

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1215

2007 HOUSE AGRICULTURE

HB 1215

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1215**

House Agriculture Committee

Check here for Conference Committee

Hearing Date: **1-18-07**

Recorder Job Number: **UNKNOWN**

Committee Clerk Signature *Fran Fronberg / changes*

Minutes:

Chairman Johnson opened the hearing on HB 1215.

Rep Froelich: (amendment attached) As you are aware, this program has been in existence for a while. I don't know the exact date that it began. The Agriculture Department is here and they can give you the details. We started this program with great intensity. I am sure the Water Commission will give you the exact dollars that they have spent over the years. When you don't need livestock assistance, you don't need it, pure and simple. Look at article 89-1.11. It states what the policy has always been. There is no federal cost share program available. Then the state program comes in. We used the federal programs for my area last summer. The federal program has dried up. The state water commission makes the decisions with Governor Hoeven and the Attorney General. You will see that the fiscal notes have been extremely high this past year because of the need. If federal programs are not available then there are state funds. That is what this program is for. Not to leave the people out there high and dry. I guess we should probably address the amendments. When this bill got drafted line 7 through line 12 were struck. You can't get both state and federal funds. When this bill was drafted, people did not realize that. Federal funds will not allow it and the state water commission will not allow it. We need to put those words and verbiage back in. Basically it is

the same bill we have always had. The only thing we have changed significantly is the percentage of cost share from 50% to 65%. And we moved the dollar amounts from thirty five hundred to forty five hundred.

Incomplete minutes.

FISCAL NOTE
Requested by Legislative Council
03/23/2007

Amendment to: Engrossed
 HB 1215

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1215 with the Senate Amendments has no fiscal impact.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	David Laschkewitsch	Agency:	ND State Water Commission
Phone Number:	328-1956	Date Prepared:	03/23/2007

FISCAL NOTE
Requested by Legislative Council
02/28/2007

Amendment to: Engrossed
 HB 1215

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures		\$67,000		\$430,000		
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1215 with the Senate Amendments provides increased payments to individuals affected by drought through the livestock water assistance program. .

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 increases the per project maximum from \$3500 to \$4500, reduces the number of projects an applicant can request assistance on from 3 to 2, and specifies that projects located on Indian lands are eligible for the drought livestock water assistance program.

Section 2 declares the act to be an emergency measure.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Based upon the assumption that the timing and number of applications that we received last year will be repeated in 2008 and 2009, and based upon the assumption that the higher maximum amount of \$4,500 will be paid out at approximately the same percentage as what was seen at the \$3,500 level (33.45%), of 644 projects 215 would receive an additional \$1000 per year in fiscal years 2008 and 2009. Of the approximately 200 projects we have yet to be paid in fiscal year 2007 33.45% or 67 projects could be eligible for an additional \$1000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	David Laschkewitsch	Agency:	ND State Water Commission
Phone Number:	328-1956	Date Prepared:	03/01/2007

FISCAL NOTE
 Requested by Legislative Council
 01/31/2007

Amendment to: HB 1215

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1215 as amended, specifies that projects located on Indian lands are eligible for the drought livestock water assistance program.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

As amended HB 1215 has no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	David Laschkewitsch	Agency:	ND State Water Commission
Phone Number:	328-1956	Date Prepared:	01/31/2007

FISCAL NOTE
 Requested by Legislative Council
 01/10/2007

Bill/Resolution No.: HB 1215

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures		\$1,000,000		\$1,800,000		\$1,800,000
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1215 raises the percentage of reimbursement from 50% to 65% and the maximum amount from \$3500 to \$4500 per project for the drought livestock water assistance program.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill amends Section 61-34-04 of the North Dakota Century Code.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

There are no additional revenues.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The agency had approximately 400 applicants last year, if each of those recieved an additional \$1000 it would cost the agency an additional \$400,000 per year, or \$800,000 per biennium. This does not consider that the increased reimbursement rates may draw additional applicants.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This would not change the agency's appropriation, the payments would have to be made using the existing general water project appropriation.

Name:	David Laschkewitsch	Agency:	ND State Wate Commission
Phone Number:	328-1956	Date Prepared:	01/12/2007

HB 1215

Date:
Roll Call Vote #:

1-18-07

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ AGRICULTURE _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number None for amend

Action Taken DO PASS = AS amended

Motion Made By BELTER Seconded By MUELLER

Representatives		Yes	No	Representatives		Yes	No
Dennis Johnson, Chairman				Tracy Boe			
Joyce Kingsbury Vice Chairman				Rodney J Froelich			
Wesley Belter				Phillip Mueller			
Mike Brandenburg				Kenton Onstad			
Mike Brandenburg				Ben Vig			
Craig Headland							
Brenda Heller							
John D Wall							
Gerry Uglem							

Vote Note

Total (Yes) 13 No 0

Absent 0

Floor Assignment _____

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

Date:
Roll Call Vote #:

HB 1215
1-18-07

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DO PASS AS AMENDED

Motion Made By

Kingsbury

Seconded By

Belter

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chairman	✓		Tracy Boe	✓	
Joyce Kingsbury Vice Chairman	✓		Rodney J Froelich	✓	
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg	✓		Kenton Onstad	✓	
Mike Brandenburg			Ben Vig	✓	
Craig Headland	✓				
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglem	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Kingsbury

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

REPORT OF STANDING COMMITTEE

HB 1215: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1215 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "applications and"

Page 1, line 7, remove the overstrike over "~~An applicant~~"

Page 1, line 8, remove the overstrike over "~~must first apply for water cost share assistance from the~~"

Page 1, line 9 after "~~service~~" insert "farm service agency" and remove the overstrike over "~~—If cost share assistance is denied by the service, the applicant may~~"

Page 1, remove the overstrike over lines 10 and 11

Page 1, line 12, remove the overstrike over "~~service stating the reason for denial of cost share assistance.~~"

Page 1, line 14, remove the overstrike over "~~fifty~~" and remove "sixty-five"

Page 1, line 15, remove the overstrike over "~~three~~" and remove "four"

Page 1, line 16, replace "application" with "applicant"

Page 1, line 17, after the period insert "A drought livestock water assistance program project located on Indian land is eligible for the program."

Renumber accordingly

2007 SENATE AGRICULTURE

HB 1215

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1215

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 22, 2007

Recorder Job Number: 3711

Committee Clerk Signature

Cassie Krow

Minutes:

Sen. Flakoll opened the hearing on HB 1215, a bill relating to drought livestock water assistance program maximum payments.

Rep. Froelich, district 31, testified in favor of the bill.

Rep. Froelich- This bill is a product of last summers drought disaster what it amounts to is that normally what happens in situations when there is a water need the federal government steps up to the plate and have different programs and products. Usually the USDA runs out of funds, the governor and the water commissioner agreed to fund three projects and there are guidelines and such involved. Indian land is not federal land so it does not fall under the water supply program. (See attached handout)

Sen. Wanzek- with the 3 projects per applicant, couldn't the same person apply more then once are you agreeing to allow it to be 3 per applicant?

Rep. Froelich- this is kind of what has been the administrative rule that is what it came out. At one time it was limit to one per person but because of the demands I think that they moved it to three projects of \$3,500. There are different parts of these projects.

Sen. Wanzek- what kind of things do the projects do?

Rep. Froelich- they could build a well or put in a water tank anything to help with an immediate crisis situation.

Joe Dunn, Standing Rock Sioux Tribe, testified in favor of the bill.

Joe Dunn- We stand in support of this bill.

Lee Klapprodt, director of the Planning and Education Division of the ND State Water Commission, testified in favor of the bill. See attached testimony.

Sen. Flakoll- did you draw up these amendments in the house?

Lee Klapprodt- these took place through discussion and the intent was to have these changes made but they did not end up in the engrossed version of the bill.

Sen. Klein- the thought would be to add to this list of applications on Indian land?

Lee Klapprodt- we've addressed that issue over Indian land, but this formalizes it in the law that Indian land does qualify for a program.

Sen. Klein- so were you able to move forward and do some of those projects last summer?

Lee Klapprodt- yes we made an adjustment in our definition of federal land so that we could.

Sen. Klein- so then what happens is that you have an applicant that can get up to 3 projects?

Lee Klapprodt- that is correct.

Sen. Flakoll- how does it work if you share one piece of property with your spouse and you share another property with a friend?

Lee Klapprodt- it adds to the problem of administering it. We go by who puts there name on the application.

Tom Silbernagel, representing Roger Johnson Ag Commissioner, testified in favor of the bill. See attached testimony.

Woody Barth, NDFU, testified in favor of the bill.

