

2009 SENATE NATURAL RESOURCES

SB 2292

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2292

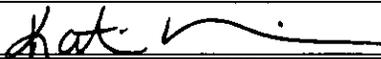
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8085

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the hearing on SB 2292, Relating to water permit applications and notices. All committee members were present.

**Senator Tim Mathern** introduced the bill. There are two main changes to our water permit process in North Dakota that this bill would establish. The first change is in section 1. The application to receive a permit to use water would need to provide further information, particularly the targeted aquifer and the depth of the proposed water appropriation. Another change is that the surface owner has been notified. The second change is changes to section 2. It essentially changes the notice requirements, which we have in place, from one mile to two miles.

**Don Nelson** representing the Dakota Research Council spoke in favor of SB 2292 (see attached testimony #1).

**Robert Kleemann**, Dunn County Commissioner, Dunn County is in favor of this bill. We only wish there was more to it.

**Senator Triplett** what else do you think we should add?

**Robert Kleemann** Dunn County just had a water depot put in. Some of the people were told that if the depot goes in there is a possibility that they might lose their water. The Water

Commission gave us the permission to put the water depot in, but if something happens where the water depot loses water or if one of the ranchers loses their water they will shut it down and check into it. So far we have not been able to do that. We want to be able to tell the people they can go ahead and do it and if something goes wrong the Water Commission will come in and look at it. We have not received anything telling us we can do that.

**Rob Shaver**, Director of the Water Appropriation Division at the North Dakota State Water Commission, spoke in opposition to SB 2292 (see attached testimony #2).

**Senator Triplett** Mr. Nelson presented an application form and under 7c it says "the applicant is the owner of an oil and gas lease which gives us ingress and egress with the right to occupy the surface for oil development and the right to use produced fresh water". If you receive something like that do you ask them to provide a copy of the lease and do you analyze it to see if you agree with their assertion?

**Rob Shaver** replied yes we do. Our water rights administrator will contact the applicant in this case for example, if it is an oil lease we would request copies of the leases and look at the wording to see if it provides sufficient documentation that they would have the right to put in a water well.

**Senator Triplett** I assume, if you disagreed or thought they were misinterpreting their own lease you would not allow the permit, correct?

**Rob Shaver** yes, if we feel the documentation is insignificant then the state engineer would either request additional documentation or deny the permit application.

**Ron Ness**, North Dakota Petroleum Council and we stand in opposition to SB 2292. We support the comments made by the state water commission and their opposition. This bill has the potential to dramatically impact the oil and gas industry. This bill is an attempt to restrict the development of oil and gas, specifically units secondary recovery in North Dakota. Many times

when a company applies for water permits they are going to need permission from the surface owner and in most cases they already have the permission. When the purpose of the water is for lease use meaning that use on a single well or lease only which includes a unit, the mineral developer has the right to use the surface. He or she may just have to settle the surface damages and not get an express agreement. After you drill an oil well you may get 15% of the oil out of the ground and then go back in and put water into the ground. About 25-30% of our oil production is from units. Cedar Hills Field in Bowman County was one of our state's greatest success stories. It was producing about 40% of our state's oil production alone. When they went into the field they drilled deep water wells to 10,000 ft into a lodge pole formation they found there and re-injected the water into that unit. They increased productivity from 8,000 barrels a day to over 45,000 barrels a day. Our state strived off the funds from that project. This bill clearly would potentially have impacts on units like that. Much of our oil production across the state is in large units and aging oil fields that need secondary recovery efforts. Majority of the time all the agreements are reached but, the oil and gas development and the mineral owner have the right on that lease to increase the productivity of that well.

**Mike Dwyer**, Executive Director of the North Dakota Irrigation Association, spoke in opposition of SB 2292 (see attached testimony #3).

**Brandon Ames**, owner of an irrigation company and Hydraulic Engineer, one of the services we offer is to fill out the water permit application. I am opposed to SB 2292 because I feel the current system works. All I see this bill doing is dragging out an already lengthy process. I have two cases in point. One case in Hebron, where we applied for a water permit in the end of 2007 and the farmer went through most of 2008 waiting for it to come through. He was only able to harvest 3.6 bushels per acre on his wheat while his neighbor who had an irrigation

system harvested nearly 80 bushels. What we have now works and I don't see any major benefit from expanding the radius.

**Senator Triplett** asked if someone from the water commission would get up and elaborate on the testimony of Senator Mathern and his comment about underground lakes and rivers.

