

2023 HOUSE POLITICAL SUBDIVISIONS

HB 1462

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1462
2/2/2023

Relating to the procedural requirements governing appeals from a local governing body and water resource board

Chairman Longmuir opened the hearing on HB 1462 at 11:48 AM.

Members present: Chairman Longmuir: Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, Rep. Hager

Discussion Topics:

- Sergeant county water board
- Public notification of landowners
- Notification requests

Rep. Schatz: Introduced the bill. 1462, #17336, #17335, #17331, #17332, #17348.

Leon Mollberg, Remote landowner testified in favor of HB, #18833.

Bob Benderet, Cogswell, ND, testified in favor of HB 1462, #18372.

Jack Dwyer, Executive Secretary of ND Water Resource Districts, testified in opposition to HB 1462, #18567.

Stephanie Dassinger Ennebretson, ND League of Cities spoke in opposition to HB 1462.

Larry Syverson, ND Township Officers Association, testified in opposition to HB 1462, #18767

Michael Wyum, Sargeant County Water Resource District, testified in opposition to HB 1462.

Additional written testimony:

Larry Skiftun, Wells County Courthouse, testimony #17850

Paul Mathews, Landowner, testimony #18364

Daniel Gaustad, City Attorney of Grand Forks, testimony #18491

Clifford Insendorf, Farmer in Bottineau Rep. Cory, testimony #18585

Gary Heintz, Wells County resident, #18699.

Chairman Longmuir closed the hearing at 12:22 PM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1462
2/2/2023

Relating to the procedural requirements governing appeals from a local governing body and water resource board
--

Chairman Longmuir opened the meeting on HB 1462 at 2:47 PM.

Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, Rep. Hager

Discussion Topics:

- Civil action to collect fees.
- Time to give notice.

Chairman Longmuir asked for committee action.

Representative Klemin addressed notice of time given.

Representative Ostlie addressed civil action to collect fees.

The meeting closed at 2:54 PM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1462
2/3/2023

Relating to the procedural requirements governing appeals from a local governing body and water resource board
--

Chairman Longmuir opened the meeting on HB 1462 at 10:00 AM.

Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, Rep. Hager

Discussion Topics:

- Committee action
- Amendment

Rep. Klemin presented an amendment LC #23.0778.01001. Testimony #19048

Representative Klemim moved the amendment, 23.0778.01002.

Representative Motschenbacher seconded.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	Y
Representative Patrick Hatlestad	Y
Representative Matt Heilman	Y
Representative Dawson Holle	Y
Representative Jim Jonas	Y
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nico Rios	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

Motion carries 14-0-0.

Representative Klemin moved a do pass as amended.

Representative Motschenbacher seconded.

Roll call vote:

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	Y
Representative Patrick Hatlestad	Y
Representative Matt Heilman	Y
Representative Dawson Holle	Y
Representative Jim Jonas	Y
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nico Rios	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

Motion carries 14-0-0. Representative Klemin will carry HB 1462.

The meeting closed at 10:19 AM.

Delores Shimek, Committee Clerk

February 3, 2023

2A
2-3-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1462

Page 1, line 1, replace "sections 28-34-01 and" with "section"

Page 1, line 2, remove "local"

Page 1, line 3, remove "governing body and"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 21

Page 2, line 26, remove "1."

Page 2, line 27, after "aggrieved" insert "within thirty days after service of notice of an order or decision by publication in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure"

Page 3, remove lines 5 through 7

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1462: Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1462 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections 28-34-01 and" with "section"

Page 1, line 2, remove "local"

Page 1, line 3, remove "governing body and"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 21

Page 2, line 26, remove "1."

Page 2, line 27, after "aggrieved" insert "within thirty days after service of notice of an order or decision by publication in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure"

Page 3, remove lines 5 through 7

Renumber accordingly

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1462

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1462
3/2/2023

A bill relating to the procedural requirements governing appeals from a water resource board.

10:46 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum are present.

Discussion Topics:

- Water sheds
- Notice of appeal
- Legal objections
- Public boards

10:46 AM Representative Mike Schatz introduced the bill and provided written testimony #21704, 21756. He presented amendments LC 23.0778.02001.

10:47 AM Leon Mallberg testified in favor of the bill and provided written testimony #21754.

10:55 AM Jack Dwyer, Executive Secretary, North Dakota Water Resource Districts Association testified opposed to the bill and provided written testimony #21755.

11:05 AM Michael Wyum, Sargent County Water Resource District, testified opposed to the bill and provided written testimony #21677.

11:10 AM Todd Stein, member, Sargent County Water Resource Board, provided oral testimony opposed to the bill.

Additional written testimony:

Clifford Issendorf #21685.

11:13 AM Chairman Patten closed the public hearing.

11:14 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1462
3/3/2023

A bill relating to the procedural requirements governing appeals from a water resource board.

10:24 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Water sheds
- Water Resource Districts

10:24 AM The committee has discussion on the bill.

10:30 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1462
3/24/2023

A bill relating to the procedural requirements governing appeals from a water resource board.

9:13 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Committee action
- Amendments

9:13 AM The committee has discussion on the bill.

9:16 AM Senator Magrum moved to adopt amendment LC 23.0778.02001(26552). Motion seconded by Senator Boehm.

9:16 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	N
Senator Jeffery J. Magrum	Y
Senator Todd Beard	N
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	N
Senator Greg Kessel	Y

Motion failed 3-3-0.

9:20 AM Senator Kannianen moved to Do Not Pass the bill. Motion seconded by Senator Beard.

9:20 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Senate Energy and Natural Resources Committee
HB 1462
03/23/23
Page 2

Motion passes 6-0-0.

Senator Beard will carry the bill.

This bill does not affect workforce development.

9:23 AM Jack Dwyer, Executive Secretary, North Dakota Water Resource Districts Association gave an update on the status of a similar bill HB 1391.

9:24 AM Chairman Patten closed the meeting.

