

2025 SENATE ENERGY AND NATURAL RESOURCES

SB 2118

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2118
1/16/2025

Relating to the appeals of stream crossing calculations.
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10:45 a.m. Chairman Patten opened the hearing.

Members present: Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Streamline Department's responsibilities
- Reduce DWR workload
- Alternative language for clarity
- Possibly reduce delays
- Possibly enhance local control

10:45 a.m. Reice Haase, Director of ND Water Resources, testified in opposition.

10:48 a.m. Jack Dwyer, Executive Secretary, ND Water Resource Districts Association, testified in opposition and submitted testimony #29303.

10:49 a.m. Chairman Patten closed the hearing.

10:49 a.m. Senator Kessel moved Do Not Pass.

10:49 a.m. Senator Beard seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	Y

Motion Passed 7-0-0.

Senator Van Oosting will carry the bill.

Additional written testimony:

Aaron Carranza, Division Director, Regulatory Division, submitted testimony in favor #29152.

Justin Sherlock, President, North Dakota Soybean Growers Association, submitted testimony in opposition #29296.

Harrison Weber, Executive Director, Red River Valley Sugarbeet Growers Association, submitted testimony in opposition #29302.

Larry Skiftun, Chairman, Wells County Water Resource District Board of Managers, submitted testimony in opposition #29315.

Doug Zink, Vice-Chair, Foster County Water Resource District, submitted testimony in opposition #29318.

Dean Knell, Vice President, North Dakota Grain Growers Association, submitted testimony in opposition #29358.

Levi Otis, Representor, Ellingson Companies, submitted testimony in opposition #29366.

Drew Courtney, Board Member, North Dakota Corn Growers Association, submitted testimony in opposition #29457.

10:50 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2118 ([25.8106.01000](#))

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2118 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.



Water Resources

Testimony in Support of

SB 2118

Senate Energy and Natural Resources

January 16, 2025

TESTIMONY OF

Aaron Carranza, Division Director, Regulatory Division

Chairman Patten, and members of the Senate Energy and Natural Resources Committee, I am Aaron Carranza the Regulatory Division Director of the Department of Water Resources. I'm here today to provide testimony in support of SB 2118.

This bill is an effort by the Department of Water Resources (Department) to enhance and optimize services provided.

The first North Dakota Century Code (N.D.C.C.) for method of highway construction for surface water (now termed "stream crossings") and flow determination were in 1945 (House Bill 269) and 1951 (House Bill 756). At the time, only through the language "...petition of the majority of landowners of the area affected..." would the Department be obligated to provide a flow rate analysis for a requested crossing. Once a flow rate analysis was provided by the Department, it was the "duty" of the county or state road authority to provide a culvert of sufficient capacity.

In 1999, House Bill 1310 codified that "Stream Crossing Standards" prepared by the Department of Transportation and the Department be used as the minimum design guidance for all public road entities in the state. This legislation also expanded which entities may request the Department provide a flow rate analysis compliant with the Stream Crossing Standards. It added county commissioners, townships supervisors, and water resource boards to the existing petition of the majority of landowners of the area affected.

In review of Department and legislative records of the 1999 legislation, the expansion of requesting entities for Department action was associated with ongoing litigation in Wells County at the time and the general concern of the uniform application of the newly referenced Stream Crossing Standards. The Department of Transportation and the Department further advanced the uniform application of the Stream Crossing Standards by jointly creating North Dakota Administrative Code (N.D.A.C) chapter 89-14-01 in 2001. The same Stream Crossing Standards are still the applicable rules today, as described in the attached fact sheet prepared by the Department in 2022.

Typically, the Department's workload and the prioritization of active permitting requests results in an extended processing time for these calculations.

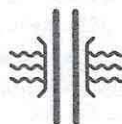
In practice, likely due to the need to take any Department-provided stream crossing flow to a qualified individual to design a code-compliant crossing, the Department receives on average a handful of such requests per year. After more than 20 years of Stream Crossing Standards determinations and uniform application of N.D.A.C. ch. 89-14-10 at the Township, County, and

STREAM CROSSINGS

FACTS & FAQs

WHAT IS A...