**Robert Shaver** we are looking at an aquifer that is comprised of either sand and unconsolidated or cemented together sand and gravel. These are primarily formed by the glacial activities in this state. The glaciers would advance and retreat with melt water coming off. It would form river systems. The Spirit Wood Aquifer is an old buried Missouri River type system. It was laid down by water from a glacier and the ice advanced over the top and covered it up with a clay material. When you look at a map and you see what looks like a river outlined in blue. People think it is an underground river, but really it is an underground sand and gravel deposit that can store and transmit water. All geologic formations can store water. The key is if they can transmit water at a rate to which you can put the water to use. Large users need the sand and gravel deposits to get very high well yields because those deposits can transmit lots of water so you can get 800-1,000 gallons per minute from a properly completed well. When you get into some of the bedrock areas you have very fine materials and they don't transmit water very well, but they can satisfy domestic stock users and other small scale users. In regards to how fast water can move underground, you are looking at feet per day. It is very slow moving.

**Senator Hogue** we heard from previous speaker that the permits in the oil fields are being routinely appealed as a way to slow down the process, is that true?

**Robert Shaver** I can't provide any kind of documentation that indicates that. For each of these water depot applications that comes in to supply water for the oil field, we get letters of concern from the DRC and they become a party of record and as such, we are required by law to send

the recommended decision to every party of record. Any party of record has 30 days to appeal in which they can send in additional comments or request a hearing. They wait till the 29<sup>th</sup> day and send in a request for a hearing. The office of administrative hearings is now backed up six months so it does provide for significant delay.

**Senator Lyson** closed the hearing on SB 2292.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2292

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8178

Committee Clerk Signature

Minutes:

**Senator Lyson** opened the discussion on SB 2292.

**Senator Hogue** moves a Do Not Pass on SB 2292.

**Senator Triplett** seconds the motion.

The bill received a Do Not Pass on a vote of 7 to 0.

Date: Jan 29, 2009

Roll Call Vote #: 2292

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."**

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen Hogue Seconded By Sen Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Sen Erbele

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

**REPORT OF STANDING COMMITTEE**

**SB 2292: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Eleventh order on the calendar.**

2009 TESTIMONY

SB 2292



**Dakota Resource Council**  
"Organizing North Dakotans Since 1978"  
P.O. Box 1095~ Dickinson, ND~ 58602-1095  
701-483-2851  
www.drcinfo.com

Senate Bill 2292  
Dakota Resource Council Testimony  
January 29, 2009

*Don Nelson*

Chairman Lyson and members of the committee, thank you for the opportunity to testify in support of Senate Bill 2292.

First of all I would like to thank the sponsors of this legislation, Senators Mathern and Potter and Representatives Drovdal, Meyer, Mock and Onstad.

There are several reasons that DRC's oil and gas task force fully supports this legislation.

The first and main reason is that they all rely on the availability of groundwater resources in order to run their farming and ranching operations. Their one and only source of drinking and stock water is groundwater and we need to protect their rights as prior appropriators with every protection available.

When and if a landowner sees a legal notice in the paper there is no mention of the depth of the proposed water appropriation. We feel that without even an estimated depth of the proposed water well, landowners are being denied their right to know. Without that knowledge they cannot possibly identify by looking at the notice if they will be potentially impacted.

The initial 30 comment period that is allowed <sup>is</sup> ~~in~~ the one and only time that a person may become a party of record. It is imperative that these notices give as much information as possible.

If a landowner is using water from 100 feet and the new applicant is looking to extract and sell water from 900 feet deep chances are they won't be affected. But, if the new applicant is looking to use water from the same depth and/or aquifer they will know right way if they should be concerned. This is a priceless protection that this committee can give to groundwater users.

The second reason we support this bill is that during our challenge of the 21 Zenergy water appropriations permits west of Alexander, some of their permit applications state that an oil and gas lease gives them the right to ingress and egress with the right

**to occupy the surface for oil development and the right to use produced fresh water.  
(copies attached)**

**We know of NO oil and gas lease that allows for any access to fresh water groundwater. Fresh water is not a byproduct of oil production. Calling it produced water does not make it something other than fresh potable water.**

**Produced water is water that accompanies oil when it is produced. It is, in most cases, extremely salty and unusable and must be disposed of properly according to state rules and laws.**

**An oil lease does not give any oil company who has a lease the right to anything but minerals.**

**In the Zenergy case, those minerals are oil and gas, not fresh water.**

**Twenty of the twenty-one (20 of 21) ~~of the~~ permit applications were eventually issued. The reason that the 21<sup>st</sup> permit was not issued was that the surface owner had an agreement with Zenergy that explicitly excluded fresh water.**

**A later water appropriations permit application from another company (Nance Petroleum) was subsequently denied by the state water commission because the company could not come to access terms with the surface owner.**

**Now, either an oil and gas lease gives them the right to access fresh potable groundwater or it doesn't. They cannot have it both ways. We hope that the language provided in this bill will clarify this issue and the requirement of a surface use agreement stating that access to fresh water has been granted will prevent this situation from happening in the future.**