Woody Barth- We stand in support of this bill and would ask you to consider the amendments that were brought forward.

Wade Moser, ND Stockmen's Association, testified in favor of the bill.

Wade Moser- We do support this bill, we do understand that if you increase the cost share amount you may limit the number of people that would be eligible so that has a plus and a minus. I think the message that we need to send out is that the state is willing to help with what they can, it is coming on organizations that we need to encourage producers now to get involved in equipped programs and programs to prepare for the next drought. This needs to be a supplement.

Dale Frank, state water commission, testified in favor of the bill.

Dale Frank- Just a bit of clarification on the fiscal note and also on the amendments. The money comes out of our budget and we have not asked for additional money. I would like to be a little bit less on the fence for if they do have money, so if they would have some encouragement to go there first it makes more sense to do that. It is a good program that we started in 1991 and at that time you only got \$3,500 and now you can get 3 projects at that amount.

No opposition to the bill.

Sen. Flakoll closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1215

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 23, 2007

Recorder Job Number: 3751

Committee Clerk Signature

Cassie Krow

Minutes:

Sen. Flakoll opened discussion on HB 1215.

Sen. Klein- yesterday we had the discussion on the amendments. After the hearing I spoke with Rep. Froelich and Mr. Barth it seemed to me that these projects were getting really expensive and can be expensive and that maybe would could limit it to 2 projects and raise that threshold from \$3,500 to \$4,500. (See attached amendments). I wish to move the amendments.

Sen. Klein motioned to move the amendments and was seconded by **Sen. Erbele**, roll call vote 1: 7 yea, 0 nay, 0 absent.

Sen. Wanzek motioned for a Do Pass as amended and was seconded by **Sen. Taylor**, roll call vote 2: 7 yea, 0 nay, 0 absent. **Sen. Klein** was designated to carry the bill to the floor.

PROPOSED AMENDMENTS TO HB 1215

Page 1, line 2, after "payments" insert "and to declare an emergency"

Page 1, line 8, after "the" insert "United States department of" and remove the overstrike over "agriculture"

Page 1, line 9, overstrike the third "service" and immediately thereafter insert "agency"

Page 1, line 11, after the second "the" insert "United States department of" and overstrike "stabilization and"

Page 1, line 12, overstrike "conservation" and immediately thereafter insert "farm" and after "service" insert "agency"

Page 1, line 15, after "than" overstrike "three" and insert immediately thereafter "four" and replace "three" with "two"

Page 1, after line 18 insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

JZ
2-23-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1215

Page 1, line 2, after "payments" insert "; and to declare an emergency"

Page 1, line 8, after "the" insert "United States department of" and remove the overstrike over "agriculture"

Page 1, line 9, overstrike "service" and insert immediately thereafter "agency"

Page 1, line 11, after the second "the" insert "United States department of" and overstrike "stabilization and"

Page 1, line 12, overstrike "conservation" and insert immediately thereafter "farm" and after "service" insert "agency"

Page 1, line 15, overstrike "three" and insert immediately thereafter "four" and replace "three" with "two"

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1215, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1215 was placed on the Sixth order on the calendar.

Page 1, line 2, after "payments" insert "; and to declare an emergency"

Page 1, line 8, after "the" insert "United States department of" and remove the overstrike over "~~agriculture~~"

Page 1, line 9, overstrike "service" and insert immediately thereafter "agency"

Page 1, line 11, after the second "the" insert "United States department of" and overstrike "stabilization and"

Page 1, line 12, overstrike "conservation" and insert immediately thereafter "farm" and after "service" insert "agency"

Page 1, line 15, overstrike "three" and insert immediately thereafter "four" and replace "three" with "two"

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2007 SENATE APPROPRIATIONS

HB 1215

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1215

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 03-13-07

Recorder Job Number: 4938

Committee Clerk Signature

Janet Pinks

Minutes:

Chairman Holmberg opened the hearing on HB 1215 with roll call.

Representative Rodney J. Froelich, District 31, Selfridge, introduced HB 1215 distributing a copy of the original House version of the bill which deals with livestock disaster programs. He indicated the bill came about because federal lands did not qualify for relief and the Governor said to fix this. The bill indicates that livestock on tribal land is eligible for disaster relief. The bill passed unanimously in the house, and the Senate version changed the bill and the request is to put the bill back to the House version. The bill has a cost, but it is in the water commission budget.

Chairman Holmberg asked if he knew why the bill was amended. The response was that the Senate felt they could have more funds available per project.

Dale Frink, ND State Engineer, Chief Engineer-Secretary to the ND State Water Commission, distributed written testimony, state engineer recommendations, and testified on HB 1215. He presented background information regarding the program for drought disaster livestock water supply assistance. He discussed the projects of the Water Commission and the portion for drought livestock indicating they would be keeping it at the budget allocated.

Senator Krebsbach questioned the first, second and third version of the fiscal note.

3-13-07

Senator Christmann questioned if there were other programs available on reservations that are not available in the rest of the state. The response was he was not aware of other programs.

Senator Mathern asked if Mr. Frink is for the bill version that was distributed. The response was he supports the House version of the bill.

Senator Tallackson asked if Mr. Frink had any conversations with the Ag Dept. The response was that he had testified at Senate Ag and the Ag Dept recommended this change. The concern is it is strictly dollars.

Senator Krebsbach indicated she saw an Emergency clause was added and is that necessary. The response was he did not know.

Senator Fischer indicated you have a program in place now so if something should arise is that correct. The response was yes.

Senator Christmann questioned a lot of this money comes from the tobacco settlement, right? The response was it is a combination from the tobacco settlement and the resources check off. Senator Christmann asked with the tobacco settlement being split up among several states, do tax free sales on reservations count into our totals for that or are they not counted. The response was he could not answer that.

Chairman Holmberg closed the hearing on HB 1215.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1215

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 3/21/07

Recorder Job Number: 5382

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1215.

Senator Krauter distributed amendments 0202 indicated the bill allows for projects on Indian Land.

Senator Krauter moved a do pass on the amendments 0202, Senator Wardner seconded. An oral vote was taken resulting in a do pass.

Senator Mathern indicated he had heard we were moving ahead with Indian land responsibly and it is the public policy of the Governor's office with his support.

Senator Krauter moved a do pass as amended, Senator Mathern seconded. A roll call vote was taken resulting in a do pass with 14 yes, 0 no 0 absent. The bill will be carried by Senator Krauter with amendments and Senator Klein to carry the bill.

Chairman Holmberg closed the hearing on HB 1215

March 13, 2007

JB
3-21-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1215

That the amendments to Engrossed House Bill No. 1215, as adopted by the Senate, as printed on page 641 of the Senate Journal be amended as follows:

Page 641 of the Senate Journal, remove lines 41 and 42

Renumber accordingly

Date: 3/21
 Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1215

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 4

Action Taken DP w Amend

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathem	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Krauter amend (carrier Klein) Ag ?

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

REPORT OF STANDING COMMITTEE

HB 1215, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1215, as amended, was placed on the Sixth order on the calendar.

That the amendments to Engrossed House Bill No. 1215, as adopted by the Senate, as printed on page 641 of the Senate Journal be amended as follows:

Page 641 of the Senate Journal, remove lines 41 and 42

Renumber accordingly

2007 TESTIMONY

HB 1215

**North Dakota State Water Commission Testimony
Relative to House Bill 1215**

Presented to the House Agriculture Committee

January 18, 2007

Mr. Chairman, Members of the House Agriculture Committee, I am Dale Frink, North Dakota State Engineer and Chief Engineer-Secretary to the North Dakota State Water Commission.

I appear before you today regarding House Bill 1215, as amended, regarding the proposed amendment to Section 61-34-04 of the North Dakota Century Code in regard to the Drought Disaster Livestock Water Supply Assistance Program.

First, I would like to provide you with some background regarding the program. The Drought Disaster Livestock Water Supply Assistance Program is administered by the North Dakota State Water Commission and was first created in 1991 in response to a widespread statewide drought. The purpose of the program is to assist livestock producers who have livestock water supply problems resulting from drought conditions. Since 1991 the program has been reactivated in 2002 and most recently in 2006. There has been a great deal of interest in the program with a total of 574 livestock producers benefiting since the program began in 1991. In 1991 the program involved 183 livestock producers receiving \$285,000. During the 2002 – 2005 drought, 200 livestock producers received \$350,000. In 2006 a total of 515 applications were received. Of the total applicants in 2006, to date, 191 livestock producers have received cost share totaling \$550,000. In addition, the State Water Commission has applications totaling more than \$650,000, pending at this time. The significant increase in applications in 2006 is due to increased awareness of the program and reduced availability of federal dollars.