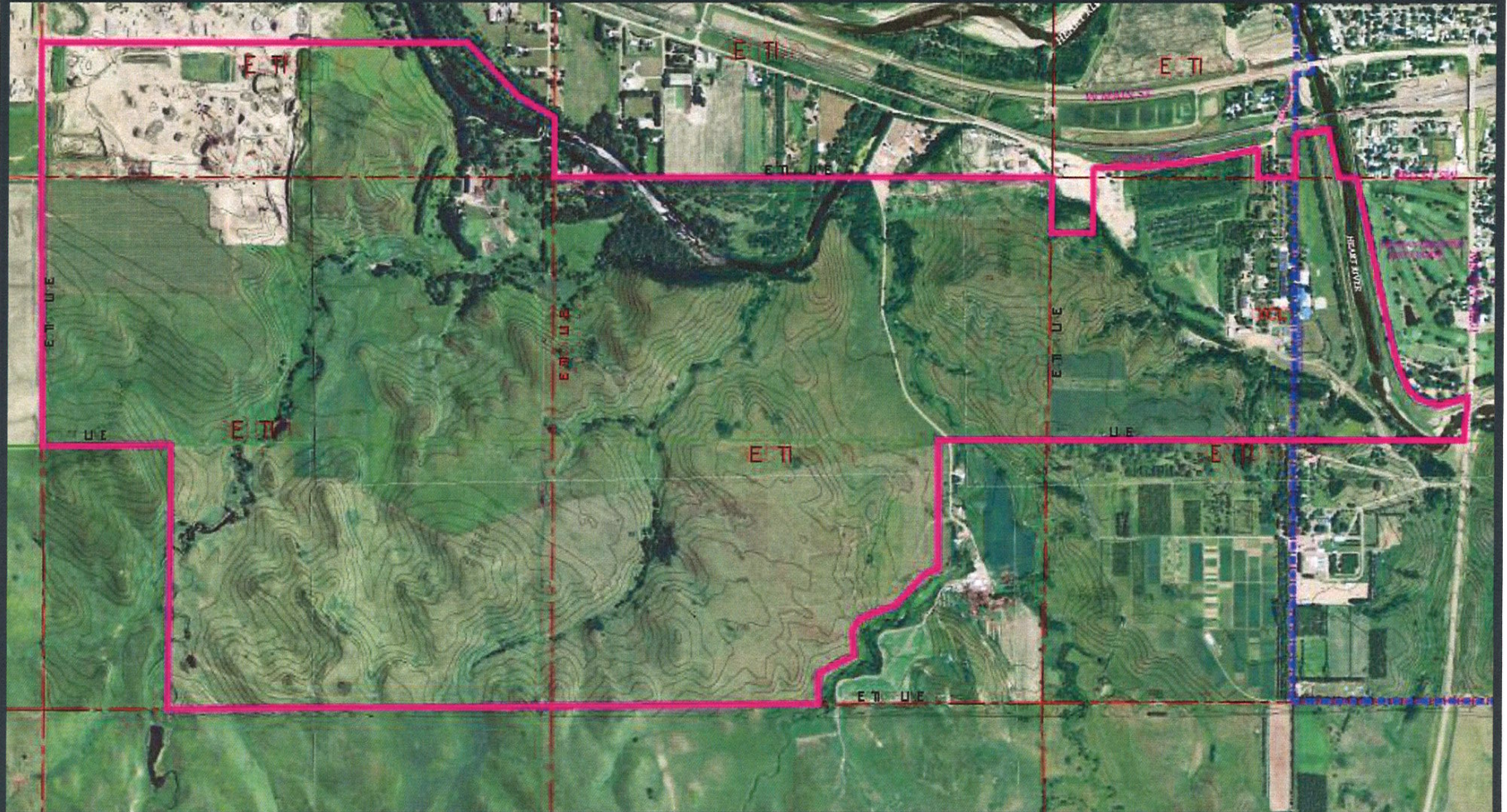
Rick Schuchard, Committee Clerk

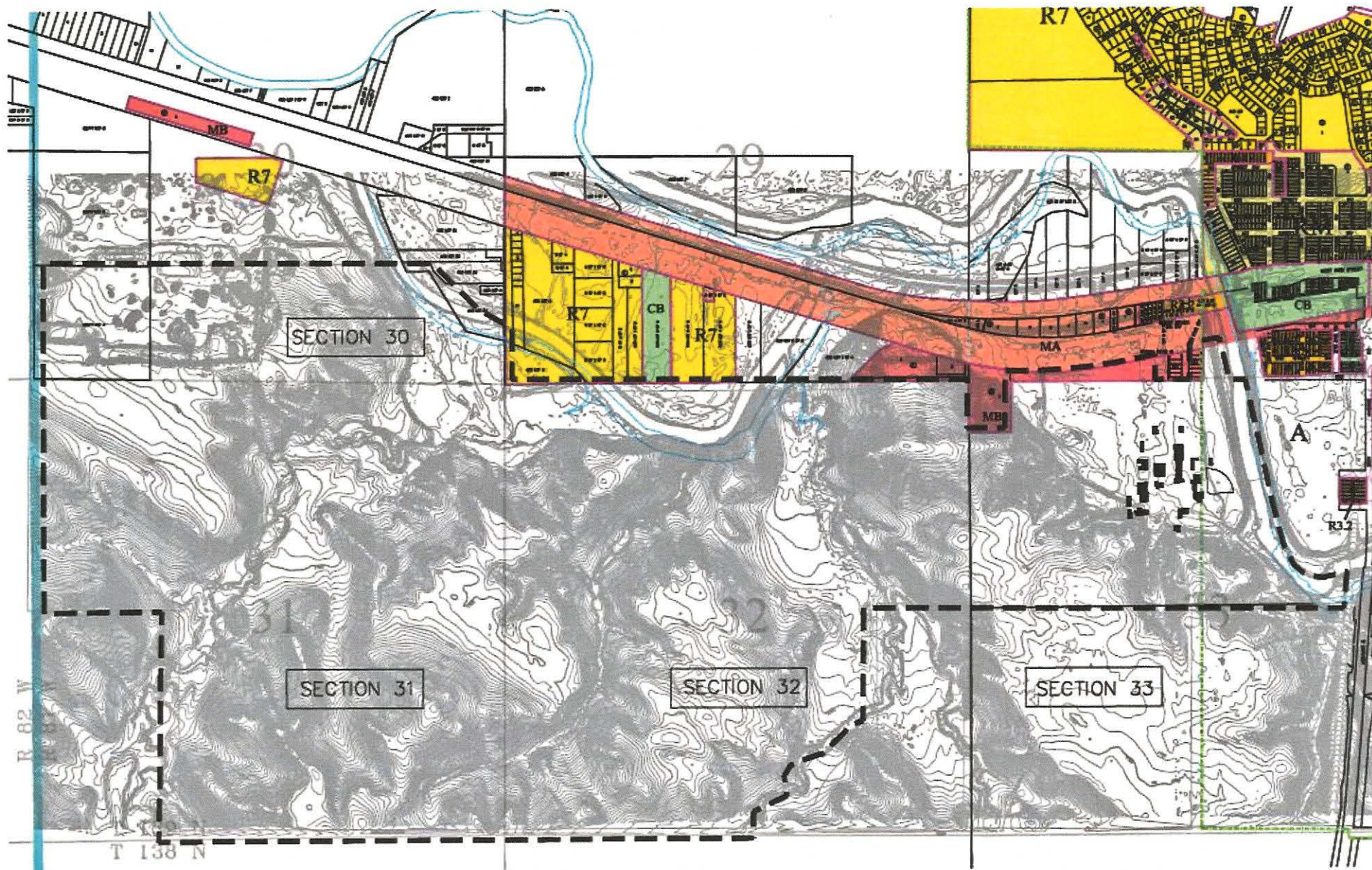
REPORT OF STANDING COMMITTEE

HB 1462, as engrossed: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1462 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1462







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Parcel#: 30-0071000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0

Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0



[Detail](#)

2022 Taxes:

First Half:	\$0.00	Due:
Second Half:	\$0.00	Due:
Total:	\$0.00	



[Detail](#)

2022 Payments:

First Half:	\$0.00
Second Half:	\$0.00
Discount:	\$0.00
Total:	\$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

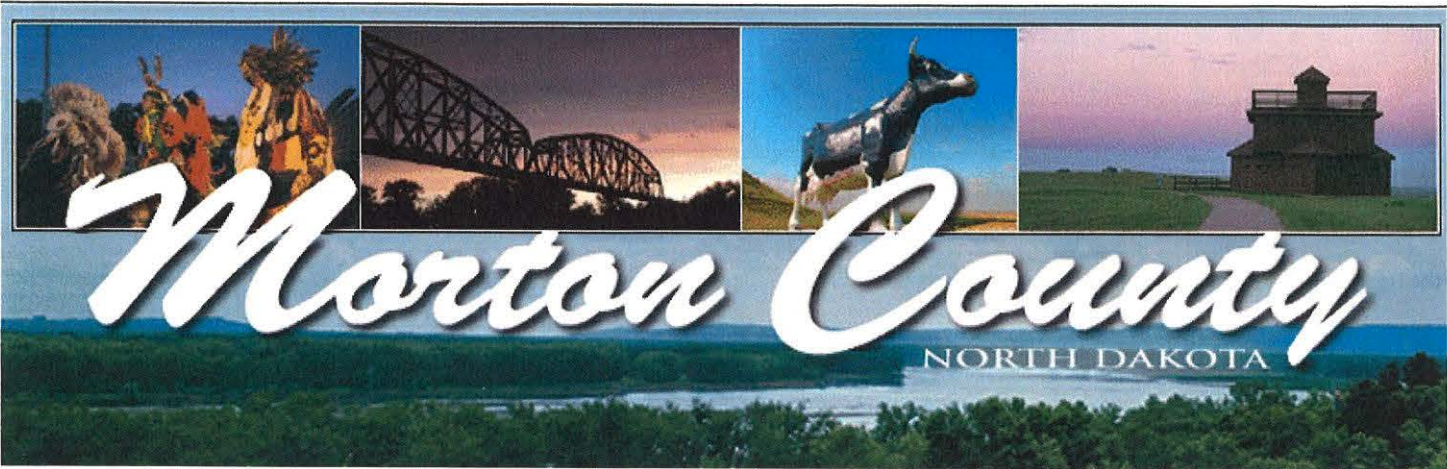
TRS: T138, R81, Sec. 9
Legal: ALL (LESS .40A RD) 639.60 ACRES

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Parcel#: 41-0268000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0
Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0



[Detail](#)

2022 Taxes:

First Half: \$0.00 **Due:**
Second Half: \$0.00 **Due:**
Total: \$0.00



[Detail](#)

2022 Payments:

First Half: \$0.00
Second Half: \$0.00
Discount: \$0.00
Total: \$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 32

Legal: SW 1/4 & PT SE 1/4 232.00 ACRES

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Parcel#: 41-0261000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0
Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0



[Detail](#)

2022 Taxes:

First Half: \$0.00 **Due:**
Second Half: \$0.00 **Due:**
Total: \$0.00



[Detail](#)

2022 Payments:

First Half: \$0.00
Second Half: \$0.00
Discount: \$0.00
Total: \$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 31

Legal: SE 1/4 & SE 1/4 NE 1/4 200.00 ACRES

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Parcel#: 41-0262000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0

Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0



[Detail](#)

2022 Taxes:

First Half:	\$0.00	Due:
Second Half:	\$0.00	Due:
Total:	\$0.00	



[Detail](#)

2022 Payments:

First Half:	\$0.00
Second Half:	\$0.00
Discount:	\$0.00
Total:	\$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 31

Legal: E 1/2 SW 1/4 80.00 ACRES

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Mandan, ND 58554



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Parcel#: 41-0249000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0

Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0



[Detail](#)

2022 Taxes:

First Half: \$0.00 **Due:**
Second Half: \$0.00 **Due:**
Total: \$0.00



[Detail](#)

2022 Payments:

First Half: \$0.00
Second Half: \$0.00
Discount: \$0.00
Total: \$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

Property address: 4086 CO RD 82, MANDAN ND 58554
TRS: T139, R81, Sec. 30
Legal: S 1/2 S 1/2 (LESS 8.46A) 152.59 ACRES

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Mandan, ND 58554



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Parcel#: 41-0264000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0

Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0



[Detail](#)

2022 Taxes:

First Half: \$0.00 **Due:**
Second Half: \$0.00 **Due:**
Total: \$0.00



[Detail](#)

2022 Payments:

First Half: \$0.00
Second Half: \$0.00
Discount: \$0.00
Total: \$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 31

Legal: NW 1/4 NW 1/4 (LOT 1) 40.77 ACRES

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Parcel#: 41-0265000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0
Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0

[Detail](#)

2022 Taxes:

First Half: \$0.00 **Due:**
Second Half: \$0.00 **Due:**
Total: \$0.00

[Detail](#)

2022 Payments:

First Half: \$0.00
Second Half: \$0.00
Discount: \$0.00
Total: \$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 31
Legal: N 1/2 NE 1/4 & SW 1/4 NE 1/4 & S 1/2 NW
1/4 & NE 1/4 NW 1/4 240.55 ACRES

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<p>Parcel#: 41-0266000</p> <p>Status: Current</p> <p>Receipt:</p> <p>2022 Owner(s): STATE OF NORTH DAKOTA</p>	<p>Mailing Address: % CITY OF MANDAN 205 2ND AVE NW MANDAN, ND 58554</p>
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Value:

Market:	\$0
Taxable:	\$0
Disabled Vet Credit:	\$0
Homestead Credit:	\$0
Net Taxable:	\$0

[Detail](#)

2022 Taxes:

First Half:	\$0.00	Due:
Second Half:	\$0.00	Due:
Total:	\$0.00	

[Detail](#)

2022 Payments:

First Half:	\$0.00
Second Half:	\$0.00
Discount:	\$0.00
Total:	\$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 32
Legal: NW 1/4 160.00 ACRES

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Parcel#: 41-0267000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0

Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0

[Detail](#)

2022 Taxes:

First Half:	\$0.00	Due:
Second Half:	\$0.00	Due:
Total:	\$0.00	

[Detail](#)

2022 Payments:

First Half:	\$0.00
Second Half:	\$0.00
Discount:	\$0.00
Total:	\$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 32
Legal: NE 1/4 160.00 ACRES

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Web data was last updated 01/12/2023 12:00 PM.

