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## **FISCAL NOTE STATEMENT**

Senate Bill or Resolution No. SB 2220

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness  
Senior Fiscal Analyst

**2017 SENATE AGRICULTURE**

**SB 2220**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

SB 2220  
1/24/2019  
31388

- Subcommittee  
 Conference Committee

Committee Clerk Signature Dan Johnston II

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

Relating to permitting of subsurface water management systems by water resource district boards.

## Minutes:

4 attachments

**Chairman Luick:** Opened hearing on SB 2220.

**Chairman Luick:** Since last session I had some Water Boards come to me and they wanted a few changes made in terms of tiling, so that is what SB 2220 does. It addresses some of the changes we were looking at last session. On page one, line 22, is a technical correction, Shall will replace Must. Probably one of the more definitive changes would be at the top of page two, last session when we were talking about the application fee of \$150, we had discussions about the different watershed districts charging different amount for their permitting fees, I remember the different discussion saying we were going to unify the fee across the state at \$150. But we were questioning whether to include the cost of any expert advice that was above and beyond what the permit costs was going to be. I feel that those extra costs need to be at the expenses of the applicant or if a downstream individual challenges that, then costs need to be adhered to by whoever brings those concerns forward, not the board itself. In the conversations we also decided to throw in the \$1000 max limit because if there is a downstream individual that wants to stop a project, they could request all kinds of tedious and maybe, not necessary information that is going to be driving those costs higher and higher. So, the \$1000 was just put in there to just cap out, so it does not have a runaway fiscal note on the project itself. The boards themselves had a problem with some timing of the applications, and getting notices to landowners, so they asked for, on line 5, the extension upon submission to change that to ten business days. On line twenty the application, the 30 days was quite long enough time because some water boards do not meet every week, so they were just asking for us to give them another 15 days for that application notice. On line 1213 of page 3, takes out the outlets directly into the legal assessment drain or public highway right of way, and that is just to change that to mitigate adverse impacts wherever these outlets are at and wherever they go into. On line 28, it just adds in the board for the technical evidence. That is the extent of the changes to SB 2220 from last session.

**Senator Klein:** Are these not all the issues that we spent a lot of time crafting whether the, I remember the \$150 was an issue, the timing was an issue, the management of the water in the ditches was an issue, didn't we hammer all that out last time?

**Chairman Luick:** You are correct Senator Klein. If you remember last session I had about 7-10 amendments to our crafted language that came over from the house, I do not remember the number of the bill that came over from the house, but we had to spend quite a bit of time on that. Over the last 2 years they have come back to me from different watersheds across the State, so that is why I am bringing them back today.

**Senator Larsen:** Are the majority of these coming from the Water Board, or they coming from the individuals installing the projects?

**Chairman Luick:** They are from the Water Boards.

**Jack Dwyer, Executive Secretary, North Dakota Water Resources Association:** See attachment #1 for testimony in support of SB 2220.

**Senator Klein:** You said the North Dakota Water Resources Districts, was this a issues that was debated in a state wide association meeting, and was the vote split? Was it a thorough, conscience, the group wanted to move forward with this, right?

**Jack Dwyer:** This issue has come up continually; there is a large conscience, although there are a few individuals who have expressed concern for this bill, so I would not say it is 100%. There are a few water managers out of Foster County that have indicated that they think the process is fine, we had an association meeting on Tuesday of this week and we looked at the 2 bills that deal with tile drainage, there was wide conscience that this bill was the right way to go.

**Senator Klein:** Sometime I hear "wide conscience" and I get home and it is only 2 or 3, is that wide conscience in your group?

**Jack Dwyer:** Tile drainage is done primarily in the eastern part of the state and in the mouse river basin. There is a conscience from our water resource district boards that the current statutes could be improved, and far as the statewide water managers, I have only heard from a couple managers from the Foster County. Those are the only people that have indicated a disagreement with this proposal.

**Senator Hogan:** Just following up on Senator Klein's comment, did you have an official vote to support this bill?

**Jack Dwyer:** Yes, we do have an official resolution that was adopted in our December meeting to move forward with this.

