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2001 HOUSE NATURAL RESOURCES

HB 1438

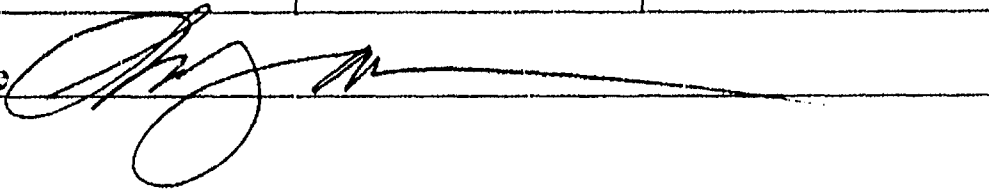
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1438

House Natural Resources Committee

Conference Committee

Hearing Date February 1, 2001

| Tape Number   | Side A | Side B | Meter #     |
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Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: I will open the hearing on HB 1438.

Rep. James Kerzman - District 35: (See written testimony and newspaper article.)

Rep. DeKrey: Be careful of what you ask for you might get it. Have you talked to any of the people up in the Northeastern part of the state where you have thousands of acres under wetland easements? How happy they are with those, and how well they have worked out for them?

Kerzman: I haven't talked to any of them, the reason we have to go with these perpetual easements is to get the Federal money to go through.

Rep. DeKrey: I guess the other question would be is isn't it rather presumptuous of this generation to decide for all future generations that we are smarter and wiser than they are and that we know what's best for the land we are on without knowing what kind of technology or anything that is going to be available in the future?

Kerzman: I don't know if I would use that term. I think we are all stewards. I have seen land in our area put under the plow that shouldn't have. Now it is CRP and it gets to be a vicious circle.

Vice Chair Nelson: Under this pilot project, who would hold the easement?

Kerzman: There is no one dedicated now to hold the easement as far as I know. It would be an agreement between anybody interested in it. You could make an easement agreement with a banker if you wanted to.

Vice Chair Nelson: You mentioned earlier that one of the reasons for requiring a perpetual easement would be for the Federal funds that would flow with a perpetual easement. Can you answer to me, is it only the Federal government that requires a perpetual easement before they participate in the program?

Kerzman: I think it is pretty much that way.

Rep. Audrey Cleary - District 49: I stand here in support of HB 1438. (see written testimony and brochure).

Rep. Nottestad: I find it kind of interesting. We have had some very passionate discussions on the House floor as to immigration and how we should be encouraging it and yet this bill here does the very opposite. Can you comment on that?

Cleary: I am not talking about immigration, I am talking about people coming and building. I don't think we were talking about immigration as far as coming into the state and helping our

population project. I don't think this area is one that they would collect, because they need to settle where they can get jobs.

Rep. Nottestad: That sounds like the nimble philosophy, not in my back yard.

Rep. Droydal: I find it ironic that we are talking about an easement, because we want to keep it in its natural state, and I do enjoy that country. We are talking about trying to restrict growth into the largest district in the state of ND and the reason is we don't have the people to do the growth there anyway. Somewhere we have to come up with a balance and try to get some people out there and now we are saying we don't want any growth there. The message is confusing. Can't we come to some agreement there. About a million acres of that tract is already protected from any growth. Here we are trying to tie up even more of it in an area we are trying to get people to move to. Are we defeating our purpose?

Cleary: People could still come and use this land for agricultural purposes. As Rep. Kerzman alluded to many parts of this western state shouldn't have been plowed under. It should have been ranched. People can still come and ranch, what we are trying to prevent is subdivisions and house all over there. I think we need to do this with some plan in mind. I think this is a good bill.

Rep. Droydal: Will you put a number on how many acres we should try to protect for future generations in this particular area.

Cleary: No, I do not. Maybe somebody who follows me will give you some idea of that.

Vice Chair Nelson: Any further committee questions? Is there anybody else wishing to testify for HB 1438?

Joe Satrom - Ducks Unlimited: I want to speak about easements in a general way. Easements had their evolution for things other than utilities and general services. About the middle of the 20th century, a number of states began to look at them as tools to protect the land. All but ND and one

other state have adopted some semblance of the Uniform Act. What easements offer the western part of ND is really going to be determined by land owners. It is going to give them the option to receive some compensation for maintaining their property in its current state. The opportunity is in the increasing interest in development in the Badlands, it is multi faceted. It may be the protection of the agricultural value, it may be to protect the view shed. We did not have any tools to work with the land owners in that view shed to allow us to buy the rights to not develop. So now, if you have been to Medora there are several developments in that view shed. It is unfortunate. One of the top golf courses in the world exists in Bismarck. The landscape around that is unprotected and that too will be diminished by the development of something that doesn't belong in the view shed. Easements can serve cultural values to protect views. They also can be used to protect historical values. This is a tool that works very effectively. Easements increase value of developmental land, everyone is served. It saves local tax payers money because it limits the amount of proliferation of development you get. One last point, people say, well don't you have zoning? I hope you as political figures realize that zoning is only as good as your current political climate. Easements are a lot stronger.

Rep. Keiser: As I understand this bill, this is just a subsection dealing with length of easements, it has nothing to do with the acreage involved. Why would your organization or any other entities involved in seeking these, what is the advantage of having an easement greater than 99 years?

