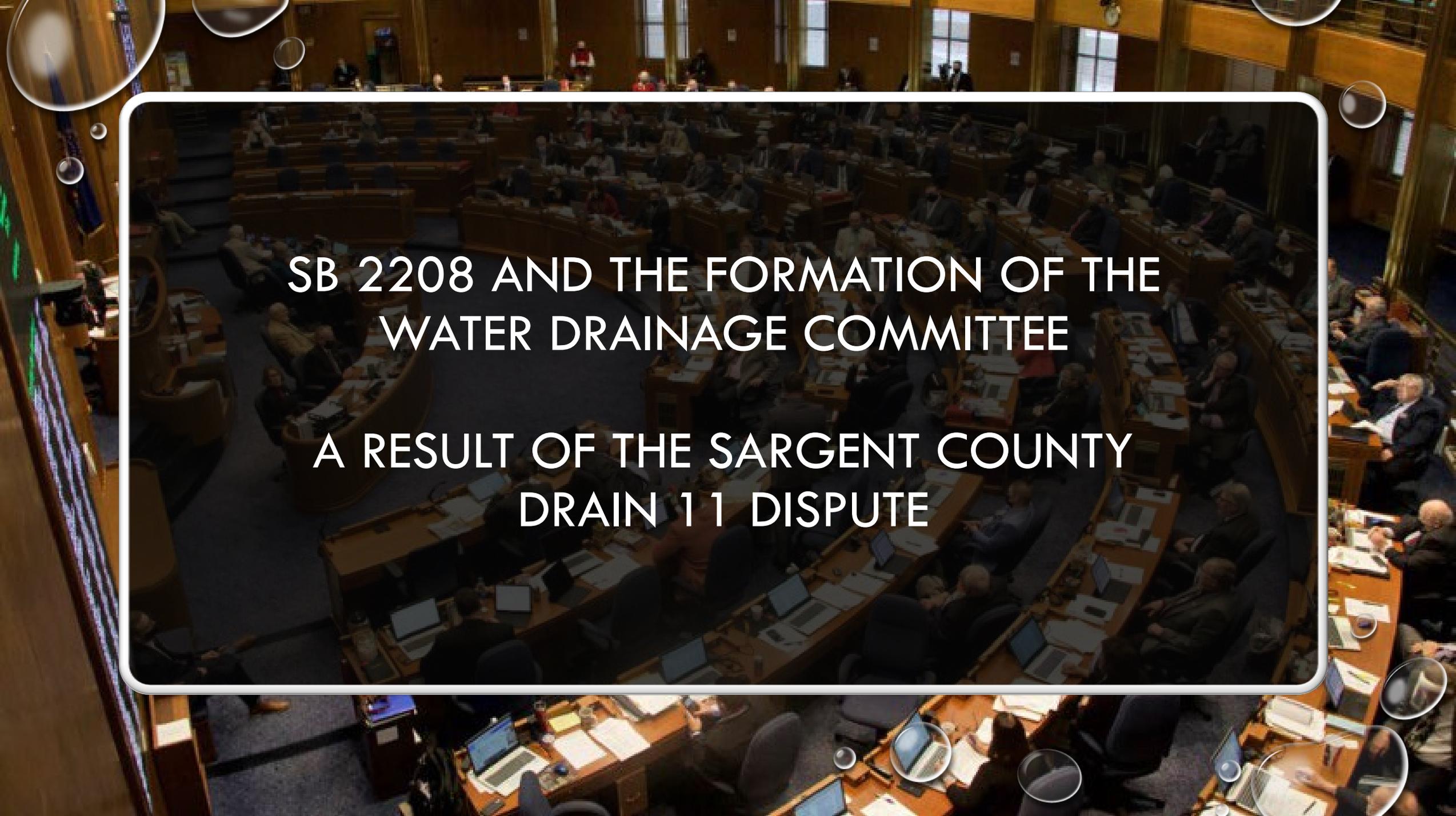
The background is a dark blue, textured surface with concentric ripples and several bubbles of varying sizes, some with highlights, suggesting water. The text is centered and white.

# WATER RESOURCE DISTRICTS ASSOCIATION

Jack Dwyer – Executive Secretary

Dwyer Law Office



**SB 2208 AND THE FORMATION OF THE  
WATER DRAINAGE COMMITTEE**

**A RESULT OF THE SARGENT COUNTY  
DRAIN 11 DISPUTE**

# SARGENT COUNTY DRAIN 11 DISPUTE

## THE STUDIES:

- Drain 11 was originally constructed in 1917. It's a 41-mile legal drain serving a portion of the Wild Rice River basin.
- Over time, precipitation and drainage increased within the watershed; NDDOT installed larger culverts upstream; and some Drain 11 project features were undersized or exceeded their useful life. Drain 11 was no longer operating properly.





# SARGENT COUNTY DRAIN 11 DISPUTE

## THE STUDIES:

- In 2014 and 2015, largely due to landowner concerns, the Sargent County WRD conducted two studies, which identified necessary system upgrades to Drain 11, which were significant.
  - First study (2014) contemplated replacing or upgrading 43 culvert crossings, but this would have resulted in downstream impacts.
  - Second study (2015) was more comprehensive and included channel modifications along with crossing upgrades.