**The other part of the proposed bill would give a better notification to the landowners with in a two-mile radius instead of one-mile. Groundwater is unpredictable. With 45% of our states residents relying on groundwater for their domestic water needs, an additional one-mile extension to the area residents does not seem excessive, only responsible. Municipalities within 12 miles of the proposed appropriation are given notice so it is reasonable to advise landowners within a two-mile radius of that proposal.**

**As an example of the necessity of this change to our state's code is; a current applicant in McKenzie County sent the required notification to the landowners within one mile and the state published a legal notice. When the time came to submit comments on the application, residents from as many as 8-10 miles away submitted comments because they were concerned about the applicants affect on their current water resources.**

**In McKenzie County, stock dams are dry and have been for over 2 years. The lack of water is a serious situation and this added notification will give those who may be concerned a better chance of getting those concerns submitted to the state water commission. Even the state's 2009 Water Resource Plan states that in the western part of the state that water losses have exceeded precipitation.**

**With pending and issued permits for water depots to supply the oil and gas industry with fresh water, currently totaling over 2 billion gallons of water annually, it is up to this committee to make certain that the landowners who will potentially share the aquifers with industry have every opportunity to be a part of the decision-making process.**

**We feel that these changes will help with that effort. We must remember that although the oil and gas industry has done much for the economy of our state that it is the agriculture industry that remains the number one and in order for that industry to thrive they need to have an abundant supply of fresh, clean groundwater.**

**Thank you.**

# WELL LOCATION PLAT

Zinke & Trumbo, Inc.

1202 E 133 ST., Ste 100 Tulsa, Oklahoma 74105-2045

ND Maris #1-16H

600 feet from north line and 600 feet from west line (surface location)

Section 16, T. 150 N., R. 102 W., 5th P.M., McKenzie County, North Dakota

Latitude 47°49'03.93" N.; Longitude 103°45'08.68" W. - NAD 83(96)

[derived from a GPS OPUS Solution NAD - 83(96)]

Original Stone &  
LS #3496 Cop

S 89°50'02" E - 5272.5' meas.

Iron Pin  
Found

600'

Surface Location  
2108' MSL

Lot 2

Lot 1

600'

NW 1/4

W 1/2 NE 1/4

Lot 3

Lot 4

N 00°00'47" E - 5277.5' meas.

16

N 00°04'35" E - 5272.7' meas.

Lot 6

Lot 5

1" = 1000'

SW 1/4

W 1/2 SE 1/4

Lot 7

Lot 8

APPROVED:

State Engineer  
SWC Water Permit No. 5768

Aluminum  
BLM Cop

S 89°54'46" E - 2632.7' meas.

Aluminum  
BLM Cop

S 89°51'36" E - 2639.2' meas.

Aluminum  
BLM Cop

I, Rick Leach, Professional Land Surveyor, do hereby certify that the survey plat shown hereon was made by me or under my direction from notes made in the field and the same is true and correct to the best of my knowledge and belief.

NOTE: All land corners are assumed unless otherwise noted. The well location shown hereon is not an as-built location.

*Rick Leach* 03/18/2004

Rick Leach 03/13/2004

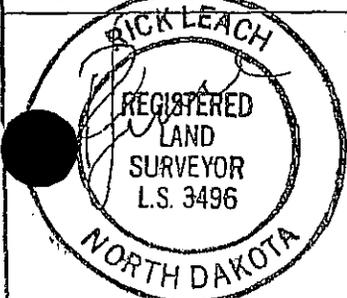
Rick Leach, ND BLS #3496

Date

Surveyed By NDRLS #3496

Date

Mar 18, 2004 - 9:05am - J:\oilfield\zinke-trumbo\8704101\cadd\ep\8704101BAS01.dwg



Vertical Control Datum Used  
Sea-Level Datum of 1929

Based on a BM elevation (H 86) in the  
SE 1/4 NE 1/4 of Sec 4-150-102, being at  
2066' MSL taken from the quad (Alexander,  
ND)

Project No. 8704101

Book OW 122 Pg. 18-22 Staking  
Book \_\_\_\_\_ Pg. \_\_\_\_\_ Levels

Professional Consulting Engineers  
and Surveyors  
Registered in  
North Dakota, South Dakota  
Montana, Wyoming & Minnesota  
Tele-Fax No. 701-572-2019  
Bus. Phone No. 701-572-6352  
222 Airport Road  
Williston, North Dakota 58801-2976  
Certificate of Authorization #C-061