STREAM CROSSING



According to North Dakota Administrative Code (N.D.A.C.) section 89-14-01-02, a "stream crossing means an opening to permit the flow of water under, adjacent to, or because of a highway."

HIGHWAY



According to North Dakota Century Code (N.D.C.C.) section 24-01-01.1(22), a "highway, street, or road" is "a general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a 'road', while a highway in an urban area may be called a 'street'."

STREAM CROSSING DETERMINATION



A stream crossing determination is a formal determination of flow (i.e., discharge) provided by the Department of Water Resources (DWR) upon request from an eligible party under N.D.C.C. section 24-03-08.

DWR STREAM CROSSING DETERMINATIONS

WHO CAN REQUEST A "STREAM CROSSING DETERMINATION" AND HOW?

According to N.D.C.C. section 24-03-08, the following parties may request a stream crossing determination:

- Board of county commissioners
- Township supervisors
- A water resource board
- A petition of the majority of landowners of the area affected

The request can be submitted to the DWR by filling out a [Stream Crossing Determination Request form \(SFN 61885\)](#).

WHAT INFORMATION WILL I GET IF I REQUEST AN DWR STREAM CROSSING DETERMINATION?

The requesting party will receive "the design discharge that the crossing is required to carry to meet the stream crossing standards" (see N.D.A.C. section 24-03-08). In other words, the requesting party will receive the minimum flow rate required at the crossing in question and for the particular recurrence interval required in Stream Crossing Standards.

The road authority shall install a culvert or bridge of sufficient capacity upon notification of the stream crossing determination made by the DWR, as described in N.D.C.C. section 24-03-08. The DWR does not recommend or suggest the size or shape opening necessary to meet "sufficient capacity" to convey the identified minimum flow. This is a task left to the road authority.

HOW DOES THE DWR MAKE A DETERMINATION?

DWR staff will assess the location and determine the best engineering method to calculate the minimum flow rate. Typically, the acceptable engineering practice is to utilize the U.S. Geological Survey's regression equations, which are summarized in [USGS's Scientific Investigations Report 2015-5096](#). DWR staff will use these equations in combination with analyzing the most recent topographic data, typically GIS software and LiDAR data, to delineate a drainage area contributing to the crossing and develop the variables needed for the equations. The DWR

will verify culvert locations via aerial photography investigation. Typically, the DWR will not make a site visit to verify culvert locations unless it would make a substantial difference in the DWR's determination. DWR staff will also identify non-contributing areas from several data sources and decide whether the DWR areas should be included in the drainage area.

USGS STREAM STATS

DWR staff often use [USGS's Stream Stats](#) when feasible to do an initial approximation of the drainage area. This tool is publicly available online. While this tool provides an approximation of the drainage area and anticipated flow rate, the DWR does not recommend usage of this tool for formal stream crossing studies or determinations.

OTHER METHODS

There are limitations to using the regression equations to determine a flow rate, so DWR staff may use other hydrology methods to verify the regression equations' results or determine a flow rate.

IS A ROAD CROSSING EVER CONSIDERED A "DAM?"

Generally, the Department of Water Resources does not regulate highways or stream crossings as "dams" as long as the crossing meets Stream Crossing Standards. However, road authorities should properly place culverts at grade or channel bottom to ensure the crossing acts as an "opening to permit the flow of water" and does not otherwise impound water.

WHAT ABOUT PRIVATE ROAD STREAM CROSSINGS?

Private road stream crossings are not subject to Stream Crossing Standards. However, any approach crossing within a road right of way must meet Stream Crossing Standards. Additionally, it is recommended that all private roads comply with Stream Crossing Standards so that the road does not act as a dam, as defined in N.D.A.C. section 89-08-01-01, or as an obstruction, as defined in N.D. Century Code section 61-16.1-51.

WHAT IF I DISAGREE WITH AN DWR STREAM CROSSING DETERMINATION?

DWR stream crossing determinations are considered an "action or decision" by DWR as described in N.D.C.C. section 61-03-22. Any person aggrieved by a stream crossing determination has 30 days to request a DWR hearing on the matter.



Senate Energy and Natural Resources Committee

Hearing for SB 2118

January 16, 2025

Testimony of Justin Sherlock, North Dakota Soybean Growers Association

Chairman Patten and members of the committee, my name is Justin Sherlock, and I am a farmer from the Dazey, ND, area in Barnes County. I am currently serving as the President of the North Dakota Soybean Growers Association.

