

**2015 SENATE POLITICAL SUBDIVISIONS**

**SB 2311**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2311  
2/12/2015  
Job Number 23756

- Subcommittee  
 Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to protection of human burial sites

### Minutes:

Written testimony #1 Joel Hanson  
Written testimony # 2 Jerome Nipstad  
Written testimony # 3 Debbie Fowler  
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Written testimony # 12 Jason Benson  
Written testimony # 13 Matt Linneman

**Chairman Burckhard** opened the hearing on SB 2311. All senators are present.

**Senator Luick** (:25-1:33) Introduced and sponsored SB 2311 is an effort to protect and provide a penalty for desecration of graves that is not covered in the law today. There are some areas of this bill that sets out and identifies the possible harm that can be coming to a grave site. Hopefully we can avert that and make sure that everyone is on the same page before we have any problems with those types of problems in the future. I ask that you hear those speaking after me and side with us on the proposal of this bill.

**Joel Hanson** (2:47-14:08 ) Spoke in favor of SB2311. Written testimony #1.

**Chairman Burckhard** Sorry, for the recent loss of your father.

**Senator Anderson** Give me some history if you know it on how cemetery relocations or these kinds of issues are dealt with currently.

**Joel Hanson** As far as I know in our area, I have not heard of any situations. I have done some reading on line about it out East. In North Carolina there are cemetery relocation companies that work on the relocating of graves. But I don't know a lot of issues because it is quite frankly something that we just didn't think was an option for us. With all of the

unknown graves and the thought of leaving those remains of those in unmarked graves just is not right. I visited with our person who digs our graves and he just shook his head and just said the cost of moving a cemetery like what we have would be astronomical.

**Senator Anderson** We have not done any recently, but obviously we wouldn't have any of our large dams in North Dakota if we allowed them to be stopped by a cemetery that was there. So, then some process and mitigation of those things in the past and my guess is that almost everyone had a cemetery where they are currently located.

**Senator Judy Lee** It's obvious that the bill has a larger agenda than just the cemetery but I am going to skip to the cemetery issue. Senator Anderson asked about relocation and one that is very close actually is what was called the Paupers' cemetery which is a Trollwood along the Red River in north Fargo. They relocated the Pauper's graves, which was relocated respectfully. The point is it is something that has been addressed even locally on the Red River.

**Senator Grabinger** The map shows in the 2009 flood and the '97 flood, this cemetery was inundated with water at that point. Can you tell me how long it was covered then and what damages you saw? I see on your second page of testimony you suggest that there may be damages to the sedimentation and address that and let us know how long that was covered with water and how deep the water was at that time?

**Joel Hanson** During those floods my father's farm has a ring dike around it and I was in the ring dike with no way in or out. So I personally did not visit the cemetery. As far as the clean-up there were corn stalks, sunflower stocks that floated in. We do not have any major damages because quite frankly the water was not there for an extended period of time, nor was it that deep. My personal gauge of how I would determine how deep it was, we built the replica church when the church burnt down. We had pictures of that and so my family and I built that up to protect it from any future flooding. In the mound area where that church sits, I would say the corn stalks was up about a foot as far as the depth goes. Being next to Highway 81 on the east side, the water flows over from the Wild Rice over Hwy 81 and down into our cemetery heading towards the Red River which is about ½ mile to the east of our cemetery.

**Senator Bekkedahl** When these cemeteries were first cited in these areas with the settlers, were they cited on high enough ground at that time so that they didn't suffer from water events initially, and have some changes in patterns of water movements now resulting in their occasional flooding. I would think back and think you would want to put the church structures and the cemetery structures where you wouldn't have had flooding at that time. Do you have that history to be helpful?

**Joel Hanson** Going back to the 1870's when the church was built, I don't have that knowledge but I know that Cass County Hwy 16 has been built up. The water coming over from the Wild Rice is next to I-29 right there, so all of that it's kind of a moving target. In 1997, I believe there was a lot of ice. It changes with the different flow. The coulee and a natural pond on the north side of our cemetery, which water flows through it too as well.

**Jerome Nipstad** (20:26-22:12) Spoke in favor of SB2311. Written testimony # 2

**Debbie Fowler** (22:46-24:38) Spoke in favor of SB2311. Written testimony # 3 Ms. Fowler asked Senator Lee. In the Paupers cemetery, how many family representatives came and represented that cemetery when they had to be moved?

**Senator Judy Lee** I can't answer that question, but I think that they are just as important.

**Debbie Fowler** I believe the remains are just as important, but it's the family that mourn them.

**Alisha Mitsche**, Representative from the Wahpeton area. (25:03-25:34) Spoke in favor of this bill and I think we owe due respect to these affected cemeteries and they are more than one cemetery. I think consideration on the impact of these areas for the potential project.

**Senator Anderson** What kind of plan, or mitigation plans, for these cemeteries have been looked at already by the diversion project, do you know?

**Alisha Mitsche** I would defer to some of the people who will testify after me that can answer those specific questions that know the extent of the project and the contingency plan.

**Hartley Ellingson** (26:44-29:22) Spoke in favor of SB 2311, representing the North West Cemetery Association and the Liam Cemetery. Written testimony # 4

**Kathy Olson** Written testimony # 5 ( Not in attendance).

**Daniel Rugroden** (29:45-33:01) Spoke in favor of SB 2311. Written testimony # 6

**Rodney & Cherie Mathison** Written testimony # 7; (not in attendance).

**Dwight Anderson** (33:41-37:22) Representing Eagle Cemetery. Spoke in favor of SB2311. Written testimony # 8

**Craig Hertsgaard** (37:37-44:16) member of the MnDak Upstream Coalition. Spoke in favor of SB 2311. Written testimony # 9, two colored maps.

**Senator Dotzenrod** On page 3 of the bill, lines 29 &30, it says that the project shall implement a Cultural Resource Mitigation Plan. What would that look like? Is that a plan that would require that certain things be done, or would that identify these cemeteries and would that call for a moving graves sites as one of the possibilities? What should we anticipate a Cultural Resource Mitigation Plan to look like?

**Craig Hertsgaard** that section that is being added to the bill allows for a hearing process. A state hearing process to let everyone in to understand what the ramifications are of what they are doing? Would the cemeteries have to be moved, are we comfortable with the state with covering them with 3, 4, 10, or 14 ft. of water. I think it makes it a large issue for the entire state than just being the prerogative of the county or the local administrator to decide what is going to happen to those cemeteries.

**Senator Anderson** Can you tell me why on page 1, line 23 and 24, the definition of person who is deleted from the current legislation?

**Craig Hertsgaard** We asked that question. My understanding was that because of this was both under legislative council and by the Attorney General's office, that there is some general language, cleanup that is done periodically in the Century Code. That was the reason for doing that. I don't think it had any bearing on the effect on state law.

**Rae Ann Kelsch** lobbyist for the MinDak Upstream Coalition. I am handing out two letters from individuals that were not able to be here today and have them for the record.

**Kay Beckermann** and Donald Olson, Fargo. Written testimony #10

**Julie Dial**, Billings, Montana ; Written testimony for the record # 11

### **Opposition**

**Jason Benson** (47:08-53:51) Spoke in opposition to SB 2311. Written testimony # 12

**Senator Bekkedahl** every project we are trying to do around that city right now is being impacted by Cultural Resources reviews. Then to, they are large projects and involve federal funding. I am curious what about the Federal Cultural Resource reviews that are required by law now and these implications of the cemeteries that are existing now. Can you answer that question first?

**Jason Benson** Yes, we go through those standard federal processes. We do historic reviews when we have federal funding involved and often go through the State Historical Society for the paperwork. This would just add an extra additional step on to this.

**Senator Bekkedahl** Would it be an additional step, or are you already doing it? That is my point.

**Jason Benson** No it would be an additional step. On a federal aid project, then we're following those all of those federal guidelines. If it is along a gravel road and we're just doing some ditch maintenance we don't have to go through that level of paper work and procedure.

**Senator Bekkedahl** My input is that from our area, once a cultural artifact is identified in the review process we can't touch that site at all with any impacts. I don't know how it is in the Red River Valley. Obviously your impacts were many years before ours. So you've gone through that process a lot sooner than us. My follow-up question is then in the language you're talking about, if the proposed construction of a highway, dam or reservoir and I don't think if the proposed construction of the dam, highway, reservoir or other project to be paid for by the public funds, is likely to impact a human burial site. Would it be better language to say is likely to directly impact human remains in a burial site?

**Jason Benson** I think that is a critical component, the remains. If we are excavating in a ditch and we're 20 feet from a gravesite, and there is no chance that those remains, that are 6 feet underground versus how the vague language right now, where it just says impact. There is no definition for what impact is.

**Senator Dotzenrod** You used the word "vague" language a number of times. On page 3, line 24 where feasible to development should avoid disturbance of the human burial sites. The word disturbed is defined on page 1, line 11. Then you referred to the term impact and said there is no definition. If we were to remove impact and put in disturb which is defined and is specific then it seems to me it would no longer be vague. Would that satisfy your concerns over vagueness?

**Jason Benson** To clarify, get rid of impact, and have that replaced with disturbed. Senator Dotzenrod yes. Jason Benson I think in specifically regarding highway projects. At this time looking at one of the issues that I still have is the proximity in that. While it says it does spell out disturbed.

