



First Session - Thirty-Seventh Legislature

of the

Legislative Assembly of Manitoba

Standing Committee

on

Public Utilities

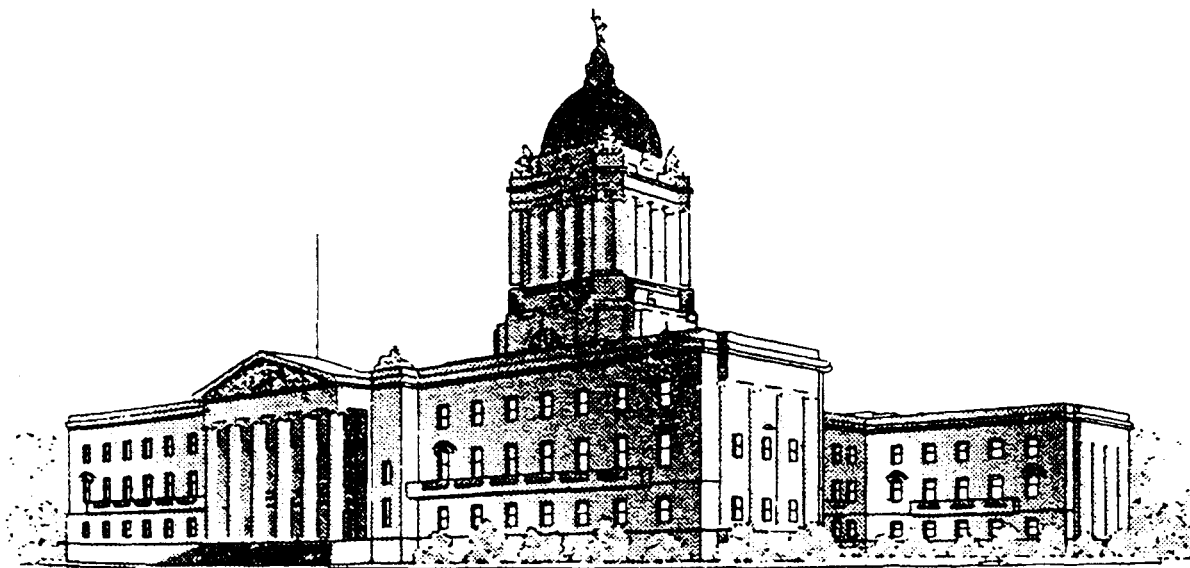
and

Natural Resources

Chairperson

Ms. Linda Asper

Constituency of Riel



Vol. L No. 6 - 7 p.m., Monday, July 17, 2000

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PUBLIC UTILITIES AND NATURAL RESOURCES

Monday, July 17, 2000

TIME – 7 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Linda Asper (Riel)

VICE-CHAIRPERSON – Mr. Harry Schellenberg (Rossmere)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Lathlin

Ms. Asper, Ms. Cerilli, Messrs. Cummings, Dewar, Enns, Gilleshammer, Nevakshonoff, Penner (Emerson), Schellenberg, Struthers

WITNESSES:

Mr. Edward Hiebert, Private Citizen

Mr. Ralph Gowan, Private Citizen

Mr. Rae Park, Private Citizen

Mr. Sergio Fanzago, Private Citizen

Mr. Lawrence Dyck, Keystone Agricultural Producers

Mr. Jake Voth, Private Citizen

Mr. Edwin Peters, Orthez Channel Committee

Mr. David Oster, Reeve, Rural Municipality of West St. Paul

Mr. Michael Waldron, Private Citizen

MATTERS UNDER DISCUSSION:

Bill 15–The Water Rights Amendment Act

Madam Chairperson: Good evening. Will the Standing Committee on Public Utilities and Natural Resources please come to order. This evening the Committee will be considering the following bill, Bill 15, The Water Rights Amendment Act; Loi modifiant la Loi sur les droits d'utilisation de l'eau.

We do have presenters who have registered to make public presentations on Bill 15, The Water Rights Amendment Act; Loi modifiant la Loi sur les droits d'utilisation de l'eau.

It is the custom to hear public presentations before the consideration of the Bill. Is it the will of the Committee to hear public presentations on Bill 15 first? *[Agreed]*

I will then read the names of the persons who have registered to make presentations this evening. They are Edward Hiebert, Ralph Gowan, C. Rae Park, Sergio Fanzago, Michael Waldron, Lawrence Dyck, Jake Voth, Edwin Peters, Henri Marion, David Oster.

Those are the persons registered to speak this evening. If there is anyone else in the audience that would like to register or has not yet registered and would like to make a presentation, would you please register at the back of the room. Just a reminder that 20 copies of your presentation are required. If you need assistance with photocopying, please see the Clerk of the Committee.