For this reason, I would recommend that Page 1, Line 14, the cost share percent of “fifty” percent, and that the cost share amount of “\$3,500” in Page 1, Line 15, not be amended. House Bill 1215 does not appropriate additional money for this program and funding would come from the State Water Commission’s budget appropriation. The State Water Commission

believes this is an excellent program and likely will continue to support it to the extent possible. But increasing the cost share could result in a fewer total number of livestock producers receiving assistance. For example, under the current program with a budget of \$1 million for the current biennium, it is estimated that a maximum of 89 fewer livestock producers would have received assistance from the program with the cost share amendment.

I would also recommend that Page 1, Line 16, the word "application" be changed to "applicant". As written, the livestock producer could submit numerous applications applying for up to 3 projects with each application. Therefore, effectively resulting in no limit to the number of projects the livestock producer would be eligible for cost share assistance.

The proposed amendment to the original House Bill 1215, which includes the following language on Page 1, Line 17; "A drought livestock water assistance program project located on Indian land is eligible for the program." The State Water Commission currently requires both the livestock producer and the landowner to sign the agreements. It is difficult to obtain landowner signatures for certain types of Indian lands.

I would also recommend that the "agricultural stabilization and conservation service" as it appears throughout Section 61-34-04 be replaced with "farm service agency". Several years ago the name of the Agricultural Stabilization and Conservation Service was changed to the Farm Service Agency.

The increased costs associated with the changes in this bill are estimated at \$800,000 per biennium, and are based upon the interest in, and the cost of the program in 2006. It must also be noted that the State Water Commission's budget for this program is not unlimited. All money for this program is taken from other worthy projects located throughout the state where the State Water Commission provides cost share.

This concludes my testimony on House Bill 1215, and I would be happy to answer any questions that the Committee might have. Thank you.

ARTICLE 89-11

DROUGHT DISASTER LIVESTOCK WATER SUPPLY PROJECT ASSISTANCE PROGRAM

Chapter
89-11-01 Drought Disaster Livestock Water Supply Project Assistance Program

**CHAPTER 89-11-01
DROUGHT DISASTER LIVESTOCK WATER SUPPLY PROJECT ASSISTANCE PROGRAM**

Section	
89-11-01-01	Definitions
89-11-01-02	Drought Declaration Required
89-11-01-03	Applicant Eligibility
89-11-01-04	Funding - Priority - Eligible Items
89-11-01-05	Noneligible Items
89-11-01-06	Application Procedure

89-11-01-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Livestock producer" means an individual who produces livestock or operates a dairy farm, who normally devotes the major portion of the individual's time to the activities of farming or ranching, and who normally receives not less than fifty percent of the individual's annual gross income from farming or ranching.
2. "Water supply project" includes construction of new wells; construction of dugouts or stock dams that are spring-fed or have a high water table, pipelines, and rural water system connections; and the development of springs.

History: Effective July 1, 1992.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-02. Drought declaration required. No funds may be disbursed for any water supply project unless the county in which the water supply project is to be located is a county or is adjacent to a county that has been declared by the governor to be a drought disaster area for purposes of this program, or a drought disaster area under a drought declaration that has not been rescinded.

History: Effective July 1, 1992.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-03. Applicant eligibility.

1. The applicant must be a livestock producer with livestock water supply problems caused by drought.
2. The applicant must first apply for water cost-share assistance from the farm service agency formerly known as the agricultural stabilization conservation service and must have been denied such cost-share assistance.

History: Effective July 1, 1992; amended effective August 27, 2002.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-04. Funding - Priority - Eligible items.

1. The state water commission shall provide funds for the program to the extent funding is available. Priority will be based on earliest date of application.
2. Cost-share assistance may only be used for water supply projects which will provide a long-term immediate solution to a drought-related water supply shortage.
3. All wells drilled with funds provided pursuant to this program must be drilled by a North Dakota certified water well contractor.
4. The applicant may receive up to fifty percent of the eligible costs of the project, but no more than three thousand five hundred dollars.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-05. Noneligible items. The following projects are not eligible for funding from the drought disaster livestock water supply project assistance program.

1. A rehabilitation of an existing well.
2. A water supply project on federal or state land.
3. A dry hole drilled in an attempt to construct a water well or to locate a water source.
4. A water supply project started without prior approval of the state engineer.

5. The construction of stock dams or dugouts dependent upon runoff.
6. Projects that require repair as a result of failure to provide maintenance to an existing water source.
7. Readily removable project features of water supply projects including electric pumps, stock watering tanks, or electrical hookups or easements.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-06. Application procedure.

1. Requests for assistance must be on a form provided by the state water commission and must include:
 - a. Written proof the applicant applied for cost-share assistance from the farm service agency formerly known as the agricultural stabilization conservation service and was denied such assistance including the reason for the denial.
 - b. An area map indicating the location of the proposed water supply project.
 - c. A written estimate of the costs of the proposed water supply project.
 - d. Verification by the applicant that the applicant is a livestock producer.
2. The state engineer shall review applications and approve or deny them. The state engineer shall, within the limits of available funding, provide assistance to those persons whose applications are approved. The applicant must agree to:
 - a. Complete the project within sixty days of receiving notification of approval of funding of the water supply project.
 - b. Provide receipt of actual expenditures or an affidavit of work completed if work is done by the applicant, or both, if applicable.
 - c. Grant to the state water commission or anyone authorized by the state water commission the right to enter upon the land to inspect the completed water supply project after giving reasonable notice to the applicant.

d. Indemnify and hold harmless the state of North Dakota and the state water commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the applicant or applicant's agents or employees under this agreement.

3. Application forms may be obtained by contacting:

North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505
(701) 328-2750

History: Effective July 1, 1992; amended effective August 27, 2002.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

CHAPTER 61-34
LIVESTOCK WATER ASSISTANCE PROGRAM

61-34-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Commission" means the state water commission.
2. "Program" means the drought disaster livestock water assistance program.
3. "State engineer" means the state engineer appointed under section 61-03-01.

61-34-02. Drought disaster livestock water assistance program - Administration. The commission shall administer the program for the purpose of providing relief for livestock water supply problems caused by drought.

61-34-03. Advisory committee. The commission shall appoint an advisory committee of at least three members. The committee shall advise the commission in determining the criteria for eligibility, in defining expenses covered by the program, and in developing rules.

61-34-04. Eligibility - Application for assistance. Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost share assistance from the agriculture stabilization and conservation service. If cost share assistance is denied by the service, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the agriculture stabilization and conservation service stating the reason for denial of cost share assistance. The state engineer shall review all applications received by the commission. If the state engineer approves an application, the applicant may receive up to fifty percent of the cost of the project, but in no event more than three thousand five hundred dollars. The state engineer shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available.

115 Wetlands

A C/S Not Eligible

Cost sharing shall not be approved for practices that would drain or negatively impact the quality of any wetlands as defined in the NRCS Field Office Technical Guide.

116 Land Under Other C/S Programs

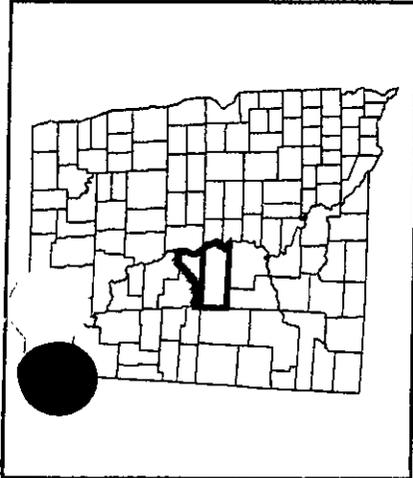
A Determining Eligibility

Determine eligibility of land under other C/S programs according to the following.