For farmers moving crops to market, adequately built and maintained roads are vital for the success of our farming operations. The impact of water on roads is significant, and North Dakota Century Code 24-03-08 provides appropriate conveyance standards for road authorities, water boards, and landowners to avoid flood damages and the undermining of roadbed foundations caused by temporary accumulation of excess water due to undersized culverts and bridges. It is essential that water flow with minimal impact to the conditions of our roads. Over the past several years, many of our members have brought attention to the issue of inadequate water flow during ever increasing large precipitation events that has caused water to back up with roads often acting as man-made dams. In addition to damaging the roads we rely upon, this also causes significant crop damage or even drown out, reducing yields and impacting our members' farming operations and livelihoods.

The North Dakota Soybean Growers Association is concerned with the wording in SB 2118; it will effectively limit the ability of the people of North Dakota to convey water through our road and ditch system. While we appreciate working with the Department of Water Resources, the language of this bill is problematic for the individuals working to ensure appropriate movement of water.

The North Dakota Water Resources Districts Association has proposed an amendment to SB 2118, and the North Dakota Soybean Growers Association supports this amendment. The proposed amendment enhances the ability to assess stream crossing determinations at the local level by people who know and work with each other on a regular basis, and who likely utilize many of the same roadways in question daily themselves. In addition, the amendment ensures the determinations are made in a timely manner so projects that help producers can move forward productively. Water impacting roads is a "now" problem, and allowing these stream crossing

determinations to occur locally and in a timely manner is very beneficial to producers. Lastly, this amendment frees up Department of Water Resources staff to work on other high priority tasks.

The North Dakota Soybean Growers Association encourages your review of SB 2118 and asks for support of the North Dakota Water Resource Districts Association amendment. Thank you for the opportunity to provide this testimony.



Senate Energy and Natural Resources Committee

Hearing for SB 2118

January 16, 2025

Testimony of Harrison Weber, Red River Valley Sugarbeet Growers Association

Chairman Patten and members of the committee, my name is Harrison Weber, and I am the executive director of the Red River Valley Sugarbeet Growers Association. This association represents more than 2,700 growers, raising sugarbeets on about 400,000 acres and delivering those beets to five factories up and down the Red River Valley of the North.

It is vital that our growers can get their beets to market. Safe, well-maintained roads and infrastructure are essential. Water is important to growing the best quality beets, but if the water damages the roads and infrastructure, our growers suffer the impacts.

North Dakota Century Code 24-03-08 provides appropriate conveyance standards for road authorities, water boards, and landowners to avoid damages due to undersized culverts and bridges. Efficiently moving water so there are no negative impacts on our roads and infrastructure should be a top priority.

The Red River Valley Sugarbeet Growers Association is apprehensive regarding the wording in SB 2118; it will curb the ability of North Dakotans to efficiently move and manage the water traveling through our roads and infrastructure system. Our Association supports a proposed amendment to SB 2118 suggested by the North Dakota Water Resources Districts Association. This proposed amendment offers up the possibility of efficiently managing the water at a local level and in a timely manner.

The Red River Valley Sugarbeet Growers Association encourages full consideration of SB 2118 and asks for support of the North Dakota Water Resource Districts Association amendment. Thank you for the opportunity to provide this testimony.

The logo for the North Dakota Water Resource Districts Association is a dark blue silhouette of the state of North Dakota. Inside the silhouette, the text "North Dakota Water Resource Districts Association" is written in white, sans-serif font, stacked in four lines.

**North Dakota
Water Resource
Districts Association**

**Senate Energy and Natural Resources Committee
Hearing for S.B. 2118
January 16, 2025**

Testimony of Jack Dwyer on behalf of the ND Water Resource Districts Association

Chairman Patten and members of the committee, my name is Jack Dwyer, and I serve as the Executive Secretary of the North Dakota Water Resource Districts Association (WRDA).