I have been informed that one or more of the presenters are from out of town. Did the Committee wish to grant its consent for out-of-town presenters to be heard first? *[Agreed]*

How does the Committee propose to deal with presenters who are not in attendance today but have their names called? Shall these names be dropped to the bottom of the list? Shall the names be dropped from the list after being called twice? So, on the first question, shall these

names be dropped to the bottom of the list?
[Agreed]

Shall the names be dropped from the list after being called twice? [Agreed]

Before we proceed with the presentations, is it the will of the Committee to set time limits on presentations?

Mr. Stan Struthers (Dauphin-Roblin): Madam Chairperson, I think the decisions we have made so far here reflect the tradition that we have established in the committee work in the Legislature. I think, in keeping with the traditions that we have set in the past, I would suggest and hopefully we can get agreement around the table, given the number of presentations we will hear and considering the amount of time it took for two presenters last time we met, I would suggest we allow 10 minutes for a presentation followed by 5 minutes of questioning. Can I put that forward and see if there is agreement from committee members?

Madam Chairperson: Is it agreed?

Mr. Jack Penner (Emerson): Well, five minutes is a very short period of time for some of the presenters to be questioned by the Committee, and I would suggest, if we are going to put time limits on, that we should at least give as much time for questions as we will for the presentation. In other words, 10 minutes and 10 minutes.

Mr. Struthers: I think that is agreeable.

Madam Chairperson: Is it agreed to 10 minutes for the presentation and 10 minutes for questions? [Agreed].

As a courtesy, then to persons waiting to make a presentation, did the Committee wish to indicate how late it is wanting to sit this evening? I will repeat again. Is it the wish of the Committee to indicate how late it wishes to sit this evening? Nothing coming, no limit then.

I will now call Mr. Edward Hiebert to come forward. Do you have written copies of your brief for distribution to committee members, Mr. Hiebert?

Mr. Edward Hiebert (Private Citizen): No, my presentation will be verbal.

Madam Chairperson: Thank you. Please proceed with your presentation.

Mr. Hiebert: First of all, I would like to express a thank you. I have been here to these proceedings before during the previous administration, and with the various civil servants that I have made contact with, I certainly appreciated the significant improvement in getting straightforward answers. It has been a very healthy improvement. I want to express my thanks to the Government.

Secondly, as far as the presentation itself, this is the Conservation Department, and I think it is important that we also try and save some trees, so, for that reason alone, I do not think we should be having so many copies. I was also told, during one of the other proceedings, it also helps, I think, in the listening skills if you do not have something in front of you, and if you miss something in the notes, I would be more than happy to provide answers afterwards. As well, I understand you have transcripts of this, so I do not think the aspect of having something at hand should be any deficiency.

First of all, I think, I am no stranger to most of you—and at the same time, I am not here on behalf of some of the political hats I wear. I am a farmer. I have talked with a number of other farmers who are very concerned about this. But I will stress that, at this point in time, I am basically speaking on my own behalf.

So why are we here? First of all, I will admit as a farmer, and recognizing it for the public good, that there are problems out there in drainage on the whole aspect of water. But, having said that, I also recognize that there has been a Hildebrandt craze which has gone beyond the shadow of a doubt to prove that the Government does not have jurisdiction. I would also underline the words that were read to me this morning, quoting Conrad Santos, where he said something to the effect, his words, and I think it speaks very well of what this legislation is about. It is a knee-jerk reaction. I do not think this is a significant way or an appropriate way of dealing with it. I will bring forward a number of

concerns, but I will conclude with I think there is also a silver lining in this legislation, and that will be my last point.

Generally speaking, I understand, historically, this government has provided, in a news release, a number of key pieces of information. I am not going to go through the whole news release, but I will just highlight four words: One is it was promised by the Minister we would have a broad-based public consultation. The other, it was asserted there was a reinstatement of jurisdiction. The third, they would release a discussion paper, and the fourth, this was to harmonize relations. My understanding is that none of that has been accomplished, and certainly this legislation is not going to harmonize relations. I think, if anything, it is going to create many problems at the rural level.

* (19:10)

I would also say that, before I receive any crocodile tears in a sense as to how inappropriate this legislation is, I would ask why the royal opposition has not gone ahead and helped draw the concerns of this legislation to the public. They certainly have every opportunity of having done so. So, in a certain sense, I am very surprised at the total lack of silence or actually all of the silence with regard to this. It is as if everyone here really wants to just simply ram it through except for maybe perhaps pointing some fingers. Perhaps someone afterwards could shed a little bit more light on that fact, because at this point I simply raise the question rhetorically.

As to the Act itself, the specific changes, if we go through the definitions, for example, the word "construct" clearly says this is in relationship to works and waterworks: "includes alter, reconstruct, or improve." And, in case anyone misses it, the word "maintain" is defined even further, when it says: "in relation to works, or water control works, includes keep in existence." Mr. Lathlin, as one person who comes from an area where I think you have a number of waterworks, I would suggest that many of those drainage ditches in conjunction with the ones that were built, I believe, by the previous administration—Harry Enns may remember when he did that on behalf of the public. But perhaps

many of those drainage ditches that are associated with those lift stations that were created there will probably also be in contravention of this act. I think we are going to have these problems throughout the province. There are going to be many legitimate types of drainage ditches that will simply be in contravention of this act, and that is inappropriate.