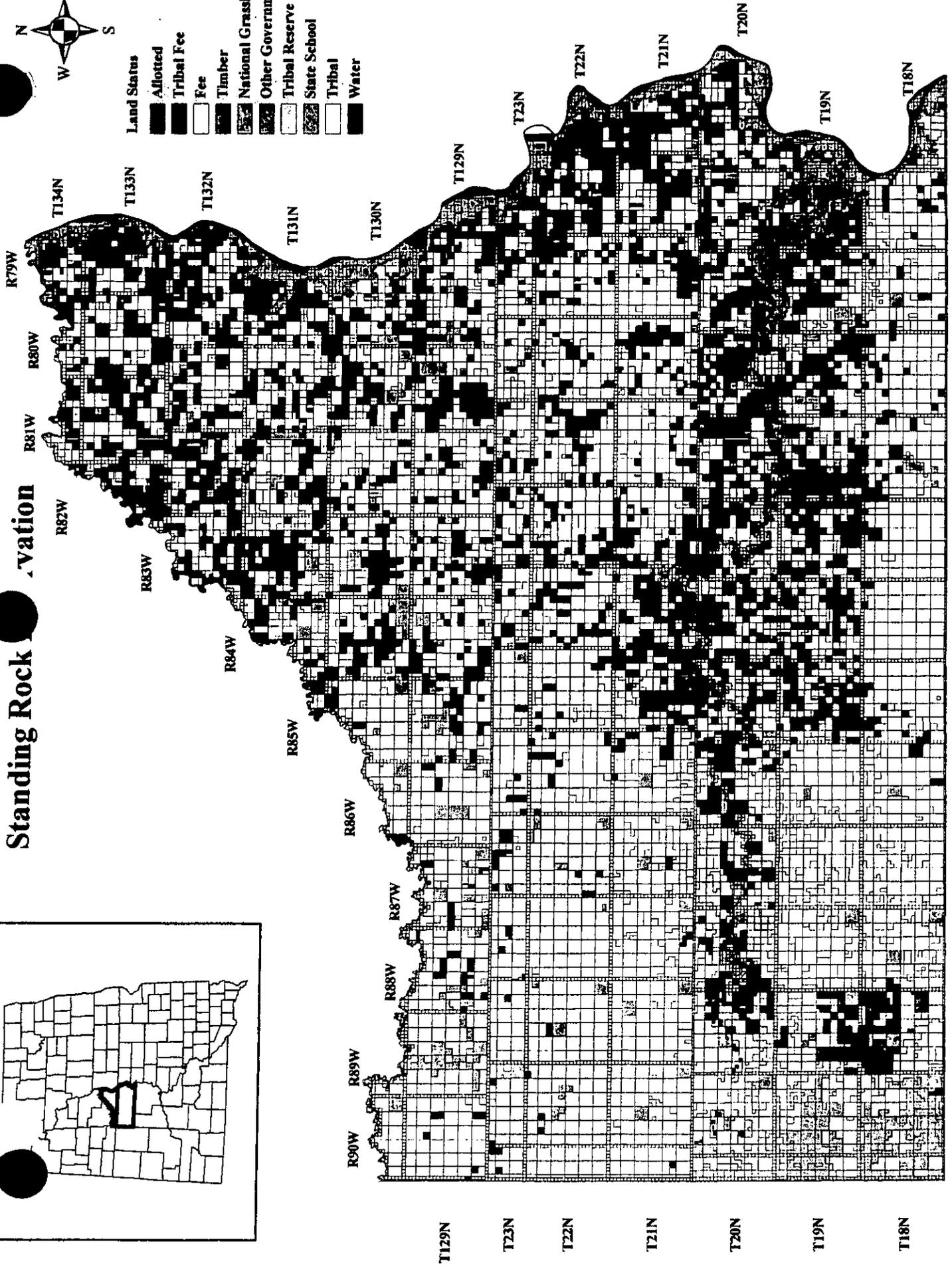
IF...	AND...	THEN C/S may...
measures will accomplish the purpose of the practice	the practice will not be C/S under another Federal program	be authorized.
a component of a practice is C/S under another program	another component of the same or comparable practice is C/S under another program to treat the same problem on the same land	not be authorized.
practices are split on the same land	C/S would be split between different Federal programs	
participants have or will receive funding on the same acreage under: <ul style="list-style-type: none"> • CRP • WRP • EWRP • EWP 		

117-129 (Reserved)

Standing Rock Reservation



- Land Status**
- Allotted
 - Tribal Fee
 - Fee
 - Timber
 - National Grassland
 - Other Government
 - Tribal Reserve
 - State School
 - Tribal
 - Water



R18E R19E R20E R21E R22E R23E R24E R25E R26E R27E R28E R29E R30E

	Allotted	Tribal	Tribal Fee	Tribal Reserve	Timber	Fee	State School	National Grassland	Other Government	Water	Totals
Rock Creek	130,623	173,084	22,261	510	1,913	624,902	20,148	30,951	0	3,394	1,007,787
Porcupine	87,736	40,578	2,356	0	382	259,979	17,959	6,239	0	1,561	416,791
Little Eagle	62,413	27,876	0	134	1,324	90,756	2,034	0	0	1,052	185,590
Wakpala	58,071	36,945	160	0	27	73,620	2,924	0	32,149	4,968	208,861
Fort Yates	58,361	37,045	2,718	368	0	64,348	5,297	0	14,287	3,192	185,616
Kenel	43,145	19,045	5,701	0	0	47,880	399	0	13,206	3,573	132,949
Bear Soldier	17,606	3,226	0	0	0	80,167	847	0	0	0	101,846
Cannonball	43,353	18,639	1,267	14	114	32,620	161	0	6,004	1,934	104,105
Totals	501,309	356,438	34,463	1,026	3,760	1,274,271	49,769	37,190	65,646	19,673	2,343,545

Part 515 - Environmental Quality Incentives Program

Subpart F – Program Eligibility

515.50 Reserved

515.51 Producer Eligibility

A. Overview

To be eligible to participate in EQIP, an applicant must be an individual, entity or joint operation and meet all of the following eligibility criteria:

- (i) Be an agricultural producer that is engaged in livestock or agricultural production as defined in this section.
- (ii) Have an interest in the farming operation associated with the land being offered for enrollment in EQIP.
- (iii) Have control of the land for the term of the proposed contract. For structural and vegetative practices, the applicant must submit a written concurrence by the landowner at the time of the application. (*See* 440-CPM, Paragraph 515.52).
- (iv) Be in compliance with the provisions for protecting the interests of tenants and sharecroppers, including the provisions for sharing EQIP payments on a fair and equitable basis.
- (v) Be in compliance with the highly erodible land and wetland conservation compliance provisions.
- (vi) Be within appropriate payment limitation requirements.
- (vii) Be in compliance with AGI requirements.

Note: Federal and State governments and political subdivisions thereof are not eligible; however land that they own may be eligible if leased to an eligible agricultural producer (*See* 440-CPM, Section 515.52). These entities may be listed with 0 percent shares on an EQIP contract in cases where they are the owner of the land. These entities may include State agencies, State universities, and other State funded organizations.

B. Responsibility for Determinations

NRCS Field Offices will:

- (i) Comply with contracting policy eligibility requirements contained in 440-CPM, Section 512.22.
- (ii) Make agricultural producer eligibility determinations (verify whether an applicant is an agricultural producer and does not exceed the program payment limitation).
- (iii) Determine interest in the farming operation using a web service accessed by ProTracts.
- (iv) Make land eligibility determinations in accordance with 440-CPM, Section 515.52.

Note: Adjusted Gross Income (AGI) is a payment eligibility determination that is applicable beginning with FY 2003 contracts. AGI eligibility determination for EQIP is made at the time of contract approval and is applicable for the entire contract term. AGI verifications are handled through ProTracts.

C. Determining Eligibility as an Agricultural Producer

- (1) NRCS has responsibility for notifying the applicant if they determine producer eligibility criteria are not met and to provide appeal rights according to 440-CPM, Part 510.

- (2) An applicant is eligible if all of the following are met:
- (i) The applicant is an individual, entity, or joint operation.
 - (ii) The applicant is engaged in livestock or agricultural production as defined in this section.
 - (iii) The land being offered for enrollment in EQIP is used in agricultural or livestock production as defined in this section.
 - (iv) Producers with forest land must have one of the following:
 - A forest management plan or forest stewardship plan
 - A prior record of timber harvest or revenue from Timber sales
 - Proof of capital investment on forest practices such as:
 - Tree plantings
 - Forest Stand Improvement
 - Site Preparation
 - Prescribed burning
 - Other Agro forestry practices
 - Other agricultural commodities
 - Other crops used for subsistence
 - Other crops as identified by the State Conservationist with the advice of the State Technical Committee
 - (v) In order to be considered an agricultural producer there must be an annual minimum of \$1,000 of agricultural products produced and/or sold from the operation. If there were reasons beyond the producers control (i.e. climatic conditions such as drought) to meet this \$1,000 annual minimum then documentation must verify that the \$1,000 minimum has been met two of the last five years. An acceptable form of proof of documentation may be an IRS form 1040 Schedule F, or other accounting records certified by a tax preparer, that show profit or loss from farm operations. States should supplement this policy in order to provide clearer guidance based on state and local needs.

Note: Forest agricultural producers are exempt from the \$1,000 requirement; however, they must meet the other producer eligibility criteria within this section.

- (vi) State Conservationists, with advice from the State Technical Committee, may further define criteria necessary for determining agricultural producer and agricultural production eligibility.

