

2009 SENATE AGRICULTURE

SB 2440

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2440

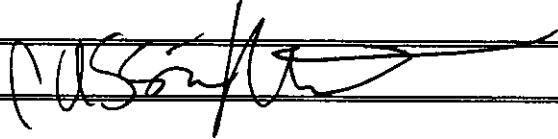
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8779

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on SB 2440, a bill relating to the chemigation site permits and to provide for a legislative council report. All members (7) were present.

Sen. Lindaas, district 20, testified in favor of the bill. See attached testimony, attachment #1 and #2.

Rep. Kaldor, district 20, testified in favor of the bill.

Rep. Kaldor- I am here today to add my voice today for support of this legislation. The concern for safety and clean water is a importance to all of us, and agriculture is changing dramatically and rapidly and more and more possibilities exist for keeping fields clean and utilizing resources like chemigation. One of the issues that I think comes to light is that we don't know where all of these systems are, so we need to make sure we protect our water sources and that is the intent of this legislation.

Sen. Wanzek- have there been incidents in the past?

Rep. Kaldor- I am not aware of an incident only the concerns that have been brought to our attention of a possibility.

Randal Loeslie, Manager of Grand Forks Trail Water District, testified in favor of the bill. See attached testimony, attachment #3.

Sen. Miller- can you give me a brief explanation of what the wellness protection program is?

Randal Loeslie- it was a program that was brought up in 1991 by the environmental protection agency through the state drinking water act, it was funded by the EPA to be responsible to make sure that the water is safe.

Sen. Klein- I cant see that by making them have this permit will make any difference, if something happens it may or may not be reported unless it is the day of inspection, where is the help here?

Randal Loeslie- chemigation involves a 2000 gallon tank full of a chemical whether it be fertilizer or pesticide, we are talking about giving the Ag department the capability of making rules or containment of that tank should a spill happen or a chemigation tank is full and it rains so they cant get rid of the fertilizer and then it sits there and a vandal comes by and shots the tank. It will get a handle on secondary containment.

Sen. Klein- so the lead in is not just the permitting process what we are doing here is allowing permitting process with rules to follow that will create the ability to contain this and the ability to have the producers put a tank up that is thick walled, so this is just the beginning?

Randal Loeslie- yes.

Sen. Taylor- do you know how many well head protection areas there are in the state?

Randal Loeslie- As far as the number in the state I am not quite sure I would say around 300 maybe.

Dave Phillips, enforcement supervisor for the ND Department of Agriculture's pesticide, feed and fertilizer team, testified in support of the bill. See attached testimony, attachment #4.

Sen. Wanek- so would the applicators of these products be certified?

Dave Phillips- they would be required to be yes.

Sen. Wanzek- so they fall under the same rules as someone using a big sprayer or someone doing chemigation?

Dave Phillips- yes everything that would be applicable from pesticide law or rule would apply.

Sen. Miller- is this a very good way to apply chemical or is it just a easier method that they utilize?

Dave Phillips- I think the choice sometimes does get to be an efficiency situation.

Sen. Flakoll- have you seen the amendments that were proposed and do you support those amendments?

Dave Philips- I have not seen them so I cannot comment.

Robert Thompson, member of the state water commission and a potato farmer, testified in opposition to the bill.

Robert Thompson- I have a lot of concerns on this bill. Right now the only people that chemigate are potato growers. The USDA inspects our sites already, I think that you need to realize that. I don't think there is expertise in the Ag department to do what you are trying to do. I think that if you are going to have something like this is should go through the water commission and not the Ag or Health department.

Casey Holverson, farmer, testified in opposition to the bill.

Casey Holverson- Mainly we are against this cause USDA already inspects us. We mainly do fermigation not chemigation. I don't think there have been incidents that we know of. The state water commission knows the location of all of these. We are already checked by the department of agriculture randomly.

Herb Grents, farmer, testified in opposition to the bill.

Herb Grents- Nothing is 100% fool proof but I don't think that any irrigator wants to go out there and contaminate his well, that is his life source. My system is a little different, here is a

picture. See attachment #5. If you are going to have a law have a good one, this bill needs a lot of work in my opinion.

Jeff VanRay, farmer, testified in opposition to the bill.

Jeff VanRay- we already have a program that we use that is similar to this and I don't feel the need for this bill.

Kurt Overson, farmer, testified in opposition to the bill.