**Senator Dotzenrod** You did refer in your testimony to the distance away. But it seems to me if you look at the term disturb, and the way it is defined, I mean there really doesn't seem to be any issues with distance in that definition. You would have to move, open, exposed, dig up etc. Those seem to eliminate the concerns about doing some work at a distance away. That is one thought. Another thing is you use some examples to say should we allow these cemeteries to stop projects and you referred to other parts of the state where we shouldn't be stopping projects. But I don't see in the bill that there is anything here that stops a project. They are just saying that they would like to know ahead of time and have that information about what are the plans that are going to be developed. What are the mitigation, what are the offsets that are going to be offered to compensate or make up for the disturbance that may occur. I don't see anything here about stopping anything. I would like to know what you meant by staying stopping?

**Jim Benson** I do understand that it's identifying those impacts and identifying what those mitigation plans are versus stopping.

**Senator Judy Lee** I would suggest that perhaps this isn't intended, well it is actually intended to stop but mostly to delay a project, that has had 18 years now since the 1997 flood in trying to provide some kind of flood control for S.E. North Dakota. So there is a delay mechanism even if it doesn't stop the whole project.

**Senator Dotzenrod** I think one of the failures thus far, in the development of this project is that those who have been affected, and asked to sacrifice the most, have not been told hold they are going to be made whole again, how they are going to be compensated, how they are going to deal with the impacts. It seems to me if you're going to spend tens of millions of dollars on a project, and not deal with these impacts, there is a real failure here. We are morally obligated. We are legally obligated to deal with the question. I can understand the proponents of the project just wanting to brush it aside and not have to deal with it because there is really no upside to dealing with it, only downside risk. Because the more you get into this question of dealing with the impacts, the more costs you start recognize. You have to begin to try to correct some of the things you've done and of course

the people from one of the projects don't have any interest in that. But I do think there is a moral obligation here. When you're dealing with people who are asked to sacrifice those who are going to benefit have a moral obligation here to make these people whole again in relationship to many aspects, many impacts. We are only dealing with one here. That is the cemeteries. We've been at this for a long time and it's gone on for years but we failed to deal with the questions of how are we going to treat the people who've been impacted? I don't see anything in this bill that would stop the project.

**Senator Judy Lee** Nobody has been ignored and this is a long time process. It is not over yet, and everybody is anxious to try to find something that is workable. None of us at the table are the experts on this and it is unfair to paint the people on either side as being folks who are looking at just their own side. We need to narrow our focus on this bill to the cemeteries and not to whether or not that project is worthy.

**Senator Anderson** I hope we get some information to answer Senator Bekkedahl's question on what has been done so far about these impacts and also I would like to talk to the Historical Society about what there process is in these kind of situations.

**Dana Larson** Ward County Engineer (1:04:03-1:05-32) More speaking along with Jason concerned with roads, we don't want to get into the Fargo Diversion. I am hoping that the Minot Flood Control Plan does not have some of the same challenges. But my main concern is once again for roads and particularly when you're dealing with small projects. Perhaps the word delay would be another one or if it's a smaller project you can actually stop it and say we're not going to do it at this time. Large projects would probably add a little extra time. But I would be concerned with smaller projects using county dollars and state dollars to do some small projects or do just do some general grading when your passing by when you're not going to have a major impact. So, if this bill was to proceed, we could have some work done with the language to make sure we're not looking at (example cited). Even townships would therefore fall into this and a lot of times the people in the townships are the same ones that are probably maintaining that graveyard. If we could make sure we would look at that if this goes forward. Against, neutral, I am not quite sure, but I would like the language addressed a little bit.

**Darrell Vanyo** Diversion Authority Chair. (1:06-02-1:06-51) With regard to the whole issue of cemeteries. The Corp of Engineers embarked upon a study to study the impacts of the water that is going to be placed on cemeteries. That was completely identified. The cemeteries and the levels of water and all of that, and they completed that last summer. From that point on they then go into mitigation plan and they've met with cemetery managers throughout this period. That plan isn't due to come out until June 2015. So, when that plan comes out I think all of the people will know more specifically what is the plan for mitigation of their particular cemetery?

### **Neutral**

**Matt Linneman** (1:07:43-1:08:41) Program Manager in the Environmental Transportation Services Division at the ND Department of Transportation; Written testimony #13 This is an opportunity to provide some neutral testimony and information on SB 2311.

**Senator Anderson** This is an entirely different responsibility for the DOT over what we are looking at here, which you're talking about is the Health Department and the Historical Preservation Society. So how do those two get involved in something where you might be impacting a cemetery or burial ground?

**Matt Linneman** On probably all of our projects, we work very closely with the State Historic Preservation office. We start a consultation process when we identify a project and identify project impacts. Our number one objective is usually to avoid those sites whether they are cemeteries; historic burials or prehistoric burials that we can identify are related to Native American sites. We work very closely with them. Much from a developing a project stand point, especially in a case of a Native American burial site as we can't always exactly pinpoint those. We work with our tribal partners to try and identify them the best we can. But sometimes they do become discovered during construction activities. Then we have a protocol that we put in place and work with and notify local authorities, we notify the Department of Health and we notify the State Historic Preservation office and respectable tribal people that would need to be involved in that process. We have a protocol set in place where a discovery, so to say.

**Senator Bekkedahl** You already have a process and it's extensive in western North Dakota, there have been issues of cultural remains concerns that have not been made public to us. It is a bitter frustration of the process because we would like to know why the project wasn't going forward on some of those. Would the department be opposed to areas where the process doesn't involve you but it involves another agency and they would be required to hold a hearing versus yourselves? I understand the duplicity. If one hearing is being held it should be a cooperative hearing between agencies but would you be opposed to the setting of the standard where if your department wasn't involved, that another agency wouldn't be require to have a hearing if it was germane to what was going on in the public?

**Matt Linneman** No we would have no opposition to that. We would be neutral on that. No comment on that. We would work closely with those agencies if the bill passed as it is. We would try to consolidate that public information effort with those other agencies.

**Senator Anderson** Do we have somebody here from the State Historical Society?

**Fern Swenson** (1:12:08-1:12:27) Director of the Archeology and Historic Preservation Division at the State Historical Society; I here today to just listen to the testimony and be available for questions.

**Senator Anderson** In this particular situation now, obviously if we have a cemetery that is being impacted under the current requirements you would be involved in the review of that to decide if they needed to be moved or mitigated or whatever else. Is that correct?

**Fern Swenson** The Chippewa office would be involved in the review of the project and the historical significance of any of the sites that are identified in the entire project area. Now, we typically only deal with unmarked graves in most situations. The State Health Department deals with historic cemeteries that are still active today. So, our involvement would end after the review and compliance with Section 1:06 or the Federal process is

completed. If a cemetery is to be moved then they have to get a permit from the State Health Department. There is processes that have to be followed for that.

**Senator Anderson** The current law says disinterred moved contents and burial sites recorded with the State Historical Society. Would all cemeteries be recorded with you or just special ones or how does that work?

**Fern Swenson** We have all the identified burial sites that aren't necessarily a cemetery. We have some of the cemeteries in our records as well. But, cemeteries that are used today are recorded with the State Health Department as well as the historic cemeteries. So, when a prehistoric grave is identified then our process would include notifying State Health Department as well so they would have a record of that.

**Senator Anderson** In your interpretation then whom we talk about here is destruction of a human burial sites by actions, that probably would not include flooding with a couple of feet of water, would that might guess be right?

**Fern Swenson** It would depend on the effects and how long the flooding was. Senator Anderson but what you're saying is you would need to look at that. **Fern Swenson** Correct.

**Chairman Burckhard** closed the hearing on SB 2311.

# 2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Red River Room, State Capitol

SB 2311  
2/13/2015  
Job Number 23825

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to protection of human burial sites

## Minutes:

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**Chairman Burckhard** opened the committee on SB2311. All senators were present.

**Senator Anderson** I do not understand what the opposition is afraid of, in holding a public hearing. However, I also realize that when you get outside of the flood business that they are having, it may cause some problems for some other people. I am not sure I want to add those in. Now, the Historical Society when they were here, and the Department of Transportation (DOT) it seems like there's adequate provisions in place. It seems like Mr. Daniel indicated the mitigation plans are going to be released to these people and I am guessing that they had an opportunity to appear at the hearings that the feds did. They are not going to see those until June, but, I don't think that putting another barrier in place for any project when it seems like we have a pretty good system in place now for people to raise their questions. Obviously, anybody who is going to do a project on the local level they are going to listen to the people, but it doesn't mean they are always going to agree with them. All this hearing would do is to give them another opportunity to voice their concerns and I guess I am not in favor of it.

**Senator Judy Lee** This is way less about cemeteries as it is about trying to figure out a way to throw another roadblock in a way of this flood project. Rae Ann Kelsch was representing this group, country cemeteries don't have the money to represent anybody to lobby for them. I asked if she was representing the cemetery group and she said no, the Upstream Land Owners Association. There have been tremendous amounts of work for many years on this and I asked Mr. Vanyo yesterday if he would send some information about the involvement and engagement that they have. There is some information, and he's hesitant to say this is what it might be, because he doesn't want anybody in the committee or as a matter of public record to have it written that way and then something different might occur. But there are extremely involved processes that they have already been a part of and some of the things they said were absolutely inaccurate. Regardless of how one feels about the flood issue, honest to goodness, it is not the state legislature's responsibility to figure out whether or not it ought to take place. The Corp of Engineers, and

the local people, which includes the upstream property owners are engaged. The Mayor of Hixon was here yesterday and their very happy with the fact that they are going to have additional protection sooner than Fargo will. There is a tremendous amount of stuff that has already been done in Fargo. We are not here to decide whether or not this is a worthy flood project and the group that was here I am not being disrespectful to cemeteries or the importance of that, but its' one more device that their using to try to stop this project. I just implore the legislature not to get engaged in that discussion because they are already extremely engaged in the local area with all of the property owners. I don't have it today, but I asked for it and would hope to have it by Thursday.