On the other hand, as this was going forward, I certainly heard Steve Topping talk about, in a very positive tone, as to how he was going to go ahead and do this in a sense of being positive, protecting the public good in the interest of all people. I say this in connection with responsibilities that he already had along the Assiniboine River, in the flood of the century. I have in my own notes that I took at that time, on the 29th of April at two o'clock in the afternoon. I gave him a call because the Assiniboine River was dropping like a lead balloon. In fact, I understand some civil servants were telling him to back off a little bit. You are putting it down too far because the fish will not even be able to survive, there is not enough water. That process ended up washing out some culverts along our area. A very unnatural set of circumstances that the water at flood stages is going to drop so fast that it starts washing out ditches. It just never happens. Now here is a guy who is controlling it on behalf of the public good.

Then, on the 12th of May, 7:30 in the morning, I heard CFAM make an announcement that by noon Headingley and St. Paul would be up by 4 feet and between 5.6 at St. Paul. This was "to minimize the damage on Lake Manitoba." I think this needs to be reinterpreted to what it really meant, that those people who were really silly enough to live outside of Winnipeg and live in flood zone areas, they would just have to be the people who have to be responsible for the victims of their own mischief for having built in flood zone areas. Again, on the 5th of May, I gave him another call. These calls have never been answered. What part of the public responsibility is there for a person who says he wants to do this on behalf of the public good, they will make sure that they do this on behalf, and in a proper way, and yet when there are legitimate calls being placed to his office already, as far back then, he did not have the courtesy to call back?

If we then go and deal with the general maintenance, this province already has significant control over public maintenance and drainage within the province. I give you the account of, for example, Sturgeon Creek, which is part of the watershed where I come from. I bring to your attention two problems that this department has not even dealt with even now, never mind an additional power grab. Sturgeon Creek, in all of the areas, is supposed to be a drain which is dry except when there is water flowing because of excessive amounts of rain, or in the spring flooding, et cetera. Yet that ditch has been so poorly undermaintained that there were beaver dams built in parts of it. The only way they got there was because there was so much water in the first place that had not been maintained properly. It should have been a dry ditch.

Secondly, if you look at how properly Sturgeon Creek has been done, these last few rains, especially the bigger one, made a very good case in point showing how the kind of safety and protection all of Manitoba is given through them. Basically what we had is a very significant slug of water out in the rural areas coming towards Winnipeg. It was blocked off at Saskatchewan Avenue, bringing the level down to a very low level. Ness Avenue did the same thing, so by the time it came to the Grant's Mill it was just rolling along gently. Meanwhile those of us upstream were under water unnecessarily for a number of days simply because someone's lawn in Winnipeg had to be protected.

I think that is part of what we are talking about in this legislation here. This legislation, I think, has very little to do with the larger interest of what we are talking about as far as the proper aspect of control of drainage that has to be done throughout the province.

I will give you one or two other examples and then I will move on to the last part, I guess, because my time is running out. A similar example is the rural development, under their promotion coming forward with a paint-by-letters or paint-by-numbers as to the kind of support they are giving rural municipalities as to how they are supposed to have their planning act. In one of the situations that they brought forward was, and I quote—this is within St. François

Xavier, which they got from the rural development: Intensive livestock feedlots should not be located in ground water pollution hazard areas. Council may require the applicant to submit detailed information—

Madam Chairperson: One minute, sir.

Mr. Hiebert: Pardon me.

Madam Chairperson: One minute, sir.

Mr. Hiebert: Okay. Then I will jump to the silver lining.

My sense is that this legislation is very inappropriate legislation. It is a power grab. But, on the other hand, I think, it is going to make it easy for myself, the Hildebrandts, and a few others to help radicalize farmers and to take the Government to task, and take it to court, because this legislation is dealing with flood waters, it is dealing with other casual waters, et cetera. Those are waters and rights that people have had over the centuries through the common law, and by moving into this area, although I do not wish this on any farmer, I think it is an undue task for any farmer to have to take the Government to task on this one, but this legislation is going to fail. It is going to fail because too many of you did not have the opportunity and the guts to stand up to our leadership.

This is rotten legislation. I encourage everyone in this House to work together in some common way, and I am not pointing fingers at each other.

Madam Chairperson: Thank you, sir. Your time is up.

Mr. Hiebert: Thank you.

Madam Chairperson: The floor is open for questions. Are there any questions? Mr. Penner, Emerson.

Mr. Jack Penner: Thank you very much for your presentation, Mr. Hiebert. I think there are a number of us in the opposition benches that agree with your last statement. We think simply that this is unworkable legislation, and far too controlled and centralized in decision making.

We are going to be bringing forward some amendments to the legislation, and we had hoped that some of the presenters here might as well propose some amendments for consideration of government. So we have taken a very serious look at this legislation, and we will be putting forward some amendments dealing with some of the sections that you have raised today.