Notes: To be eligible for EQIP, an applicant who certified as a beginning farmer or rancher must also be determined as an agricultural producer.

Foreign individuals and entities may be determined eligible producers provided they meet the provisions of this section.

Agricultural support businesses such as agricultural supply buyers and sellers are not eligible to participate in EQIP. Likewise, producer organizations and cooperatives that provide support but do not meet the above criteria are not eligible.

- (3) In addition to the above criteria:
- (i) **Agricultural production** is defined as farm or ranch operations involving the production of crops including but not limited to:
 - Grains or row crops
 - Tobacco
 - Seed crops
 - Vegetables or fruits

- Hay, forage, or pasture
- Orchards or vineyards
- Flowers or bulbs
- Naval stores
- Field-grown ornamentals
- Plant materials
- Plant materials in green houses
- Trees, including private non-industrial forest land

Livestock production is defined as farm or ranch operations involving the production, growing, raising, or reproducing of livestock or livestock products:

- (ii) For food or fiber, including but not limited to the following:
 - Dairy cattle
 - Beef cattle
 - Buffalo
 - Poultry
 - Turkeys
 - Swine
 - Sheep or goats
 - Horses
 - Fish or other animals raised by aquaculture
 - Ostriches or emu
 - Other livestock or fowl
- (iii) Other animals as identified by the State Conservationist with the advice of the State Technical Committee.

D. Determining Eligibility as Separate Individual or Entity

- (1) To be considered as a separate individual or entity for the purposes of EQIP, (other than an individual or entity that is a member of a joint operation), in addition to other provisions of this section, all of the following must apply:
- (2) Has a separate and distinct interest in the land or the agricultural or livestock production involved.
 - (i) Exercises separate responsibility for such interest.
 - (ii) Maintains funds or accounts separate from that of any other individual or entity for such interest.

E. Determining Payment Limitations

- (1) A payment limitation service is available in ProTracts to provide the balance of payment limitations available for contract approval to ensure that a participant has not received payments exceeding the \$450,000 dollar limit. The payment calculation will consider all EQIP payments received from 2002 or newer contracts either direct or indirectly.
- (2) ProTracts will use web service information available from FSA to determine the following information which is necessary to track payment limitations:
 - (i) Names of all members of the entity
 - (ii) Names of all members of any embedded entities
 - (iii) Percentage share for all members
 - (iv) Social Security Numbers for all members (Where applicable; American Indians, Alaska Natives and Pacific Islanders may use another unique identification number for each individual eligible for payment)

Exceptions:

- (i) Foreign individuals and members of foreign entities must obtain and provide a Federal ID number (EIN or SSN).
- (ii) With regard to contracts on Indian Land, payments exceeding the payment limitation may be made to the Tribal venture if an official of BIA or a Tribal official certifies in writing that no one individual directly or indirectly will receive more than the limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made, by social security number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request of NRCS, proof of payments made to the individuals that incurred the costs for installation of the practices.

F. Subsistence Producers

Individuals and families engaged in agricultural production for subsistence purposes are eligible for EQIP if they meet the requirements of 440-CPM, Paragraph 515.51(c), however the value of the production of food and fiber had it been sold may be used to document the \$1,000 requirement if the production is:

- (i) The primary source of family consumption and use or
- (ii) Used in barter and trade.

G. Squatters or Tenants by Sufferance

- (1) The applicant must meet all of the following conditions:
 - (i) Be an eligible producer according to 440-CPM, Paragraph 515.61(c).
 - (ii) Have legal access to the land being offered for enrollment.
- (2) Determine EQIP eligibility according to the following table:

IF the applicant...	THEN the applicant is...
Has control of the land being offered for enrollment with the knowledge and consent of the owner.	Eligible.
Is on the land being offered for enrollment without the knowledge and consent of the owner.	Ineligible.

H. Indians and Indian Tribes

Indians and Indian tribes are eligible producers if any of the following apply:

- (i) The Indian tribe owns or has control of the eligible land. (*See* 440-CPM, Section 515.52).
- (ii) An individual Indian on tribal land meets the requirements of 440-CPM, Paragraph 515.51(c).
- (iii) An individual Indian on non-tribal lands meets the requirements of 440-CPM, Paragraph 515.51(c).
- (iv) An individual or entity having grazing authority on tribal land is eligible as a tenant to perform practices on the land if the lease or permit is issued by an appropriate tribal or Bureau of Indian Affairs official.

I. Cooperative Grazing Associations or Districts

A cooperative grazing association or district is eligible if either of the following applies:

515.52 Eligibility of Land

A. Land Eligibility Decisions

NRCS makes land eligibility decisions and maintains copies of the determination in the official EQIP file.

B. Eligible Land

In general, the term “eligible land” means land on which agricultural commodities or livestock are produced in order for an agricultural producer to meet the requirements of 440-CPM. Paragraph 515.61(c). This includes:

- (i) Cropland
- (ii) Rangeland
- (iii) Grassland
- (iv) Pasture land
- (v) Private, non-industrial forestland
- (vi) Other land which the Secretary determines poses a serious threat to soil, air, water , or related resources

Note: Irrigation History:

A participant will be eligible for cost-share or incentive payments for irrigation related structural, vegetative, and land management practices only on land that has been irrigated for two of the last five years prior to application for assistance. State Conservationists will supplement this manual to identify the process and documentation necessary to validate irrigation history.

C. Land Ownership and Control

Land may only be considered for enrollment if the land meets any of the following criteria:

- (i) Privately owned.
- (ii) Publicly owned land where all of the following apply.
- (iii) The land is under private control for the contract period and included in the participant's operating unit.
- (iv) Installation of conservation practices will contribute to an improvement in the identified natural resource concern.
- (v) The conservation practices will directly benefit agricultural land owned by the participant.
- (vi) The participant has written authorization from the Government or Tribal landowner to apply the conservation practices.
- (vii) Tribal, allotted, ceded, or Indian land.

D. Evidence of Control of Land

An applicant must provide satisfactory evidence that control of the land will continue uninterrupted for the contract period. Evidence may include:

- (i) Deed or other evidence of land ownership
- (ii) Lease
- (iii) Other written authorization from the landowner showing control of the land for the life of the contract.

Note: Evidence may already be on file in the FSA county office or NRCS field office and should be referenced.

E. Permission of the Landowners

An applicant proposing to implement a structural or vegetative practice (*See* 440-CPM, Paragraph 515.91(e)) on rented land must sign the application and submit written concurrence by the landowner at time of application. (*See* 440-CPM, Paragraph 515.81(b).)

F. Land enrolled in other Conservation Programs

Land enrolled in other conservation programs is eligible under EQIP provided:

- (i) EQIP does not pay for the same practice on the same land as any other USDA conservation program.
- (ii) Land enrolled in CRP may only be offered for enrollment during the last year of the contract and no EQIP practice shall be applied on that land until after the CRP contract has expired or has been terminated.
- (iii) The EQIP practices do not defeat the purpose of either EQIP or the other conservation program.

(*See* 440-CPM, Paragraph 515.91(b) for practice eligibility).

**STANDING ROCK 2006 CONSTRUCTION ACCOMPLISHMENTS OF STRUCTURAL PRACTICES
JANUARY 1, 2006 TO DECEMBER 30, 2006**

FIELD OFFICE	STATE	FENCE FT	WELL #	PUMPS #	PIPELINE FT	TANKS #
SELFRIDGE	ND	96,687	12	13	187,452	56
MCINTOSH	SD	41,347	5	10	152,806	45
FORT YATES	ND	5,850	4	4	17,900	8
FORT YATES	SD	44,351	7	7	25,812	4
SUBTOTAL	ND	102,537	16	17	205,442	64
SUBTOTAL	SD	85,698	12	17	178,618	49
TOTAL		188,235	28	34	384,060	113

EQUIP PRIMARY SOURCE OF COST SHARE , SECONDARY SOURCE - ECP, CRP, TRIP

AVERAGE COST ESTIMATED BASED ON EQUIP RATES

\$ 0.70 /ft- 3 wire	131,764.00				
250' deep @ \$20.00		140,000.00			
\$3,000.00 ea.			102,000.00		
\$2.00 / ft- reg & rocky				768,120.00	
\$1.25 /gal- 1200 ea.					169,500

TOTAL ESTIMATED COST \$1,311,384.00

Dakota FARMER



Extra-10-bushel plan for wheat
See Page 16

Time to rethink your insurance
See Page 36



Fight back

By LON TONNESON

WE are standing up and fighting for our right to farm," says Pam Brekke.