Kurt Overson, I think that the state water commission already does a great job with this and we do not need a bill for this. I think that we could do this without making it into a state law and would make it expensive to go this route.

Sen. Flakoll closed the hearing on the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2440

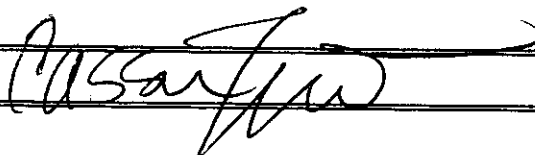
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8782

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the discussion on SB 2440, all members (7) present.

Sen. Klein- one of the things that I was thinking of is the certification of all these guys and somehow make that the law but they are certified and have to be to do chemigation and fertigation. I see some problems with this, I believe the producers have a good reason why this won't work.

Sen. Heckaman- the only solution I would have is that when they come to install these that they are required to report where they are installed then there would be a log of it and that would not require a bill.

Sen. Wanzek- these farmers have to be certified to apply pesticides. How much more can we really pile on the regulations. I don't feel that this accomplishes anything.

Sen. Behm- a farmer will not violate these cause it will cost them too much money. I don't see how this bill is going to help.

Sen. Heckaman- it says in the Ag testimony that it would help the locations of these other than that I don't know how this would make a difference otherwise.

Sen. Wanzek motioned for a Do Not Pass and was seconded by **Sen. Klein**, vote 5 yea 2 nay
0 absent, **Sen. Wanzek** was designated to carry the bill to the floor.

Sen. Flakoll closed discussion.

FISCAL NOTE
Requested by Legislative Council
01/28/2009

Bill/Resolution No.: SB 2440

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$60,000	\$0	\$60,000
Expenditures	\$0	\$0	\$0	\$7,220	\$0	\$7,220
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

The bill establishes a requirement for a chemigation permit and a \$30 fee per permit.

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

Section 1 provides for a \$30 fee for a three year permit. There are about 2,000 irrigation units which would require a permit.

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

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

The bill provides for the deposit of the fees into the Environment and Rangeland Protection Fund.

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

Since the Department of Agriculture doesn't have a current FTE available to absorb this increased workload, we anticipate to incur overtime (salary) expenses of \$3,600 per biennium. The Department also estimates increased operating expenses of \$3,620 to cover development of the permitting process, processing permits, and conducting outreach activities to inform chemigators of the permitting requirement.

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

We anticipate no additional appropriations.

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328-4758	Date Prepared:	02/04/2009

Date: 2.5.09'
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2440

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Wanzek Seconded By Klein

Senators		Yes	No	Senators		Yes	No
Tim Flakoll-Chairman				Arthur Behm	X		
Terry Wanzek-Vice Chairman	X			Joan Heckaman		X	
Jerry Klein	X			Ryan Taylor		X	
Joe Miller	X						

Total (Yes) 5 No 2

Absent 0

Floor Assignment Sen. Wanzek

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

REPORT OF STANDING COMMITTEE (410)
February 5, 2009 1:19 p.m.

Module No: SR-23-1791
Carrier: Wanzek
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2440: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO NOT PASS
(5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2440 was placed on the
Eleventh order on the calendar.

2009 TESTIMONY

SB 2440

Good Morning Chairman Flakoll and Senate Agricultural committee members. My name is Elroy Lindaas, State Senator from District 20 which includes all of Traill County and parts of Steele, Cass and Barnes Counties.

I am here today as prime sponsor on SB 2440. This bill is introduced to address concerns about a practice that is somewhat new to the agricultural industry, namely Chemigation. Simply explained, it allows irrigators to Insert chemicals such as fertilizer or pesticides into an irrigation system providing both water and chemical in one operation. The concerns are about the possibility of a mechanical malfunction whereby a chemical might contaminate the underground water supply or aquifer. At the present time there is very little regulation or standardization of safety measures or devices. In fact neither the ND Department of Agriculture, the ND State Water Commission or the Health Department know exactly where these systems are located. It is with this in mind that this bill would require a permitting process where each Chemigator would be required to make application to the Department of Agriculture along with a 30 dollar fee, good for 3 years. This would insure that someone would know where each system is located and provide for an inspection to insure safe practices.

The ND Agriculture Commissioner will draw up some specifications and rules that would be presented to an interim committee in the summer of 2010. These rules would lay out necessary items for the safe operation of the Chemigation systems. These specifications would cover the area of chemical containment, mechanical check valves or any other devices that would protect our natural environment and specifically our water resources. If an event such as a backflow or siphoning should occur in some of these areas it would have disasterous consequences.

