Beltz, Vice Chairman Hauck, Representatives Anderson, Dobervich, Henderson, Holle, Hoverson, Kiefert, Nehring, Olson, Rios, Schreiber-Beck, Tveit, Vollmer

Discussion Topics:

- Committee action

11:19 a.m. Representative Anderson moved Do Not Pass.

11:19 a.m. Representative Holle seconded the motion.

Representatives	Vote
Representative Mike Beltz	Y
Representative Dori Hauck	Y
Representative Karen A. Anderson	Y
Representative Gretchen Dobervich	AB
Representative Donna Henderson	N
Representative Dawson Holle	Y
Representative Jeff Hoverson	AB
Representative Dwight Kiefert	Y
Representative Dennis Nehring	N
Representative SuAnn Olson	N
Representative Nico Rios	N
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	N
Representative Daniel R. Vollmer	Y

Motion passed 7-5-2.

11:21 Representative Beltz will carry the bill.

11:21 a.m. Chairman Beltz closed the meeting.

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1544 ([25.1264.01000](#))

Agriculture Committee (Rep. Beltz, Chairman) recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1544 was placed on the Eleventh order on the calendar.