I also got an email from a Fargo engineer and he said that on the big levies and we have 17 miles of levy's going through Fargo, the cemeteries are always on the west side of the levy, because they protect other properties first. I just implore you to not allow us to move forward with something that has an entirely different motivation than what the title and the subject of this bill really is.

**Chairman Burckhard** Who is the diversion authority's name. **Senator Judy Lee** It was Mark Vanyo and it's the Flood Diversion Authority. He has put thousands of hours in and he was the city commissioner in West Fargo. He then moved out the city limits but at that time the city limits moved and he ended up running for the county commission and won. He captured home rule and 12 years and so he was term limited out of the county commission. That is how he got engaged and it is Cass County, Clay County in North Dakota and Minnesota. There is both a city and a county representative on this diversion authority who represent all those political subdivisions. Governor Dayton has gotten involved in the Minnesota side, and they have even said now with the DNR that the retention proposal is not the sole solution to this problem as its part of a greater possibility and that isn't the way to solve this. There is far different motivation for the group who brought this bill forward.

**Senator Anderson** When this Fargo flood disagreement came up, I was hoping that we could just stay out of it out here in the West. Those people but came and asked us for a lot of money. So it makes it harder for us to stay out.

**Senator Dotzenrod** The issue is big. This is still not settled, and when you consider the 10 of millions of dollars that have been spent to have this still hanging out there with no settlement as yet. I think it is a big issue and maybe there are 3000 graves, but their request. I just look at what the bill says, and I not trying to impune or make any judgment about motives. They are asking for a couple of hearings and to have some sort of a cultural mitigation plan and I don't think that is unreasonable. I think if you want to treat the people that are being affected and our sacrificing the most, with some decency and respect, it seems to me that there saying we would like to know what is going to happen here. I don't think that is unreasonable.

**Senator Judy Lee** I think it is really important. All of these people were interviewed and all of the cemeteries were visited. I think it is very important that the conversation continue and take place. I absolutely agree with Senator Dotzenrods' point there. But the report is coming out in June and we won't be in session in June and so, if all that it involves is another hearing at this point I guess it doesn't matter. But it isn't that none of this has been addressed, it isn't that the cemeteries aren't considered, it isn't that the farmsteads aren't

considered. Then there is really fine compensation that is being proposed. NDSU is doing a study right now that will come out with what the recommendations are as far as easements and other kinds of compensation for property owners and how they are going to handle all of the various projects. So it isn't that they haven't been included they have been included. I am not being disrespectful in saying that they shouldn't have any more hearings, but they have been various much engaged in discussions up to this point.

**Senator Anderson** I did ask the lady from the Historical Society. I said if the cemetery is going to be flooded does that mean you need to look at it? **Fern** replied yes. So I guess in my opinion, the procedures are already in place.

**Chairman Burckhard** Do we have a motion yet? We don't do, we?

**Senator Judy Lee** Do you want to wait until next week. The committee might want to have that report that is supposed to be coming from Mr. Vanyo.

**Senator Dotzenrod** If you could wait I would like to offer an amendment to take the word impact out and replace it with the defined term, disturb. There was some concern on the highway from the DOT or Cass County engineer about the term impact was not defined. It was unclear to him. So, I think a little amendment there to put the word disturb then would probably be for clarification.

**Senator Bekkedahl** page 3, line 26.

**Chairman Burckhard** closed the committee for discussion.

# 2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Red River Room, State Capitol

SB 2311  
February 19, 2015  
Job Number 24119

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to protection of human burial sites

## Minutes:

Written testimony e-mail from Jason Benson #1  
Written testimony e-mail from Darrell Vanyo #2

**Chairman Burckhard** opened the committee for discussion on SB 2311. All senators were present.

**Senator Judy Lee** I have written down here somewhere there is an amendment. I intend to oppose this bill in the same sense that Minot should be able to determine its own flood protection program. The South East North Dakota is doing the same thing. You all had an email forwarded to you information from Jason Benson and Darrell Vanyo who was here and he is the diversion chairman. There has been a tremendous amount of work done in communicating with the various stakeholders there. These reports just on cemeteries themselves will be out in June. There will be public comment after that. So it isn't accurate to say no consideration has been given to this, and it also isn't accurate to say that none of these have ever flooded. It isn't accurate to say that any cemetery is being proposed to be moved. Mitigation has been done for example in the community in Hixon, that the community is very happy with berming and landscaping and things that are really quite attractive. There efforts will continue to be successful and how cemeteries are treated and it really is an effort by Upstream Landowners, because that who was here, and that's who their lobbyists represent. To add another barrier to the project and so for that project I would move a do not pass on 2311.

**Senator Anderson** 2<sup>nd</sup> motion for a do not pass on SB 2311.

**Chairman Burckhard** Any discussion on that motion? **Senator Grabinger** I have that there was talk of amending two words in this on page 3, line 26 change impact to disturb; and on page 28 change impacted to disturb a burial site.

**Senator Judy Lee** Mr. Chairman I would be receptive to that amendment so if you like, I would withdraw my initial motion and if Senator Grabinger wants to propose this amendment.

**Chairman Burckhard** The original motion has been withdrawn; the second has also been withdrawn.

**Chairman Burckhard** There is a new motion out from Senator Grabinger to include an amendment.

**Senator Grabinger** I so move an amendment changing those two words. **Chairman Burckhard** pg 3 line 26, change impact to disturb, line 28 change impacted to disturbed.

**Senator Grabinger** I think that is the talk we've had. **Senator Judy Lee** Yes we did .

**Senator Judy Lee** 2<sup>nd</sup>  
Roll call vote 6 Yea, 0 No, 0 Absent,

**Senator Judy Lee** I would now move do not pass as amended

**Senator Anderson** 2<sup>nd</sup>

Committee Discussion:

**Senator Dotzenrod** All that the bill asks is that the government entity conducting a project shall provide a cultural resource mitigation plan that is approved by the director of the State Historical Society. So it seems to me that there is a responsibility here to those people who are making these sacrifices to know what is going to happen. It seems to me that in the case where we had the testimony on with the Fargo Diversion there has been a tremendous amount of money that has been spent on the project but the people that are being impacted have not been told what the plans are. We know that some of them they may do nothing with, some of them they are going to berm, some of them they may be able to find some way to offset the effects of water. Some of them may not have much effects from water, some may have others, but it seems like the interest in those people knowing and that some effort be put into telling them. I know they are talking about some Army Corp of Engineer report coming later on. But, were not sure what that is going to say, we don't know how complete it will be. There has also been an Army Corp report that was done earlier but that was really incomplete and didn't just identify the sites basically. It didn't say what was going to be done. This issue of the burial sites has been around since the project started and there's no information yet to those people in their area what's going to happen. It seems like they should know that. It seems like that would be reasonable.

**Senator Judy Lee** There has been information and there has been a tremendous amount of communication with them. I would draw your attention to two different messages that came to us one from Jason Benson who is the Cass County engineer I believe (read the email). The one that included the link to the long report from Darrell Vanyo (read this email) (6:51- 9:30) I think it is important for us to keep in mind the fact that they have been contacted, they have been a part of the meetings, but there is no way that a final answer is there because as anybody has ever worked with flooding project, the Corp doesn't move quickly and part of that is for good reason.

**Senator Dotzenrod** Part of these letters said they have been in close communication with the people in the cemetery. But the testimony we had in the committee it sure didn't sound like they felt they had been in any close communications. I think that there wondering what

is going to be done at each of those sites. It will be different for each one. There not effective in a similar way. If it is going to be a long time before the diversion is operable then to pass this bill and to ask them to provide a mitigation plan it doesn't seem like it is unreasonable because it isn't something that is going to be happening right away. They will have time to work on this.

**Senator Bekkedahl** I did pull up the F/M Diversion site and this is the 3<sup>rd</sup> time that I've looked at it now based on your letter that I got today. I do see that there are letters here to the eleven cemeteries potentially impacted by the project, that went out in June of 2014. They talk about in their second to last paragraph, the next step will be contacting the point of contacts for each eleven cemeteries potentially impacted before the 1<sup>st</sup>. August, 2014 to schedule one on one meetings to discuss mitigation measures for offsetting the potentially impacts to the specific cemetery. These letters all have the names crossed out, but they have the names of the cemetery so that the Corp must've had a primary point of contact at some point. Whether that means they didn't get to anybody else or if these were not sent certified I can't attest to how that was. I am just looking at the website and seeing that its looks to me that the Department of the Army Corp of Engineers made an attempt to get ahold of somebody in those 11 impacted cemeteries.

**Senator Anderson** It also seems to me like there are procedures in place. Do you remember I asked Fern from the Historical Society if they were going to flood these, if she would need to look at them and she said yes. They would need to do that. So, I am thinking that they already considered those plans and have been participating in this whole project.

**Chairman Burckhard** I was going to actually ask Fern Swenson as well because I thought she had said something about that. Thanks for the comments.

**Chairman Burckhard** Any other discussion on the motion for a do not pass as amended.

Roll call vote: 4 Yea, 2 No 0 Absent

Do not pass motion passes 4-2.

Carrier: Senator Burckhard

February 19, 2015

TD  
2/19/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2311

Page 3, line 26, replace "impact" with "disturb"

Page 3, line 28, replace "impacted" with "disturbed"

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**SB 2311: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2311 was placed on the Sixth order on the calendar.