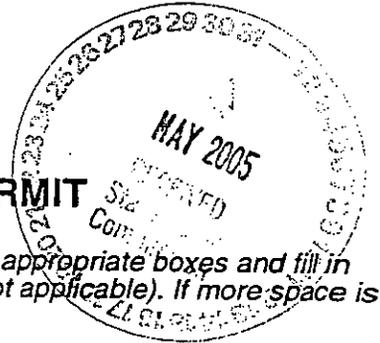
*R/LJ* Subsidiary company  
**Kadmas**  
**Lee &**  
**Jackson**  
Engineers, Surveyors  
and Planners

Drawing No. 1 of 7

© Kadmas, Lee & Jackson, 2004

Application No. 5768

# STATE OF NORTH DAKOTA APPLICATION FOR CONDITIONAL WATER PERMIT



NOTE: Use one application for each type of source (ground water, surface water). Check all appropriate boxes and fill in each blank line. If the question is not applicable to your proposed development, enter NA (not applicable). If more space is necessary, attach additional sheets.

(PLEASE TYPE OR PRINT IN INK)

1. Name of Applicant Zinke & Trumbo, Inc., by Diamond Resources, Inc., Agent  
Mailing Address P.O. Box 1938  
City Williston State ND Zip 58802-1938  
Home Phone 701-572-4523 Other Phone \_\_\_\_\_

2. Source of water supply:  ground water  surface water

If surface water: (a) stream \_\_\_\_\_ a tributary of \_\_\_\_\_

(b) If new impoundment — 1/4 1/4 Sec. \_\_\_\_\_, Twp. \_\_\_\_\_, Rge. \_\_\_\_\_

(c) If existing impoundment, give name \_\_\_\_\_



Point of diversion:

(1) NW 1/4 NW 1/4 of Section 16 Township 150 N., Range 102 W., McKenzie County

Additional points of diversion, if any:

(2) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County

(3) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County

(4) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County

4. Amount of water requested:

(a) Annual use from points listed in Item 3 above, rate of diversion, and period of use:

Five (5) acre-feet at 10 cfs/gpm from Jan 1 to Dec. 31 inclusive  
(AMOUNT) (RATE) (MONTH-DAY) (MONTH-DAY)

(b) If Impoundment: \_\_\_\_\_ acre-feet storage out of which \_\_\_\_\_ acre-feet will be used to offset evaporative losses.

(c) Total annual use requested (sum of annual use from 4a and evaporation from 4b):

Five (5) acre-feet

5. Proposed construction:

Proposed starting date Well has already been drilled.

Anticipated completion date N/A

6. Description of proposed beneficial water uses:

(a) Irrigation (if applicable)

- (1) Method of irrigation:  gravity  sprinkler  waterspreading
- (2) Project will involve new irrigated land:  Yes  No
- (3) Project will involve supplemental water to existing irrigation:  Yes  No
- (4) Description of land to be irrigated (show lot numbers where applicable):

SEC.	TWP.	RGE.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL
			NE1/4	NW1/4	SW1/4	SE1/4													
TOTAL NUMBER OF ACRES TO BE IRRIGATED:																			

(b) Non-irrigation use (if applicable):

Municipal \_\_\_\_\_ Recreation \_\_\_\_\_  
 Rural-Domestic \_\_\_\_\_ Fish and Wildlife \_\_\_\_\_  
 Industrial Dilution of produced salt water from an oil well. Other (please specify) \_\_\_\_\_

7. Ownership:

(a) Property owner at the point of diversion: \_\_\_\_\_

(b) Property owner at the place of use: \_\_\_\_\_

(c) If either (a) or (b) above are other than the applicant, describe the arrangement enabling the applicant to make this filing: Applicant is the owner of an oil and gas lease, which gives us ingress and egress with the right to occupy the surface for oil development and the right to use produced fresh water.

8. State law requires that cities and landowners within a one-mile radius of the proposed point of diversion be advised of this application. A completed "Notice of Application" will be forwarded to you upon receipt of this application. Therefore, please indicate the number of landowners and cities which you must notify:

Eleven (11)

9. THE APPLICANT CERTIFIES THAT THE STATEMENTS APPEARING HEREIN ARE TO THE BEST OF HIS KNOWLEDGE TRUE AND CORRECT:

\_\_\_\_\_  
 (SIGNATURE) Diamond Resources, Inc., Agent (DATE) 5-27-05  
 \_\_\_\_\_  
 (SIGNATURE) Donn Skadeland, President (DATE)  
 \_\_\_\_\_  
 (SIGNATURE) (DATE)

Signature of the applicant(s) must be exactly as in Item 1. If more than one applicant is shown, all must sign.

NOTE: Mail the completed application, along with the required map and application fee to:

(PLEASE DO NOT SUBMIT A COPY OF THIS APPLICATION FORM.)