I would like to offer an amendment at this time that would limit concerns to other than Well Head Protection areas. Those who follow me today will offer more scientific information as they are the individuals who work closely with these issues.

Mr. Chairman, I will end my testimony at this time and offer myself for any questions. I would urge your favorable recommendation for a Do Pass on this important issue.

90474.0301
Title.

Prepared by the Legislative Council staff for
Senator Lindaas

February 2, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2440

Page 1, line 8, after "chemigation" insert "within the boundaries of a wellhead protection area delineated by the state department of health"

Renumber accordingly

Testimony on SB2440

Good morning Senators and members of the community. I am Randal Loeslie, Manager of Grand Forks – Traill Water District, Thompson ND. I am also Chairman of the ND Rural Water Systems Legislative Committee.

Grand Forks – Traill Water was the first rural water system in the State. Originally with 900 members, now serving 2,373, approximately 10,000 people. We serve rural Grand Forks and Traill Counties, including the cities of Thompson, Reynolds, Buxton, Northwood, Hatton, Emerado, and Arvilla.

When we started construction of our system in 1969 we had only three water wells, we now have 15 wells and produced 360,000,000 gallons of water in 2008. There was no irrigation in our area until about 1985. Now we have 14 center pivots in our Well Head Protection Area. The Well Head Protection Areas are a 10 year time of travel for the water to move through a well field. The North Dakota Department of Health, through the EPA Safe Drinking Water Act, funded the Well Head Project across the whole state, assessing the vulnerability of potable water systems to different possible contaminant sources. I believe all groundwater potable systems for cities and rural water are delineated and signed.

Chemigation and fertigation is being done now right over these well fields. In fact, we had a 2,000 gallon tank with fertilizer in it for two weeks only 300' from one of our 250 GPM potable wells. The water table there is only 7' and very sandy soil. If the tank would have ruptured or had been shot at by some vandals, the tank could well have leaked out the contents and polluted this well.

Presently, North Dakota does not require secondary containment on its chemigation tanks, such as a dike or double wall tank. The States of Kansas, Iowa, Colorado, Nebraska, and Minnesota have a variety of rules in general, however, permits, regular chemigation inspections, and some type of secondary containment. This includes all chemigation, not only in Well Head Protection Areas.

Protecting our ground water resources used for potable water is a safety issue. It may be a slight infringement on irrigation practices, but should be well worth the measure of safety it will bring. Ground water is owned by the State of North Dakota and permitted out to beneficial users. Let us keep it safe and clean.

→

GRAND FORKS-TRAILL WATER DISTRICT GRAND FORKS COUNTY, NORTH DAKOTA WELLHEAD PROTECTION PROGRAM MARCH 2006

CONTAMINANT SOURCE INVENTORY

Grand Forks-Trail Water District, recognizing the need to protect its public water supply, made the decision to participate in North Dakota's Wellhead Protection Program. To aid in properly assessing the vulnerability of its groundwater resource and to manage surface activities adjacent to the wellfield, the North Dakota Department of Health (NDDH), Division of Water Quality (DWQ), delineated four Wellhead Protection Areas (WHPA) for the system's fifteen wells. The system's wells are located within Arvilla and Avon Townships.

Land within the WHPA is owned by private entities. Land use in the WHPA is for the conservation reserve program (CRP), hayland, and cropland (see map). Arvilla and Avon Townships maintain gravel roads in and around the WHPA. Some section lines without maintained roads are often utilized for farm trails or fence lines. Hazen Brook a creek with intermittent flows meanders near the WHPA. Contaminant spills and non-point runoff originating within the creek's watershed could move into the inventoried area. This creek will occasionally overflow its banks in the spring of the year or after a heavy rainfall event.

The North Dakota Department of Health maintains records of contaminate spill sites in the state. The Health Department monitors spill sites for public health and safety concerns, such as, the extent of surface/ground water contamination. Monitoring is discontinued when there is no longer any threat to public health or safety. No spill sites are on record for the Grand Forks-Trail Water District's wellfield.

This inventory identifies potential sources of contamination that may impact water resources within the boundaries and also in the outer periphery of the WHPA. The following sites express various degrees of environmental contamination potential, but they are not ranked as to their capabilities of posing a threat to local water resources. Site locations can be found on the enclosed map.