Mr. Hiebert: Would you like me to give some suggestions?

Madam Chairperson: Pardon, through the Chair, please.

Mr. Hiebert: Pardon me.

Madam Chairperson: It is necessary to recognize each speaker for purposes of the record.

Mr. Hiebert: Could you be more specific? Was there a question or would you wish me to give you some examples of some of the improvements that I think I see?

Mr. Jack Penner: Basically, all I was trying to do was to inform you that we would be bringing forward some amendments as you had indicated that needed some significant scrutiny, and I think we have given it some significant scrutiny. We will be when time allows bring forward some amendments to this bill.

Madam Chairperson: Further questions?

Mr. Glen Cummings (Ste. Rose): Is it your view that the municipalities would be better equipped to deal with the issues raised in terms of water management?

Mr. Hiebert: Yes, certainly. The municipalities do have jurisdiction, and at the local level it makes much more sense. If I could add to it, I think there are also two other models which could be much more instructive than this current legislation, the Oak Hammock Marsh, for example. I come forward with a point recognizing, as I said in the earlier part of the statement, that there are many properties that should never have been drained. But this particular legislation is going to penalize those farmers who in good faith have simply done what we have as a policy. So we need to change

the general policies as to how to deal with this. I think there are two excellent examples as to how that can be dealt with.

What has happened with the Oak Hammock Marsh is one example. I am not talking about the Ducks Unlimited movement there. I am talking about the larger issue that has been done over there, and that is, for example, the federal-provincial co-operation that has gone forward. At first farmers were, I understand, quite against the development of Oak Hammock Marsh. However, since then, through a voluntary program, farmers can be part of the baiting of alternative lands for the fowl life. It is a very positive measure. It is complementary to the situation instead of just simply an expropriation of land. It is a kind of compensation.

* (19:20)

The other part that has happened is, because of the way it has been done, there have been very positive spinoffs. I understand some farmers will be able to rent their land off for hunting purposes and get somewhere in the equivalent of the amount of taxes they pay. So that has been a positive benefit.

There is also one further, more recent, I think, very positive way with which this should be dealt. That, to the extent that I understand it, is with regard to the federal legislation with the Endangered Species Act. Both of them are very similar. We need to protect endangered species. We also need to protect our land resource base and not just for agriculture, in the widest sense of the word. What I find positive in that one is that particular legislation, to the extent that I understand it in what is made public, is that it is done also on a voluntary basis, to some extent. I mean there has to be some teeth, but I am talking about a voluntary basis as far as farmers moving their land into some of the protected zones or extra areas. There is compensation within it. It certainly does not penalize the farmers who were the last ones to, in a sense, improve their local areas. It is done in harmony with agriculture. It is done in harmony with environment. I think those are two very positive aspects, as ways in which it can be done in a larger, decent, comprehensive plan for sustainable development.

I go back to this particular act. I do not think this act is salvageable. I think you should start over and go for a larger portion of it. So I thank you for the question, and I hope I have answered it more than enough.

Mr. Harry Enns (Lakeside): Mr. Hiebert, I appreciate your appearance before this committee. It allows me to remind all of us that Manitoba is the only government in Canada that offers their citizens an opportunity to make the kind of presentations, comments that we just heard Mr. Hiebert make prior to any legislation coming into law. Now, Mr. Hiebert, you are well aware that has sometimes led to some abuses. For instance, if a Conservative government was wanting to pass a particular piece of legislation, they made sure that their friends and supporters would be appearing in front of the Committee to support the government of the day in that legislation.

So my question to you, Mr. Hiebert, is: Can you not confirm that you, sir, have been a long-time supporter of the New Democrats, in fact, that you have run against me as a candidate on not one but I believe three occasions, and you are calling this piece of New Democratic Party Government legislation bad, and should not be passed? Am I hearing you right, Mr. Hiebert?

Mr. Hiebert: Do you find a difficulty for someone who is within the broader society working towards the public good, regardless of what party they have worked together in? Do you think there is any difficulty in that?

Mr. Enns: Your integrity and your honesty for coming forward and demonstrating that.

Madam Chairperson: Mr. Hiebert, questions? Seeing none, thank you, Mr. Hiebert.

I call upon Mr. Gowan. Mr. Gowan, do you have copies?

Mr. Ralph Gowan (Private Citizen): Yes, I do.

Madam Chairperson: Thank you. Please begin your presentation.

Mr. Gowan: Madam Chairperson, Honourable Oscar Lathlin, committee members. As a con-

cerned Manitoban, actively working in this province with potential, I wish to respond to Bill 15 and the proposed amendments to The Water Rights Act.

It is my opinion that land use must favour crop production and development. Current value is placed on farmland topsoil, around the world varying from \$5,000 per hectare in Manitoba to \$100,000 per hectare in Japan. One thing is certain: topsoil is a valuable resource. Manitoba has only a limited amount of stone-free workable topsoil. This land should be developed to provide a gross national product to support future generations. I believe a good balance can be obtained between natural resources and agricultural production, with each department benefiting from working together.