STATE ENGINEER  
 State Office Building  
 900 East Boulevard  
 Bismarck, ND 58505-0850

**TESTIMONY ON SENATE BILL 2292****Senate Natural Resources Committee**

**Robert Shaver, Director  
Water Appropriation Division  
North Dakota State Water Commission**

**January 29, 2009**

Mr. Chairman, and members of the Senate Natural Resources Committee, I am Robert Shaver, Director of the Water Appropriation Division at the North Dakota State Water Commission, and I offer the following comments in opposition to Senate Bill 2292:

The amendment to include the estimated target aquifer and depth of the proposed water appropriation on the water permit application is often times indeterminate at the time of application. There are numerous locations throughout the state that are underlain by more than one aquifer. Near the city of Oakes in southeastern North Dakota, there are land tracts that overlie three different fresh water aquifers. These are the surficial Oakes aquifer (depths from 0 to 70 feet below land surface), the middle James aquifer (depth from about 90 to 120 feet below land surface), and the Spiritwood aquifer (depths from about 150-225 feet below land surface). There are existing water permit holders and other water users (domestic, stock) in each of the above three aquifers. Until the Water Appropriations Division hydrologist completes the hydrogeologic analysis, it is uncertain if the applicant would be issued a water permit to pump ground water from any of the above aquifers.

Many aquifers (particularly those of glacial origin) are comprised of more than one water-bearing layer. Examples include the Central Dakota aquifer (Kidder County) and the Lake Nettie aquifer (McLean County). Each of these aquifers is comprised of three, distinct water-bearing sand/gravel layers. Each layer is a ground-water source for existing water users. As with the example of Oakes, ND, it is uncertain if the applicant would be issued a water permit to pump ground water from any of the three layers until a hydrogeologic analysis is completed.

Many aquifers in North Dakota are characterized by complex geometries that are difficult to identify without extensive test drilling and aquifer testing. This is particularly true for aquifers of glacial origin, which occur in the glaciated landscape that occupies about two-thirds of North Dakota. Considerable expense would be required by the applicant to perform test drilling and aquifer testing prior to application. This "up front" expense could prevent the small-scale water user from applying for a water permit in a timely manner and establishing a senior priority date. Affluent applicants would be able to provide the cost of test drilling/aquifer testing in a timely manner and as a result, could readily apply for a water permit and establish a senior priority date. In a competitive aquifer setting where the appropriation of additional water is minimal, the small-scale farmer/rancher would be at a disadvantage in obtaining a water permit.

The amendment to N.D.C.C. § 61-04-03 would further require that, "[i]f the applicant is not the surface owner of record, the applicant shall submit documentation showing that written permission for surface access has been granted by the surface owner of record."

I offer the following neutral comments on this section, rather than opposition:

Attachment A is SWC Form No. 108, State of North Dakota, Application for Conditional Water Permit. Item No. 7 on Form No. 108 deals with ownership. The applicant is required to identify both the property owner at the point of diversion (7a), and the property owner at the place of use (7b). Further, (7c) requires "[i]f either (a) or (b) above are other than the applicant, describe the arrangement enabling the applicant to make this filing."

An applicant filing for a water permit in North Dakota does not have to own the land on which the water permit application is being filed. North Dakota Administrative Code § 89-03-01-01.0, Land, property, or other interest requirement for conditional water permit (see attachment B), requires that the applicant have an interest or intent and ability to acquire an interest in the land or must demonstrate to the satisfaction of the State Engineer that the applicant has the capability to put water to beneficial use.

Based on the above, a mechanism currently exists to identify, at the time of application, if an applicant does not own the land on which a water permit application is being filed. Further, the applicant must show interest in the land and demonstrate to the State Engineer that water can be put to beneficial use.

It appears that the proposed surface access documentation is intended to protect an existing water supply (well) used by the surface owner. Under North Dakota water law, the surface owner's well is a prior (senior) appropriator in relation to any new well that would be constructed by the non-surface owner. For the State Engineer to issue a water permit for the new, non-surface owned well, it must be determined that pumping the new well will not unduly affect the rights of a prior appropriator.

The last concern of this bill that amends subsections 1 and 2 of § 61-04-05 to change the notice of application by certified mail to all record title land owners within a radius of one mile from the location of the proposed water appropriation site to a radius of two miles from the location of the proposed water appropriation site is unnecessary. Increasing the radius of notification does not provide for any additional protection of a prior appropriator (existing water supply). The one-mile radius of notification insures that the closest water users that could experience the largest amount of well interference are fully aware of the proposed appropriation and can submit letters of concern and thus become a party of record. Water level drawdowns for selected distances from the pumping well up to a distance of two miles are shown for a typical confined aquifer and unconfined aquifer in the table shown in Attachment C. It is assumed the production well is pumping at a constant rate of 500 gallons per minute, 24 hours per day, for 365 days. For both aquifer examples, you can see that the largest

amount of water level drawdown occurs at or near the pumping well. It is also apparent from the table that the difference in water level drawdown between the one and two-mile distance is small.