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Mandan, ND 58554



Shopping Cart: 0 items [\$0.00]



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Parcel#: 41-0271000

Status: Current

Receipt:

2022 Owner(s):
STATE OF NORTH DAKOTA

Mailing Address:
% CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Value:

Market: \$0
Taxable: \$0
Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0

[Detail](#)

2022 Taxes:

First Half: \$0.00 **Due:**
Second Half: \$0.00 **Due:**
Total: \$0.00

[Detail](#)

2022 Payments:

First Half: \$0.00
Second Half: \$0.00
Discount: \$0.00
Total: \$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

TRS: T139, R81, Sec. 33
Legal: NW 1/4 153.46 ACRES

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Web data was last updated 01/12/2023 12:00 PM.

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Shopping Cart: 0 items [\$0.00]



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Parcel#: 65-5782000

Status: Current

Receipt:

2022 Owner(s):
N DAKOTA INDUSTRIAL SCHOOL

Mailing Address:

HCO 4 BOX 500
MANDAN , ND 58554

Value:

Market: \$0
Taxable: \$0
Disabled Vet Credit: \$0
Homestead Credit: \$0
Net Taxable: \$0



[Detail](#)

2022 Taxes:

First Half:	\$0.00	Due:
Second Half:	\$0.00	Due:
Total:	\$0.00	



[Detail](#)

2022 Payments:

First Half:	\$0.00
Second Half:	\$0.00
Discount:	\$0.00
Total:	\$0.00

(May include penalty & interest)

2022 Legal Records:

Geo Code:

Subdivision: (224) MANDAN LANDS
TRS: T139, R81, Sec. 33
Legal: PT NE 1/4 SW OF H/RIV.(LESS .11A RD)
 47.52 ACRES -2923

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 Mandan, ND 58554

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE CONCURRENT RESOLUTION NO. 3002
(Legislative Management)
(Government Finance Committee)

A concurrent resolution recognizing the memorandum of understanding and option to acquire land entered by the Department of Corrections and Rehabilitation, by and through the State Penitentiary and the Missouri River Correctional Center and the Parks and Recreation Department.

WHEREAS, the Department of Corrections and Rehabilitation, by and through the State Penitentiary and the Missouri River Correctional Center, previously known as the North Dakota State Farm, is in continuous and open possession and custody of the real property owned by the State of North Dakota and located in the northwest quarter and northeast quarter of Section 29, Township 138 North, Range 80 West, Burleigh County, described as part of Government lots 1, 2, 3, and 4, and the northwest quarter and northeast quarter of Section 29, and what is described as Auditor's Lot "A" in the plat recorded with the Burleigh County Recorder as Document No. 851887 and as Exhibit A to Document No. 851886; and that part of the northeast quarter and the northwest quarter of Section 30, Township 138 North, Range 80 West, Burleigh County, and what is now described as Auditor's Lot "A" in the plat recorded with the Burleigh County Recorder as Document No. 851888 and as Exhibit B to Document No. 851886, but subject to any designated sovereign lands within the ordinary high water mark of the Missouri River in accordance with North Dakota Century Code Section 61-33-03; and

WHEREAS, the described property was originally managed and farmed by the State Penitentiary, which in 1941 became known as the North Dakota State Farm and is now known as the Missouri River Correctional Center, an affiliated facility of the State Penitentiary, which includes approximately 300 acres of irrigated crop land as authorized under Water Permit No. 939 issued by the state engineer; and

WHEREAS, North Dakota State University used parts of the property described as Auditor's Lot "A" in Section 29 and Auditor's Lot "A" in Section 30, along with other property under the management of the Department of Corrections and Rehabilitation, for agricultural research, including multispecies grazing research and the management of noxious weeds; and

WHEREAS, the custody of the property, Auditor's Lot "A" in Section 29 and Auditor's Lot "A" in Section 30, was transferred to the Parks and Recreation Department in 2016, to develop into a state park; and

WHEREAS, in 2017, the Parks and Recreation Department determined it was not in the position to develop the state property into a state park, but the Department of Corrections and Rehabilitation had immediate management needs for return of the custody of the transferred land to the Department of Corrections and Rehabilitation, and in 2017, custody of the property was subsequently transferred to the Department of Corrections and Rehabilitation; and

WHEREAS, the Missouri River Correctional Center includes a campus and adjacent property located in Section 19, Township 138 North, Range 80 West, Burleigh County; and

WHEREAS, in July 2018, the Department of Corrections and Rehabilitation and the Parks and Recreation Department, entered a memorandum of understanding and option to acquire land, providing if the Department of Corrections and Rehabilitation determines to discontinue the operation of the Missouri River Correctional Center in Sections 19, 29, and 30 in Township 138 North, Range 80 West, Burleigh County, and to divest itself of custody of such state property, the Department of Corrections and Rehabilitation grants to the Parks and Recreation Department the option to acquire custody of the property, or a portion of the premises, subject to the approval of the Legislative Assembly, and the

ability, resources, and available appropriations of the Parks and Recreation Department to develop the property into a state park.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

The Sixty-Seventh Legislative Assembly supports the memorandum of understanding and option to acquire land entered by the Department of Corrections and Rehabilitation and Parks and Recreation Department; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Department of Corrections and Rehabilitation and Parks and Recreation Department.

Speaker of the House

President of the Senate

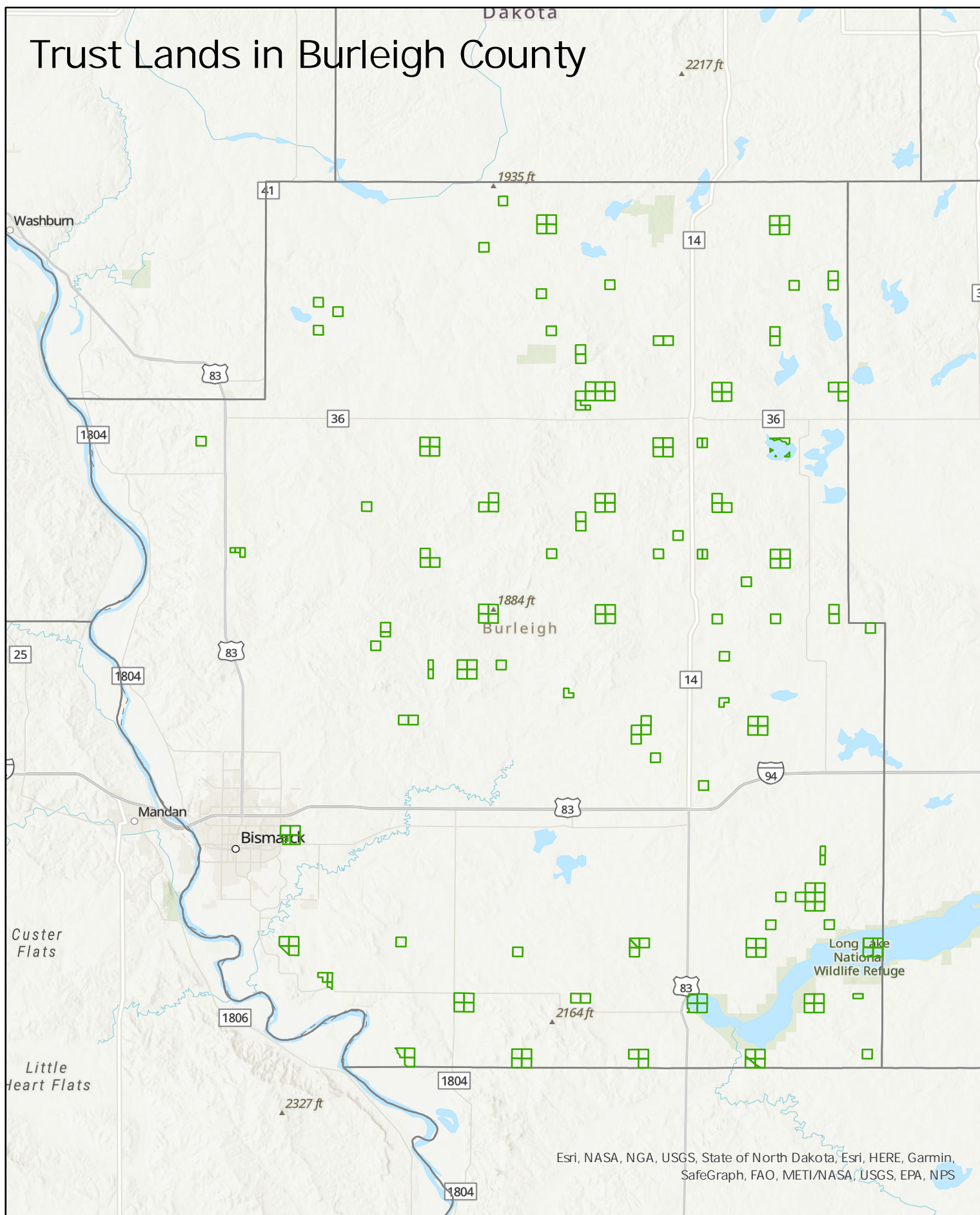
Chief Clerk of the House

Secretary of the Senate

Filed in this office this _____ day of _____, 2021,
at _____ o'clock _____ M.

Secretary of State

Trust Lands in Burleigh County



Representative Mike Schatz
House District 39
Testimony for HB 1462

HB 1433

Chairman Longmuir and members of the House Political Subdivisions Committee,

For the record, I am Rep. Mike Schatz from New England, ND and I represent District 39 in the southwest corner of the state.

HB 1433 is a bill that will require the Department of Rehabilitation and Corrections to sell land on both sides of the Missouri river. The Missouri River Correctional Center comprises approximately 900 acres in south Bismarck and a large portion of river front property. The Youth Correctional Center in south Mandan is comprised of approximately 1800 acres.

The idea behind selling these two parcels of land is twofold. First, because they are very valuable and will make the state a great deal of money, the state will be able to build new facilities for MRCC and YCC.