**Vice Chair Myrdal:** Can you clarify the funding of each Water Board? I know it comes from the county, but when we are talking about the up to \$1000, it is very ambituses to me. Because the landowner has no say in whether it is \$999 just because you need funding, I am not questioning the service of the people on these Boards, it is just a little scary. So, is it

not a concern of the downstream person, who then comes in and says that this could do damage to my property, which is very rare. Is it not in their highest interest to bring that technical evidence in, and on the person who is applying? Page 2, line 22 takes all the authority away from the landowner and gives it to the right back to the Board, which is one of the processes we tried to avoid last time. Because the landowners had no recourse. Can you answer that whole process for me?

**Jack Dwyer:** Water boards get their funding through up to 4 mills, they are an appointed Board, so they have to submit their budget to the county commission, who will then levy their approved budget. It is typically done in the amount of dollars, not mills. That is how the Water Boards get funded generally. Regarding the \$1000 maximum, some Water Boards rely on their attorney or engineer to process an application, how this process works is that any downstream landowner within 1 mile receives notice, and so there is a title search, there are some notices that are sent out. Whether or not they utilize an engineer to look at this would differ between Water Boards, and so I think the purpose of this bill would be to allow a Water Board who utilizes an attorney or an engineer to process the application, to charge those costs to the applicant.

**Vice Chair Myrdal:** What I am not clear on, and we did get downstream from a project and it was done very well; what I am not clear on, because these are taxpayer moneys levied in the counties, where do those moneys go if they cannot cover technical evidence? And frankly, if the farmers in my district hear the word engineer again, they will riot. Because there really is no control over the amount that can be charged. We heard last session that the lawyers were charging \$300 to go and ascertain whose land it is. What I am trying to figure out is what the employee of said water resource board do that prevents them from being able to do some of this stuff that under this bill, the landowner would have to pay for? I am just concerned about the potential cost to the landowner to improve his own land.

**Jack Dwyer:** I believe the cap of \$1,000 is intended to deter any runaway costs, and it is too much, it is your decision to make. I think water boards differ on the amount they rely on professionals, I know the counties that have a lot of tiling rely on professionals quite a bit. I do not know the best way to answer that question.

**Senator Hogan:** You mentioned at one point, if downstream residents had different concerns on a proposal, would that \$1,000 cover the technical costs on issue they may raise, or is it only for the permit applicant?

**Jack Dwyer:** The way that this bill reads, if a water board does go out and hire an engineer, those costs would be taxable to the landowner.

**Senator Hogan:** So the downstream landowner would not have any financial responsibility if they raised concerns?

**Jack Dwyer:** No, if the water board obtained their own expert or engineer to provide technical evidence from the board that would be on the board.

**Senator Larsen:** It is not attached to the new language added, but as I was reading on page 2 line 13-19, it talks about notarizing and getting statements from the downstream folks, Do

you see that going by the wayside? That the farmer or the landowner upstream is getting these notarized documents to make the system go smoother. My second question concerning the notary, is it the person doing the tiling that goes and gathers these, or is it the landowner upstream that does this notarizing project?

**Jack Dwyer:** I will do my best to answer your question. My understanding is that water boards, and someone else could probably answer that better, if an applicant brings notarized letters of approval with them when they make the application, it will streamline the process the process. So, that is something that has been helpful.

**Senator Hogan:** On page 3, the whole question, I do remember from last session when we had endless discussion about legal access to drains and public highways right away, and to go from what was specific to a broad language of mitigate adverse impacts, who gets to decide what is an adverse impact?

**Jack Dwyer:** That would be the water board, if they determined that there was adverse impacts, they could impose reasonable conditions to mitigate those impacts. The way the statues read right now, if a downstream landowner submits technical evidence and a water board finds that there will be unreasonable harm or flooding to the downstream landowners property, the water board can only deny the permit or approve the permit with no condition. So, this provision could allow the water board to impose reasonable conditions that could mitigate those impacts and allow the tile system to move forward.