After the State Engineer receives the Affidavit of Notice, the Notice of Application is published in the official newspaper of the county once a week for two consecutive weeks. It is important to understand that when the Water Appropriations Division hydrologist evaluates the water permit application, the hydrologist must determine, among other things, that the "rights of a prior appropriator will not be unduly affected." N.D.C.C. § 61-04-06. As part of the analysis, the hydrologist makes a determination of the area of influence of the proposed appropriation, the amount of water-level interference within the area of influence of the proposed appropriation and if a prior appropriator (existing water supply) will be unduly affected. The hydrologist has a large database of existing water wells compiled in each of the North Dakota County Ground-Water Studies and from completion reports of water wells on file with the North Dakota Board of Water Well Contractors. Field investigations, on an as-need basis, provide additional water well information in the practical area of influence of the proposed water permit application. Thus, even if a water user outside of the one-mile radius of notification does not become aware of the proposed water diversion from the newspaper, the effects of the proposed diversion on their water supply will be considered as part of the hydrologic analysis. In short, increasing the radius of notification from one mile to two miles offers no additional protection for prior appropriators (existing water users).

Increasing the notice of application to a two-mile radius places unnecessary burden on the applicant. The area of notification increases four times when the radius of notification is increased from one to two miles. Performing a records search at the County Recorder's Office can be costly and time consuming. A four-fold increase in the area of notification will result in additional research time and cost to the applicant. Attachment D is a plat map showing land ownership for Mountrail Township in Mountrail County. A proposed point of diversion (a quarter section) is shown by the red, slanted lines. The areas of notification for the one and two mile radii are shown. Using the current one-mile radius, the applicant would have to notify by certified mail 16 landowners and using the two-mile radius, the applicant would have to notify by certified mail, 51 owners. As indicated above, the notification of an additional 35 landowners is unnecessary.

It is apparent that the intent of Senate Bill 2292 is to protect the rights of prior water appropriators (existing water users). The existing statutes governing the application and management of the state's water resources are efficiently designed to protect the rights of prior appropriators. In my 32 years with the Water Appropriation Division, I am not aware of a single example of where the rights of a prior appropriator with an efficiently designed water capture system were not protected and that those rights were overlooked in the hydrologic analysis associated with a new water permit application.

Based on the above, the proposed amendments to § 61-04-03 regarding estimated aquifer and target depth, and subsections 1 and 2 of § 61-04-05 of the North Dakota Century Code do not provide additional protection for the rights of prior appropriators and therefore, the amendments are unnecessary, and place undue burden on water permit applicants. As a result, the Office of the State Engineer opposes these proposed amendments.

Although the State Engineer is neutral with regard to the proposed amendment to § 61-04-03 regarding permission for surface access, based on current water permit application procedures and statutes, this amendment also seems unnecessary.

Application No. \_\_\_\_\_

STATE OF NORTH DAKOTA  
APPLICATION FOR CONDITIONAL WATER PERMIT

NOTE: Use one application for each type of source (ground water, surface water). Check all appropriate boxes and fill in each blank line. If the question is not applicable to your proposed development, enter NA (not applicable). If more space is necessary, attach additional sheets.

(PLEASE TYPE OR PRINT IN INK)

1. Name of Applicant \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Home Phone \_\_\_\_\_ Other Phone \_\_\_\_\_

2. Source of water supply:  ground water  surface water

If surface water: (a) stream \_\_\_\_\_ a tributary of \_\_\_\_\_  
\_\_\_\_\_  
(b) If new impoundment — \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 Sec. \_\_\_\_\_, Twp. \_\_\_\_\_, Rge. \_\_\_\_\_  
(c) If existing impoundment, give name \_\_\_\_\_

Point of diversion:

- (1) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County
- Additional points of diversion, if any:
- (2) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County
  - (3) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County
  - (4) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County

4. Amount of water requested: .

(a) Annual use from points listed in Item 3 above, rate of diversion, and period of use:

\_\_\_\_\_ acre-feet at \_\_\_\_\_ cfs from \_\_\_\_\_ to \_\_\_\_\_ inclusive  
(AMOUNT) (RATE) gpm (MONTH-DAY) (MONTH-DAY)

(b) If Impoundment: \_\_\_\_\_ acre-feet storage out of which \_\_\_\_\_ acre-feet will be used to offset evaporative losses.