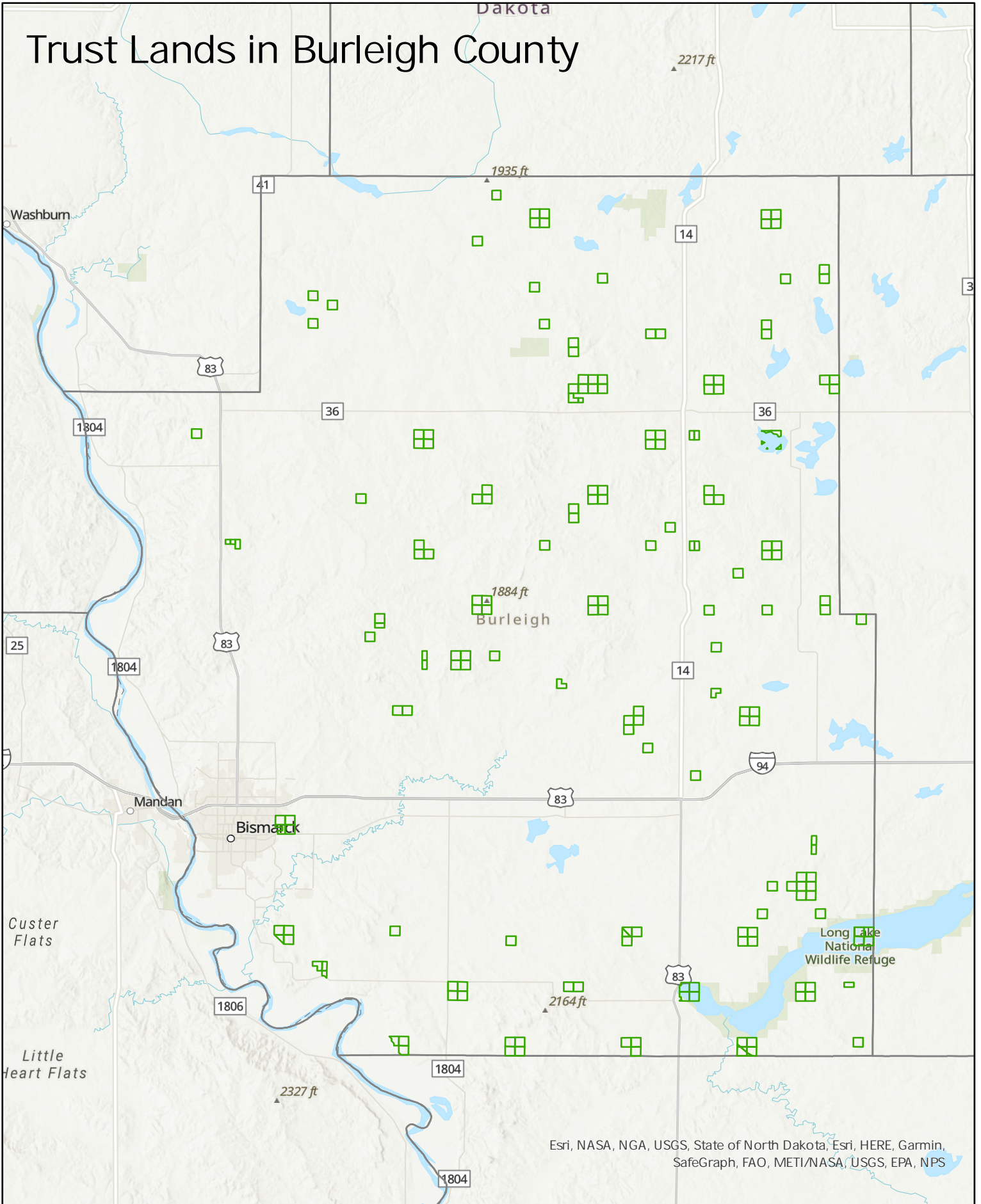
Second, because the Bismarck/Mandan communities are the fastest growing cities in the region, this property will make way for more housing and expansion. To have correctional centers surrounded by residential areas doesnt make much sense.

My proposal would require the DOCR to relocate MRCC and YCC to state land in Burleigh or Morton Counties and construct new buildings. My recommendation is that they use steel buildings which are very large, open, and less expensive than traditional brick and mortar facilities. I have included maps of all the state land in both Burleigh and Morton counties on the testimony page on your computer.

As many of you may know, New England currently is home to the womens prison and I feel the people there do an outstanding job. DOCR has a plan to build a \$161 million facility for women in Mandan, but I say, why are they trying to fix something that isnt broken. However, New Englands facility is a womens prison and not a mental hospital. It is my feeling that prisoners with mental health issues should be in a secured facility at the State Hospital in Jamestown. Perhaps the sale of this land will render enough for all the needs of the DOCR.

Thank you, Mr. Chairman, and I will answer any questions I can

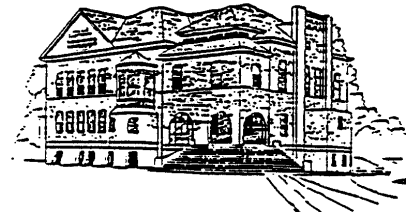
Trust Lands in Burleigh County



Wells County Water Resource District

Tammy Roehrich, Secretary
700 Railway St N #244
Fessenden, ND 58438
Phone: 547-2537
Cell:341-1359
Fax: 701-547-3188
troehric@nd.gov

WELLS COUNTY COURTHOUSE



Chairman Longmuir & House Political Subdivisions Committee Members:

Thank you for the opportunity to testify on House Bill 1462.

My name is Larry Skiftun. I am a lifelong farmer in Wells County, a landowner, and also the current Chairman of the Wells County Water Resource District Board of Managers. I submit this written testimony in opposition to House Bill 1462.

Century Code section 28-34-01 is the appeals procedure for several decisions or orders of water resource boards. House Bill 1462 amends this section of code to extend the deadline for appealing decisions or orders from 30 days after the decision to 30 days after the decision has been served on the affected party.

This creates a new obligation for water resource boards to serve affected parties with a decision in order to start the appeals period clock. In some contexts, this might make sense, but House Bill 1462 broadly applies to all decisions or orders where this additional requirement should not be required. This would include orders to establish an assessment project or orders to dismiss an assessment project after the vote of the local assessment district. The appeals period on these orders must expire before the water resource board can contract for a temporary improvement warrant or solicit bids for construction of the project. In some cases, the affected parties (the voting landowners) of these projects can include hundreds of owners of property in the assessment area. House Bill 1462 would not allow deadline of the board's order to expire until all property owners are served with the order. The cost of hiring a process server or a local sheriff to serve a procedural order on hundreds of people is not a good use of limited taxpayer resources. In addition, this would occupy limited resources and time of local sheriff's office and cause unnecessary stress on landowners to be served by a process server or a sheriff with a procedural order of the water resource board.

I encourage a "Do Not Pass" recommendation on House Bill 1462. I request the opportunity to testify in person before the committee and will stand for any questions. Thank you for your consideration of my testimony.

Sincerely,

Larry Skiftun, Board of Managers Chair
Wells County Water Resource District

January 31, 2023

Representative Donald W. Longmuir, Chairman
And Members of House Political Subdivisions

RE: HB # 1462

Today I will offer my support of this proposed amendment to our State's Century Code as landowner **property rights** are being marginalized without it.

In the spirit of brevity, I will reveal a real-life example that an overzealous water board can act without impunity to harm landowners.

In December 2001, I witnessed my water board enter private property with dozens of truckloads of drain spoils from other parts of Drain #11 in Sargent County that apparently was a nuisance to their maintenance of the drain left by 1918 construction. I made inquires what authority they felt they had to dump their unwanted spoils on our property - which the inquiry alone apparently created animosity.

Over a decade later, their wrath was exposed again. On the same area adjacent to the drain corridor, they determine I had invaded acres by farming that they believed they owned via 1918 documents. These were 2 acres, adjacent to drain, which the county had not used since 1918 installation. When I did not agree to pay them "rent" on these acres that I believe were only subject to the 1918 easement, the Sargent County Water Board sued me for trespass. Eventually, the ND Supreme Court decided that the 1918 document truly was only an easement and dismissed the allegations of trespass this board used to flame rhetoric across my community about my personal stature.

Compensation cannot repair the personal integrity that a public trial imposes, but what about the legal costs to defend oneself from an unprovoked threat to private property by a governmental entity? Tens of thousands of dollars of private monies flowed to defend this aggressive action and same volume of public funds too. All this expended and hours of efforts for 2 acres of unused corridor acres a landowner wasn't paying rent (on what was his own acres.)

This true story is only one of several events I have been challenged with by my Sargent County Water Board. Each event is saturated with legal fees. In this period, I have witnessed other landowner events of equal significance. What I sincerely want Legislative members to realize, that any "sheriff" obligations to keep water boards acting within the confines of ND Century Code essentially are only landowners themselves with only their private monies to defend **property rights**. To leave this supervision only to landowners is burdensome in many ways, but to obligate landowners to defend erroneous board decisions is with their own funds that are not recoverable is without mercy or respect. At minimum, when landowners are reimbursed for this duty, at least financially they are put back into position left unharmed financially by a poor public board decision.

Without legislative correction, instead, the water boards can react though their frustrations by initiating actions that are clothed with retaliation, retribution and without remorse.

Again, **I have more personal stories** to equal this one that are indications of the same reckless behavior. This board was described by a District Court as “morally deficient,” which speaks volumes and perhaps indicates a reason for their behaviors. But if Legislator assumes this is a small, isolated event in North Dakota, I would like to warn Legislators that my board’s consultants, which advise the board are into many ND boardrooms. Its apparent in my board’s reactions to consultant advice is to blindly follow that advice. This was demonstrated in 2016 when consultants advised board members to remove one of their own when that board member challenged them.

To summarize, I am sure many water boards in ND act responsible and act as worthy trustees to special assessment drain funds. But society must remain diligent to the exception (even one aggrieved person is too many) when Boards fail these expectations.

If Legislature determines the landowners are the “sheriff”, I believe we must replenish the private funds the landowner expends to do this duty.

I would suggest Legislators consider why a situation of less than 3 three aggrieved parties is an appropriate condition whereas 3 or more is. Isn’t the price of the harm inflicted the same even though it might be only a single person?

I have attempted numerous times to involve a familiar farm group for aid to advance knowledge of water board activities. Finally, and after decades of no return messages, I have given up my organization’s membership of near 50 years. I sense that they only want to advance drainage at no matter the cost to property rights. Victims of water board abuse are marginalized and separated to left to be alone. I am not against water drainage and utilize drains too.

Currently, existing Century Code leaves **property rights** under threat and I would encourage Legislators amend to protect property rights.