Keeping this in mind, I will clarify my position. The province can easily be divided into three drainage areas: the Agassiz lake bottom, wet sand beaches and the western Manitoba area. I will go strictly to area No. 1, the Agassiz lake bottom. This was wet swampland drained by our forefathers. Today, we benefit from their far-sightedness. The world-renowned wheat land made farmable by them still provides this generation with a good standard of living. Major drainage structures have been built to control the water from the high beach areas. These drainage channels have not been updated or maintained to accommodate present day farming. Farming this area requires a 24-hour field removable of excess water or substantial financial losses occur. Good surface drainage may be adequate for western crops; wheat, oats, barley, flax, canola. However, this standard is not enough to support the specialty crops such as corn, beans, lentils, potatoes, or other vegetables. In the future, this area will be increasingly used for specialty crops, for example, the development of gene designer crops with extremely high values requiring perfect growing conditions. Lack of drainage is a major problem in this area.

Number 2, the wet sands area. There are 1.5 million acres of wet sands in Manitoba. These areas are excellent for the production of specialty crops particularly the row crops such as corn, beans, potatoes, sunflowers and soya beans. In the past, this area has not been developed to the same level of farming as the

heavy clay. Surface drainage is not adequate to drain this area. A typical field may at one time be both too wet and too dry. This leads to crop failure and huge crop insurance payouts. This area does, however, have the greatest potential of all land types. The problems of farming these soils can be minimized by using proven long-term farming techniques, not necessarily, always new technology. Inadequate, improper aeration and drainage, as well as ditch depth, are among the difficulties encountered in this area. Although these sands are the most valuable resource in farming, and have the ability to successfully grow row crops, and vegetables, and gene designer crops, drainage and production techniques must be carefully planned and implemented. It should be noted that irrigation and drainage go hand in hand. One is not viable without the other on wet sands.

Area 3, the western Manitoba area. In the past, farming practices were either to work around low-lying areas or to use as pasture or hay land. Development has been seriously hindered. Farming around low-lying areas is no longer acceptable. The increase in cost by overlapping the spray, seed, and work can no longer be supported. Low-lying areas are known to cause as much as a 20% overlap. This land must become productive in the future. The development of this area should be increased to accommodate the higher value specialty crops. The soil is of excellent quality. Farming this rich topsoil resource is essential to Manitoba's economy. In the future, both surface and subsurface drainage will be needed due to the rolling terrain and internal water movement. Also the salts must be controlled. It is unthinkable to farm thin topsoil on the high ground, and destroy rich bottomland by neglecting it. We cannot leave this legacy to our children and grandchildren.

Observations: Two things that I have worked with very closely in Manitoba. One is ever increasing soil pH. Excess water held on or in farmland is free moving. It is not held. It cannot be held in one area only. A depression totally surrounded by higher land uses the high land to disperse the water by wick action resulting in an ever-increasing rise in pH and soil deterioration. Level land with excess internal water uses the surface to dispense some

moisture. This movement acts much as a coolant in a rad, keeping the root zone colder than desired with a devastating result in crops. Most of the areas I have dealt with have a calcium carbonate buildup; pH of the soil is 8.1/8.2. The pH of seawater is 8.3. It is essential to control this problem.

* (19:30)

Denitrification: soils lacking adequate oxygen quickly change to an anaerobic state and can result in 20% to 40% loss in nitrogen. This can occur in a very short period of time, time periods as short as 48 hours.

Canada has a proven leadership in controlling these problems, having completed drainage aeration projects in Pakistan, Egypt and the recent \$100-million project in India. To eliminate or alleviate some of the problems listed above, here are a few suggestions. In area 1 the channels across it must receive the flow from the higher areas. It must also have a municipal drainage ditch system to get the excess water from the field to the channel. Some parts of this area may require deeper ditches as subsurface drainage will be needed for the production of specialty crops.

Area 2 must utilize zero tillage, cover crops to stop soil erosion on higher areas, but the increased moisture on the higher areas will also increase the water at the base of the knoll or slope. This rich bottom land has inadequate internal drainage. A four- or five-inch rain can cause severe damage to crops. Heavy rains in June are frequently recorded in Manitoba and are troublesome in this area. Subsurface drainage and aeration is the proper way to control this water table as well as the salt buildup. Ditches must be deep enough to accept the tile outlets in the wet sands area. Without subsurface drainage and aeration, only a limited area can be developed for specialty crops.

Area 3, from my observations, is in serious need of municipal ditches. It is essential for the long-term sustainability of farming.

Rights and responsibilities: All farmland must have access to adequate drainage and aeration outlets. Farm property drainage and aeration is the responsibility of the farmer. Municipal

drains must move the water to the provincial drainage system. These should be locally developed and maintained, and these should be cost shared by the landowners, the Province and the federal government.