She is in the middle of a dispute over ag zoning in North Dakota that may be headed for a showdown in the legislature or the courts.

Brekke farms with her husband, Scot, near Edmore, N.D., and is clerk of the Prospect Township board of supervisors and a member of the Ramsey County commission.

Two years ago, Ramsey County passed a zoning ordinance that opponents say is one of the most restrictive in the state. However, proponents say it provides the best regulation of concentrated animal feeding operations in North Dakota and is necessary to adequately protect Devils Lake, one of the state's largest fisheries and the foundation of the county's multimillion-dollar tourism industry.

The two sides have been fighting over it ever since.

This summer, Prospect Township — located on Ramsey County's northern border, 45 miles from Devils Lake — passed its own zoning law. Then it approved a permit for Viking Pork to build a 5,000-sow farrowing barn in the township.

Chaos coming

"It's going to create chaos," warns Todd Leake, an Emerado, N.D., farmer and member of

Key Points

- Township and county are locked in an ag zoning battle.
- Issue will likely be decided by courts or legislature.
- Outcome will set a precedent for ag zoning statewide.

the Dakota Resource Council, an environmental and farm advocacy group that has worked with counties and townships on zoning. It often opposes large livestock enterprises. "The attorney general needs to look at this closely."

At issue is whether a township can have less restrictive zoning than the county. In most states, that isn't legal. But in North Dakota, township zoning trumps county zoning. Prospect Township's zoning complies with state regulations.

DRC also claims that Prospect Township didn't follow proper hearing notices and failed to adopt important sections of the state's model ordinance.

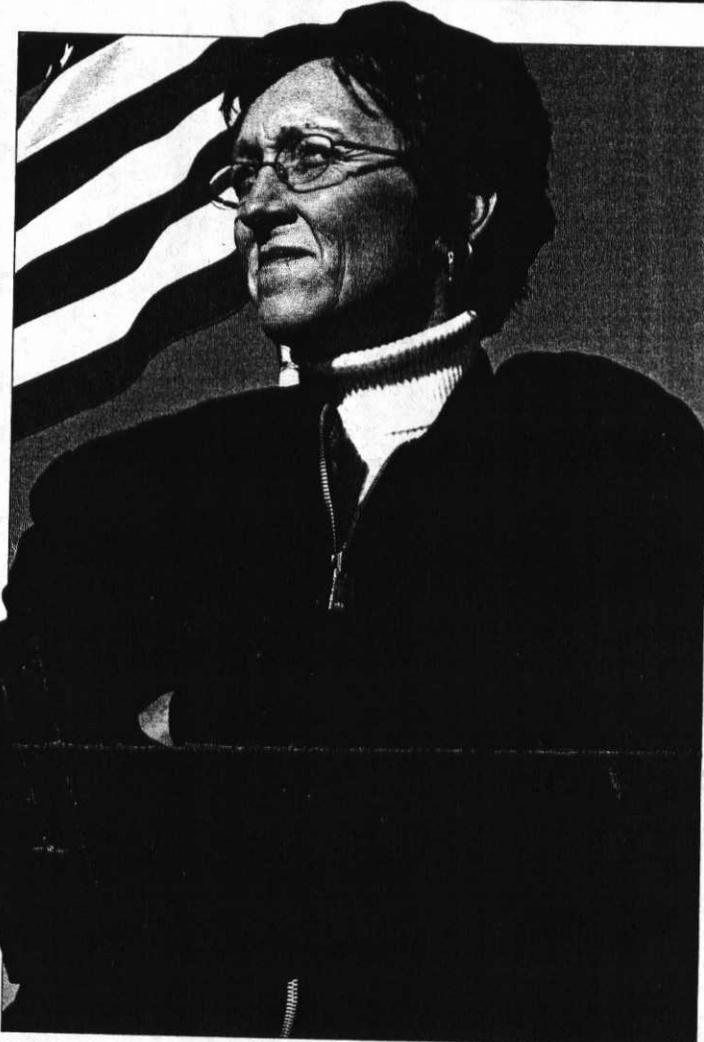
"Their law isn't legal," Leake says.

Prospect Township pulled a fast one for Viking Pork, Leake says.

"It's happened before in other places — build first and then sort out what's legal. It's just plain wrong."

Line in the sand

Eric Aasmundstad, president, North Dakota Farm Bureau,



ZONING FIGHT: Pam Brekke, standing at the end of her driveway, faces a township vs. county zoning conflict that has major implications for livestock development.

says Ramsey County is the "line in the sand" for livestock development and the right to farm in North Dakota.

How the courts resolve the issue, or how the legislature

reacts, will set a precedent in the state, says Aasmundstad, who lives in Ramsey County and serves on the county planning and zoning committee.

The Ramsey County Farm

Bureau also is suing the county over its zoning ordinance.

"It is going to be a dog fight," Aasmundstad says.

Read more on Pages 6-7.

*****CAR-RT LOT**R-001
18562 12 1240 000000395438
MIKE BRANDENBUR 004
8044 COUNTY ROAD 34
EDGELEY ND 58433-9761



Powerful Performance

Roundup
AGRICULTURAL HERBICIDES

Around Dakota Ag

Township, county split over zoning

By LON TONNESON

SETBACKS and odor aren't the cause of the clash between Ramsey County and Prospect Township over zoning and livestock development.

At issue are the county's requirements that a person with 1,000 or more animal units in a concentrated feeding operation:

- Resubmit the permit to the county for review every five years.

- Pay a \$4,000 annual fee.
- Agree to pay all reasonable costs in excess of the fee that the county incurs to monitor the site.

- Post a sufficient amount of money, but not less than \$100,000, to be used to clean up the site if the company goes out of business.

What's wrong

These and other measures completely block development of large, modern livestock operations in the county, says Pam Brekke, an Edmore, N.D., farmer and member of both the Ramsey County commission and Prospect Township board.

No one will invest millions in a hog barn or dairy or beef feedlot if the county can shut it down in five years, she says.

No one is willing to turn over his or her operating checkbook

Key Points

- Prospect Township says county went too far with zoning.
- At issue are new requirements for CAFOs.
- The county believes its ordinance is reasonable.



IN DISPUTE: Pam Brekke holds a copy of the Prospect Township zoning ordinance.

to the county. Permit holders have to pay for any monitoring or study a majority of the commissioners decides is reasonable.

Site closure bonds aren't even available to the industry. Asking companies to set aside \$100,000-plus in cash or credit is unreasonable and unnecessary, she says.

Brekke suspects that these provisions were designed to turn away developers without banning livestock feeding outright.

Much of the text of the ordinance apparently comes from an organization called GrassRoots Action Center for the Environment — a fact she learned after the county passed the ordinance, she says.

Among GRACE's many causes is opposition to farms that it defines as factory farms. GRACE helps members block factory-farm projects in their communities.

On its Web site in 2004, GRACE cheered passage of the Ramsey County zoning ordinance and noted that it had provided the text and research for the law, Brekke says. The references have since been removed.

Ramsey County commissioners were told that the county needed a tough law to protect Devils Lake from pollution, Brekke says, but that they could grant variances for applicants who wanted to build in places like Prospect Township, which is 45 miles from Devils Lake.

But when commissioners started talking about a real permit, they learned they could only grant variances on the setback requirements.

"I was misled," Brekke says.

Lawson: No restrictions on the right to farm

RAMSEY County's ordinance doesn't restrict anyone's right to farm, says Joe Lawson.

Nor does it prevent anyone from building a concentrated animal feeding operation.

The ordinance limits them to appropriate sites and gives the county the power and the money to make sure the operators comply with the regulation, he says.

Lawson, a retired Air Force pilot and retired farmer from Broomfield, N.D., serves on the nine-member Ramsey County planning and zoning committee. He took the lead in writing the ordinance.

Lawson says Ramsey County needs stronger enforcement than what the state health department provides. In a written document to the planning commission, he describes those annual inspections as two- to three-hour on-site visits in which officials mostly check nutrient management plan documents.

Having a good plan on paper doesn't mean that it is

being followed, Lawson says. "We need to verify that the spread areas are not becoming oversaturated with nitrates and phosphates."

Karl Rockeman, an environmental engineer with the state health department, says the department's two inspectors — a third is being hired — visit the state's 60 largest CAFOs an average of four times a year and check the sites and practices thoroughly. "We are not just checking paperwork," he says.

Ramsey County should require that a permit holder clean up a site when it is closed, Lawson continues. Owners of a limited-liability company are personally shielded from liability. At the end of the day, if a company isn't able to provide a performance bond or a standby letter of credit, the applicant probably doesn't have the financial ability to clean up, he says.