Paul Mathews, landowner

Cogswell ND 701-724-6470

farmerpost@hotmail.com (preferred contact)

Representative Donald Longmuir

and members of the House Political Subdivision Committee

RE HB 1462

Thank you, Mr. Chairman, and members of the committee for giving me the opportunity to speak in support of this bill with a bit of fine tuning. The current 30-day appeal process of local governing body decisions is unworkable unless an affected party attends every single meeting of the governing body. Minutes are taken of these meetings and then adopted at the next monthly meeting. The 30-day appeal period is over by that time. Since I have become aware of this unworkable appeal timeline, I have noticed that small towns publish batches of minutes. They will publish 5 to 6 months of meeting minutes in one paper edition. It certainly fulfills the publication of minutes requirement but does not allow an appeal by an aggrieved person who can't attend the meetings.

In a recent ruling, the ND Supreme Court weighed in on this very topic:

Banderet v Sargent County Water Resource Board
ND Supreme Court
February 26, 2019

"[¶18] In Sandahl v. City Council of the City of Larimore , 2016 ND 155, ¶ 9, 882 N.W.2d 721, we stated:

Our decisions in Zajac and this case recognize an abbreviated time frame for a party to appeal from a decision by a local governing body is imposed under the plain language of N.D.C.C. § 28-34-01. **The legislature may want to consider extending the time for appeal or consider triggering the time for appeal from a decision by a local governing body from service of the notice of the decision on the affected party or from publication of the decision.**

The ND Supreme Court realized the importance of notification of a governing body's decision to include publication of the decision or the minutes. I would respectfully ask that "or from publication of the decision" be added to the amendment.

Pertaining to Section 2 of this bill: It has become painfully apparent from my involvement with the aforementioned Supreme Court decision that landowners have been solely tasked with “policing” water board actions. Our county commissioners disavowed any responsibility of overseeing the water board by stating “we just appoint them, after that they are on their own”! It becomes a huge financial burden for landowners to take on a lengthy court battle and the end result is that it almost never happens. The 2019 Supreme Court case cost landowners more than \$100,000 and there is no incentive to pursue such an appeal under the present law. The additional wording of Section 2 of this bill would allow aggrieved landowners to remain financially whole if they were to prevail against the water board, unlike the 2005 ND Supreme Court ruling where the landowners’ award was denied because only county commissioners are mentioned in Century Code as being liable for opponent’s attorney fees.

About 10 years ago, a landowner from Sargent County was sued by the water board over a right of way disagreement. He took it all the way to the ND Supreme Court and amassed over \$30,000 in attorney’s fees. He prevailed at the Supreme Court but could only be awarded a few hundred dollars in filing and transcription fees.

This bill will rectify that injustice! Please give this bill a “Do Pass” recommendation.

Bob Banderet

Cogswell, ND

bobnlori@drtel.net

701-680-9738

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1462

House Political Subdivisions Committee

February 1, 2023

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Donald W. Longmuir and members of the House Political Subdivisions Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition to the portion of House Bill 1462 that would amend N.D.C.C. § 28-34-01(1) regarding appeals of local governing body decisions.

The City of Grand Forks, like many cities in North Dakota and other governmental entities, conduct regular meetings wherein various decisions are made. The City of Grand Forks, through its robust website, provides notices of its meetings, information regarding agenda items considered at meetings and the decisions that are made. In addition, the City of Grand Forks city council, its committee of the whole and planning and zoning committee meetings can be seen live on local television are streamed live at <https://www.facebook.com/CityofGrandForks>. It is understood similar extensive outreach to citizens is occurring within other municipalities. Thus, the citizens of Grand Forks are afforded significant opportunities to learn of decisions in real time or shortly thereafter through these live and web-based forums.

Certain decisions made by the City of Grand Forks governing body may be appealed to district court, and N.D.C.C. § 28-34-01 sets forth the time period, requirements and procedures in order for a district court to have jurisdiction to hear and consider such an appeal. As proposed, House Bill 1462 would change the time period to bring an appeal by changing the commencing date of the appeal period, which is currently starts on the date of the governing body decision is made, to starting on the date an "affected party" has been served with the governing body decision. Thus, as modified, the appeal period would not begin until service of the decision is made on each "affected party."

This may appear to be an innocuous modification. However, decisions of the Grand Forks City Council that may be subject to appeal can have city-wide affect. As proposed by House Bill 1462, such city-wide decisions that are subject to an appeal would require the City to serve each citizen of the Grand Forks with the decision because each citizen would be "affected" by the decision. Under the modifications offered by House Bill 1462, the appeal time period would not commence for each citizen that was affected by the decision but not served. Indeed, an argument could be made that this proposed change would be interpreted to mean that absent service on each and every "affected party" the appeal

period would not commence. The cost and expense to accomplish such service would be monumental. Furthermore, requiring such service to start the appeal period would have a crippling effect on local governing bodies because decisions made months or even years ago, even when the matter or work arising from such decision has been completed, would still be subject to an appeal, which in turn would necessitate the expenditure of time and money to defend. Even with those decisions that may have a more finite number of “affected parties,” the required service on each “affected party” could delay the implementation of such governmental decisions because the appeal period would only end upon completion of service on each “affected party.”

The City of Grand Forks asks for a DO NOT PASS for House Bill 1462.



North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

HB 1462
Testimony of Jack Dwyer
House Political Subdivisions Committee

Dear Chairman Longmuir and members of the House Political Subdivisions Committee, my name is Jack Dwyer, and I serve as the Executive Secretary of the North Dakota Water Resource Districts Association.

The Water Resource Districts Association has concerns about HB 1462. This bill would require all local boards, including water boards, serve notice of a decision on every affected party. This would put a significant cost and burden on water boards, and all other local boards. The bill fails to define both “notice” and “affected party.” Due to the lack of definition, my advice to water boards would be to serve personal notice under Rule 4 of the North Dakota Rules of Civil Procedure to as broad an audience as possible to ensure compliance with this vague requirement.

Not only do the water resource districts lack the staff and funding to “serve” all affected parties by any decision, water resource districts oppose using public funds to pay for appellants’ attorney fees. This will encourage lawsuits and appeals against water boards. We suggest that water boards be treated similarly to other political subdivisions in this regard. If water boards are required to pay for appellants’ attorney fees, then other political subdivisions should be held to the same requirement.

On behalf of the Water Resource Districts Association, I respectfully request a do not pass recommendation on HB 1462.

February 1, 2023

House Political Subdivisions Committee
c/o Representative Donald W. Longmuir, Chair
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill 1462 – Opposition

Dear Chairman Longmuir and Members of the House Political Subdivisions Committee:

Thank you for the opportunity to submit this testimony in opposition to House Bill 1462.

My name is Clifford Issendorf. I am a lifelong farmer in Bottineau County, a landowner, and currently the Bottineau County Water Resource Board Chair I have served on the Bottineau County Water Resource District Board for over 40 years.

House Bill 1462 adds new, costly requirements for water resource boards. Century Code chapters 61-21 and 61-16.1 require water resource boards to issue orders that may affect multitudes of people. In the case of an assessment project, for example, hundreds of landowners may be affected by the proposed project. The Bottineau County Water Resource Board believes it is important that landowners be notified of projects that affect them and that they be given an opportunity to participate in support or opposition. In fact, these projects already require the water resource board to mail notice of the proposed project to all affected parties along with information about the project and contact information on where more information can be found. The water resource board must also hold a public hearing at which affected parties can provide input and voice opinions publicly, and provide an opportunity for affected parties to vote whether to approve or dismiss a project. If more than fifty percent of the votes filed are in favor, the water resource board must adopt an order establishing the project. Otherwise, the water resource board must adopt an order dismissing the project.

Under current law, the water resource board must wait 30 days from the date of adopting an order establishing a project before it can proceed with an assessment hearing, bidding the project for construction, or negotiating with banks on temporary improvement warrants and bond financing. This allows affected landowners, who have already been notified of the project and given an opportunity to participate in the proceedings, 30 days to appeal the order to district court.

House Bill 1462 changes the existing law so that the 30-day appeals period only starts after “affected parties” have been “served” with the order. In the case of assessment projects, this could mean paying for a process server or a local sheriff to serve hundreds of affected landowners. This adds thousands of dollars to the project costs. Often times, some of the affected landowners live out-of-state, requiring the water resource board to hire a process server or local sheriff on the other side of the country. The water

resource board would need to wait until all affected landowners are served before the 30-day appeals period would begin. This could be costly and cause significant delays. The Bottineau County Water Resource Board is opposed to occupying the resources of local sheriffs' offices for this purpose.

We are also concerned about Section 2 of the bill and its awarding of attorneys' fees when there are three or more appellants in an appeal where the court rules in favor of appellants. Under House Bill 1462, must the court rule in favor of appellants on all issues? Would attorneys' fees be awarded if the court ruled in favor of the water resource board on a majority of issues? These questions are not addressed by the current bill.

The default rule in the United States is known as the "American Rule" – that each party is responsible for paying for its own attorney's fees. Exceptions are typically reserved for situations where a party's position or processing of the appeal has been deemed unreasonable or done in bad faith.

House Bill 1462 uses the number of appellants, rather than the actions of the parties, as the threshold for awarding attorneys' fees. The bill also applies only to water resource boards. An unreasonable appeal or appeal taken in bad faith can cause unnecessary delays and increase project costs which are often passed on to taxpayers. If an award of attorneys' fees is to be included with this bill, we urge the Committee to amend the bill so that attorneys' fees are only awarded in cases where one party has acted unreasonably or in bad faith, as determined by the court. Also, the award of attorneys' fees in such situations should be equally available to appellants and local governments.

I submit this written testimony to make record that the Bottineau County Water Resource Board is opposed to House Bill 1462. We urge the Committee to vote "Do Not Pass" on this bill.

Sincerely,

Clifford Issendorf
Board of Managers Chair,
Bottineau County Water Resource District

Testimony for HB 1462

DATE: Submitted on 2-2-2023

RE: Gary Heintz

19 1st Ave. NW, Chaseley ND 58423

Cell Phone: 701-650-2064

Email: gheintz@daktel.com

My name is Gary Heintz from Chaseley ND. I support this bill, HB 1462. I reside in Wells County and pay assessments on the Hurdsfield Drain.