**Senator Hogan:** With this law, are there any administrative rules or regulations that would define what an adverse impact could be? Is there any structure for that definition?

**Jack Dwyer:** There is no definition in our code that I know of, so it would just be based on the individual situation.

**Duane Pool, Administrator, Bottineau County Water Resources District Board:** See attachment #2 for testimony in support of SB 2220.

**Senator Hogan:** Do you think the language change in terms of adverse impact is significant?

**Duane Pool:** In all honesty, that is the attorneys place to say whether or not that creates limits upon us on how we are allowed to (remainder of statement inaudible).

**Senator Hogan:** Maybe from a practical point of view, if you were actually looking at a situation, how would you as a board define mitigate adverse impact/

**Duane Pool:** I think, for us, it would be common sense, my board is not made up of a group of engineers, we are made up of landowners and farmers. We just went through a lawsuit in our district over a tile drain, it just ended a couple of months ago. We learned that the person who decides what an adverse impact is, has judge (remainder of statement inaudible).

**Carmen Miller, Director of Public Policy, Ducks Unlimited:** Duck Unlimited was founded in 1937 and is now the worlds largest private water fowl and wetland conservation organization, with over 80 year of experience restoring and protecting aquatic habitat. We

have been working in ND for over 30 years, we have over 4,000 members in this, Ducks Unlimited has invested over \$100,000,000 in North Dakota. We have a staff of over 40, working a regional office here in Bismarck. Ducks Unlimited closely watched the effort of the North Dakota Legislature, and particularly this Committee during the 2017 Session as it considered the permitting process for subsurface drainage. The Committee was almost the same, so we are familiar with the conversations we had back then. As the worlds largest private wetlands conservation organization, Ducks Unlimited is concerned about the impacts on subsurface tile drainage on North Dakotas wetlands, which is a globally unique resource that is home to 900 different animals and plant species, and is also the driving force behind North Dakotas \$2,000,000,000 annual hunting industry. We understand that tile drainage is some that is occurring on the landscape, there are places where it is even appropriate. But it can have serious impacts on wetlands, downstream flooding, and for this reason it really should not be taken lightly. This bill actually improves upon the process that was established in 2017, by providing the Water Boards with a little more flexibility, the ability to use some technical expertise to get that advice, as I have heard from my predecessors; this can be a complicated, technical process that they could use a little help with. So we are in favor of providing the water boards with more resources, more time to process applications, a mechanism for acquiring some expert advice. So, we support this bill, we think these improvements are a good start and building on the process that was established in 2017.

**Senator Hogan:** Regarding my question that I seem to be asking everybody, is mitigate adverse impacts too broad?

**Carmen Miller:** It is a good start.

**Levi Otis, Ellingson:** Ellingson is a water management company that operates across the USA and in North Dakota; we have about 70 employees who live here in North Dakota. It should be no surprise that I am against this bill, we hammered this out last Session. When the discussion was happening for how much we should charge, there was an attorney from the eastern side of the state that was asked what he bills out, and it was something about \$1,200 per permit. Then it was asked, well what are you doing? The response was finding downstream landowners who actually owns the land etc. With the law that changed last session, that is now put on the landowner or the applicant. I do not know what the \$1,000 is for, to be honest with you, because anybody that knows engineering, I mean, is that \$1,000 even adequate? I would ask that, your landowners and farmers are tax payers, and as someone in favor of this bill said, it is a tax. So now we are raising taxes on our landowners who are already paying the tax. I think you probably heard as much opposition of this bill as you will, I am sure your email have been going off just as my phone has. I had one gentleman tell me that this is like the 1985 farm bill, where it makes you feel good and it starts out great, but 30 years you are back to where you started. We do not build projects to hurt people, so a lot of this stuff is about people feeling that they lost their rights, or that water boards lost their rights. I have the feeling water boards do not have rights, landowners have rights; water boards are a tool to help the process, so I will leave you with that. I appreciate your time.

**Senator Klein:** It is my understanding that Minnesota, Iowa, California, there are some states where there are no rules; could you elaborate on those?