1. Rural Residence
 - drain field septic system
 - private well
2. Rural Residence
 - drain field septic system
 - private well
- ③ Center Pivot Irrigation
- ④ Center Pivot Irrigation
- ⑤ Center Pivot Irrigation
- ⑥ Center Pivot Irrigation
7. Rural Residence
 - drain field septic system
 - private well
- ⑧ Center Pivot Irrigation
9. Rural Residence
 - drain field septic system
 - private well
10. Rural Residence
 - drain field septic system
 - private well

14 Center Pivot Irrigation

- 11. Rural Residence
 - drain field septic system
 - private well

- 12. Center Pivot Irrigation

- 13. Rural Residence
 - drain field septic system
 - private well

- 14. Rural Residence
 - drain field septic system
 - private well

- 15. Abandoned Farmstead
 - abandoned well?

- 16. Center Pivot Irrigation

- 17. Rural Residence
 - drain field septic system
 - private well

- 18. Rural Residence
 - drain field septic system
 - private well

- 19. Center Pivot Irrigation

- 20. Center Pivot Irrigation

- 21. Center Pivot Irrigation

- 22. Center Pivot Irrigation

- 23. Center Pivot Irrigation

- 24. Rural Residence
 - drain field septic system
 - private well

- 25. Rural Residence
 - drain field septic system
 - private well

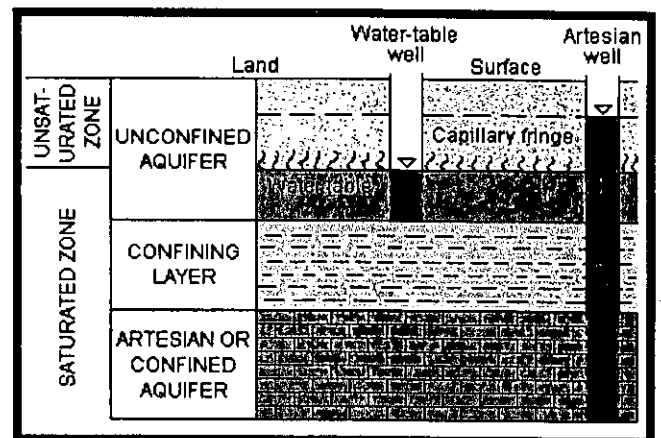
- 26. Rural Residence
 - drain field septic system
 - private well

- 27. Center Pivot Irrigation

- 28. Center Pivot Irrigation

MANAGEMENT PLAN

The Board of Directors for Grand Forks-Trail Water District recognizes that residents rely on groundwater for a safe drinking water supply. In order to ensure that the system's groundwater supply is safe to drink for years to come, the source of the system's groundwater should be protected. The system's groundwater source is a glacial drift aquifer known as the Elk Valley Aquifer. This surficial aquifer is comprised of sand deposited by deltaic, beach, and/or glacial outwash processes during glacial Lake Agassiz times. The aquifer sets on relatively impermeable glacial till. This aquifer is 45 to 60 feet thick in the wellfield area. The system's fifteen wells developed within this aquifer range in depth from 57 feet to 92 feet. The area is overlain by coarse-grained soils. Recharge precipitation and surface contaminants will percolate through the sandy soils and sandy subsurface at a rapid rate.





Grand Forks Trail Water District

BOX 287
1401 7th AVENUE N.E.
THOMPSON, NORTH DAKOTA 58278
"Rural Water for a Better Rural Life"

Office: 1 Mile West of Thompson
Phone: 701-599-2963
Fax: 701-599-2056

RANDAL W. LOESLIE
System Manager
e-mail: gftwu@invisimax.com

Surrounding States Key Regulation Issues

Kansas

- *Chemigation Safety Law
- *Certified chemigation equipment operator examination required
- *Pocket cards for certified operators (yearly)

Iowa

- *Permits required for chemigation operation
- *Secondary containment all chemigation tanks

Colorado

- *Requires a permit each calendar year – by February 1st of each year
- *Yearly inspections – "Properly Trained Staff"

Nebraska

- *Chemigation Act
- *Must obtain a permit each calendar year
- *Name of certified applicator their certificate number and expiration date of their certification required.
- *The district will inspect 25% of permit holders annually for compliance with the Chemigation Act.