(c) Total annual use requested (sum of annual use from 4a and evaporation from 4b):

\_\_\_\_\_ acre-feet

Proposed construction:

Proposed starting date \_\_\_\_\_  
Anticipated completion date \_\_\_\_\_

6. Description of proposed beneficial water uses:

(a) Irrigation (if applicable)

- (1) Method of irrigation:  gravity  sprinkler  waterspreading
- (2) Project will involve new irrigated land:  Yes  No
- (3) Project will involve supplemental water to existing irrigation:  Yes  No
- (4) Description of land to be irrigated (show lot numbers where applicable):

SEC.	TWP.	RGE.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL		
			NE1/4	NW1/4	SW1/4	SE1/4															
TOTAL NUMBER OF ACRES TO BE IRRIGATED:																					

(b) Non-irrigation use (if applicable):

Municipal \_\_\_\_\_ Recreation \_\_\_\_\_  
 Rural-Domestic \_\_\_\_\_ Fish and Wildlife \_\_\_\_\_  
 Industrial \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Ownership:

- (a) Property owner at the point of diversion: \_\_\_\_\_
- (b) Property owner at the place of use: \_\_\_\_\_
- (c) If either (a) or (b) above are other than the applicant, describe the arrangement enabling the applicant to make this filing: \_\_\_\_\_

8. State law requires that cities and landowners within a one-mile radius of the proposed point of diversion be advised of this application. A completed "Notice of Application" will be forwarded to you upon receipt of this application. Therefore, please indicate the number of landowners and cities which you must notify:

9. THE APPLICANT CERTIFIES THAT THE STATEMENTS APPEARING HEREIN ARE TO THE BEST OF HIS KNOWLEDGE TRUE AND CORRECT:

\_\_\_\_\_  
 (SIGNATURE) (DATE)

\_\_\_\_\_  
 (SIGNATURE) (DATE)

\_\_\_\_\_  
 (SIGNATURE) (DATE)

Signature of the applicant(s) must be exactly as in Item 1. If more than one applicant is shown, all must sign.

NOTE: Mail the completed application, along with the required map and application fee to:  
 (PLEASE DO NOT SUBMIT A COPY OF THIS APPLICATION FORM.)

STATE ENGINEER  
 State Office Building  
 900 East Boulevard  
 Bismarck, ND 58505-0850

## ATTACHMENT B

**89-03-01-01.2. Land, property, or other interest requirement for conditional water permit.** An applicant for a conditional water permit must have an interest or intent and ability to acquire an interest in the land on which the point of diversion and conveyance system will be located or must demonstrate to the satisfaction of the state engineer that the applicant has the capability to put the water to beneficial use. If the applicant is seeking a permit for irrigation, the applicant must also have an interest or intent and ability to acquire an interest in the land to be irrigated. If the applicant is seeking a permit to impound water, the applicant must have an interest or intent and ability to acquire an interest in the land or other property inundated by the impounded water. The state engineer may require the applicant to submit evidence of such an interest. At any time the state engineer may require additional verification of land or property interest or other interest demonstrating the capability to put the water to beneficial use.