**Levi Otis:** Minnesota is broken into watersheds, so you do not have the county lines, like this gentleman said, it hard to manage water using imaginary lines. Now those watersheds allowed a little freedom on design criteria, so if one watershed said that they want a  $\frac{1}{4}$  in coefficient or a  $\frac{3}{8}$  coefficient they must have a control structure, stop gate, or lift station, as long as you have those three things, you go on tiling and contact the water board and tell them what you built. Iowa has no permitting, they actually laugh if you call somebody from for Iowa and ask what you have to do to get a tile permit. We have some potato costumers in the state that have farms around the country, we actually do work for them in North Carolina, Arkansas; they would rather do their work in North Carolina because they do not have to deal with regulation. In California we are doing some projects right now, even as crazy as California is they have no permitting process. South Dakota is reasonable use, which means you cannot deny a permit as long as it is within reason, as Senator Hogan might say, well who determines that?

**Vice Chair Myrdal:** I think that there is a lack of education out there as far subsurface water management does; I think there is a general conscience that it floods your neighbors land when you do it. In my experience, in my region, it does the opposite; would explain what it does? And then, what is the responsibility of your engineers to people affected by your projects?

**Levi Otis:** To address your first question, we are removing the excess moisture that your soil and roots do not want. So if your soil is 50% dirt, 25% air, 25% water, tile drainage takes out a lot of the excess moisture. The second question is tricky because I am kind of conservative, in that I don't believe the contractors are the police. We try to educate our costumers, get them to get permits; now if they call and say, hey, I am tying in, or my neighbor is tying in, it goes in. now if people are doing that, I would be very disappointed adding onto an 80 acre project that we do not know or that they do not have a permit for. But I look at it like, GM should not be responsible because somebody gets into their car and drinks and drives.

**Senator Larsen:** I want to go back to that notary thing, do you have any part in gathering that and making that go?

**Levi Otis:** That process is where our sales team really tries to get farmers to work with their neighbors. The best way it works is when nobody has a choice, when it is going to happen, all of the sudden the neighbor comes and says maybe we could put in a larger main and I will tie in later when I can afford it. We saw that a lot more with the previous law, when water boards let people do what they want, like in South Dakota with the reasonable use, the less regulation, the people say, your going to do it anyway, let me work with you. When the water boards get in the middle of it, it is more complaining and less wanting to work together. So, your question about notarized letters, North Dakota is a very competitive state, everybody is going after more and more land, acreage is getting bigger, family farms are getting smaller. When you are competing at an auction for a piece of ground, and the next week the person who won is tiling, that gets a little difficult. But I would say that for the most part, 90% of the time if we play the middle man, we get the downstream letter of approval.

**Senator Larsen:** I remember when this started going and we had that subsurface water drainage in the code, and I really did not like how that was going; there was a change that was changed to water management and an education piece that was talked about, trying to

take that sting out. Has that played a role in changing that for education wise, and how downstream people, how it really is managing that resource?

**Levi Otis:** The answer is yes, in fact our company has changed our name from Ellingson Drainage, to Ellingson Water Management. Because we are not draining any more, for the most part, with the technology that we have today and everything that is going on across the country, it is water management, and people are trying to figure out how to reduce nitrate loads downstream, and how to keep the wetlands and use them for the good of your fields verses just draining everything away. It is when environmentalists come at you and act like you're going to drain every wetland on the landscape and become like Iowa that our customers pushback and ask why they are getting in the business of my farm? So, you have that side where now somebody is grumpy over here make a little more noise at the coffee shop, say that we just want to kill all the ducks. In reality, people just want to manage their farm, and if they can move some wetlands occasionally, that really helps to.

**Chairman Luick:** In Iowa and some of these other states where they do not have any permitting requirements, would you say that is one of the reasons they have nitrogen concerns in drinking water?