Page 3, line 26, replace "impact" with "disturb"

Page 3, line 28, replace "impacted" with "disturbed"

Renumber accordingly

**2015 TESTIMONY**

**SB 2311**

**Good morning Mr. Chairman and members of the committee,**

Thank you for the opportunity to meet with you all to share our concerns regarding the flooding of North Dakota cemeteries, specifically those being threatened by the Fargo Diversion project. My name is Joel Hanson and I live in Fargo. I was raised on a farm near Hickson, ND and have strong family ties to the Lower Wild Rice and Red River Cemetery. I currently serve as the secretary/treasurer for our cemetery association. I am also affiliated with the Upstream Cemetery Authority which I will talk about in a couple of minutes. The LWRRRC is located on the east side of US HWY 81, approximately ¼ mile south of County Hwy 16. According to the F-M Diversion website, the path of the dam and diversion will be immediately south of Cass County Hwy 16. Due to the proximity to the base of the dam, it is projected that our cemetery will be inundated with over 14 ft of water for at least 12 days during a 100 year flood.

The Lower Wild Rice and Red River Church and cemetery was organized in 1872. In 1940, the church was destroyed by fire and the cemetery records were lost. Today, there are approximately 375 known graves in our cemetery plus numerous unknown graves, due to the loss of records and no permanent headstones. My family has been involved with the care of this cemetery since the 1940's when my grandfather would dig graves by hand, including the winter months when he dug the graves in the frozen ground with a pick. My father served on the cemetery board and was Sexton for several years. Today, my brother and I serve on the board and consider it a great honor to care for the hallowed ground where our ancestors and 100's of others are buried.

The LWRRRC is an active cemetery and a sacred place for those of us who have buried loved ones there. Each Memorial Day, the Horace American Legion's Honor Guard conducts a beautiful service which pays tribute and honors the 27 Veterans who served our country and now lay at rest in our cemetery. My family members buried in our cemetery include my grandparents, aunts, uncles, brother, mother and father, having just laid my father to rest 2 weeks ago. Making this matter even more personal for me, my wife and I have purchased our gravesites next to my mother and father as it is important to us to be buried next to family, a tradition that has been made by others for multiple generations.

Protecting the final resting place of my family members and beloved friends from our community is very near and dear to my heart. The thought of their final resting places being inundated by 14+ feet of water for days on end is beyond comprehension for me. I am sure you all have lost a family member or loved one...can you imagine the graves of those you love being intentionally flooded by several feet of water for several days? If the threat of flooding cemeteries can happen to us, it can happen to anyone, which is why we feel a state law needs to be put in place. We are asking for a law to protect the sanctity of our cemeteries from intentional flooding and to allow our loved ones to rest in peace.

Periodically, mother nature sends flood waters our way. We accept what comes naturally and we deal with it as needed. Each spring several individuals with ties to our cemetery gather to do an annual cleanup of whatever needs to be done and reminisce about those who have passed. Our cemetery board has discussed our options should the diversion project be built and we all agree that we do not support relocating our cemetery, nor do we want it to be intentionally flooded by a dam located ¼ mile away. In a relocation situation, with so many unmarked graves, there is no doubt that remains would be left behind. In our eyes, these options are neither respectful nor acceptable. No cemetery, no matter where it is located, should be threatened by such an

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unnatural act. With the dam and diversion in operation, our cemetery would be flooded much more frequently and for longer periods of time. Being at the base of the dam means that the water on our cemetery will be the last drained. If the folks that are designing this project are able to figure out a way to cross 5 rivers with sophisticated control structures, and can build/fund a private golf course, then they certainly should be able to figure out a way to protect our cemeteries.

## Upstream Cemetery Authority

The Upstream Cemetery Authority was formed on October 16, 2013 as a way for all impacted cemeteries to be represented as one entity and serve as one voice when dealing with the Corps and Diversion Authority. Without a united voice, our fear was that the DA and CoE would attempt to divide and conquer and bully their way to whatever they wanted without regard to the families and final resting places of our loved ones. Needless to say, there is not a lot of trust in what we are being told by the DA and CoE and we wanted each cemetery to have the same information. At the time the Upstream Cemetery Authority was formed, there were approximately 2300 known graves in the ND Upstream Cemeteries plus countless unmarked graves when. As a point of reference, there were approximately 1061 know graves in the MN Upstream Cemeteries when the Upstream Cemetery Authority was formed.

Although the voice of those buried in our cemeteries will never be heard on this issue, it is our responsibility to make sure their final resting places are not desecrated. The cemeteries that we all represent may be nothing more than an "obstacle" to the Corps of Engineers and the Diversion Authority, but these are sacred places to us all. We have laid to rest our loved ones and visit their graves often to pay our respects. There is great historical, ancestral, and cultural significance that none of us want to lose and that the Corps of Engineers and Diversion Authority simply do not seem to understand.

Last June, the Corps of Engineers scheduled on-site meetings with representatives from each of the cemeteries in the staging area. This fall, the cemeteries in the staging area were contacted to schedule a cultural survey to be done by AECOM out of Denver. My understanding is that one of the purposes of these surveys is to determine if there is any "historical significance" to any of the upstream cemeteries. The president of the LWRRRC was recently notified that he will be receiving a 1200-1300 page report with the findings which includes a 3-4 page description of each monument in the cemetery. I appreciate the effort put into this report but what it captures is a written description of what lies on the surface our cemetery. It in no way captures the lives lived nor the sanctity of our quiet and beautiful cemetery where our loved ones lie at rest. I am anticipating the report to conclude that our cemeteries do not have "historical significance." As far as I know they never talked to Wallace Backlund who passed away in 2012. He served in the US Army from 1942 to 1945 during WWII in France, Belgium, and Germany in the European Theater of Operations. He was a recipient of the Bronze Star. They never talked to my father who was in the Marines during the Korean War. He participated in the Atomic Bomb tests in Nevada in 1953. After the bomb detonated, his group was shuttled up to ground zero so those conducting the tests could determine if the soldiers would be affected. There are other stories as well... those are just two examples of the relevancy of what our Veterans did for our nation... but my fear is that their efforts will be deemed as not significant in the historical sense. Although the individual efforts and experiences of each of our service men may not register on the "historical significance" scale, I argue that what our Veterans did to protect our freedom is significant. There are 27 Veterans

buried in the LWRRC with 2 having served during WWI, 13 during WWII, 3 during the Korean War, and 2 during the Vietnam War.

In a June 30, 2014 news commentary posting on the F-M Area Diversion website, I quote, **“We like to look at all sites independently,” said Aaron Snyder, U.S. Army Corps of Engineers Project Manager. “We don’t anticipate that cemeteries in the impacted area will experience anything being dislodged from underground. The types of impacts that will likely be seen include the possibility that some gravestones may be displaced. There is also the potential of some sedimentation, and some grass dying. We will look for ways to mitigate all of these.”** Based on this quote by the project manager, it sounds like the plan, as recent as last June is to allow the cemeteries to flood. We have not heard otherwise. The LWRRC is to be located at the base of the dam/staging area with over 14 feet of water. I suspect that the damages will be much more significant than Mr. Snyder claims. Who gets to determine what the acceptable amount of damage that will be tolerated? The stress and anxiety that have been caused to individuals with ties to our cemeteries by this issue is beyond description. As a cemetery board member it is difficult to talk with the elderly in the community who have questions about the status of the project and what we think the outcome will be. In part, I hear their concern for the graves of their loved ones, but in looking into their eyes, I see the concern regarding what will become of what is planned to be their final resting place as well.

Each of our cemeteries is cared for by volunteers and the grounds are maintained through memorial donations. We do not have a county-wide sales tax to fund our efforts or agenda. We do not have access to millions of dollars from the state or the federal government. We rely on \$10 and \$20 donations given to our cemeteries in memory of a loved one.

If the flooding of our cemeteries is to be permitted, there will be many questions to answer? How will delayed burials be dealt with? Will we be able to conduct Memorial Day Services? Who is going to clean up the cemeteries and repair the damages? I doubt that the level of care that has been given to these sites in the past will be replicated by the new “caretakers”.

In October 2013 Kevin Campbell (Diversion Authority member from Clay County, MN) was interviewed for a story on WDAY TV and was quoted as saying that “...we will do everything we can so we don’t change the current situation for them” (referring to the upstream cemeteries.) Comments like this are nothing but sound bytes for the media unless there are intentional actions taken to do what is right. People hear these kinds of remarks on the news and think that all is well with the world.

I am saddened when I review the different resources on the FM Diversion website that are geared at justifying and promoting the features of the diversion project. While our cemeteries are being threatened with massive amounts of water, the diversion planners are designing recreational areas including picnic areas and trails. While those of us with interests in the upstream cemeteries await to hear the fate of our cemeteries (some that have been around more than 140 years) we see that the answers to our questions have yet to be determined and we continue to wait, and wait, and wait.

According to my core value system, and everything that I have learned in life, intentionally flooding our cemeteries is just plain wrong, morally, ethically, and otherwise. My hope is that our North Dakota Legislature will see the emotional and physical impacts that this issue is having on the upstream communities and that SB 2311 will pass giving us back our hope.

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Chairman Burckhard, committee members, my name is Jerome Nipstad. I live near the town of Horace, ND. I am here to speak in favor of Senate Bill 2311. I represent the North Pleasant Cemetery in southern Cass County.