N.D.C.C. 24-03-08, in its current form, provides an important tool for road authorities, water boards, and landowners. Under that statute, a road authority, water board, or majority of landowners may request the Department of Water Resources (DWR) to calculate the flow the stream crossing (culvert or bridge) would need to carry to meet North Dakota's Stream Crossing Standards. Once the DWR determines the design flow, the applicable road authority then has a duty to install a stream crossing of sufficient capacity to meet the design flow to permit the water to flow freely and unimpeded.

S.B. 2118 was identified as a "Red Tape Reduction Initiative" bill. Based on communications with the DWR, the main purpose of the proposal was to remove the DWR from the obligation of calculating the flow a stream crossing would need to carry to meet North Dakota's Stream Crossing Standards when requested by a road authority, local water board, or a majority of landowners. The idea was that the DWR would instead serve in a review capacity. Our group did not challenge the intent communicated by the DWR, but the wording of this bill as it stands today is problematic.

First, despite what I believe to be the intent from the Department, this bill would not reduce DWR's workload. Instead, the DWR's analysis becomes more complicated, in that it must first perform an analysis to determine whether the requesting party is "aggrieved." Most importantly, this bill effectively grandfathers all existing stream crossings (by replacing the words "has been or will be constructed" with "is newly constructed or reconstructed"). Lastly, this bill removes altogether the enforcement language that requires road authorities to satisfy the design flow determination, which renders the determination meaningless. In addition to not alleviating a workload issue, this bill will reduce the ability of locals to convey water through our road and ditch system.

The WRDA does recommend alternative language, which is attached to my testimony. This is a very straightforward proposal. This proposal would substitute the local water board for the DWR. In practice, when a road authority, water board, or majority of landowners requests a stream crossing determination, that request would instead be directed at the local water board. This would not only reduce the DWR's workload, but it would also

provide more local control. These determinations take the DWR months to compute, but local water boards would likely be able to turn these out within a few weeks, if not sooner. This amendment offers a process that is very similar to DWR's proposal for watercourse determinations set forth in [S.B. 2044](#), which this Committee reviewed this morning.

Additionally, WRDA's suggested language allows the DWR to serve in a review capacity if there is a disagreement with the determination made by the local water resource board. This provides an appropriate failsafe to resolve disputes. There is also language to allow for input from the Agriculture Commissioner for highways under the jurisdiction of the Department of Transportation, recognizing that appropriate water conveyance is a high priority for the agriculture community.

We believe that this alternative language meets the needs expressed by the DWR to reduce workload, offers the ability of local boards to provide this important information in a timely manner, and provides for a dispute resolution process if there are local disagreements. It is our hope that this language satisfies the concerns of all parties. We'd ask for your support of this amendment.

Thank you, Mr. Chairman. I'd be happy to stand for any questions.

PROPOSED AMENDMENT

24-03-08. Determinations of surface water flow and appropriate highway construction. Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county or the board of township supervisors has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the ~~department of water resources~~ water resource district, upon petition of the majority of landowners of the area affected or at the request of the board of county commissioners, township supervisors, or a water resource board, shall determine as nearly as practicable the design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the department and the department of water resources. When the determination has been made by the ~~department of water resources~~ water resource district, the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, upon notification of the determination, shall install a culvert or bridge of sufficient capacity to permit the water to flow freely and unimpeded through the culvert or under the bridge. The department, county, and township are not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the department of water resources.

A person aggrieved by a stream crossing determination made by a water resource district may request the department of water resources review the determination of the water

resource district. Upon request, the department of water resources shall review the water resource district's determination and determine as nearly as practical the design discharge that the crossing is required to carry to meet the stream crossing standards. In the case that a determination of a design discharge has been made impacting a highway under the supervision, control, and jurisdiction of the department of transportation, the director of the department of water resources and the director of the department of transportation shall consult with the agriculture commissioner on the request by the aggrieved party. A person aggrieved by a department of water resources determination may file an appeal under section 61 - 03 - 22.

Wells County Water Resource District

Tammy Roehrich, Secretary

700 Railway St N #244

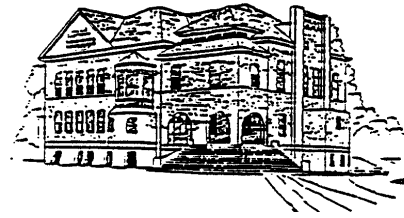
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WELLS COUNTY COURTHOUSE

Chairman Patten & Senate Energy & Natural Resources Committee Members:

Thank you for the opportunity to testify on Senate Bill 2118.