**Levi Otis:** I would say that because their soil is so healthy and so high in organic matter, it creates its own nitrate, and that is how the judge ruled it. What we see a lot of now is Agridrain is doing a lot of that. I will say that we met with their soil scientist and water people, we asked what the answer is, they said 1% wetland of your acreage if you tilled into it and had an outlet on the other side, it would clean your water dramatically. I said, well, why are we not talking that? They said because it is not sexy enough, it is not huge projects. You want to create little wetlands on all these farms, this is how you can clean it up really quick. But the answer to the nitrate problem is, You have old clay tile that is gravity fed and it just runs, if you can slow back the release and hold that in your soil, you would dramatically reduce your nitrate problem.

**Chairman Luick:** You said that in the state of Minnesota, the watersheds have the ability to determine if there is downstream adverse impacts.

**Levi Otis:** Design criteria. They do not use downstream.

**Chairman Luick:** But they are the ones that determine if there is a negative impact?

**Levi Otis:** No.

**Chairman Luick:** Who decides that?

**Levi Otis:** No other state considers downstream landowners.

**Dan Wogsland, NDGGA:** See attachment #3 for testimony in opposition of SB 2220.

**Emmery Mehlhoff, NDFB:** See attachment #4 for testimony in opposition of SB 2220.

**Senator Hogan:** Regarding the fee, it says actual cost, do you think those costs should be paid by all of the tax payers rather than the person applying?

**Emmery Mehlhoff:** You're asking me if the actual costs should be paid by the tax payer?

**Senator Hogan:** Yes.

**Emmery Mehlhoff:** It is my understanding that technical evidence must be, I guess I am not sure what we are even paying in this, I assume it is technical evidence, so the person with the project or the downstream landowner needs to procure that technical evidence. It is my understanding that the board is not the one procuring that evidence.

**Chairman Luick:** Closed the hearing on SB 2220.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Roosevelt Park Room, State Capitol

SB 2220  
2/1/2019  
Job 32031 (1:55:26 to end)

- Subcommittee
- Conference Committee

Committee Clerk: Amy Crane
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## **Explanation or reason for introduction of bill/resolution:**

Relating to permitting of subsurface water management systems by water resource district boards.

## **Minutes:**

**Starts at (1:55:26) of Job # 32031 recording.**

**Chairman Luick:** Opened the committee work session on SB 2220. This is the tiling bill. Was there anybody that had any amendments on that bill or where were we at on that bill?

**Senator Klein:** I was just going to vote no. At this point there was nothing there compelling that we didn't do great work two years ago and we should try to continue that effort and just see where that lands.

**Chairman Luick:** Nobody had any amendments, am I correct on that?

**Vice Chair Myrdal:** No, but I did hear from one of my water research board, that they have the signatures of about 30 people and that was one of the districts that was questioning what we did last time. And they signed the thing that said let's keep it the way it is now, because they were concerned about a bill on the house side that would eliminate all the classes and regulations. So they just want to kill that one and so I won't bring any amendments either.

**Chairman Luick:** So are you ready to vote on that bill or should we wait? Because there isn't a fiscal note on that?

**Senator Hogan:** This is the one that extends the time frame and the \$1000? I plan on supporting it. One of the things, this is where we learned who actually does most of the tiling and it really is in the valley isn't it? And the numbers of permits in many counties just aren't there.

**Vice Chair Myrdal:** I know Senator Hogan wasn't with us in this committee last session. We had the water and whisky bill is what we called it. So I think it flips back a lot of the provisions we did last session. We worked hard on this. I think constituents and many water resource boards including one that stood here and said it's working. So I think there's no provisions in that bill that I would like to see passed.

**Senator Klein:** I know we hashed this over the last go round two years ago, the fee, you make a fee for \$1000 does that mean we're gonna charge \$1000 and remember that was the argument we had with the house because they didn't want any fee. And I think we leveled it off at \$150 eventually. I think there's nothing there I can really grab on because I think the discussion from Wells county was they don't like this. Because there were 55 tiling permits issued in Wells county and the water folks said there were zero. But that's all been given to us now and I was in touch with the Wells county water board and she confirmed all those numbers so I just don't feel there is anything there in my opinion.