Madam Chairperson: One minute, sir.

Mr. Gowan: I do not agree with the premise that downstream landowners have rights over upstream landowners. The lower landowner must help move the water past his area. Failing to do this, he must accept part or all of the upstream damage from inadequate drainage downstream from his land. All farmland must carry with it equal opportunity to utilize best-known farm practices. I will go to the closing, list of benefit of drainage. I will draw three points: Drainage, 34% reduction in surface runoffs; 6- to 12-degree increase in soil temperatures; and lastly an increased economic activity of these developments substantially benefits the non-farming community.

In closing, I ask this committee to ensure that all farmland carry the right of drainage and aeration. As the benefits greatly outweigh the initial costs and concerns. I ask you not to remove land drainage from The Municipal Act, as this is a fundamental principle of grassroots democracy. I forewarn that anything less will create instability and stifle investments.

Madam Chairperson: Thank you, sir, for your presentation. The floor is open for questions. Are there any questions?

Mr. Cummings: I am interested in your point about the downstream landowner's rights. Does government have a role to play in protecting the downstream landowner in your opinion?

Mr. Gowan: I believe that a municipal drainage system would take care of that problem.

Mr. Cummings: Then you are saying that you believe there is no role for provincial regulation in this area?

Mr. Gowan: The role of the municipality should be to move the water from across more than one farm to the provincial drainage system. No.

Mr. Cummings: I am not familiar with this approach, considering that the province tradi-

tionally had, in some parts of the province, some of the more valuable land that you referenced. There is some significant amount of infrastructure that has been put in over the years at significant cost to public purse. There are other parts of the province where there is less of that, but it has indeed led to certain court cases.

I was interested if you feel there is a role for—I am rephrasing the question. The bottom line is still whether or not you feel there is a role for the provincial government to play in either regulation or provision of infrastructure.

Mr. Gowan: Assisting the municipalities in the funding of municipal ditches. Yes.

Mr. Cummings: I certainly want to understand your view. I am not trying to be obstinate. But we do have examples, I believe, of where municipalities are being sued by other municipalities or are certainly on the verge of being sued by the municipalities because of damage that they perceive occurring because the municipality above them has not controlled the drainage.

So I am asking, I guess, from the other side of the question, then: If the municipalities should accept responsibility for this, does that mean the courts would end up, in your view, being the arbiter of whether or not there is damage that occurs?

Mr. Gowan: I believe courts will end up being the arbitrator of damages.

Madam Chairperson: Further questions? Seeing none, thank you very much. The next presenter is C. Rae Park. Mr. Park, welcome. Do you have copies you wish to circulate?

Mr. Rae Park (Private Citizen): No, I do not.

Madam Chairperson: Please begin your presentation.

Mr. Park: Good evening, ladies and gentlemen. I would just like to tell you how disappointed I am at how the system in Manitoba is working right now. I have been blessed with two sons. They have both completed a degree in agronomy at the University of Manitoba. I am amazed that

neither one of them has studied in regard to surface or subsurface drainage. There seems to be no thought process in that regard. What I am getting at, you have publications as to one of the limiting factors of growing a crop in Manitoba. In the publication that used to be presented or put out, it would show that excess water is one of the main reasons why one has trouble growing a crop in Manitoba.

The corn growers with, I believe it was, PFRA back in '95 did some tile demonstration plots out in southern Manitoba, and some of that water that is collected is potable at different times of the year that comes from these outlets. Another great benefit of tile drainage is that there can be 15% to 30% less runoff come off tiled ground. I would think that people living around and near Winnipeg would be greatly interested in having 15% to 30% less water reach their community. These studies have been done through your sister province Ontario and through midwestern states, mentioning Illinois, Iowa, Indiana, Ohio. So it is just mind-boggling to me why there is not a thrust to get some controlled drainage done within this province. Ontario has it. Ontario has the Act to drain. It is amazing to me how you draw a line there, and, all of a sudden, you do not know what exists in Ontario, or if you do not like the Ontarians, why not study a little bit of what your American neighbours are doing?

* (19:40)

There is probably 5 percent of Manitoba that is considered high-quality land. So I would advocate let us make it very productive, and I am not against the ducks or the deer, the geese. I just invite you, the hunter, the fisherman, to drive a little bit further or fly a little bit further on quality agricultural row crop farmland, I believe, that needs to be drained. That is about all I have to say.

Mr. Chairperson: Thank you, Mr. Park. Questions?

Mr. Cummings: Just following up on your last statement then, would you agree with what seemed to be implied earlier, that the right to drain should go with the property?

Mr. Park: Yes, I believe, that we need the right to drain. I am only speaking about productive

farmland. I am not talking about marshes. Can I make another statement?

Mr. Chairperson: Proceed.