The proposed change in HB 1462 is exactly what is needed to help give aggrieved landowners a voice. Currently if the landowners appeal via the courts and win, they still shoulder the attorney costs. The fear of additional costs prevents many landowners with valid arguments from coming forward to plead their case.

Thank you for this opportunity to testify on this bill.

Respectfully,
Gary Heintz

Oppose HB 1462

House Political Subdivisions Committee

February 2, 2023

Chairman Longmuir and Committee members,

I am Larry Syverson from Mayville, I grow soybeans on my farm in Traill County, I am the Chairman of the Board of Supervisors for Roseville Township, and I am also the Executive Secretary of the North Dakota Township Officers Association. NDTOA represents nearly 6,000 Township Officers that serve in more than 1,100 dues paying member townships.

The North Dakota Township Officers Association has concerns about HB 1462. This bill would require that all local boards serve notice of a decision on every affected party. This would put a significant cost and burden on township boards. The bill fails to define both "notice" and "affected party." Due to the lack of definition, it would be necessary to serve personal notice under Rule 4 of the North Dakota Rules of Civil Procedure to as broad an audience as possible to ensure compliance with this vague requirement. North Dakota townships lack the staff and funding to "serve" all affected parties by any decision.

A decision to close a road in the middle of the night because of a washed out culvert will "affect" people. Does the township board need to wait 30 days after all "affected parties" are searched out and served notice before taking action?

The North Dakota Township Officers Association requests that you give HB 1462 a do not pass recommendation.

Thank you, Chairman Longmuir and Committee members, I will try to answer any questions you may have.

Testimony with regard to House Bill No. **1462**

My name is Leon Mallberg and I am asking for a "Do Pass" on House Bill No. 1462. I live in Dickinson, North Dakota but I manage the family farm in Sargent County, North Dakota. I am a "remote land owner" in the eyes of the Water Board. The property is located in what is known as the Drain # 11 Watershed, the largest watershed of its kind in North Dakota. I am not a paid lobbyist nor do I represent any special interest or industry group. I am just a "run of the mill" citizen.

As you may know, this watershed has been in the spot light for the last seven (7) years. That would not be the case if House Bill No. 1462 had been in effect. Two items in the bill are presented for your consideration:

First, under Section 1, Item one: "The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body has been served on the affected party." On October 20, 2016, the Sargent County Water Board had their monthly meeting and passed a "Resolution of Necessity" with respect to Drain # 11. This action was not published in advance of the meeting in any agenda. It was passed unanimously. The only people at the meeting were five board members, the board secretary and one county landowner who had no interest in Drain # 11. The statute states that if any affected landowner objects to the board action they must do it via the courts within thirty (30) days. Unchallenged it eliminated any possible vote of approval by the landowners. No affected landowner was notified that there was a hard and fast window of 30 days. At 2:30 PM on the 27th day of the 30 days the minutes were offered showing the resolution. With the 30th day being a Saturday (November 19, 2016) it left 2 days to decide what to do, find an attorney, prepare a legal objection and present the document to the Court. There was not enough time. One would expect that a "**Public Board**" would notify some affected parties of the 30 window. After seven years and spending \$110,000.00 in legal fees to try and get a landowner vote to no avail, we have a \$4,100,000.00 4.5 mile ditch without the approval from those who pay and 40 miles of remaining Drain # 11 ditch with no maintenance funds.

Second, Section 2, Item 2. "The district court may award costs and reasonable attorney's fees to appellants *when three or more aggrieved individuals* have joined in an appeal from a decision of the water resource board and the court rules in favor of the appellants." (I question the "**three or more**".) This was added to the bill because of the following: (Specific information on this situation will be provided to Committee Members upon request.) A landowner within the Drain # 11 watershed was told that he was trespassing on Water Board land. The landowner denied the actuation and he was then told if he continued to farm the subject land he would have to pay cash rent. The landowner stated that he owned all the land in question. The Water Board then threatened to send the sheriff to evict him from the property. The issue went to District Court and the ruling there was in favor of the Water Board. The landowner appealed it to the North Dakota Supreme Court and it ruled in favor of the landowner stating that the Water Board only had an easement and owned nothing. The total effort cost the landowner over \$28,000.00 in legal fees, time, incidentals and travel.

There is also a similar case from Pembina County where a District Judge saw fit to awarded attorney fees but on appeal to the Supreme Court, the attorney fees were denied because there was no provision for it in the law. (2005 ND 106 – No. 20040299)

Respectfully yours --- Leon L Mallberg

Dear North Dakota Legislator:

December 26, 2022

Sargent County now has 4.5 miles of 90 foot wide ditch costing \$4,100,000.00 where those that pay were excluded. Autocratic actions of Public Boards, at any level, should be questioned and corrected. I refer to the Water Board of Sargent County, ND. This situation has left the affected landowners frustrated and dismayed and questioning the word "Public" in Public Board. A quote from a County Commissioner in the Sargent County Teller on July 10, 2015: ***"(County Commissioner) Anderson pointed out that, while the County Commission appoints members to the water Board, it is a self-governing entity and does not answer to the commission." The question is who do they answer to?*** Over a substantial period of time, they have not seen fit to allowed landowner to be involved. If you are a remote landowner living outside the County you have little standing. In a memorandum prepared for the Water Board for Forum Communication Outlets on March 14, 2019, it states: ***"The District had no legal obligation to take the Project to a vote (of affected landowners), and did not even have any obligation to discuss the Project with the public (taxpayer)."*** Apparently they feel the law allows them the latitude to say that. Reviewing State law, the Water Boards truly do not answer to anyone.

The construction in question is called the Drain # 11 Improvement Project, involving the largest watershed of its kind in North Dakota. The area includes land in Sargent, Ransom, and Dickey Counties in ND and at one time Marshall County, SD. For 106 years, the only land to be assessed for its construction / up-keep was Sargent County. The other Counties were not assessed but contributed approximately 40% of the water in the drain. Sargent County carried the whole load for 106 years!

Several requests were made to include all counties in the watershed and provide a vote of the affected landowners ***to no avail***. A "Resolution of Necessity" by five (5) unelected board members was all that was needed to exclude all landowner in three counties.

The project has progressed with the following result: Drain # 11 has a total of 44 miles of ditch of which 10.5 miles were to be improved. Once a "Motion to Proceed" was passed, the Water Board found they could only afford 3.5 – 4.5 miles of the proposed 10.5 miles. Presently we now have a new 90 foot wide ditch in the middle of nowhere with a 106 year old, 40 foot wide ditch on both ends at a cost \$4,100,000. Presently there is no benefit or return to anyone in the watershed. Not one additional shovel of dirt will be moved for another 6 – 7 years because of the way it was financed. The board committed all of the maintenance money allowed by law for 7 years to secure the construction bonds leaving no money for maintenance of the remaining 41.5 miles of Drain.

There was a solution that only the landowners could provide but the board would not consider it. However there is a Water Board in Bottineau County that seems to work very well but their first priority and concern is the landowner. As a suggestion, the Legislature should consider changing the law so that all land in a watershed is included and water board maintenance or improvement projects over \$100,000.00 are voted on by the effected landowners to make sure they are involved and agreed. Additional details are available upon request.

Leon L Mallberg, Landowner – Drain # 11 Watershed
941 13th Street West, Dickinson, ND 58601-3538
Phone Line: 701 483 8338 Cell Phone: 701 590 9370
E-mail: llmallberg@ndsupernet.com

23.0778.01001
Title.

Prepared by the Legislative Council staff for
Representative Klemin
February 2, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1462

Page 1, line 1, replace "sections 28-34-01 and" with "section"

Page 1, line 2, remove "local"

Page 1, line 3, remove "governing body and"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 21

Page 2, line 26, remove "1."

Page 2, line 26, overstrike "An" and insert immediately thereafter "By publication in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure within thirty days after service of notice of an order or decision, an"

Page 3, remove lines 5 through 7

Renumber accordingly

March 1, 2023

Chairman Patten and Senate Energy and Natural Resources Committee:

My name is Michael Wyum. As Vice Chairman of the Sargent County Water Resource Board, I urge a NO vote on HB 1462.

If one assumes that HB 1391 becomes law, its language states: "The minutes of the meeting must be provided to the official newspaper of the county for publication OR posted to the water resource board's website within ten days". This seems to be a reasonable time frame and an affordable method of notification for actions of a Water Resource District.

As proposed in HB 1462, notification would require publication three times in the newspaper of record or service by a process server to all affected parties. Neither of these methods is affordable in money or time required. In our rural communities, the legal newspaper is generally a weekly publication which would require three additional weeks for proper notification.

Many decisions which Water Resource Districts make are quite time sensitive from a public safety standpoint. Remedying washed out culverts, collapsed drainage ditches due to sloughing, or flooded roadways should not be delayed for the above mentioned notification process.

As a side note, I read with dismay the testimony from three Sargent County landowners who have been opposed to a project on Drain # 11 in Sargent County. Sargent County Water Resource District has been legally challenged several times by this group. They have yet to be successful. They have, however, delayed the project several years and cost our local constituents millions of dollars in added project costs, plus the loss of productivity caused by a less than well functioning legal drain. In reading their testimony, I feel that much of what is said is "sour grapes" and that you're not hearing "the rest of the story" which paints a much different picture from what you've read.

I believe that it is poor policy to base legislative change on the basis of a few individuals who do not have the best interests of the general public at the forefront. Therefore, I strongly encourage you to vote NO on HB 1462.

Sincerely, Michael Wyum
9270 139th Ave. SE
Rutland, ND 58067
Ph 701-678-3634

March 1, 2023

Senate Energy & Natural Resources Committee
c/o Senator Dale Patten, Chair
State Capitol
600 East Boulevard Avenue Bismarck,
ND 58505

Re: House Bill 1462 – Opposition

Dear Chairman Patten & Senate Energy & Natural Resources Committee Members:

Thank you for the opportunity to submit this testimony in opposition to House Bill 1462. My name is Clifford Issendorf. I am a lifelong farmer in Bottineau County, a landowner, and currently the Bottineau County Water Resource Board Chair. I have served on the Bottineau County Water Resource Board for over 40 years.

H.B. 1462 adds four new requirements to every water resource board decision or order:

1. The Board (or its engineers or lawyers) must determine who is all affected by the decision or order and their last reasonably ascertainable address.
2. Prepare a notice directed to all persons affected by the decision or order, listing them by name.
3. Publish the notice once a week for three successive weeks in the newspaper.
4. Mail the notice no later than 14 days after the first publication.