**Senator Osland:** I echo what Jerry said. Maybe this law does need some work but I don't know that we have what we would probably like and I think we're better off leaving what we have as opposed to making these changes so I would say leave it as is.

**Senator Larson:** I agree with what I stated last session and continue that we have many watersheds, the Devils Lake and over by Trenton and Williston Basin over there and I think we should have no restriction. We should let the land owners manage their property and we shouldn't have any involvement in it and I think the work we should have on it is to just get rid of all of the requirements on it and just be able to manage our own property.

**Senator Luick:** That's a philosophy that if everybody downstream or upstream had a conscience and cared about everything like everybody should. The problem is that that drain board is a mediator in between that upstream person and that downstream person and so now if we don't give them the ability to mediate between these two parties, its gonna go into court and its gonna cost the downstream negative impacted person court fees to actually bring that suit against somebody that's draining on them. So I look at it like yes, in a righteous world, and you take it away and the amount of negative impact probably is minimal. But there are still cases where, \$1000 is a cap, not something that they can just go out and charge. It is a mandated top of the scale cap.

**Senator Larson:** In that sense we probably wouldn't have had the Garrison Dams if this would be today. And speaking of the caps, when I just left and came to the legislature and we had some discussion with our political subdivisions, and the word cap was mentioned. Those political subdivisions said we're gonna go right to the cap and I will never forget the individuals that said that to me when we mentioned the word cap.

**Vice Chair Myrdal: Moved a Do Not Pass.**

**Senator Larsen: Seconded.**

**A Roll Call was taken: 4 yeas, 2 nays, 0 absent.**

**Motion carried.**

**Vice Chair Myrdal will carry the bill.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2220**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Vice Chair Myrdal    Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick- Chairman		X	Senator Hogan		X
Senator Myrdal- Vice Chair	X				
Senator Klein	X				
Senator Larsen	X				
Senator Osland	X				

Total (Yes) 4    No 2

Absent 0

Floor Assignment Vice Chair Myrdal

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

**REPORT OF STANDING COMMITTEE**

**SB 2220: Agriculture Committee (Sen. Luick, Chairman)** recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2220 was placed on the Eleventh order on the calendar.

**2017 TESTIMONY**

**SB 2220**

Chairman Luick and the Senate Agriculture Committee:

My name is Jack Dwyer, and I serve as the Executive Secretary of the North Dakota Water Resources Association, and I also lobby on behalf of the North Dakota Water Users Association.

As you recall, the 2017 Legislature adopted significant changes to subsurface drainage law in the State of North Dakota. These changes provide a streamlined process for farmers to permit subsurface water management systems on their farmland, allowing farmers to improve productivity and add value to their farms. Water resource districts strongly support subsurface water management as a beneficial practice. In fact, a large number, if not most, of water managers are farmers, and a number of these water managers install subsurface water management systems.

While the process for subsurface water management systems was streamlined in 2017, Senate Bill 2220 makes a few small changes to this existing law that water resource districts view as positive, without extending or complicating the process. The four substantive changes promoted by Senate Bill 2220 are as follows:

- Current law allows water resource districts to charge an application fee of \$150. This bill also allows the water resource district to tax the applicant for the costs of processing the application up to \$1,000.
- Current law requires a downstream landowner to submit technical evidence within 30 days of receipt of the water resource board receiving the permit application. This bill extends that time period to 45 days. However, water boards still must act on the permit within 60 days.
- Currently, water boards can impose reasonable conditions upon a subsurface water management system if the system outlets directly into a road ditch or a legal assessment drain. This bill allows reasonable conditions to be placed on all subsurface water management systems.
- Currently, water boards can only consider technical evidence provided by the applicant or a downstream landowner when considering the application. Senate Bill 2220 allows water resource districts to consider its own technical evidence as well.

Again, these changes are small, but water resource managers believe these changes are important for responsible subsurface water management and to better protect downstream landowners, without extending the time for water resource boards to process applications.

This is important for the State of North Dakota, and I urge you to give a Do Pass recommendation on Senate Bill 2220.