On January 22 of this year my 99 year old mother was buried in this cemetery. As I was standing there, I couldn't help but think about the possibility of having this cemetery covered with one to two feet of water, possibly destroying the grass and vegetation there. What could this standing water do to the graves themselves and the tombstones? This cemetery has never flooded at any time since it was established. We have approximately 241<sup>(350)</sup> graves there now. I now have both my parents, grandparents and numerous relatives and neighbors buried there.

I don't understand why we should have our cemetery flooded so Fargo can develop in the flood plain. I ask that you would support Senate Bill 2311.

Thank You

Jerome Nipstad  
Horace, ND

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#3

Committee Members (not sure how to address group)

My name is Debbie Fowler and I live in rural Walcott. I grew up in Hickson, North Dakota, thirteen miles south of Fargo. My 91 year old mother, Lillian Johnson, still lives in the family home in Hickson. She would be here today but she is visiting my brother Kevin, and his family in Arizona right now. I came to represent her and our family.

Just last summer we purchased a headstone with my Mom and Dad's names on it at the Lower Wild Rice and Red River Cemetery, just north of Hickson. My Mother plans for that to be her **final resting place** - next to my Dad, Earl Johnson. This Cemetery is a sacred place, one that should not be disturbed. Besides my Dad, I have lost two brothers, Chuck and Bruce, and they are buried there. My Grandmother and Grandfather Johnson are there, My Uncles Billy Johnson and Jennings Johnson. My aunt Harriet Johnson. My cousins Ron Johnson and Jennings Johnson. Five of them are former military - three from World War II and two Vietnam veterans.

My cousin, Diane Johnson and her husband Bob, moved from California three years ago to be near family. She brought her Mother's ashes "home" and they are in this cemetery. I have two cousins ashes spread there. How do you move ashes?

I also have many friends and former neighbors that are buried in this cemetery.

Cemeteries are not just ground. It is **SACRED GROUND**. Final resting places mean a lot to people. Please take into consideration when you pass legislation that it affects people's lives in more than monetary ways.

Thank you.

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#4

I am Hartley Ellingson, of rural Christine, ND. I am testifying in support of Senate Bill 2311 to protect cemeteries from intentional flooding. I am on the cemetery board of the North Pleasant Cemetery located southwest of Hickson, ND. My great, great grandparents donated the land where the cemetery sits as the location for the North Pleasant Church and cemetery. The church building was moved to Hickson when the congregation joined with the Lower Wild Rice congregation after a fire destroyed their building. Generations of my family are buried in that cemetery—great, great grandparents, great grandparents, grandparents, parents, aunts, uncles, cousins, and my wife.

While the North Pleasant Cemetery is located near the Wild Rice River, it has not ever flooded. With the current plans for the Fargo Moorhead Diversion, this cemetery will either be under up to eight feet of water when the diversion is in operation or it will be surrounded by an 11 foot ring dike. Ring dikes need to have upkeep and pumps are needed to get the water from snow melt and heavy rains out of the diked area. I am not sure how we will access the cemetery during a flood event to ensure that the pumps are working properly. There is not electricity at the site so that would need to be added.

Allowing the cemetery to flood bring concerns such as vaults raising out of the ground from the water pressure and damage to head stones from moving water. When my wife died a couple years ago, we asked the funeral director how we could prevent the vault from coming up. We also asked how easy it would be to move the vault and casket if we would need to. He had not yet been asked that question by anyone. In the end, we made the decision to cremate her body so we could more easily move her remains if we need to.

I ask that you pass Senate Bill 2311 so we can continue to protect and honor our ancestors' and family's loved ones.

## Lium Cemetery

The Lium Cemetery is located one mile north and ½ west of the town of Christine, ND, and consists of 80 grave sites, a number of unmarked sites as well as ashes of loved ones dispersed on the grounds.

My great, great grandfather donated the parcel of land where the cemetery is located in the 1800's. I have lived 1/2 mile to the west of the cemetery my entire life. My great, great grandparents, great grandparents and grandparents, as well as, my father and numerous uncles, aunts and relatives are buried there. My family is responsible for upkeep of the cemetery which we do gladly. It is our privilege to honor our loved ones by caring for their resting place.

Senate Bill No. 2311 would add language making it unlawful to disturb a cemetery by many methods including intentional flooding. It is important that these cemeteries continued to be revered as our ancestors and loved ones final resting place. The cemetery was placed where it was because our ancestors knew the importance of being on high ground during flood events. Aside from the concerns we have about the effects of water pressure on the gravesites, we know that doing flood mitigation on the cemeteries brings additional questions that have not been answered. A ring dike would need to have upkeep and someone to man pumps to keep the diked area from becoming a fish bowl. If it is allowed to flood, there would be additional labor needed to remove flood debris and repair any damage. That would become an additional expense on the already cash strapped cemetery association.

If the language is not added a part of my life would be taken away from me and others who have loved ones buried there or ashes that have been scattered on this sacred piece of ground.

Respectfully submitted by

Kathy Olson

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#6

Let me take this opportunity to thank Chairman Randall Burckhard for allowing me to testify before this Senate Political Subdivisions Standing Committee. I also want to thank all the members of this committee for their patience and time. I am here today, Thursday, February 12, 2015, to speak in favor of Senate Bill Number 3211. Many distinguished legislatures passionately support this bill.

My name is Daniel Rugroden. Our family lives near Hickson, North Dakota, in Pleasant Township, which is the most southeast township of Cass County. We have lived in the house that we built for over twenty years.

How many of us have relatives buried in cemeteries? Everyone here has a relative buried in a cemetery someplace. Therefore, the dam plans of the Diversion Authority have the potential to affect everyone in this room, eventually. That is because the dam plans of the Diversion Authority set a dangerous precedent. If these cemeteries can be flooded so can other cemeteries. This could happen to cemeteries where your relatives are buried. We must not condone disrespect of burial sites. The purpose of this bill is to protect human burial sites, human remains, and burial goods.

None of my relatives are buried in the cemeteries adversely affected by the man-made flood caused by the dam of the Diversion Authority. But that really does not matter. The people buried in these cemeteries are someone's relatives. Can you fathom what it would be like to witness the burial sites, human remains, and/or burial goods of your relatives artificially flooded? The emotional trauma could be devastating.

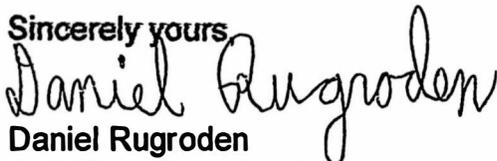
Most of the cemeteries adversely affected by the artificial flood caused by the dam of the Diversion Authority happen to be connected to Lutheran Churches. I am Lutheran. So, I find their plans for these Lutheran cemeteries personally particularly reprehensible. But all of us would be appalled if they treated Baptist, Evangelical Free, Catholic, or cemeteries of any other denomination with such contempt.

We really do not know what the Diversion Authority has planned for these cemeteries. We have heard many different stories. All of their schemes are unacceptable. Our forefathers can not speak about respect. Therefore, it is our obligation to defend them.

None of the cemeteries in our area of the Red River Valley have been permanently damaged by any natural flood as far as I know. Therefore, it is imperative that we prevent these cemeteries from any man-made flood. That is what this bill does. It is our responsibly and duty to the pioneers of North Dakota and our forefathers.

We must take the moral high ground. There are absolute rights and wrongs. Therefore, we strongly urge all the members of this body to support Senate Bill Number 2311. Thank you for your time, compassion, and cooperation.

Sincerely yours,



Daniel Rugroden  
120 Plum Tree Road  
Hickson, North Dakota 58047

Randall Burckhard, Chairman  
Senate Political Subdivisions Committee

(To be read by proxy at the Senate Committee meeting on 12 Feb 2015, regarding Senate Bill 2311.)

Some of the earliest emigrants in the Dakota Territories settled along the western banks of the Red River, after driving their ox carts north from the crossing at Fort Abercrombie. They came from Norway, bringing little but determination, perseverance and most important to them, their faith. Beginning in 1871, their small Sunday gatherings were initially held in a log cabin home, until a church could be built. Before that could occur, Karsten Arentzen died in 1872. The small corner section of land where he was buried was donated for the congregation's cemetery. They named it for the place they came from in Norway, Hemnes Cemetery. The earliest burial places are unknown, as initially only a handwritten list of names was kept. Those first wooden grave markers have long since disappeared, but the ground in which the bones of those first settlers lay remains hallowed, sacred and serene.

Hemnes Cemetery, the oldest Lutheran cemetery in North Dakota, is located in the very northeastern corner of Richland County. It is a quiet, well-cared-for pioneer cemetery, where our grandparents, great grandparents and great, great grandparents chose to spend their eternal rest. There are rare native grasses and peonies here older than any living person in this room. Marit Johnson, born in 1802, three years after George Washington died, is one of the oldest marked graves in Hemnes. She died in 1885, four years before North Dakota's statehood. There are a handful of unmarked graves here, and some who no longer have living descendants. There are veterans of the great World Wars buried here. Infants, children and victims of the epidemics that swept through the plains rest here. Alive yet are a few who wish to join their loved ones in this final resting place, so dear to our hearts.

We cannot fathom that anyone could find it necessary or appropriate to relocate the Hemnes Cemetery or worse yet, allow it to be purposely flooded. Our conscience tells us this is absolutely, unforgivably wrong. We, as proud North Dakotans, descended from the first settlers here, know that the right and just action is to make unthinkable actions such as flooding cemeteries illegal.

Please pass Senate Bill 2311.