Mr. Park: In our *Valley Leader*, the latest publication, I would invite everyone to read this or get it photocopied, and read this article. It shows in here that, when Carman was being developed, No. 3 Highway went around, way around to get to Carman, and the reason being is that the Boyne River never drained. It was a marsh, and in this article it reads that it is some of the most productive farmland now in Manitoba, because the Boyne is now allowed to drain. That happened in 1900. Here we are 100 years later, and on some of it, I do not think we have come too far. There needs to be controlled drainage.

Mr. Chairperson: Further questions?

Mr. Cummings: Controlled drainage means different things to different people. I am sorry, just to pick up on what your closing comment there was, could you give us some idea of where you think that control should lie, or was that what you were referring to?

Mr. Park: I think it should be controlled in that, if a lot of the land was allowed to be tiled, the land acts as a sponge. There are some cases out our way where 25 acres of land which is not a lot of land, but, after a one-inch rain, it takes 5.5 days to drain that one inch of water off those 25 acres, because for every acre that the good Lord puts down, it is about 25 000 gallons of water on an acre to make up one inch of rain. So on this 25 acres, it takes 5.5 days for it to drain.

Now, it comes out of a pipe that is 7.25 inches in diameter and only runs five-eighths full, because we are not pumping it. It is seeping in there, just like the tile drainage that you have around your homes, and you do that to keep your basements dry. That is all that we are wanting to do. So I think it could benefit the farmer, plus the people in the cities, because I would think you would want 15% to 30% less water reaching your cities, like with the floods. I cannot understand how your engineers have not grasped that point, and I am not an educated man, as you can tell by the way I am conducting myself.

Mr. Cummings: I think you are giving us sound advice based on your experience. My question about controlled drainage, I meant more the nature of control that is implied in legislation. Should there be a licensing body that ultimately exercises some control?

Mr. Park: We were brought up that this was a democratic society. That was my understanding going through grade school and some high school. So I would think that some of the control should be municipally to have representation by a farmer or landowner to speak to his or her councillor, then that councillor go to a larger body, whether it be water resources or some segment of the government, if it was going to be representation by the people. That is how I interpreted it, being brought up in a democratic society. Does that answer your question?

Mr. Cummings: Yes, it does.

Madam Chairperson: Questions? Seeing none, thank you very much.

The next presenter, Sergio Fanzago. Yes, sir, do you have copies that you are circulating? Thank you. Please make your presentation.

Mr. Sergio Fanzago (Private Citizen): I wanted to add to what the first two speakers said. First, I want to introduce myself. I was farming overseas all my life in the Po Valley, under sea level. I am familiar with their reclamation district. I agree 100 percent that the land has to be drained in a different way, surface drainage, mainly tile drainage. But my feeling is from the government point of view, different levels of government, is that we have an over-imposing point, and putting obstacles, mainly creating obstacles, artificially or politically, because we are looking at the mountain, and we are not looking at the valley, where the water has to be at the proper place.

So there should be different jurisdictions working together and mainly if it is necessary a engineering technician. On the north side, I believe close to The Pas, many years ago, you had a project which is almost dying because of a lack of maintenance, and that part of the farming area is going to be back to a marsh.

So this is happening in this area, which is the forefather, as somebody else previously said,

bona fide. The taking care about the drainage as the first area, you have a rich land, which is the black clay here. Instead we have the yellow clay in the Po Valley, very fertile, together with other types of soil. You need a pumping station to take water to the main canal that has to be maintained, second, but first it has to be built properly. I do not have anything else to say.

Madam Chairperson: Thank you, sir. Are there any questions from the Committee?

Mr. Jack Penner: I appreciate your comments and the comments of the previous two presenters. Mr. Fanzago, I wonder if you could tell this committee whether you agree with the intent of this bill insofar as it would relegate the province as the only permitter of any kind of drainage work in Manitoba and would exclude entirely the municipality's involvement in any decision making in drainage. Do you agree with that?

Mr. Fanzago: I believe, following what I said, that the main problem seen by me, that is, at the valley, if that problem is resolved at the quarterly, I believe it has come subsequently that the municipality and then the private owner do not have too much to fight together, because it is one after the other. But if the main problem would be solved, then the other will be regulated accordingly.

* (19:50)

Madam Chairperson: Further questions? Seeing none, thank you very much.

Our next presenter, Mr. Michael Waldron, had a brief presented by Mr. Bill Hildebrandt on his behalf on July 11, 2000. Because normal practice is one presentation for each presenter, I am therefore seeking leave of the Committee for Mr. Waldron to present to the Committee this evening. Is there leave of the Committee? *[Agreed]*

I call on Mr. Michael Waldron. So his name then will drop to the end of the list.

I call upon Mr. Lawrence Dyck. Mr. Dyck, do you have copies you want to circulate?

Mr. Lawrence Dyck (Keystone Agricultural Producers): Yes.

Madam Chairperson: I will ask you to begin your presentation, please.