Thank you,

Jack Dwyer

January 24, 2019

ND Senate Agriculture Committee  
Senator Larry Luick, Chairman

Honorable Chairman Luick and members,

My name is Duane Pool. I am the administrator for the Bottineau County Water Resources District Board. My board has asked that I provide testimony today regarding SB 2220 on their behalf.

Current legislation provides some semblance of process, due diligence and concern for all parties potentially impacted by the implementation of tile drainage practices for agricultural production and other benefits. SB 2220 offers several substantive improvements to the current law that our board supports.

1: Unless the timing of an application under the current structure is perfect there are cases where in order to meet legislated time lines the board may need to call a special meeting. Increasing the recoverable cost to the board for processing a permit is necessary otherwise the costs above the current application fee would be borne by the other non beneficiaries through property tax levies. Having the applicant beneficiary pay the actual costs necessary to processing their application only makes sense if we are to be accountable to the taxpayers in the District. EX: Notice in Paper \$30, 5 board members at \$125/day = 625, 1 hour of consultation with an engineer \$165, ... as you see this can quickly exceeds the current application fee.

2: Extending the response time for downstream landowners is reasonable. If during harvest, an oil boom, or mid winter 30 days is not much time to acquire technical information on the downstream impacts of potential drainage discharges. Providing landowners 15 extra days is or should not be overly burdensome on any in the process except to the WRD itself which will have less time on the back end the review any new technical information, as the total mandated review time is still at the old limit.

3: As a water board we are compelled to provide due diligence in the exercise of permit reviews. In order to do so the inclusion of language allowing the WRD to consider our own technical information during the process makes common sense. We may have access to data that if not considered would be tantamount to blind process rather than due process.

4: Anytime WRD infrastructure either provides benefits or actions may increase demands on that infrastructure the WRD should have a say in the matter. This is especially true if the tile drained field is outside the legally assessed drain but is using its flow capacity. The WRD should have the ability to require reasonable conditions on a tiler; EX either to manage time and quantity of contribution to the system so as not to cause harm to the infrastructure nor to exacerbate downstream impacts during peak flows. Asking tile drain beneficiaries to maintain subsurface

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storage during major flood events for a couple of days until the head passes would be an example of a reasonable request. After this point the tile would then flow again reducing hydraulic pressure and allowing the tile beneficiary to dry out their field in a timely manner. WRDs are charged with managing the system of drains during major events, to do so without the support of this body may make that task more difficult. This addition allows for management of the system in the context of the larger responsibility to the community.

On behalf of BCWRD I want thank the honorable Chairman and members for allowing us to voice our support of SB 2220. We encourage you to support these minor but responsible changes to our current law on tile drainage.

Respectfully yours,

Duane Pool



**Ducks Unlimited**

**Testimony in Support of SB 2220  
Carmen Miller, Director of Public Policy, Ducks Unlimited  
North Dakota Senate Agriculture Committee  
January 24, 2019**

Good morning, Chairman Luick, and committee members. My name is Carmen Miller and I am the Director of Public Policy for Ducks Unlimited's Great Plains Region, and I'm here today to testify in support of SB 2220. Ducks Unlimited was founded in 1937 and is now the world's largest private waterfowl and wetlands conservation organization, with over 80 years of experience restoring and protecting wetlands and other aquatic habitat. DU has been working in North Dakota for over 30 years, has over 4000 members in the State, has invested over \$100 million in North Dakota, and employs a staff of over 40 in an office here in Bismarck which serves as a regional headquarters for 7 states.

Ducks Unlimited watched closely the efforts of the North Dakota Legislature, and in particular this committee, as it considered the permitting process for subsurface drainage during the 2017 Legislative Session. As the world's largest private wetlands organization, Ducks Unlimited is concerned about the impacts of subsurface tile drainage on North Dakota's wetlands, a globally unique resource and home to 900 different plant and animal species, and a driving force behind ND's \$2.1 billion annual hunting and fishing industry.