Respectfully,

Rodney and Cherie Mathison  
5298 174 ½ Ave. SE  
Hickson, ND 58047  
701-371-1421

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#8

To Chairman Burckhard and all members of the committee:

I wish to express my support for Senate Bill 2311.

This bill seeks to preserve without damage all cemetery properties in North Dakota from any physical peril. Of present concern is possible flooding if current discussion results in flood control measures being built that would adversely affect cemeteries along the Red River south of Fargo, ND.

My Great Grandfather had a son who died in infancy in the late 1880's. Somehow he managed to dig a grave on a hillside near his home in the middle of winter to bury his son's body. Since then, around 250 others have found their final resting place in what is now Eagle Cemetery of Rural Christine, ND. My parents are both buried there, as well as both sets of grandparents. I have an uncle who gave his life trying to rescue wounded comrades in the Philippines during WWII. His memorial cross is in Eagle Cemetery. Most of my deceased uncles and aunts have their place in that cemetery as well. I also lost my oldest son because of a senseless homicidal act 8 years ago down in Texas and he is also buried in Eagle Cemetery.

Eagle Cemetery is located on one of the highest elevations between Wahpeton and Fargo and therefore has never been flooded from the Red River in known history. The floods of 2009 and 2011 came close to doing so, but any additional water levels would certainly put it at risk. Many other cemeteries to the north would be completely submerged if the Fargo Dam was built. A new Church has been built just to the south of Eagle Cemetery and is relatively safe from flooding if no new flood control measures are put in place.

I don't believe anyone who lives in the area wishes to see Fargo and Moorhead suffer a flood disaster like they have so far successfully avoided. There needs to be co-operation between opposite sides in this difficult decision. It may mean some water retention projects on rivers that feed into the Red River as well as additional flood protection within the city of Fargo. The people living in Fargo could feel somewhat uncomfortable knowing that only a man-made dike separates them from a few thousand acres of overland water.

Please support with your recommendations and votes, Senate Bill 2311 to protect our cemeteries from all perils including floods.

Dwight Anderson

5037 166 Ave SE

Kindred, ND

Eagle Cemetery

2009 Flood

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Chairman Burckhard, committee members. My name is Craig Hertsgaard. I am a farmer and I live near Kindred, ND. I am a member of the MnDak Upstream Coalition, and am here to speak in favor of Senate Bill 2311.

The folks you have heard testify this morning have described the heart and soul of this issue. I will spend a few minutes talking about the nuts and bolts of what the river levels mean to these cemeteries, what's normal, and how to get a perspective of what's really happening. The first issue is what is normal for spring flooding around these cemeteries. Of all the cemeteries on this map upstream of the dam, only one, the Lower Wild Rice is vulnerable to floods similar to 2009. The first chart shows the extent of the 2009 and 1997 floods. This level is slightly higher than what the new standard FEMA 100 flood levels are, but it is reasonably close to what is depicted in light blue. The second chart is estimated coverage from what the Army Corps calls a 100 year flood. That area is dark blue. The red area is the additional coverage caused by the dam at the south end of the diversion project. On both maps, locations for the upstream cemeteries are labeled in red with a white outline. I don't know how many of you have heard the Diversion Authority or Army Corps discuss their plan for the cemeteries in the path of the project, or have seen the information they have been preparing. They claim that most of the cemeteries that the people before me testified about, flood already under "normal 100 year" flood conditions. These two maps show a different story and I want to explain why.

When they Army Corps first evaluated Fargo Moorhead for a federal flood project, they needed to have the benefits from their plan be higher than the cost. They imagined the cities without dikes or levees and a FEMA 100 year flood. Unfortunately, the cost of the first diversion plan was higher than the damages that would result from a flood. They tweaked the numbers and tried again, but still, the cost of the project was higher than the benefits. Congress will not authorize a plan whose benefit/cost ratio is less than one. At that point the Corps assembled six hydrologists in what they call an "Expert opinion Elicitation" panel, or EOE. They met for two days and looked at climate data for the last 120 years. They were asked questions about weather history and patterns and asked about possible conclusions. In the course of the two days, the hydrologists were

asked a series of questions about climate change, weather cycles, and if it was reasonable to rely on patterns of weather. The result of the session was that the Army Corps decided to drop all the historical flood data prior to 1942, and use only the recent data to determine flood frequency for Fargo. FEMA uses the entire period of record or about 120 years of data. The Corps dropped about 45 percent of that data, keeping only the information from more recent years. The result is that the likely 100 year flood crest for Fargo's diversion feasibility study was raised about three feet. Miraculously, the benefit cost ratio for the project far exceed the minimums required for authorization. That explains why the dark blue area on one chart is much larger than the light blue area on the other. The EOE panel is slick way to qualify for federal funds, and if this is standard procedure for the federal government, it explains why we have an almost \$20 trillion national debt.

Gaining federal funding for a local project is a worthy goal, but using the manufactured flood levels to justify flooding cemeteries is not. When diversion authority or Corps representatives talk about existing conditions, and that these cemeteries are flooded already, we believe they are intentionally misleading people. With the exception of the Lower Wild Rice Cemetery, which Mr. Hanson spoke about, these cemeteries would not flood in a FEMA 100 year flood. To say that their project would not cause additional damage is simply wrong. In addition, the dam would not operate only in an EOE 100 year flood. It would likely flood this area and these cemeteries in flood as frequent as one out of ten years. The project planners need to find a way to keep from flooded graveyards if their dam is built.

The second issue is the claim that our cemeteries must be flooded to protect a vastly larger number of cemeteries behind the diversion. This is also blatantly untrue. The claims of flood damage to the Fargo cemeteries is calculated as if there were no dikes, no roads, and no railroad tracks, and the flood level is three feet higher than what FEMA recognizes. The fact of the matter is that most of the cemeteries they call at risk are not. Fargo is currently in the process of building their in town dikes and levees to 44 feet. The new FEMA 100 year flood level is 39.5 feet.

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It's appalling that anyone would think that we should trade the respect of our dead for theirs. We need to be better than that as a state. This isn't just about honoring the bodies of people that were important to us. It's about remembering that other people did a lot more for us than we could ever do for ourselves, and that we have the responsibility to try and do the same for the next generation. We can't give in to being predators of our neighbors. We need to do the right thing.

I urge you to pass SB 2311.

Thank you,

Craig Hertsgaard

Kindred, ND



# 1997 & 2009 Flood Extent

Army Corps "Red Box" Impact Area

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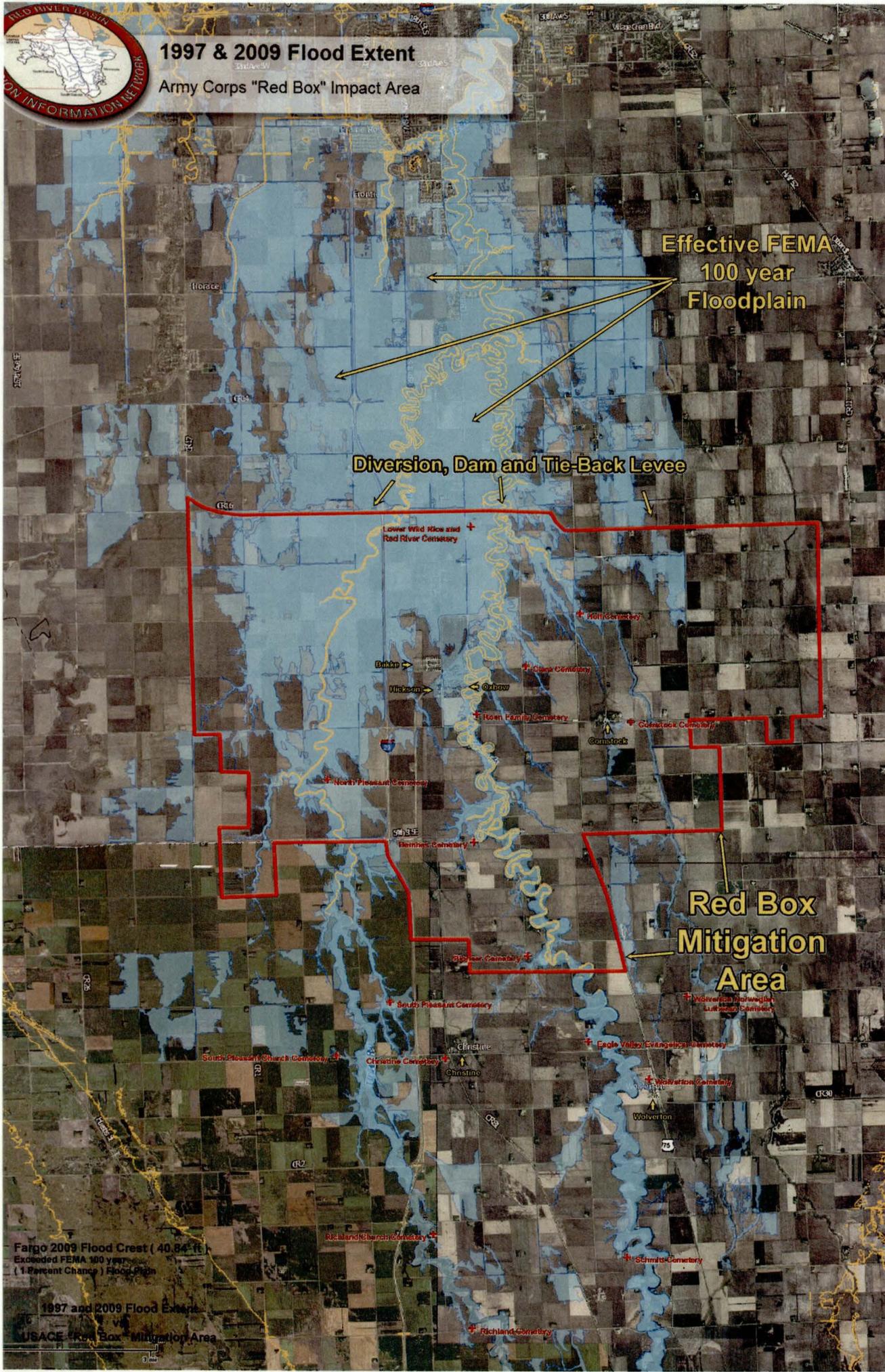
Effective FEMA  
100 year  
Floodplain