Satrom: Good question? The reasons vary. Private donors want permanent protection. Mainly because they are giving their money and in 99 years a replacement easement will be expensive and not negotiable. Essentially a term easement is no better than zoning. There is a wide spread recognition of this tool in the current climate of agriculture. The Western Governors, the area where there is the most protected land, have endorsed a Grassland Protection Initiative in the new

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House Natural Resources Committee

Bill/Resolution Number HB 1438

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farm bill. The current wetland reserve program has a perpetual component used in every other state besides ND where we restrict it. The opportunity to do something with permanent perpetual easements has never been greater. Remember, it is entirely voluntary. It is not something where there is anybody dictating to the landowners. The determination of acreage in the protected area will be in the hands of the people who own the land. That's the way it should be.

Vice Chair Nelson: Any further questions of the committee?

Rep. Kelsor: When the landowner maintains the rights, all succeeding generations own the rights, and the rights can't change other than those agreed to in the initial agreement?

Satrom: The easement is attached to the deed as recorded in the courthouse and it does stay with the land for perpetuity.

Vice Chair Nelson: Further questions? Anyone else here in favor of HB 1438?

Bill Pfeifer - ND Chapter of the Wildlife Society: The Wildlife Society supports HB 1438. (see written testimony).

Vice Chair Nelson: Would you support legislation that would amend this to limit perpetual easements to ranch and ag easements?

Pfeifer: I guess I would not favor any bills that would place any encumbrances on the landowner preventing him from doing what he wants to providing it fits in with all the zoning standards that exist.

Chairman Rennerfeldt: Any further questions?

Mike Donahue - USND & NDWF: The United Sportsmen of ND is neutral on this bill, and the ND Wildlife Federation supports this bill and asks for a Do Pass for all the reasons stated. One question I would like to address, this isn't an easement on the whole basin automatically, it is

what the landowner wants to do. Right now, with the 99 year easement, the IRS won't allow a tax advantage, like the perpetual easement would.

Chairman Rennerfeldt: Any questions of the committee, anyone else care to testify in favor of HB 1438. Anyone opposed?

Eric Aasmundstad - President of ND Farm Bureau: ND Farm Bureau opposes HB 1438. We realize that the ability to enter into an easement is a property right, however we are opposed to perpetual easements, they place restrictions on the property in the best interest of this generation and are short sighted and presumptuous. Beyond these reasons we believe there is legislation pending in hearing in the Senate that better addresses the issue. Legislation that will better address the needs of property owners as well as the conservation community,

Chairman Rennerfeldt: Any questions of the committee? Anyone else opposed to this bill?

Julie Ellingson - ND Stockmen's Association: The ND Stockmen's Association would like to register its opposition to HB 1438.

Chairman Rennerfeldt: Any questions from the committee?

Rep. Keiser: I understand it is the official policy of the Stockmen's Association. When the vote was taken, do you have a breakdown of the membership, on how they voted? Was it 100% in support of it, or were there some members who actually support perpetual easements?

Ellingson: I don't have that official number, but I can get back to you.

Chairman Rennerfeldt: Anyone else?

Paul Becker: I am opposed to HB 1438, because of the perpetual easement part of it. Earlier there was testimony about encumbrances. I think the biggest encumbrance that could come to any land is the perpetual easement. I think that the generation that is there or maybe the next generation has no decision on that. 100 years ago, my great, great grandfather homesteaded, things were a



lot different then, there could have been an easement that would have prevented a road through the land. The perpetual easement is the wrong thing. I think they are giving up too many rights by selling that easement. Another thing, along the same line, is they buy the easement and the landowner still pays all the taxes on it. If that easement is valuable to that organization that bought it, I think some of the property taxes should be paid annually by that organization because the landowner gave up that part of the property.

Rep. Hanson: Can an Eminent Domain override an easement?

Becker: I don't know.

Rep. Hanson: In your comment about the road, I mean, if they needed a road, can Eminent Domain override the easement?

Becker: I can assume it may, maybe my road wasn't a good example. But looking at things like wind energy. It would be possible that an easement wouldn't allow things like that. Many things that come 100 years from now that we don't have a clue and we are saying right now we don't want anything to do with it.

Chairman Rennerfeldt: Any questions of the committee? Anyone else opposed to HB 1438? If not, I will close the hearing on HB 1438.

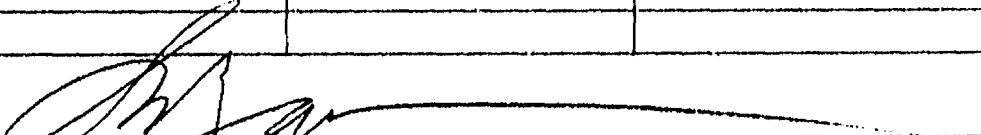
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1438

House Natural Resources Committee

Conference Committee

Hearing Date February 2, 2001

| Tape Number   | Side A | Side B | Meter #      |
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Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Kelser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: Let's take a look at HB 1438.

Rep. Droydal: I would like to move a Do Not Pass on HB 1438.

Rep. Weiler: I second.

Chairman Rennerfeldt: Any further discussion?

Rep. DeKrey: This state has an extensive history on perpetual easements. I don't think they have been good for the state at all. Particularly up in the Devils Lake area. I don't know why we want to perpetuate a problem that we know exists in this state and move it to the southwest corner also.