Tile drainage is a part of the agricultural landscape, but can also have serious impacts on wetlands, wildlife habitat, downstream flooding and water quality, and therefore it should not be conducted without permitting and oversight that takes these factors into consideration. SB 2220 improves upon the permitting process established in the 2017 Legislature by providing more flexibility and resources to local water resource district boards who are considering complicated permit applications for subsurface drainage systems. By providing those boards with more time to process applications, and a mechanism for acquiring expert advice, the bill acknowledges the technical issues which can be involved in subsurface drainage. Allowing local boards to require permittees to mitigate adverse impacts provides an option for addressing the concerns of downstream landowners. This is important, because we are all downstream from someone.

Thank you for your time, consideration and service to the people of ND. I'd be happy to entertain any questions if time allows.

SB 2220 #3  
1-24-19 Agl



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## North Dakota Grain Growers Association Testimony on SB 2220 Senate Agriculture Committee January 24, 2019

Chairman Luick, members of the Senate Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council NDGGA engages in domestic policy issues on the state and federal levels on behalf of North Dakota wheat and barley farmers. I appear before you today on behalf of NDGGA to oppose SB 2220.

Chairman Luick, members of the Senate Agriculture Committee, you are all well aware of the need for orderly water management in the state. Additionally, all of you are well aware of the forward movement the 2017 Legislative Session engaged in regarding water management issues. The bill before you today attempts to turn back the clock regarding that forward movement by impeding the water management process in the state of North Dakota. Moving water management backward is something NDGGA cannot support.

Specifically, NDGGA has five issues with the legislation; first, the increase in permitting fees. Permitting fees have been a long debated issue because their arbitrary application has served to stymie otherwise well-planned water projects. Additionally, it is questionable at best to allow a fee increase to hire "any expert advice or information necessary" in accessing a permit application without further defining just what constitutes "any expert advice."

Second, NDGGA opposes extending the notification time water boards have for notification of downstream landowners. Current law adequately addresses the notification issue. The seasons are short in North Dakota; this is especially true for water projects. Timeliness is not only important to those engaging in water projects, that timeliness is also critical to downstream interests who deserve

*NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.*

immediate notification. Current law is reasonable in this regard and should be maintained as is.

Third, the current law of 30 days gives water resource boards ample time for project review. Adding 15 days to the process only serves to extend water project timing at an added cost to all involved.

Fourth, current law is adequate in accessing downstream impacts and does not warrant the time and cost involved by allowing the water resource board to conjure up its own information from "any expert advice."

Fifth, current law already allows water resource districts the ability to attach reasonable conditions to a water project and specifies where those conditions are applied. Adding "to mitigate adverse impacts" and deleting current law only serves to confuse that issue.

Therefore, Chairman Luick, member of the Senate Agriculture Committee, the North Dakota Grain Growers Association opposes SB 2220 for the reasons provided above; the legislation is a step in the wrong direction in water management for the state. NDGGA would respectfully request the Committee give SB 2220 a Do Not Pass recommendation.

Mr Chairman, members of the committee,

My name is Emmery Mehlhoff, and I represent the ND Farm Bureau.

The ND Farm Bureau stands in opposition to SB 2220.

In our policy, our members support the agricultural use of drain tile both as a conservation tool and as a flood mitigation tool. The ND Farm Bureau is happy with the legislation we passed last session and we dislike how this bill erodes the efforts that have been made.

We oppose an increase in fees. With this legislation, an applicant could be charged up to \$1,150 for one permit application without any guarantee that his application will be approved. This fee could be charged for multiple permit applications for multiple projects. This is an unnecessary burden on the applicant.

We oppose expanding the time-frame. Time is of the essence, especially for farmers with short growing seasons and we oppose any legislation that could extend this process.

Finally, we oppose changing the language to say "mitigate adverse impacts." This language is obscure and leaves it wide open for interpretation by those who may or may not understand subsurface water management. The law currently provides protection for the landowner downstream. If projects do affect public improvements, the law currently allows the board to place conditions on a project if the project creates adverse impacts to a legal drain or public right of way.

In conclusion, we oppose this bill and are happy with the current law.

Thank you Mr. Chairman, and with that, I will stand for any questions.