Lawson contends that the Ramsey County law is "more than reasonable. It only requires that the county be able

to verify that the permit holder does what he says he will do."

Majority rules

Ramsey County's zoning ordinance was crafted in open, public meetings, Lawson says. People interested in expanding or starting new livestock enterprises participated in the meetings. The nine-member planning committee also received help from livestock and zoning experts.

"Everyone had a place at the table," he says. Some didn't participate, but that was their choice.

The ordinance may have some text that came from the GrassRoots Action Center for the Environment, but Lawson says he looked at 40 different sources of information. The ordinance also has language from the state model ordinance and North Dakota State University recommendations.

The county commission passed the ordinance unanimously, and a majority still supports it today, Lawson points out.

Sierra Club recommends strategy to block CAFOs

By LON TONNESON

THE following is a five-step strategy from the Sierra Club to keep concentrated animal feeding operations from locating near you. The information is reprinted verbatim from the Web site, www.sierraclub.org/factoryfarms/resources/strategies.asp.

1) Use the public comment and review process.

Get on every mailing list possible: Division of Environmental Quality (state environmental agency), USDA/Natural Resources Conservation Service, EPA, Army Corps, county planning and zoning, and any other agency that may have to issue permits or review applications. Scrutinize the public notices and other information sent out on CAFOs — the info may be concealed or listed in such a way that it is not immediately apparent.

Follow up: Provide comments on water quality, air quality, socio-economic issues, whatever. You don't have to be an expert (although soon you will discover that you are becoming one); keep reminding the agencies that they are required not only to listen but to respond to citizens' comments. Get involved in state-level committees and agency working groups that are charged with issues related to water quality, air quality, or CAFOs. Push every button at every level.

Keep commenting and enlist others to join you. Let them know that you are not going away — this falls under the heading of "wearing them down." Sooner or later, you will begin to notice incremental changes in the way things are done, and if enough forces are gathered, the planning and zoning, health departments, and finally the state agencies will begin to respond positively — and may even turn down a permit or make conditions actually protective of the environment (which means that the applicant will likely withdraw).

2) Organize a friendly "letter from the neighbors."

If you learn that a CAFO is moving in or a landowner is about to become a contract grower, one tactic Missouri activists have used successfully is what is now known as the "neighbor letter." Quite simply, all of the adjacent and neighboring landowners send a letter to the company and the potential contract grower telling them that everyone is having their properties appraised; and will have the properties re-appraised nine months after hog production begins. The letter concludes by stating that the neighbors will sue the company and the grower for any loss of property values. The appraisals must be completed and the letter sent prior to the beginning of construction of the facilities.

3) Press for county health ordinances.

Most states won't let counties zone for "agricultural operations." Even though we all know that a CAFO is really an industrial operation, not a farm in any sense, legally these operations are still considered "agricultural." But, all counties have the authority, indeed the duty, to adopt ordinances to protect the public health and welfare, including protection from rank odors and noxious emissions. You and your allies can place pressure upon county commissioners to adopt such ordinances.

4) Use the "threatened or impaired watersheds" process.

Obtain from your state water regulatory agency or the EPA regional offices for your area a copy of the listing of all "impaired water bodies" or the "303(d) list" for your state. Every state has such a list. They can also provide you with a copy of the regulations that govern the impaired water bodies process. No new or expanded CAFOs are allowed to locate in the drainages of impaired water bodies unless very strict standards are met. If you know of such a new or expanding operation in an impaired water body, report this to the state agency, the regional office of EPA, and to the Sierra Club Clean Water Campaign.

5) Sue them.

This is not necessarily the last resort. In fact, just filing a lawsuit opens a lot of doors and lets everyone — the agencies, politicians and the CAFO owner or grower — know that you mean business. Suits can be filed under the "citizens suit" provisions of the federal Clean Air Act and Clean Water Act, and legal fees are recoverable (which is how your attorney will get paid). Lawsuits are easier and you are more likely to prevail if a group of plaintiffs files jointly. The problem with a lawsuit is that you may have to show that you have been harmed, which means waiting until after something negative has occurred. Recent cases, however, have prevailed on the basis of a "presumptive nuisance," which means that certain things can be presumed to be a nuisance and there is no need to wait until it happens.

Read more at www.sierraclub.org/factoryfarms/resources/strategies.asp.

TESTIMONY ON ENGROSSED HOUSE BILL 1215

Senate Agriculture Committee

Lee Klapprodt
Director, Planning and Education Division
North Dakota State Water Commission

February 22, 2007

Mr. Chairman, Members of the Senate Agriculture Committee, I am Lee Klapprodt, Director of the Planning and Education Division of the North Dakota State Water Commission.

I appear before you today relative to Engrossed House Bill 1215, and proposed amendments to Section 61-34-04 of the North Dakota Century Code in regard to the Drought Disaster Livestock Water Supply Project Assistance Program.

First, I would like to provide you with some background on the Program. The Drought Disaster Livestock Water Supply Project Assistance Program is administered by the North Dakota State Water Commission and was created in 1991 in response to a widespread statewide drought. The purpose of the program is to assist livestock producers who have livestock water supply shortages caused by drought. Since 1991 the program was reactivated in 2002 and most recently in 2006. There has been a great deal of interest in the program with a total of 574 livestock producers benefiting since the program began in 1991. In 1991 the program involved 183 livestock producers receiving \$285,000. During the 2002-2005 drought, 200 livestock producers received \$350,000. In 2006 a total of 515 applications were received. Of the total applicants in 2006, to date, 191 livestock producers have received cost share totaling \$550,000. Requests for reimbursement are being processed weekly. In addition, the State Water Commission has about 50 applications totaling approximately \$130,000 in various stages of completion. Over 100 additional applications have been received, and are being reviewed. The significant increase in applications in 2006 is due to increased awareness of the Program, reduced availability of federal dollars, and expansion of the continuing drought. Attached is a map showing the extent of drought conditions in the upper mid-west.

I will now address specific amendments we would like to have considered for Engrossed House Bill 1215. Primarily, they stem from the name change from USDA "Agriculture Stabilization and Conservation Service" to USDA "Farm Service Agency". A summary of our suggested changes is attached.

On line 9, "USDA" should be inserted before "farm service agency".

Also in line 9, beginning with, "If cost-share assistance is denied by the service...", the word "service" be changed to "agency" to correctly reflect the farm service agency as mentioned in the previous sentence in line 9.

We also recommend that in lines 11 and 12, the "agricultural stabilization and conservation service" be replaced with "USDA farm service agency".

The State Water Commission believes this is an excellent program and likely will continue to support it to the extent possible. Engrossed House Bill 1215 does not appropriate additional money for this program and funding would come from the State Water Commission's budget appropriation. It must also be noted that the State Water Commission's budget for this program is not unlimited. All money for this program is taken from other worthy projects located throughout the state where the State Water Commission provides cost share.

This concludes my testimony on Engrossed House Bill 1215, and I would be happy to answer any questions that the Committee might have. Thank you.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1215

Page 1, line 8, after "the" insert "United States department of" and remove the overstrike over "agriculture"

Page 1, line 9, overstrike the third "service" and immediately thereafter insert "agency"

