

Scott Estabrook
(Public Testimony)
Document 16

I am a 5th generation farmer in Sanborn County South Dakota. I would like my children to become 6th generation farmers. The reason I bring this up is to show that no one has a longer track record or greater interest in taking care of the land resources than me and farmers like me.

As a farmer my first job is to grow food, and energy. My average sized farm in Sanborn County raises enough food on a calorie basis to feed 46,000 people¹ Millions of people are malnourished or starving.² I can make a significant change in that number by my actions as a farmer by providing more food. According to research done by Iowa state university energy raised here at home reduces fuel costs \$0.29 to \$0.40 I can also have a a great impact on this by increasing yields. ³

Eastern South Dakota Farm land is not owned by the government. It passed from government ownership to private individuals with the homestead act of 1862.⁴ This was done in part to attract settlers to the plains of the United States which would in turn increase the citizenship, economic wellbeing, and ultimately increase revenue to the government in the form of taxes. Homesteaders like my great great grandfather Louis Estabrook settled most of eastern South Dakota in the 1880s. The Homestead Act had just three requirements. 1. File for a Claim. 2. Improve the Land 3. File for a deed. ⁵

Except for paper work the only requirement of the Homestead Act was part 2 improve the land. The improvement of the land for the most part consisted of drainage and planting crops. ⁶

Since the 1880s extensive drainage projects have been planned and carried out by individuals, counties, and the federal government. In Sanborn County extensive, detailed, and highly accurate maps showing a drainage network that covers my part of the county and I assume the other parts as well date back to 1917⁷ and before. Tiling projects and agreements date back to 1911 on my own farm. ⁸

In all cases the ownership of land can be traced back to the original homesteaders or individuals who purchased land from them. In most cases the private individuals who purchased this land did so with the hopes of making a profit from farming in and in all cases did so with the expectations that they would be allowed to do so as they had been in the past.

Common Law or Case Law or Precedent is a system which states that it is unfair to treat similar facts differently on different occasions. It is a system that our society relies upon to ensure that an individual or a class of citizens is treated fairly. To impose a set of regulations that is so onerous that it will significantly slow or in many cases stop drainage that has been in place for years flies in the face of Common Law. It tells a private individual that used their savings and undertook significant debt in the fully reasonable expectations of being able to make a profit by producing food and energy with that land that they can no longer do so. It protects the interests of one group of citizens, for example those interested in expanding migratory bird populations. And it places the entire burden of protecting those interests on another group of citizens, the private land owners and farmers.

The state in taking the position of punishing one group of citizens to protect the interests of another group puts itself in a position of liability.⁹

South Dakota drainage law has always been based upon the system of dominance otherwise known as the law of natural drainage. Dominance is the principle that states owners of dominant tenements have legal rights to have water drain off their lands. Owners of servient tenements have the duty of not obstructing the natural flow.

Common or Case law of South Dakota recognizes situations in which one can drain onto their neighbor.^{10 11} It also recognizes cases where they cannot.¹²¹³ Recognizing these different situations is a job well suited to Common law as there are differences in every case that statutory law cannot anticipate. If statutory law attempts to anticipate all these differences it will error on the side of decay of our current systems and stagnation in any progress. This will punish all farmers

On my farm I would estimate that less than 1/2 of one percent of surface water is held back in depressions. More than 99 1/2 % runs off through existing water ways. Maintenance of this system requires yearly touch ups. This is an operation completed with dirt moving equipment in the fall of the year in the very brief window between harvest completion and the ground becoming frozen. I will typically spend 2 or 3 hours per field checking the ditches, removing ruts or silt, usually no more than 2 to 3 inches for a short space. A system that will require permits for this process will be a great burden and will serve no useful purpose.

I would like the opportunity to use new technology in drainage systems such as tiling and drainage water management systems. On my farm where the surface water already drains these systems will result in lower peak flow, lower overall water quantity drained, higher yields, less need for maintenance, cleaner water, and less erosion. I would ask that you as a panel do not recommend legislation that would block my ability to carry out a process with so many benefits.

I apologize for the very rough form of this document, I did not have sufficient time to elaborate further, touch on other important topics, or properly edit. Thank you for taking the time to consider my input. Please contact me at 605-770-8717 or at scottestabrook@gmail.com with any questions. Scott Estabrook

¹ <http://fatknowledge.blogspot.com/2008/11/how-many-people-can-earth-support.html> (1 bushel of corn can feed a person for 52 days at 2400 calories per day 2600 acre farm x 120 bushels per acre x 52 days / 365 days per year

² <http://www.actionagainsthunger.org/impact/nutrition?gclid=CPfm--yu3rYCFaNhMgodERcAjQ>

³ <http://www.card.iastate.edu/publications/DBS/PDFFiles/08wp467.pdf>

⁴ http://en.wikipedia.org/wiki/Homestead_Acts

⁵ http://en.wikipedia.org/wiki/Homestead_Acts

⁶ http://en.wikipedia.org/wiki/Land_improvement (agricultural land improvement)

⁷ Sanborn County Drainage map DD#27 Jan, 24 1917

⁸ Christopher, Benson, McIntyre agreement 1911

⁹ Lucas v. South Carolina Coastal Council 1.

505 U.S. 1003 (1992).

¹⁰ Thompson vs. Andrews 165 N.W. 9 (S.D. 1917).

¹¹ JOHNSON V. METROPOLITAN LIFE INSURANCE CO. 22 N.W.2d

¹² RAE V. KUHNs

¹³ LAFLEUR V. KOLDA