My name is Larry Skiftun. I am a lifelong farmer in Wells County, a landowner, and the current Chairman of the Wells County Water Resource District Board of Managers.

On behalf of the Wells County Water Resource District Board of Managers, I submit this testimony in opposition to S.B. 2118.

Under North Dakota Century Code § 24-03-06, all highways must be constructed in a way that does not obstruct the natural flow and drainage of surface waters, in compliance with stream crossing standards set by the North Dakota Department of Transportation (ND DOT) and the North Dakota Department of Water Resources (ND DWR). S.B. 2118 does not change this basic requirement. However, enforcement of these stream crossing standards has been a significant challenge for water resource districts and property owners.

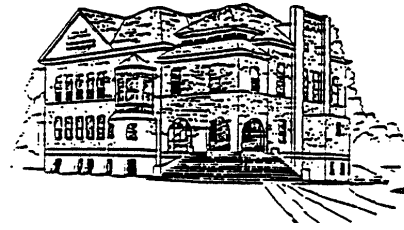
One of the most common problems we face is highway culverts that are undersized, poorly positioned, or inverted in a way that disrupts the natural flow of water. This leads to water accumulation and flooding of private property upstream from the highway. Ideally, these issues should be addressed with the road authority. However, when the road authority fails to act, property owners often turn to their local water boards for assistance.

Current law, specifically ND Century Code § 24-03-08, allows local water resource boards to request from the ND DWR a design discharge for stream crossing compliance. This discharge requirement, once determined, is used by the water resource board's engineer to recommend a crossing design that meets state standards. The local water board then shares the DWR's findings and the engineer's recommendation with the road authority, which is legally obligated to install a crossing that allows water to flow freely, provided it adheres to the state's stream crossing standards. The law also shields the road authority from liability if the crossing complies with these minimum standards.

Our objection to S.B. 2118 is that it removes an important tool that helps resolve these disputes. Specifically, Line 15 on Page 1 (S.B. 2118 25.8106.01000) strikes the words "has been" from the current statute and introduces the terms "newly constructed" or "reconstructed" to describe the highways that must comply with stream crossing standards. This change would create a loophole for culverts that were non-compliant when originally installed but would no longer be considered "newly constructed" or "reconstructed" over time. This means that culverts that obstruct water flow and flood private property could be exempt from future enforcement of stream crossing standards if they were not identified as problematic at the time of construction or reconstruction.

Wells County Water Resource District

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We understand that the ND DWR is facing challenges with workload and response times regarding stream crossing compliance requests. However, we believe there are ways to address these issues without exempting non-compliant crossings from necessary improvements, which could exacerbate flooding problems and hinder effective water management. For example, we agree with the ND DWR that an entity qualified to design a code-compliant crossing can appropriately determine a stream crossing standards-compliant minimum design flow. Professional Engineers employed by water resource districts can make these initial determinations.

We strongly urge the committee to recommend a “Do Not Pass” on S.B. 2118 in its current form. I would also appreciate the opportunity to provide oral testimony to the committee, offering examples of how this bill could negatively impact water management and property rights in Wells County.

Thank you for your time and consideration.

Sincerely,

Larry Skiftun, Board of Managers Chair
Wells County Water Resource District

**Written & Oral Testimony by Doug Zink
Foster County Water Resource District Vice Chair**

**Written Testimony by Ronn Stangeland
Foster County Water Resource District Chair**

**Before the Senate Energy & Natural Resources Committee
In Opposition to Senate Bill 2118**

January 16, 2025

My name is Doug Zink. I am a farmer and landowner in Foster County, and the Vice Chair of the Foster County Water Resource District. I am here today to testify in opposition to Senate Bill 2118, and to explain why we believe the bill would weaken the enforcement of stream crossing standards in North Dakota.

The Foster County Water Resource District, which is concerned about the implications of this bill, has authorized its Chair, Ronn Stangeland, to join in submitting this written testimony.