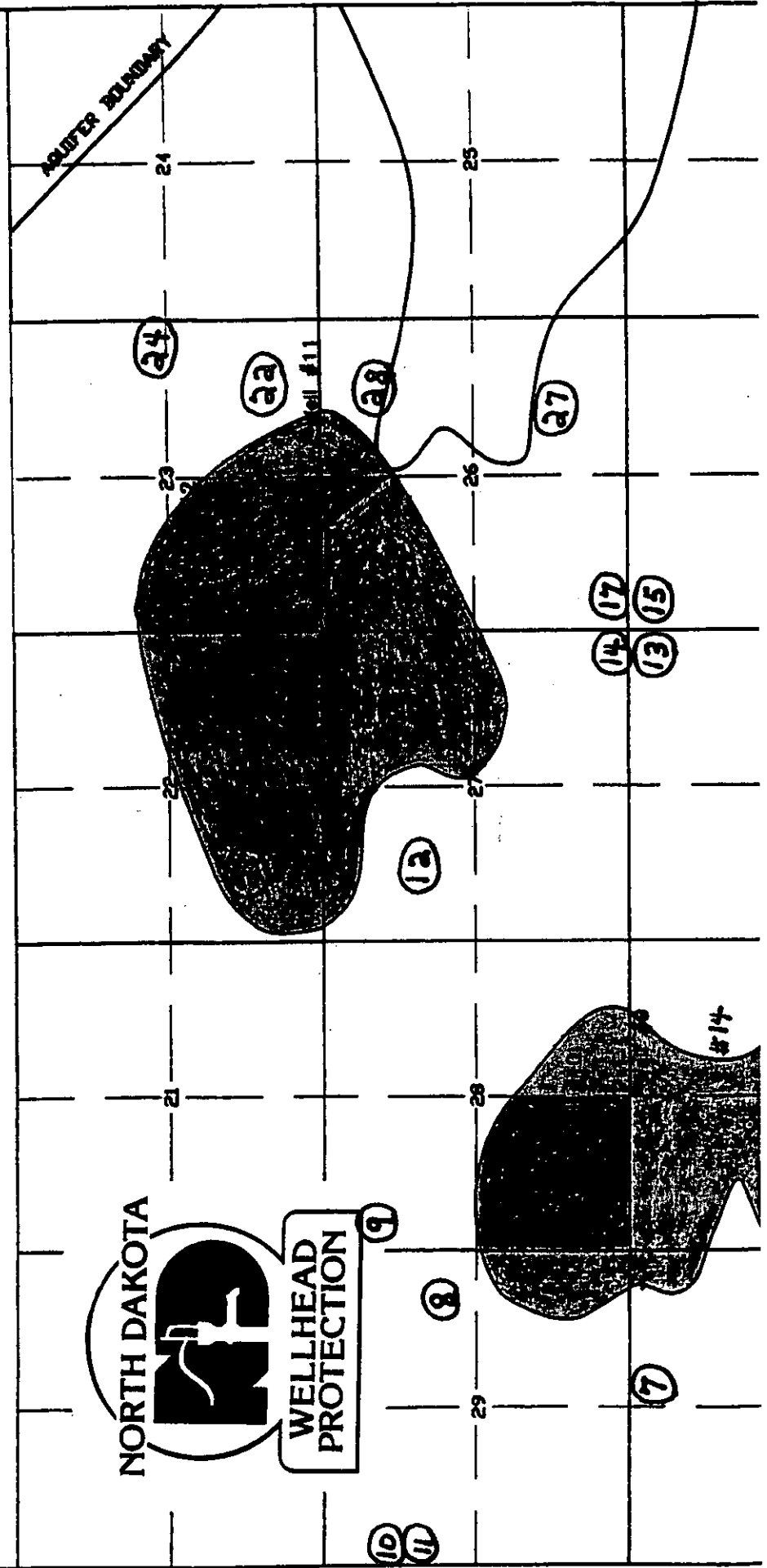
Minnesota

- *Permit required
- *Application records must be kept for five years; dates / inspections
- *Requires secondary safeguards. Reinforce concrete, contained metal, 2nd synthetic tank, all may be used for secondary containment – the whole state, not only in Well Head Protection Areas.

North Dakota

- *Two pages of chemigation regulations and definitions. No chemigation license required. No yearly inspections of irrigation equipment are required by the S.W.C. or the State Ag Department. SWC does implement certain criteria when an irrigator asks to move water from one section of land to another by pipeline. i.e. in Well Head Protection Areas the SWC routinely requires that no chemigation whatsoever be done in these areas.