# SELECTING A PROJECT ALTERNATIVE

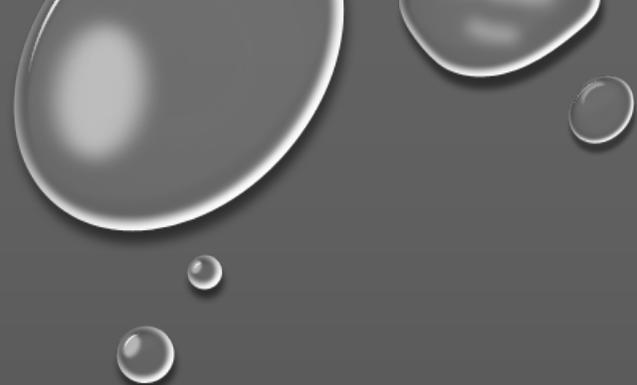
- In the spring of 2016, the Board acknowledged that constructing all of the suggested system improvements at once would be costly and would result in new assessments to landowners, so they identified the project features that provided the best efficiency and selected the project alternative accordingly.
- The Board applied for a surface drainage permit. The OSE did not find statewide significance. The OSE did not require downstream easements or mitigation and issued the drain permit.



# SELECTING A PROJECT ALTERNATIVE

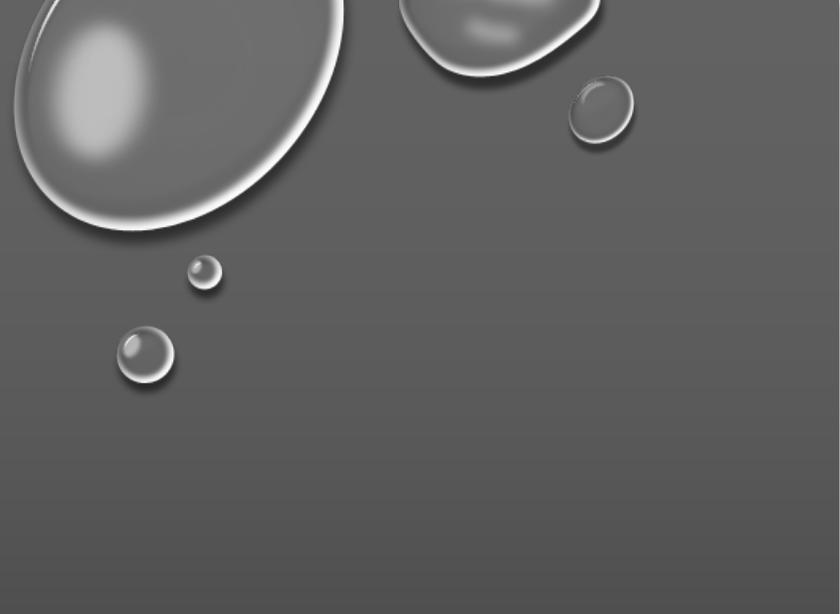
- In October of 2016, the Board authorized the project alternative to move forward, using the annual “maintenance levy” for financing the improvements. This financing option would not result in new assessments to landowners (they would simply continue to pay their annual levy).





## MAINTENANCE LEVY

- Allows an existing assessment project to raise money for operating, maintaining, deepening, and widening an existing project (NDAG 2020-L-04).
- Does not require a vote (the original 1917 project did, of course).
- Limits a WRD from obligating the assessment district for more than the maximum \$4/acre annual levy for ag land over 6 years.



## MAINTENANCE LEVY

- Same statutes exist under both chapters See NDCC 61-16.1-45 and NDCC 61-21-46.
- In this case, using the maintenance levy allowed the Sargent County WRD to avoid new assessments (landowners would never have to pay in excess of the maintenance levy maximum).

# DRAIN 11 RECONSTRUCTION

- **Total Project Cost: \$3.9M**
- State Water Commission Cost-Share: \$1.4M
- Sargent County Commission Crossing Cost-Share: \$200K
- Local Share total: \$2.28M paid as follows:
  - Six-Year Bond Max: \$1.7M (approximately \$283K max levy over six years)
  - Remainder of local share: Funds on hand



# THE OPPOSITION

- Despite strong landowner support for this Project, several project opponents have filed challenges and complaints to the following:

- Sargent County WRD
- Office of the State Engineer
- State Water Commissioners
- Three lawsuits
- Supreme Court appeal
- US Corps of Engineers
- Road authorities
- Attorney General
- Legislators
- 2208 Drainage committee



# THE OPPOSITION



- Opponents have framed this project as a Board conducting backroom meetings and sliding this through over strong landowner opposition without a vote, and without consideration for landowner benefits.
- It's the opposite. This project was vetted extensively at the local level. It has been subject to intense scrutiny at every possible level. The Sargent County WRD has discussed Drain 11 in nearly 100 public meetings, which were properly noticed!
- Drain 11 taxpayers have experienced significant costs, including legal and engineering fees, and significant inflation due to construction delays caused by challenges (five years of delays).

# THE NDAG OPINION:



- Following two unsuccessful lawsuits and a supreme court appeal, project opponents (through a legislator) requested an Attorney General opinion, which was issued in the fall of 2020 (NDAG 2020-L-04). In summary:
  - The maintenance levy can be used for activities such as deepening and widening an assessment drain, even if the drainage capacity of the assessment drain exceeds the original design.
  - The WRD cannot subject the landowners in the assessment district for more than 6 years @ \$4/acre max without a vote.
  - We should combine chapters.



## SB 2208

- Leading up to the 2021 Legislative Session, water resource district managers were aware of an effort to “fix” drainage law.
- The WRDA met with a number of water managers and experienced consultants, and submitted a redline of our statutes covering drainage, which suggested:
  - combining chapters
  - providing stronger landowner protections than either chapter independently
  - requiring more landowner outreach

- The drainage bill that submitted was SB 2208, which was an anti-drainage, anti-WRD authority bill, which was drafted by Sargent County Drain 11 opponents.
- None of the language submitted by WRDA was included in SB 2208 or its amendments.
- Thus the Drainage Committee was formed.





THANK YOU!

ANY QUESTIONS?