Diversion, Dam and Tie-Back Levee

Red Box  
Mitigation  
Area

Fargo 2009 Flood Crest ( 40.84 ft )  
Exceeded FEMA 100 year  
( 1 Percent Chance ) Flood Plain

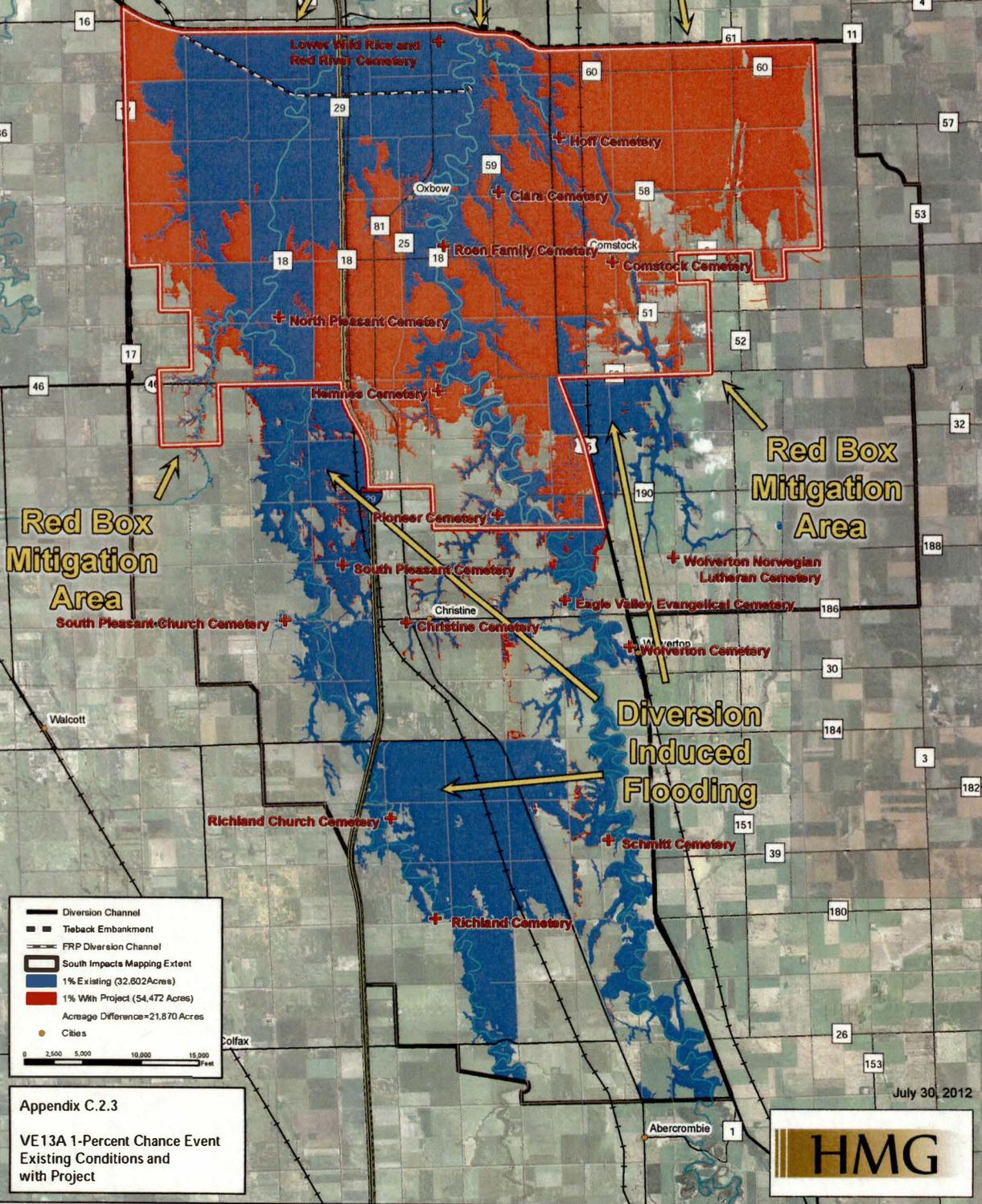
1997 and 2009 Flood Extent  
USACE "Red Box" Mitigation Area



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# 100 year Impacts Induced By Diversion

## Diversion, Dam and Tie-Back Levee



Appendix C.2.3

VE13A 1-Percent Chance Event Existing Conditions and with Project

At the age of 27, Torger Olsen left his native Norway to settle in Pleasant Township (Cass County). The year was 1871 and within the next decade he established a farm, married Antonette, started a family, and helped move most of his immediate family to America. He began his farming career as a farm hand, saving money until he was able to purchase land and equipment, eventually owning 400 acres and becoming one of the most substantial farmers in the county. He was a school director for many years and according to family legend, Torger built one of the first wood frame houses in Fargo.

His industriousness and energy set the foundation for the rest of his family as generations of Olson's have farmed this same land and laying to rest those who passed away for the next 140 +years.

Ole Olson (1855-1938), farmer; Clarence Olson (1900-1955), farmer, private in the United States Army in WWI, businessman; Julia Olson (1900-1991), teacher in a one-room schoolhouse; Ernest Olson (1914-2001), farmer; Rev. Gary Olson (1937-1995), former pastor of First Lutheran Church. These names don't mean much to the average person, but to this family they are the reason we exist. They are the reason we believe in the land and the reason we believe in family. They are also the reason we believe in allowing them to rest in peace for eternity.

Last spring my father and I read a *Forum* article about the proposed flooding of the Lower Wild Rice and Red River Cemetery if the diversion is built. This was a shock! We knew the farm may be at risk, but we had not heard how the cemetery would be affected. Since this time we have learned the cemetery would be subjected to over 12' of flooding for extended periods. The thought of the graves of our ancestors being desecrated by the City of Fargo is difficult to accept. The cemetery should be a place of peace, a place to compose one's thoughts of the past and look to the future. It should not be a place that causes one to worry if the graves are shifting or if bodies are being damaged due to the actions of man.

The Lower Wild Rice and Red River Cemetery is over 140 years old. The individuals resting in this cemetery were not famous, but they fought for our country, farmed the land, taught at the schools, prayed at the churches, and were some of the original inhabitants of this Fargo area. The diversion is a disgrace to the memories of these people and to those who remember them.

Kay Beckermann, Fargo

Donald Olson, Fargo

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#11

Dear Mr. Chairman and members of the committee,

I am writing in support of Senate Bill 2311. This bill creates an extension of the existing graves protection act and adds penalties for ignoring these protections. In the over 140 year history of the Wild Rice Cemetery it has occasionally been slightly flooded by nature. The willful desecration of the graves by the planned flooding, however, is on a scale that will destroy not only the remains of our ancestors but any marker as well. This is not abandoned land. This cemetery is still active. Our family has a memorial planned in June to intern my Mother with my Father and five generations of our family.

The bill you are considering today sets a national precedent for the care of cemeteries. Please make history today with this brave and valuable act.

Sincerely,



Julie Dial  
Billings, Montana

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2.12.15  
#12

**SB 2311 Testimony, February 12, 2015**  
**Jason Benson, Cass County Engineer**

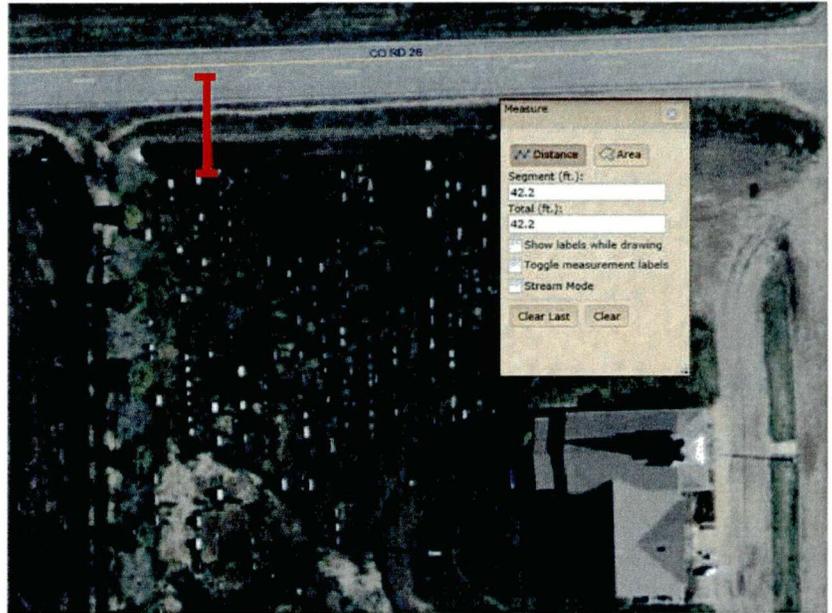
I oppose the changes outlined in SB 2311. Due to the bill's vague language and new restrictions, I feel this bill will only place an unnecessary burden on local governments. Reviewing the bill's language, there are new requirements that have not been needed in the past and aren't needed now. First, if there is the potential to disturb a grave site. The proposed bill states "*the state department of health and the state historical society shall schedule a public hearing to allow public comment regarding the impacted burial site.*" This means public meetings will be completed by the State Department of Health and the State Historical Society and taken out of the hands of the local government. If both agencies are unable to make one meeting, it appears two separate hearings may be required. Then the bill states "*Before the project may commence, the governmental entity conducting the project shall implement a cultural resource mitigation plan approved by the director of the state historical society.*" This adds an additional layer of bureaucracy and cost that I feel is unnecessary.