The Bottineau County Water Resource Board can certainly understand why some landowners want to be specifically notified of water resource board decisions that impact them and their land. Fortunately, current laws already provide a way for those who want specific notice to request it without creating additional costs which will be passed down to taxpayers. If asked, a public entity must provide any requester with notice of meetings regarding topics of specific concern. The proponents of this bill only need to request notice in advance of all meetings at which decisions affecting his or her land will be made.

For example, the source of this bill was displeasure with a water resource board decision impacting land in the Sargent County Drain 11 assessment district. Current law allows landowners in that assessment district to request the water resource board notify them in advance of all meetings in which Drain 11 will be discussed. This avoids incurring additional expense to complete steps 1-4 above, which would ultimately be passed on to landowners in the Drain 11 assessment district. The requester need not attend every meeting of the water resource board. The requester will be notified of which meetings he or she should attend and can request a copy of minutes from those meetings. Speaking of meeting minutes, H.B. 1391, if passed, will require the water resource board to post or publish minutes within 10 days of a meeting, providing further easy access to information without burdening other taxpayers in the assessment district.

Proponents of H.B. 1462 do not think compliance with Rule 4 requires much additional effort, especially for new assessment projects where notices of public hearings are already required. The fact is that H.B. 1462 requires the board to do much more than is required under current law. Current law allows notice to landowners using the name and address as shown by the tax rolls of the county in which the affected

property is located and when there are multiple property owners, the tax rolls typically list just one name. Rule 4 requires that names and addresses of all landowners be listed in the notice, requiring much more research and effort by the water resource board and its consultants.

Worse, inadvertently missing the name of a landowner in the notice may result in the appeals period for a decision or order to never expire.

H.B. 1462 broadly applies to all decisions and orders, not just orders for new assessment projects. Water resource boards will need to complete steps 1-4 above on orders to repair existing projects, regardless of repair costs; orders to levy an annual repair assessment; and decisions on complaints regarding water-related issues, like noncomplying drains. These are all examples of water resource board decisions or orders in which Bottineau County landowners have not complained about lack of notice. Compliance with H.B. 1462 will impose thousands of dollars in new costs that will be passed on to landowners in assessment districts in some cases and to general taxpayers of the county's mill levy in others.

Because H.B. 1462 references Rule 4, we are concerned whether Rule 4(e)(7) applies. Rule 4(e)(7) allows an affected person to re-open a decision or order for litigation months or years after notice is mailed. If this is the case, how will purchasers of water resource district bonds react to H.B. 1462? Will they now shy away from bond purchases since there will be uncertainty as to whether the appeals period has expired?

I submit this written testimony to make record that the Bottineau County Water Resource Board is opposed to House Bill 1462. We urge the Committee to vote "Do Not Pass" on this bill.

Sincerely,

Clifford Issendorf
Board of Managers Chair,
Bottineau County Water Resource District

Representative Mike Schatz
House District 39
Testimony for HB 1462

Chairman Patten and members of the Senate Energy and Natural Resources Committee

For the record, I am Rep Mike Schatz from New England and I represent District 39 which is in the southwest corner of the state.

I have amendments to HB 1462 which would restore it to its original intent.

HB 1462 is a fairly simple bill with only two changes to existing law. I have put this bill up for a friend and constituent of mine. Leon Mallberg is a high school graduate of the last class from Cogswell HS in Sargent County. He started a real estate company in Dickinson and has been a lifelong and loyal member of the majority party. In 1988 he was the endorsed gubernatorial candidate for the Republican party. Rather than having me try to explain something that I am not that well acquainted with, I want Leon to come up and give you the good and right reasons for you to pass this bill. Thank you, Mr. Chairman.

Testimony with regard to House Bill No. **1462**

My name is Leon Mallberg and I am asking for a “Do Pass” on House Bill No. 1462. I live in Dickinson, North Dakota but I manage the family farm in Sargent County, North Dakota. I am a “remote land owner” in the eyes of the Water Board. The property is located in what is known as the Drain # 11 Watershed, the largest watershed of its kind in North Dakota. I am not a paid lobbyist nor do I represent any special interest or industry group. I am just a “run of the mill” citizen.

As you may know, this watershed has been in the spot light for the last seven (7) years. That would not be the case if House Bill No. 1462 had been in effect. Two items in the bill are presented for your consideration:

First, under Section 1, Item one: “The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body has been served on the affected party.” On October 20, 2016, the Sargent County Water Board had their monthly meeting and passed a “Resolution of Necessity” with respect to Drain # 11. This action was not published in advance of the meeting in any agenda. It was passed unanimously. The only people at the meeting were five board members, the board secretary and one county landowner who had no interest in Drain # 11. The statute states that if any affected landowner objects to the board action they must do it via the courts within thirty (30) days. Unchallenged it eliminated any possible vote of approval by the landowners. No affected landowner was notified that there was a hard and fast window of 30 days. At 2:30 PM on the 27th day of the 30 days the minutes were offered showing the resolution. With the 30th day being a Saturday (November 19, 2016) it left 2 days to decide what to do, find an attorney, prepare a legal objection and present the document to the Court. There was not enough time. One would expect that a “**Public Board**” would notify some affected parties of the 30 window. After seven years and spending \$110,000.00 in legal fees to try and get a landowner vote to no avail, we have a \$4,100,000.00 4.5 mile ditch without the approval from those who pay and 40 miles of remaining Drain # 11 ditch with no maintenance funds.

Second, Section 2, Item 2. “The district court may award costs and reasonable attorney’s fees to appellants **when three or more aggrieved individuals** have joined in an appeal from a decision of the water resource board and the court rules in favor of the appellants.” (I question the “**three or more**”.)_This was added to the bill because of the following: (Specific information on this situation will be provided to Committee Members upon request.) A landowner within the Drain # 11 watershed was told that he was trespassing on Water Board land. The landowner denied the actuation and he was then told if he continued to farm the subject land he would have to pay cash rent. The landowner stated that he owned all the land in question. The Water Board then threatened to send the sheriff to evict him from the property. The issue went to District Court and the ruling there was in favor of the Water Board. The landowner appealed it to the North Dakota Supreme Court and it ruled in favor of the landowner stating that the Water Board only had an easement and owned nothing. The total effort cost the landowner over \$28,000.00 in legal fees, time, incidentals and travel.

There is also a similar case from Pembina County where a District Judge saw fit to awarded attorney fees but on appeal to the Supreme Court, the attorney fees were denied because there was no provision for it in the law. (2005 ND 106 – No. 20040299)

Respectfully yours --- Leon L Mallberg

Dear North Dakota Legislator:

December 26, 2022

Sargent County now has 4.5 miles of 90 foot wide ditch costing \$4,100,000.00 where those that pay were excluded. Autocratic actions of Public Boards, at any level, should be questioned and corrected. I refer to the Water Board of Sargent County, ND. This situation has left the affected landowners frustrated and dismayed and questioning the word "Public" in Public Board. A quote from a County Commissioner in the Sargent County Teller on July 10, 2015: *"(County Commissioner) Anderson pointed out that, while the County Commission appoints members to the water Board, it is a self-governing entity and does not answer to the commission." The question is who do they answer to?* Over a substantial period of time, they have not seen fit to allowed landowner to be involved. If you are a remote landowner living outside the County you have little standing. In a memorandum prepared for the Water Board for Forum Communication Outlets on March 14, 2019, it states: *"The District had no legal obligation to take the Project to a vote (of affected landowners), and did not even have any obligation to discuss the Project with the public (taxpayer)." Apparently they feel the law allows them the latitude to say that. Reviewing State law, the Water Boards truly do not answer to anyone.*

The construction in question is called the Drain # 11 Improvement Project, involving the largest watershed of its kind in North Dakota. The area includes land in Sargent, Ransom, and Dickey Counties in ND and at one time Marshall County, SD. For 106 years, the only land to be assessed for its construction / up-keep was Sargent County. The other Counties were not assessed but contributed approximately 40% of the water in the drain. Sargent County carried the whole load for 106 years!

Several requests were made to include all counties in the watershed and provide a vote of the affected landowners *to no avail*. A "Resolution of Necessity" by five (5) unelected board members was all that was needed to exclude all landowner in three counties.

The project has progressed with the following result: Drain # 11 has a total of 44 miles of ditch of which 10.5 miles were to be improved. Once a "Motion to Proceed" was passed, the Water Board found they could only afford 3.5 – 4.5 miles of the proposed 10.5 miles. Presently we now have a new 90 foot wide ditch in the middle of nowhere with a 106 year old, 40 foot wide ditch on both ends at a cost \$4,100,000. Presently there is no benefit or return to anyone in the watershed. Not one additional shovel of dirt will be moved for another 6 – 7 years because of the way it was financed. The board committed all of the maintenance money allowed by law for 7 years to secure the construction bonds leaving no money for maintenance of the remaining 41.5 miles of Drain.

There was a solution that only the landowners could provide but the board would not consider it. However there is a Water Board in Bottineau County that seems to work very well but their first priority and concern is the landowner. As a suggestion, the Legislature should consider changing the law so that all land in a watershed is included and water board maintenance or improvement projects over \$100,000.00 are voted on by the effected landowners to make sure they are involved and agreed. Additional details are available upon request.

Leon L Mallberg, Landowner – Drain # 11 Watershed
941 13th Street West, Dickinson, ND 58601-3538
Phone Line: 701 483 8338 Cell Phone: 701 590 9370
E-mail: llmallberg@ndsupernet.com

**North Dakota
Water Resource
Districts Association**

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

Dear Chairman Patten and Senate Energy and Natural Resources Committee:

Water resource districts have serious concerns about the version of House Bill 1462 that passed the House. I would like you to compare two bills that passed the House. HB 1462 and HB 1391. Both bills are aimed at providing statutory protections for the public in obtaining notice of water resource districts activities. HB 1391 is fair and provides statutory protections to ensure the public has notice of WRD decisions, but HB 1462 is oppressive and unnecessary.