In the past, I have testified before the legislature about the difficult task of balancing private property rights with the limited resources of public road authorities. As a landowner, I know firsthand how my property rights can be jeopardized when road authorities fail to comply with stream crossing standards. As Vice Chair of the Foster County Water Resource District, I also hear from our constituents who face similar challenges. They rely on us to mediate issues with local road authorities whose failure to comply with these standards can threaten their ability to protect their land and our shared ability to manage the flow of water in the county.

While I acknowledge that S.B. 2118 does not alter the core requirement of ND Century Code § 24-03-06, which mandates that road authorities construct highways to allow the natural flow and drainage of surface waters, there are concerns about how this bill would impact enforcement.

The key issue lies in how S.B. 2118 proposes to amend ND Century Code § 24-03-08. The Department of Water Resources (DWR) has stated that the bill would transition its role from the primary authority for determining compliance to a secondary review role for aggrieved parties. However, I believe the bill goes further than this. Specifically, Lines 15-16 of the bill strike the words “has been” and replace them with “newly constructed or reconstructed,” which introduces a significant change. This change would create a new exemption for road crossings that did not meet stream crossing standards at the time of construction, but for which aggrieved parties did not request timely review by DWR.

This amendment could have the unintended consequence of excusing road authorities from meeting the necessary standards for certain crossings, even if those crossings were problematic at the time of construction. This creates a loophole that could undermine the enforcement of stream crossing standards in North Dakota.

ND Century Code § 24-03-08 has been a valuable tool for water resource boards like ours, as it helps us mediate issues with road authorities who have failed to comply with stream crossing standards. The statute clearly states that when a road authority is notified of non-compliance, it

must install a culvert or bridge with sufficient capacity to allow water to flow freely. However, some road authorities are not following this law, and we are seeing the consequences of that failure in our own county. I have brought examples of these situations, which I would be happy to share with you.

In conclusion, S.B. 2118, as written, could weaken the enforcement of important stream crossing standards in North Dakota, and I respectfully ask you to reconsider this proposal. Thank you for the opportunity to testify, and I am happy to answer any questions you may have.

Doug Zink,
Vice Chair, Board of Managers
Foster County Water Resource District

Ronn Stangeland
Chair, Board of Managers
Foster County Water Resource District



**North Dakota Grain Growers Association
Testimony regarding SB 2118
Senate Energy and Natural Resources Committee
January 16, 2025**

Chairman Patton, Members of the Senate Energy and Natural Resources Committee, for the record my name is Dean Knell; I am a family farmer from Hazen, North Dakota as well as being Vice President of the North Dakota Grain Growers Association. I appear before you today to express concerns regarding SB 2118 and to support an alternative amendment to the legislation.

Overview of N.D.C.C. 24-03-08

N.D.C.C. 24-03-08 ensures that culverts and bridges are properly designed to prevent flooding and minimize the negative impact of undersized stream crossings. When a stream crossing is too small, the Department of Water Resources (DWR) determines the appropriate design flow to meet North Dakota's Stream Crossing Standards. The law mandates that the road authority installs a crossing that meets the required capacity, ensuring the free and effective flow of water.

About S.B. 2118

S.B. 2118 is part of the "Red Tape Reduction Initiative" and aims to shift the responsibility of calculating design flows from the DWR to other entities, leaving the DWR with a review and oversight role. While the initiative's intent to streamline processes is appreciated, there are significant concerns about the unintended consequences of this bill.

Concerns with S.B. 2118

1. Increased Complexity for the DWR

- Rather than reducing the workload, S.B. 2118 adds unnecessary complexity. The DWR would be tasked with determining whether a party is "aggrieved," which is a subjective process that could lead to delays and administrative challenges.

2. Grandfathering Existing Stream Crossings

- By changing the language from "has been or will be constructed" to "is newly constructed or reconstructed," the bill allows outdated and undersized stream crossings to remain in place indefinitely. This creates a loophole that undermines the original intent of N.D.C.C. 24-03-08, increasing the risk of flooding and related damage.

3. Elimination of Enforcement

- S.B. 2118 removes the requirement for road authorities to adhere to the DWR's design flow determinations. Without enforcement, compliance becomes optional, rendering the process ineffective and compromising the integrity of our water management systems.

4. Negative Impact on Water Management

- The proposed changes reduce the ability to manage water effectively through roads and ditches, leading to potential long-term consequences for infrastructure and property owners in flood-prone areas.