Grand Forks—Trail Water Users, Inc. Wellhead Protection



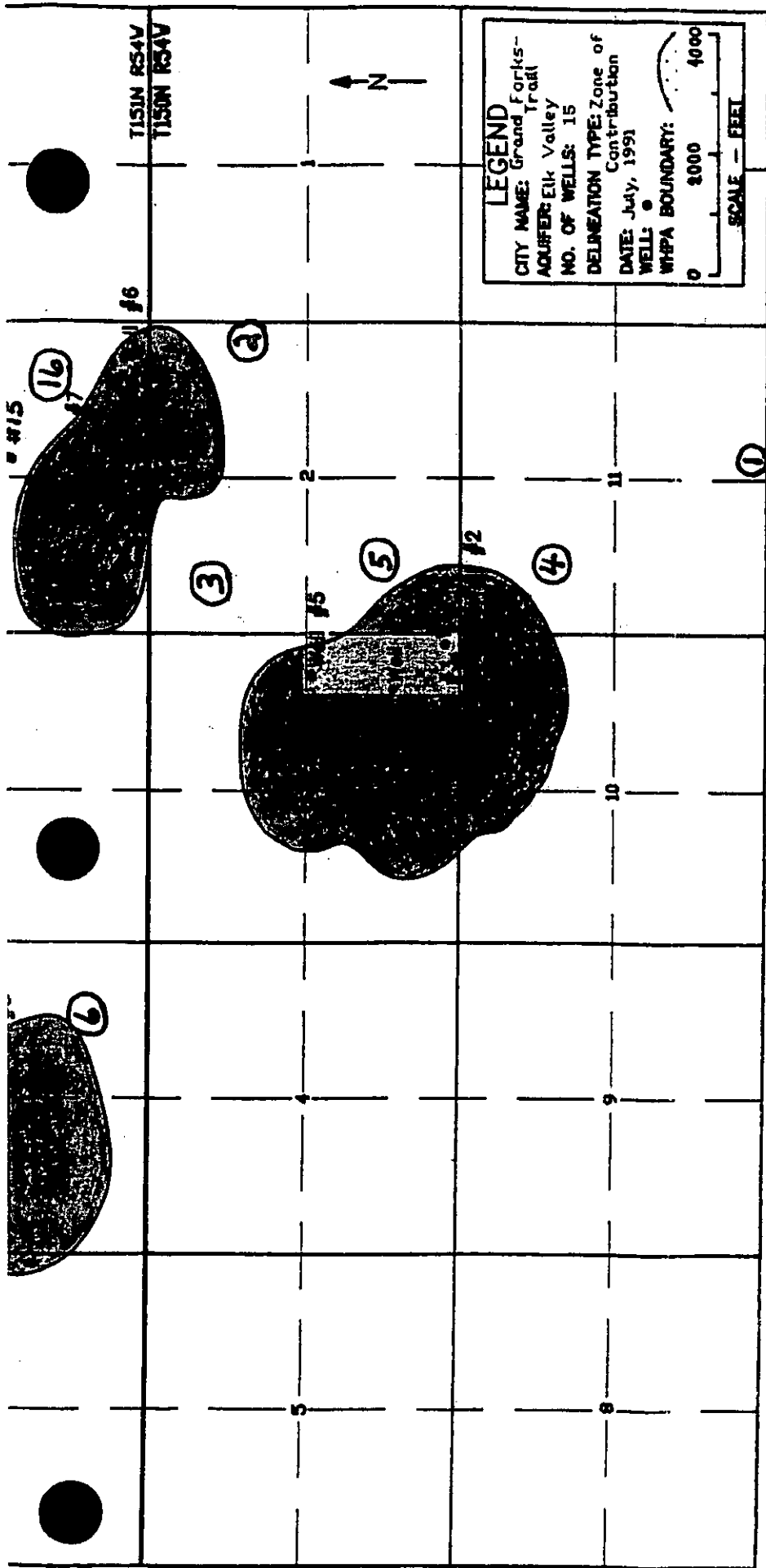
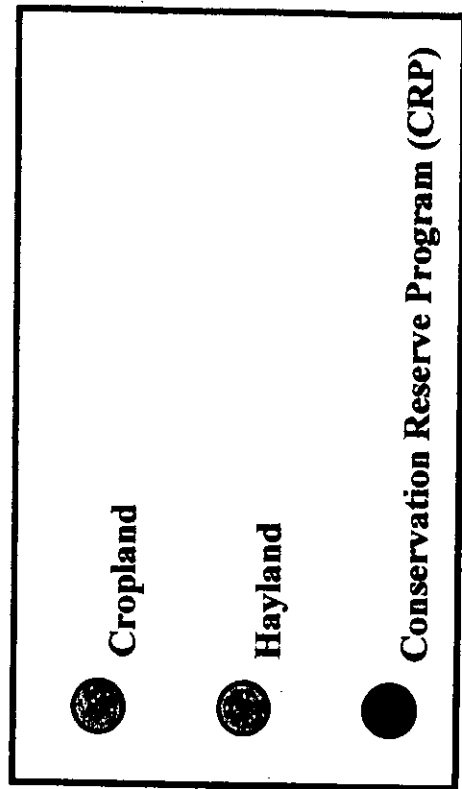
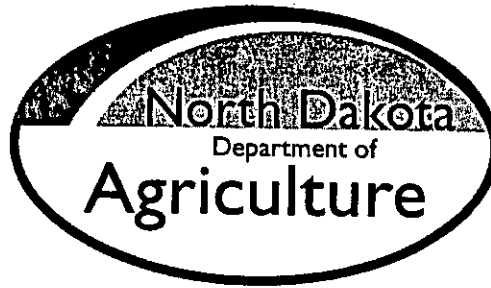