To provide background, HB 1462 would require water resource districts to serve notice under the North Dakota Rules of Civil Procedure under Rule 4 by advertisement on all "aggrieved parties" before the 30-day appeal period set forth in NDCC 61-16.1-54 accrues. NDCC 61-16.1-54 provides a catch-all appeal for a water resource district decision. Because this statute provides a catch-all appeal, HB 1462 would apply to all decisions of a water resource district, even decisions to undertake routine maintenance.

Requiring service under Rule 4 by publication would be a significant burden. No other political subdivisions are required to "serve" notice of its decisions by publication or otherwise, although cities have a duty to publish minutes. NDCC 40-01-09.1. As you are aware, water resource districts are political subdivisions created under NDCC 61-16 and NDCC 16-16.1. As such, water resource districts must comply with open meetings and open records laws. Water boards are not concerned with a statute that would require minutes to be sent to the local paper for publication, or alternatively that would require minutes to be posted on a water resource district's website within a reasonable time frame. In fact, HB 1391, which was referred to a Senate Ag, is a competing bill that would require that a WRD do so within 10 days. The NDWRDA is not opposed to HB 1391.

Currently, under our open meetings and records laws, the notice and agenda of all meetings can be requested by any citizen, which must be provided to them as soon as the notice and agenda are circulated to the board of any political subdivision under NDCC 44-04-20. Those requests will remain effective for one year, but must be renewed annually NDCC 44-04-20(5). Minutes are governed under NDCC 44-04-21, which cannot be withheld from any open records request pending approval. In other words, minutes should be available to the public as soon as they are drafted.

Requiring service by publication under Rule 4 would have unintended consequences. Rule 4 would require the minutes or decision to be published 3 times, and would require the minutes or decision to be mailed to everyone they could aggrieve. I assume that in order for the service to be effective, the publication would have to list every potentially aggrieved party by name, if known. By way of example, if SE Cass WRD decided to maintain the Sheyenne Diversion project, for example, which has two assessment districts, each with over 6,000 parcels, there would have to be 12,000 parcel owners named in the paper, which must be published 3 times, and there would be \$7,200 worth of stamps.

In practice, I have not heard that there is a problem for the public to obtain meeting minutes. I believe that currently, statewide, anyone who requests meeting notices and agendas from their local water board, or a copy of meeting minutes, they would have those documents mailed or emailed by the water board's secretary regularly and shortly after any meeting. We do not have a problem providing statutory safeguards for the public but would like those safeguards to follow existing practice with other political subdivisions and citizen responsibility.

23.0778.02001
Title.

Prepared by the Legislative Council staff for
Representative Schatz
March 1, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1462

Page 1, line 1, replace "section" with "sections 28-34-01 and"

Page 1, line 2, after "a" insert "local governing body and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 28-34-01 of the North Dakota Century Code is amended and reenacted as follows:

28-34-01. Appeals from local governing bodies - Procedures.

This section, to the extent that it is not inconsistent with procedural rules adopted by the North Dakota supreme court, governs any appeal provided by statute from the decision of a local governing body, except those court reviews provided under sections 2-04-11 and 40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board, commission, resource or conservation district, or other political subdivision. Each appeal is governed by the following procedure:

1. The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body has been served on the affected party. A copy of the notice of appeal must be served on the local governing body in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure.
2. The appellee shall prepare and file a single copy of the record on appeal with the court. Within thirty days, or such longer time as the court by order may direct, after the notice of appeal has been filed in the court, and after the deposit by the appellant of the estimated cost of a transcript of the evidence, the local governing body shall prepare and file in the office of the clerk of the court in which the appeal is pending the original or a certified copy of the entire proceedings before the local governing body, or such abstract of the record as may be agreed upon and stipulated by the parties, including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact submitted to the local governing body, and the decision of the local governing body in the proceedings. If the notice of appeal specifies that no exception or objection is made to the local governing body's findings of fact, and that the appeal is concerned only with the local governing body's conclusions based on the facts found by it, the evidence submitted at the hearing before the local governing body must be omitted from the record filed in the court. The court may permit amendments or additions to the record to complete the record.
3. If the court determines on its own motion or if an application for leave to adduce additional evidence is made to the court in which an appeal from a determination from a local governing body is pending, and it is shown to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to adduce such evidence in the hearing or proceeding had before the local governing body, or that

such evidence is material to the issues involved and was rejected or excluded by the local governing body, the court may order that such additional evidence be taken, heard, and considered by the local governing body on such terms and conditions as the court may determine. After considering the additional evidence, the local governing body may amend or modify its decision and shall file with the court a transcript of the additional evidence together with its new or modified decision, if any."

Page 1, after line 7, insert:

"1."

Page 1, line 9, remove "within thirty days after service of notice of an order or"

Page 1, remove line 10

Page 1, line 11, remove "Procedure"

Page 1, after line 18, insert:

"2. The district court may award costs and reasonable attorney's fees to appellants when three or more aggrieved individuals have joined in an appeal from a decision of the water resource board and the court rules in favor of the appellants."

Renumber accordingly

March 1, 2023

Chairman Patten and Senate Energy and Natural Resources Committee:

My name is Michael Wyum. As Vice Chairman of the Sargent County Water Resource Board, I urge a NO vote on HB 1462.

If one assumes that HB 1391 becomes law, its language states: "The minutes of the meeting must be provided to the official newspaper of the county for publication OR posted to the water resource board's website within ten days". This seems to be a reasonable time frame and an affordable method of notification for actions of a Water Resource District.

As proposed in HB 1462, notification would require publication three times in the newspaper of record or service by a process server to all affected parties. Neither of these methods is affordable in money or time required. In our rural communities, the legal newspaper is generally a weekly publication which would require three additional weeks for proper notification.

Many decisions which Water Resource Districts make are quite time sensitive from a public safety standpoint. Remedying washed out culverts, collapsed drainage ditches due to sloughing, or flooded roadways should not be delayed for the above mentioned notification process.

As a side note, I read with dismay the testimony from three Sargent County landowners who have been opposed to a project on Drain # 11 in Sargent County. Sargent County Water Resource District has been legally challenged several times by this group. They have yet to be successful. They have, however, delayed the project several years and cost our local constituents millions of dollars in added project costs, plus the loss of productivity caused by a less than well functioning legal drain. In reading their testimony, I feel that much of what is said is "sour grapes" and that you're not hearing "the rest of the story" which paints a much different picture from what you've read.

I believe that it is poor policy to base legislative change on the basis of a few individuals who do not have the best interests of the general public at the forefront. Therefore, I strongly encourage you to vote NO on HB 1462.

Sincerely, Michael Wyum
9270 139th Ave. SE
Rutland, ND 58067
Ph 701-678-3634

23.0778.02001

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1462

Introduced by

Representatives Schatz, Bellew, Dockter, Hauck, VanWinkle

Senators Luick, Paulson

1 A BILL for an Act to amend and reenact ~~section~~sections 28-34-01 and 61-16.1-54 of the North
2 Dakota Century Code, relating to the procedural requirements governing appeals from a local
3 governing body and water resource board.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 28-34-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **28-34-01. Appeals from local governing bodies - Procedures.**

8 This section, to the extent that it is not inconsistent with procedural rules adopted by the
9 North Dakota supreme court, governs any appeal provided by statute from the decision of a
10 local governing body, except those court reviews provided under sections 2-04-11 and
11 40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board,
12 commission, resource or conservation district, or other political subdivision. Each appeal is
13 governed by the following procedure:

- 14 1. The notice of appeal must be filed with the clerk of the court within thirty days after the
15 decision of the local governing body has been served on the affected party. A copy of
16 the notice of appeal must be served on the local governing body in the manner
17 provided by rule 4 of the North Dakota Rules of Civil Procedure.
- 18 2. The appellee shall prepare and file a single copy of the record on appeal with the
19 court. Within thirty days, or such longer time as the court by order may direct, after the
20 notice of appeal has been filed in the court, and after the deposit by the appellant of
21 the estimated cost of a transcript of the evidence, the local governing body shall
22 prepare and file in the office of the clerk of the court in which the appeal is pending the
23 original or a certified copy of the entire proceedings before the local governing body, or
24 such abstract of the record as may be agreed upon and stipulated by the parties,

1 including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or
2 memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact
3 submitted to the local governing body, and the decision of the local governing body in
4 the proceedings. If the notice of appeal specifies that no exception or objection is
5 made to the local governing body's findings of fact, and that the appeal is concerned
6 only with the local governing body's conclusions based on the facts found by it, the
7 evidence submitted at the hearing before the local governing body must be omitted
8 from the record filed in the court. The court may permit amendments or additions to
9 the record to complete the record.

10 3. If the court determines on its own motion or if an application for leave to adduce
11 additional evidence is made to the court in which an appeal from a determination from
12 a local governing body is pending, and it is shown to the satisfaction of the court that
13 such additional evidence is material and that there are reasonable grounds for the
14 failure to adduce such evidence in the hearing or proceeding had before the local
15 governing body, or that such evidence is material to the issues involved and was
16 rejected or excluded by the local governing body, the court may order that such
17 additional evidence be taken, heard, and considered by the local governing body on
18 such terms and conditions as the court may determine. After considering the additional
19 evidence, the local governing body may amend or modify its decision and shall file
20 with the court a transcript of the additional evidence together with its new or modified
21 decision, if any.

22 **SECTION 2. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
25 **Jurisdiction.**

26 1. An appeal may be taken to the district court from any order or decision of the water
27 resource board by any person aggrieved ~~within thirty days after service of notice of an~~
28 ~~order or decision by publication in the manner provided by rule 4 of the North Dakota~~
29 ~~Rules of Civil Procedure.~~ An appellant shall file an undertaking in the sum of two
30 hundred dollars with such sureties as may be approved by the clerk of the district court
31 to which the appeal is taken. The undertaking must be conditioned that the appellant

1 will prosecute the appeal without delay and will pay all costs adjudged against the
2 appellant in the district court. The undertaking must be in favor of the water resource
3 board as obligee, and may be sued on in the name of the obligee. The appeal must be
4 taken to the district court of the county in which the land claimed to be affected
5 adversely by the order or decision appealed from is located and is governed by the
6 procedure provided in section 28-34-01.

7 2. The district court may award costs and reasonable attorney's fees to appellants when
8 three or more aggrieved individuals have joined in an appeal from a decision of the
9 water resource board and the court rules in favor of the appellants.