Alternative Proposal

To address these concerns while still reducing the burden on the DWR, NDGGA would support the following alternative:

- **Shift Responsibility to Local Water Boards**

- Requests for stream crossing determinations could be handled by local water boards, which have a better understanding of local conditions and can process requests more efficiently, often within weeks instead of months.
- Aggrieved parties would retain the right to appeal water board decisions to the DWR, preserving oversight and accountability.

- **Benefits of this Approach**

- Reduces the workload on the DWR, aligning with the goals of the "Red Tape Reduction Initiative."
- Empowers local entities to take timely and effective action.
- Maintains robust enforcement and ensures that stream crossings comply with established standards.

Conclusion

While the goals of S.B. 2118 are admirable, the current version of the bill poses significant risks to water management and infrastructure safety. NDGGA would urge the Committee to consider the alternative proposal, which balances the need for streamlined processes with the importance of maintaining effective water management standards.

Thank you for your time and consideration. I am happy to answer any questions.



January 15, 2025
Senate Bill 2118

Mr. Chairman and Members of the Senate Energy and Natural Resources Committee,

Thank you for the opportunity to testify today. My name is Levi Otis, and I represent Ellingson Companies, where we focus primarily on agricultural water management for over 3,000 customers. I appreciate the chance to share our perspective. We strongly oppose **SB 2118** and urge the committee to issue a **DO NOT PASS** recommendation.

Water conveyance and management are critical for North Dakota's farmers. Proper management improves soil health, reduces erosion, enhances wildlife habitats, and supports agricultural productivity. Unfortunately, SB 2118 does not advance these goals.

Key Concerns with SB 2118

1. Increased Complexity in the Department of Water Resources (DWR)

The bill introduces unnecessary delays by requiring the DWR to determine whether a requesting party is "aggrieved" before analyzing design flows. This added step could extend project timelines by months, hindering timely improvements. Water Resource Districts already possess the local knowledge necessary to identify areas needing upgrades—they require funding and genuine reductions in bureaucratic hurdles to succeed.

2. Grandfathering of Existing Stream Crossings

By effectively grandfathering outdated stream crossings, the bill allows subpar infrastructure to persist indefinitely. Instead of maintaining the status quo, we should prioritize upgrading and replacing crossings to improve water conveyance and support modern agricultural practices.

3. Removal of Enforcement Provisions

The removal of enforcement language obligating road authorities to comply with DWR's design flow determinations undermines the integrity of our water management system. Without accountability, compliance becomes optional, weakening the state's ability to manage water effectively.

Negative Impact of SB 2118

This bill would limit North Dakota's ability to convey water efficiently through its road and ditch systems, jeopardizing both agricultural productivity and infrastructure integrity.

Alternative Approach

We respectfully request a **DO NOT PASS** recommendation on SB 2118. However, we support the **amendments proposed by the North Dakota Water Resource District Association**, which strike a better balance between reducing administrative burdens and maintaining effective water management standards.

Thank you for your consideration. I am happy to answer any questions the committee may have.

Sincerely,
Levi Otis
Ellingson Companies

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In Opposition to SB 2118
Senate Energy and Natural Resources Committee
Testimony of Drew Courtney
January 16, 2025

Chairman Patten and members of the Committee,

Thank you for the opportunity for the North Dakota Corn Growers Association to testify on SB 2118.

For the record, my name is Drew Courtney. I farm near Oakes with my cousin, wife, and kids. I also serve on my township board. I am here today as a board member of the North Dakota Corn Growers Association, which is the voice of North Dakota corn producers, representing more than 13,000 growers across the state.

The North Dakota Corn Growers Association has concerns with SB 2118 as currently written as we believe it would be detrimental to rural infrastructure, both infrastructure for water conveyance and roads. However, we support the alternative language offered by the Water Resource Districts Association.

Importantly, the amendment offered by the Water Resource Districts Association allows local water boards to conduct stream crossing determinations on local projects. This will help ensure that these determinations are done in a timely manner so projects that are necessary to protect and maintain rural infrastructure are completed.

Thank you for your consideration of this amendment to SB 2118. I will stand for any questions you may have.