In Cass County alone there are over 40 cemeteries located along County highways and numerous more located along State and Township roads. If the County is required to work near a grave site while widening a road or improving a ditch, would that be considered "*likely to impact a human burial site*" and trigger this lengthy review? The vague language of the bill leaves this in question. This bill doesn't clarify how close to a grave you can be to trigger the public hearing and other requirements. It doesn't provide other specifics to spell out when these proposed requirements would be needed. Based on the bill's language, I'm not sure who has authority to determine if doing ditch work would have an impact or not. If the cemetery representative and my staff don't think it there will be an impact, is that good enough? Or does the State Department of Health and the State Historical Society need to be notified anytime we are working in a ditch near a grave.

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12A

I've completed five highway re-grading and reconstruction projects along cemeteries over the last 10 years and we haven't had any issues. In the attached picture the Church asked us to re-grade the ditch when we were paving the adjacent County highway. As you can see, there are numerous graves within 40-50 feet of the center of the road. Our contractor worked respectfully to



complete the work without damaging a grave site. I don't see how I could have completed this work under the proposed legislation without going through the SHPO review, public hearing, and approved mitigation. Because we were working with the Church and Cemetery Representative, all work was done to satisfaction without issues. I have many sites throughout the County that are similar to this. In 2016 I will be reconstructing a road north of Enderlin that has two cemeteries along it. In both cases we are working with a cemetery representative concerning right of way and in one case, having a fence moved. I am concerned about the impacts of this bill on this project and the additional requirements and costs it will add. I'm guessing the Legislature would rather spend money on highway projects rather than on more paperwork and studies.

In addition, this bill will continue to have unintended consequences with the language "*other project to be paid for with public funds is likely to impact a human burial site.*" Could gravelling a road that causes dust to fall on a grave site be an impact? How about when the County conducts an aerial spray for mosquitoes, could this be an impact? Who gets to determine what an impact is to a grave site?

### **Conclusion:**

I ask the Committee to oppose SB 2311. The proposed changes in this bill will negatively impact Counties and local governments by placing unnecessary restrictions and costs when conducting road work along highways.

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#13

## Senate Political Subdivisions Committee

February 12, 2015 - 10:00 A.M.

Red River Room

North Dakota Department of Transportation

Matt Linneman, PE, Program Manager - Environmental & Transportation Services

Senate Bill 2311

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Mr. Chairman and members of the committee, I am Matt Linneman, Program Manager in the Environmental & Transportation Services Division at the North Dakota Department of Transportation (DOT). Thank you for giving me the opportunity to provide neutral testimony and information on SB 2311.

The DOT, in partnership with Federal Highway Administration (FHWA) and the State Historic Preservation Office, provides protection of human burial sites, both historic and prehistoric, under the National Historic Preservation Act; the Native American Graves Protection and Repatriation Act (NAGPRA); under Section 23-06-27 and Administrative Rule 40-02 of current state law; and as part of a Tribal Consultation programmatic agreement.

The DOT also has a public involvement policy for highway improvement projects. The policy requires public meetings for projects that have the potential to impact important resources, such as burial sites. Requiring other state agencies to conduct public hearings on highway improvement projects is a potential duplication of effort by agencies and may be confusing or frustrating to the public.

Through the Tribal consultation process our Tribal partners have expressed concern over keeping burial locations and details confidential and dealing with burials in a respectful manner. A public hearing where details are presented in a public forum may not be respectful of those wishes.

Mr. Chairman, I would be happy to answer any questions at this time.

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**NDLA, S PSD - Wocken, Mary Jo**

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**From:** Lee, Judy E.  
**Sent:** Saturday, February 14, 2015 6:50 PM  
**To:** Burckhard, Randall A.; Anderson, Jr., Howard C.; Bekkedahl, Brad; Dotzenrod, Jim A.; Grabinger, John  
**Cc:** NDLA, S PSD - Wocken, Mary Jo; NDLA, Intern 01 - Adisa, Femi  
**Subject:** FW: SB 2311

I am forwarding this message from Darrell Vanyo about the cemeteries.  
Mary Jo, perhaps you would print a copy for each of us.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
home phone: 701-282-6512  
e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

-----Original Message-----

**From:** Darrell Vanyo [<mailto:dvanyo@hotmail.com>]  
**Sent:** Friday, February 13, 2015 9:03 PM  
**To:** Rocky Schneider  
**Cc:** Lee, Judy E.; Berndt, Keith D.; Benson, Jason; Eric Dodds  
**Subject:** Re: Sb2311

Judy, I do hope you take the time to peruse the 185 pages of this document, not so much to understand every detail of this report; but for you to understand how painstakingly the USACE studies every aspect of this project. To listen to the testimony, one would be led to believe that nothing has been analyzed, discussed, or communicated in any way to those in the upstream area. I can assure you, nothing is further from the truth.

Please feel free to forward this to members of the committee for their review as well. If we can be of further help, please let us know.

Rocky, great job on getting this out so quickly, as well as your own commentary.

Darrell Vanyo

Sent from my iPad

> On Feb 13, 2015, at 6:42 PM, Rocky Schneider <[Rocky.Schneider@AE2S.com](mailto:Rocky.Schneider@AE2S.com)> wrote:

>

> Sen. Lee,

> Darrell Vanyo asked me to follow up with you on some additional information on SB2076. As you know, the Diversion Authority and Corps of Engineers have been working hard to come up with a plan to mitigate the impacts from the Diversion Project, including those to cemeteries.

> As you can sure imagine, by no means does anyone want to flood a cemetery. It's an issue that all of us take very seriously as we all have loved ones we think of during these discussions. In June of 2014, the Corps of Engineers released its initial cemetery study. This 185-page document identifies 54 separate cemeteries in the region that are either benefited, impacted, or have no change in situation due to the Diversion. I would be happy to bring my copy out to you

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in Bismarck on my next trip; otherwise it is broken into four parts due to its length at <http://fmdiversion.com/library.php>. Part 1 includes the summary, which is of most interest.

[http://www.fmdiversion.com/pdf/140626 Cemetery Study Part1.pdf](http://www.fmdiversion.com/pdf/140626_Cemetery_Study_Part1.pdf)

> To summarize the study, there are 11 cemeteries that have some additional water during flooding when the Diversion Project operates. Many of these would already have some level of water under existing conditions and currently experience impacts during floods. I think it is also helpful to note that the Diversion Project protects 19 cemeteries within the protective boundary that otherwise would flood under existing conditions.

> The initial study laid out many possible mitigation options that might work for some of the cemeteries, but each cemetery's situation is quite unique and so more work was needed to identify mitigation options specific to each site. We have been working with the Corps since the last report was released on an even more in-depth report that is due out in June of 2015. Since the last report was released, the Corps has identified the point of contacts at each location and has been in close communication with them. The Corps has also reached out to all the cemeteries in the area that ARE NOT impacted so that there is no confusion out there. You can see the letters to both groups at the link above as well.

> As with every aspect of the Diversion Project, there are strict federal and state guidelines already in place on how to properly handle final resting places. We are working closely with those regulatory bodies closely.

> Another item to keep in mind is that these impacts are only realized after the Diversion is operational. This means that it could be a decade from now before any impacts are seen. That does not mean we are working slowly, but it does mean we can take the proper amount of time to make sure we do the job right. SB2311 has a lot of emotions behind it and that is understandable, but we have to let the Corps finish their report and see what options are on the table. Legislating this effort before we even know the options does not seem like the best process to follow.

> Thank you for your comments at the hearing, I think they were reasonable and very accurately shown a deep understanding of the situation. Please let me know if I can provide any additional information to you and your colleagues make the best decision.

> Rocky Schneider

> 701-306-4505

>

>

> Sent from my iPhone

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**NDLA, S PSD - Wocken, Mary Jo**

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**From:** Lee, Judy E.  
**Sent:** Saturday, February 14, 2015 6:52 PM  
**To:** Burckhard, Randall A.; Anderson, Jr., Howard C.; Bekkedahl, Brad; Dotzenrod, Jim A.; Grabinger, John  
**Cc:** NDLA, S PSD - Wocken, Mary Jo; NDLA, Intern 01 - Adisa, Femi  
**Subject:** FW: Sb2311

Please note correction on bill number in first sentence of main message.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
home phone: 701-282-6512  
e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

-----Original Message-----

From: Darrell Vanyo [<mailto:dvanyo@hotmail.com>]  
Sent: Friday, February 13, 2015 8:48 PM  
To: Rocky Schneider  
Cc: Lee, Judy E.; Berndt, Keith D.; Benson, Jason; Eric Dodds  
Subject: Re: Sb2311

Correction, Judy, Rocky meant SB2311 in his first sentence.

Sent from my iPad

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