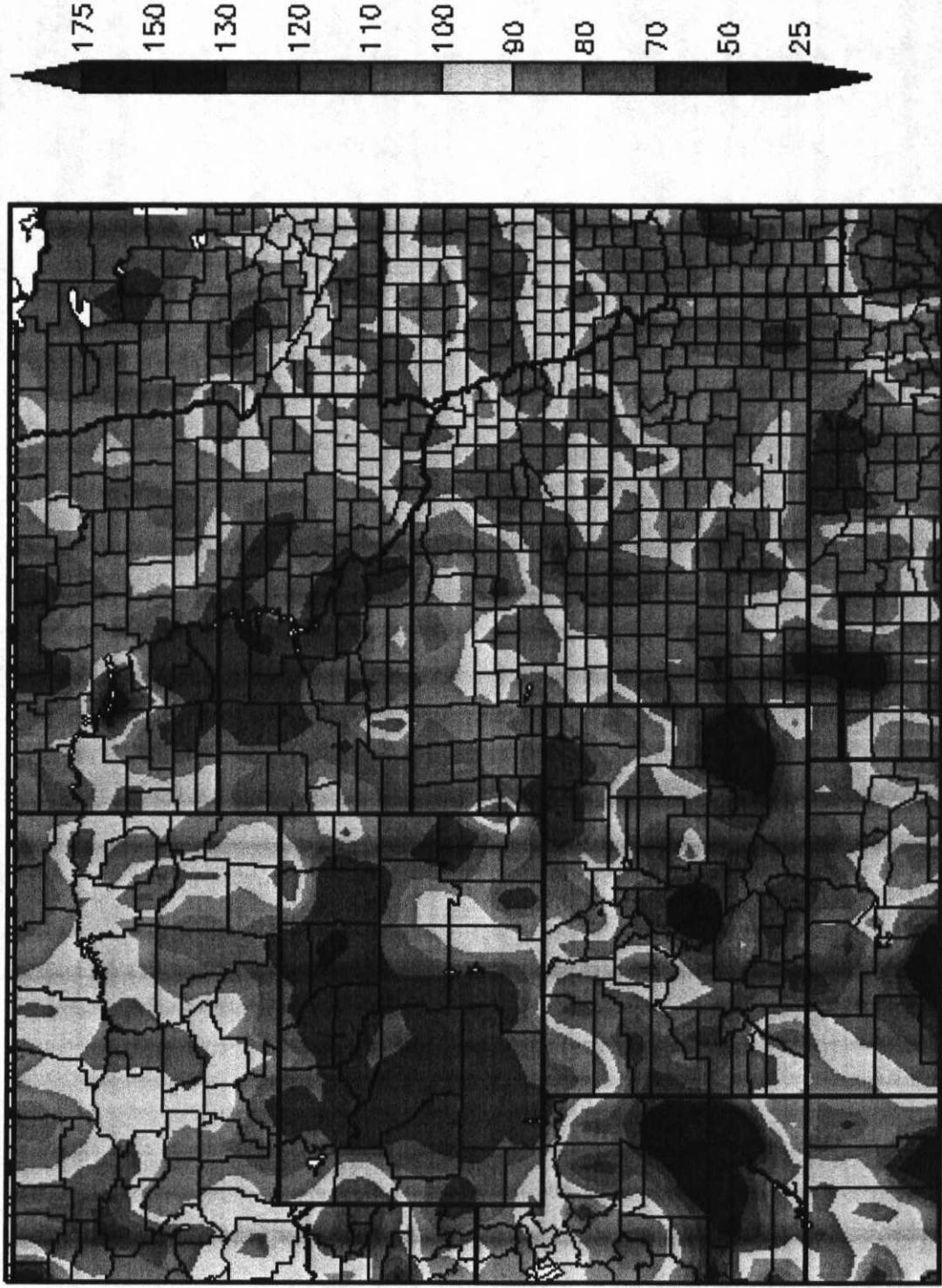
Page 1, line 11, after the second "the" insert "United States department of" and overstrike "stabilization and"

Page 1, line 12, overstrike "conservation" and immediately thereafter insert "farm", and after "service" insert "agency"

Renumber accordingly

Percent of Normal Precipitation (%)

2/1/2006 - 1/31/2007



Roger Johnson
Agriculture Commissioner
www.agdepartment.com



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**Testimony of Roger Johnson
Agriculture Commissioner
House Bill 1215
Senate Agriculture Committee
Roosevelt Park Room
February 22, 2007**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Tom Silbernagel, Administrator of the ND Agricultural Mediation Service. I am here to testify on behalf Agriculture Commissioner Roger Johnson in support of HB 1215 which amends the North Dakota Century Code relating to the Drought Livestock Water Assistance Program. As I mentioned, the Commissioner supports this bill, however he respectfully asks this committee to consider making some changes to HB 1215 before it is sent on for final passage.

This bill was passed by the House of Representatives after amendments were approved which in part, removed proposed increases in the cost share percentage and the maximum payment per project. The bill in its original form increased the cost share percentage from 50% to 65% and increased the maximum payment amount from \$3500 to \$4500.

Due to the severe drought experienced by most producers in the state this year, the Drought Livestock Water Assistance Program was reactivated on June 28th. I know from the calls

received at the Agriculture Department that many applicants complained about the cost share percentage (50%) and maximum payment (\$3500). In order to solve the problem, the Program's Advisory Committee met on July 12, 2006 and made changes to the Administrative Rules that allowed three projects per application and increased the time limit to construct the project from 60 to 180 days. These changes were significant but did little for the producer with just one larger project.

The Drought Disaster Livestock Water Supply Assistance Program was established by the legislature in 1991 when agricultural operating expenses were much lower than they are today. The reimbursement level and the cost share percentage will remain at the 1991 levels unless the amendment removed by the House of Representatives is reinstated.

Chairman Flakoll and committee members, I urge a do pass on HB 1215 and again ask on behalf of Commissioner Johnson that you consider increasing the cost share percentage and maximum minimum payment. I would be happy to answer any questions you may have.

Froelich, Rodney

From: Knudtson, Larry J.
Sent: Monday, March 05, 2007 5:01 PM
To: Froelich, Rodney
Subject: FW: Drought Program

Hi Rod. Mike Noone put together some more details on the Program.

If you have any questions, or need more info, please call.

Larry Knudtson
 Research Analyst
 North Dakota State Water Commission
 900 East Blvd.
 Bismarck, ND 58501-0850

lknudtson@nd.gov
 (701) 328-4969

----- Forwarded Message

From: Mike Noone <mnoone@nd.gov>
Date: Mon, 05 Mar 2007 16:44:27 -0600
To: Larry Knudtson <lknudtson@nd.gov>
Conversation: Drought Program
Subject: Drought Program

Average Cost Per Applicant: \$2,841.78
Average Cost Per Project: \$1,879.63

Total # Applications Received: 548
Total # Applications Approved: 446
Total # Applications Approved & Paid: 253
Total# Applications Rejected: 99

Number of Projects Approved Per Applicant

3 Projects 53
2 Projects 118
1 Project 277

Total # of Applicants by Month

Apps in June '06 4
 Apps in July '06 204
 Apps in Aug '06 177
 Apps in Sept '06 70
 Apps in Oct '06 45
 Apps in Nov '06 23
 Apps in Dec '06 7
 Apps in Jan '07 8
 Apps in Feb '07 6
TOTAL 544

Total # Projects Requested By Type

Total # Wells 261
 Total # Dugouts 238
 Total # Springs 21
 Total # Pipelines 108
 Total # Rural Waters 35
 Total # Pumps 20
 Total # Generators 17
 Total # Elec/Solar 48
 Total # Rentals 3
 Total # Tanks 49
TOTAL 800

----- End of Forwarded Message

3/6/2007

TESTIMONY ON ENGROSSED HOUSE BILL 1215

Senate Appropriations Committee

**Dale Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
North Dakota State Water Commission**

March 13, 2007

Mr. Chairman, Members of the Senate Appropriations Committee, I am Dale Frink, North Dakota State Engineer, and Chief Engineer-Secretary of the North Dakota State Water Commission.

I appear before you today regarding Engrossed House Bill 1215, as amended, and proposed amendments to Section 61-34-04 of the North Dakota Century Code in regard to the Drought Disaster Livestock Water Supply Project Assistance Program.

First, I would like to provide you with some background regarding the program. The Drought Disaster Livestock Water Supply Assistance Program is administered by the North Dakota State Water Commission and was first created in 1991 in response to a widespread statewide drought. The purpose of the program is to assist livestock producers who have livestock water supply problems resulting from drought conditions. Since 1991, the program was reactivated in 2002 and most recently in 2006. There has been a great deal of interest in the program with a total of 574 livestock producers benefiting since the program began in 1991. In 1991 the program involved 183 livestock producers receiving \$285,000. During the 2002-2005 drought, 200 livestock producers received \$350,000. In 2006 a total of 550 applications were received. Of the total applicants in 2006, to date, 250 livestock producers have received cost share totaling \$725,000. In addition, the State Water Commission has applications totaling more than \$475,000 pending at this time. The significant increase in applications in 2006 is due to increased awareness of the program and reduced availability of federal dollars.

For this reason, I would recommend that Page 1, Line 17, the cost share amount of "\$3,500" not be amended. Of the 450 applications approved, roughly 60 percent had one project, 30 percent two projects, and 10 percent applied for three projects. House Bill 1215 does not appropriate additional money for this program and funding would come from the State Water Commission's budget appropriation. The State Water Commission believes this is an excellent program and likely will continue to support it to the extent possible. But if the State Water Commission does not increase the total dollars allocated to the project, increasing the cost share will result in fewer livestock producers receiving assistance.

If the increased costs associated with the changes in this bill were fully funded, we estimate the program would need an additional \$430,000 per biennium. This is based upon the interest in and the cost of the program in 2006. It must also be noted that the State Water Commission's budget for this program is not unlimited. All money for this program is taken from other worthy projects located throughout the state where the State Water Commission provides cost share.

This concludes my testimony on Engrossed House Bill 1215, and I would be happy to answer any questions that the Committee might have. Thank you.