## ATTACHMENT C

### UNCONFINED AQUIFER

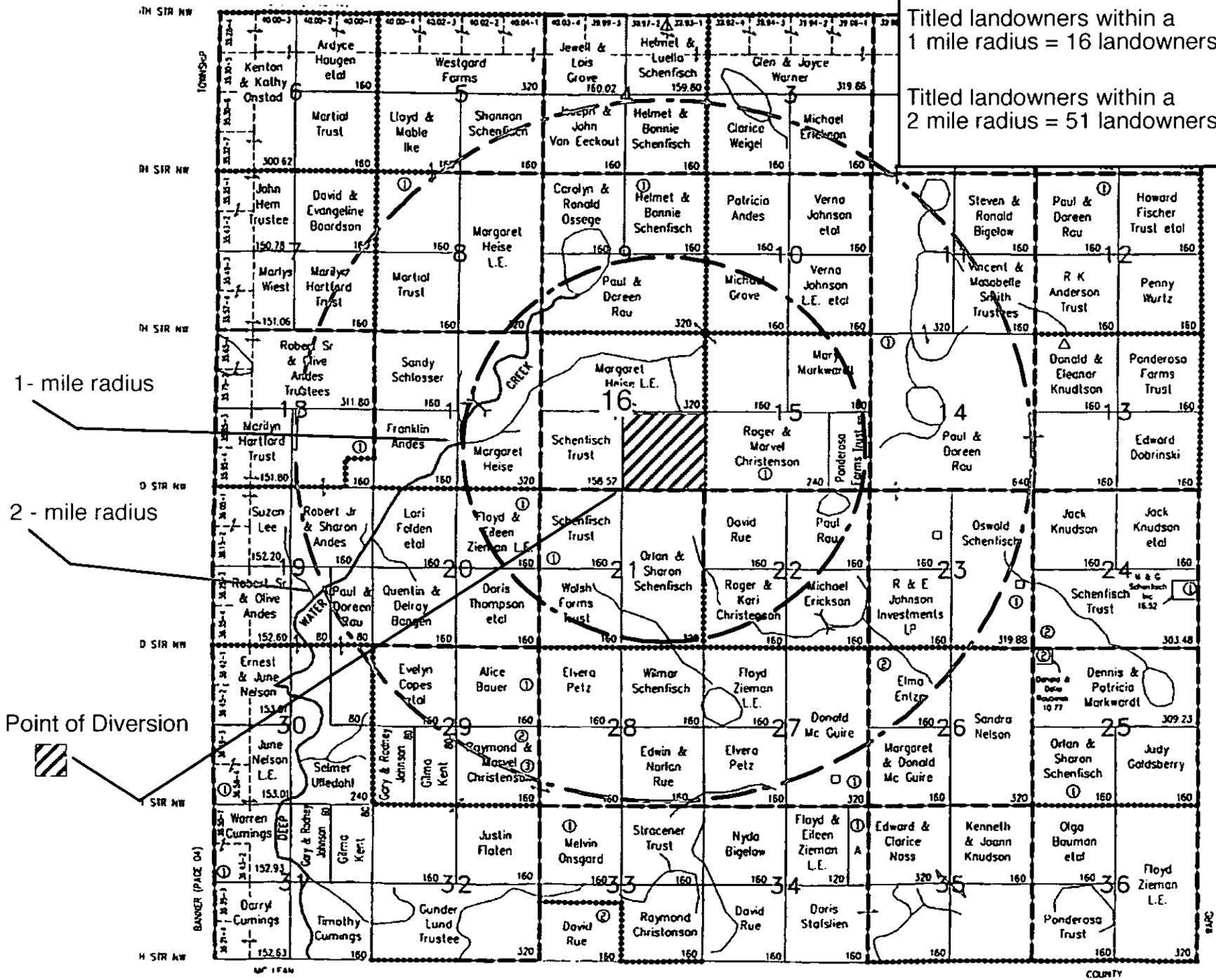
DISTANCE	0.5 Ft. (pumping well)	500 Ft.	1000 Ft.	2000 Ft.	3000 Ft.	4000 Ft.	1 Mile	2 Miles
WATER LEVEL DRAWDOWN (Ft.)	14.4	3.8	2.8	1.8	1.2	0.8	0.5	0.1
<b>CONFINED AQUIFER</b>								
WATER LEVEL DRAWDOWN (Ft.)	19.8	9.2	8.1	7.1	6.5	6.0	5.6	4.5

\* well pumping 500 gallons per minute, 24 hours a day, for 365 days.

NORTH DAKOTA

Titled landowners within a  
1 mile radius = 16 landowners

Titled landowners within a  
2 mile radius = 51 landowners



TESTIMONY ON SENATE BILL 2292

Presented to the Senate Committee on Natural Resources  
9:30 a.m.  
January 29, 2009

Presented by Michael Dwyer  
Executive Director, North Dakota Irrigation Association

Mr. Chairman and members of the Committee my name is Mike Dwyer, Executive Director of the North Dakota Irrigation Association (NDIA). Senate Bill 2292 proposes to amend Section 61-04-03 and subsections 1 and 2 of Section 61-04-05 of the ND Century Code. These amendments call for substantive changes that would add a significant burden for a water permit applicant. The NDIA is opposed to two elements in this bill.

It is proposed that the applicant be required to estimate or identify the target aquifer zone and the depth from which the proposed water appropriation is requested. In many multi-layered aquifer systems significant evaluation is required before defining the particular zone from which the water appropriation is to be made. This is best left to the Office of the State Engineer to determine after careful study to determine that the requirements of Section 61-04-06 NDCC are met. The staff of the State Engineer is best qualified to make this determination after receiving the comments of interested parties and evaluating the data.

The amendment in Section 2 of the Bill would change the requirement for the applicant to provide notice by certified mail to all fee title landowners within a one mile radius of the proposed point of diversion to a radius of two miles from the proposed point of diversion. The point of diversion for a water permit application for irrigation is often a quarter section. A one mile radius from the perimeter of a quarter section covers 6 square miles. A radius of 2 miles covers an additional 14.5 square miles. In order to obtain current information the applicant must research the records of the County Recorder. This increases the burden on the applicant of having to conduct the additional title search or the hiring of an abstractor at increased cost and also the added mailing charges. The record shows the current notification system is working well and there is no basis for the proposed amendment.

It is asked that the Committee give Senate Bill 2292 a "do not pass" recommendation.