FIGURE 1.



Roger Johnson
Agriculture Commissioner
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**Testimony of Dave Phillips
Senate Bill 2440
Senate Agriculture Committee
Roosevelt Park Room
February 5, 2009**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Dave Phillips, enforcement supervisor for the North Dakota Department of Agriculture's Pesticide, Feed, and Fertilizer Team. I am here today in support of SB 2440.

The North Dakota Department of Agriculture has primary authority to regulate chemigation in North Dakota. For reference, chemigation is the application of pesticides or fertilizers through irrigation systems. Through the authority provided by N.D.C.C. 4-35.1, we have adopted rules that specify design requirements for chemigation equipment, specifically for anti-siphon devices and backflow-preventing check valves to reduce the risk of contamination of water sources. Department staff inspects chemigation operations throughout the use season to ensure that chemigation devices meet the required design specifications and are in good working order. We also check for compliance with pesticide labeling and recordkeeping requirements.

Section 1 of the bill amends N.D.C.C. 4-35.1 to require that chemigation operations register with the Department. I support this change for two reasons.

First, although we have a general idea of the areas of the state where chemigation occurs, we have no way of determining the specific chemigation locations. Although the State Water Commission issues irrigation permits, not all of those permit holders chemigate. In addition, one irrigation permit can service multiple irrigation center pivots, and the irrigation diversion site can be a long distance from the site where irrigation actually occurs. Under the current system, inspectors are forced to wander the primary chemigation areas in hopes of finding fields where chemigation is occurring. This is an inefficient use of inspector time. Knowing the precise chemigation locations will allow us to better utilize our scarce resources and schedule operations for inspections.

Second, some chemicals applied through irrigation, such as soil fumigants, can be dangerous. I certainly do not want to put my staff members in danger. The permitting system will allow inspectors to contact the owner of a chemigation operation prior to entering any fields to ensure that they are not entering potentially dangerous situations.

The intent of a permit system is to simply capture chemigation sites into a database for tracking purposes. We do not want the permitting system to be onerous. I think that a \$30 fee for a three-year period is reasonable. A three-year permit will also help ensure that data are updated frequently.

Section 2 of the bill requires the Department to report to the Legislative Council by July 1, 2010, on the status of rule-making to address check valves and secondary containment. We do not oppose such a requirement.

Chairman Flakoll and committee members, I urge a do pass on SB 2440. I would be happy to answer any questions.

J. T. RANCH 30

WATER PERMITS #895, #989, & #1984

COUNTY: EMMONS

REVISED MAP: JUNE 26, 2000



HOLDING POND

36

31

32

T184 N
T188 N

R078W R078W

7



LEGEND

- = PUMPSITES
- = IRRIGATED ACRES BOUNDARY w/in EACH 1/4 1/4 SECTION
- = PIPELINE
- = IRRIGATED ACRES w/in EACH 1/4 1/4 SECTION
- = PIVOT SYSTEM #
- = SECTION #
- = PERMIT #895
- = PERMIT #989
- = PERMIT #1984

Attachment #5