Mr. Lawrence Dyck: On behalf of the Keystone Agricultural Producers, I am pleased to present our organization's position with respect to Bill 15, The Water Rights Amendment Act. KAP is a democratically controlled general farm lobby organization which represents and promotes the interest of agriculture producers in Manitoba. It is a grassroots organization wholly run and funded by its members, farm units throughout Manitoba.

There is growing dissension and dispute over issues of water management in Manitoba, particularly in wet years when producers increase their drainage activities in order to maximize their crops. Uncoordinated drainage activities result in increased water pressure downstream. Disputes between farmers, neighbours, municipalities, become very heated and could lead to court involvement. The opposite problem can occur as producers build retention ponds and dams to facilitate irrigation affecting the available water supplies for irrigation and domestic use downstream. This latter situation is becoming more prevalent as producers are having to wait up to two years for irrigation licences from Manitoba Conservation. It is evident that there is a need for a provincial strategy, which encompasses drainage, water retention, water use, and water quality issues.

KAP is in agreement in principle to support Bill 15, but this support is contingent on the implementation of various other principles and structures. There is a need for harmonization in the Province's approach to water management, and all stakeholders need to be involved in the process. During the 1997-1998 drainage workshops and during the 1999 public consultation process on water use and allocation, there was strong support for implementing watershed planning. We would like to make note that agriculture is a No. 3 priority, ahead of industrial.

I will now outline our position on watershed districts. Keystone Agricultural Producers believe that in order for drainage and water use to be properly managed in Manitoba, local governments, ratepayers, farmers, and other stakeholders must be involved in the process. This can be accomplished by establishing watershed management boards or conservation districts based on watershed areas. These watershed

management boards should have authority over all water in their watershed area, and develop a watershed management plan including the responsibility of issuing licences. The Province should assume responsibility for funding enforcement and appeals. Management plans must include public input. This includes producer input. The makeup of the board is critical to a fair process. Currently, Ducks Unlimited is on the conservation boards and they bring a conservation viewpoint. We need to insure that the management plan is balanced.

If the provincial government has control, it also needs to illustrate its responsibility such as more timely issuing of licences for drainage and retention activities, and adequate staffing to address needs in the various districts. There is cost associated with this, and that cost should be absorbed by the Government. Agriculture is struggling to remain competitive in the global market place, and cannot afford to accept additional costs.

I would now like to highlight areas, which Bill 15 does not address. The involvement of farmers in the board process, farmers are major stakeholders in drainage activities. The importance of their viewpoint is astronomical. Emergency drainage and maintenance of existing drains need to be addressed, and changes to the Act need to be implemented parallel to changes to other acts to accommodate for the watershed management board structures. There are agreements in place to address inter-provincial waterways. For example, one half of the eastward flow rising in or flowing through Saskatchewan is reserved for Manitoba. We need to ensure that any agreements that are in place are consistent or are addressed on a continual basis in an effort to control the minimum or the excess flows more effectively. There should be a transparent appeal process, which limits criteria to which an appeal is applicable. An appeal is applicable only if there is personal conflict or if there is a case of hastened approval of a project within the watershed management plan. It is important that agricultural producers are a part of the appeal board.

For agricultural production, user fees for water use are not acceptable. Farmers have no way of passing on increased cost, and there

should be reference to the First Nations and the unique situation caused by conflicting jurisdictions.

On behalf of KAP, I would like to reiterate the need for timely movement of this bill and implementation of watershed districts. KAP would be pleased to be a part of the planning process to ensure that agriculture's views are heard and agriculture's needs are addressed to allow for the continued growth of our industry on a sustainable basis.

Thank you for the opportunity to present our views on The Water Rights Amendment Act.

Madam Chairperson: Thank you, Mr. Dyck. My apologies to the Committee, I did not realize that Mr. Dyck was from Winnipeg, in terms of the order that we established.

Mr. Lawrence Dyck: I am not from Winnipeg. I had to drive an hour and a half to get here.

Madam Chairperson: Well, thank you, then.

Questions? Mr. Penner, Emerson.

Mr. Jack Penner: Knowing Mr. Dyck well, and knowing where he lives, and knowing that he lives and farms on some of the flattest of terrain probably in the world, and knowing how difficult it is to drain some of that area, I appreciate very much your comments today, and in respect to bringing forward the recommendations and comments from the Keystone Agricultural Producers. You make some very interesting comments.

I find it relatively interesting that the amendments in the Bill make no reference to watershed districts, or watersheds, or watershed management boards, or conservation districts, or the licensing provisions for conservation or watershed management boards. We will be bringing forward an amendment that will deal with that section, because we believe this is a serious deletion. Maybe it is done intentionally, but we think it was probably an oversight of the Department in looking at this legislation, or the Minister made an oversight in bringing forward the recommendations that the Department made to her. We are not quite sure which happened here. We believe that this is very significant, and

we appreciate the support that Keystone lends to this aspect.

The question I have for you, Mr. Dyck, is that this bill, of course, takes away all the rights of the municipalities to be involved in the decision making of the drainage processes, and that all responsibility of the final decision of that decision-making process belongs to the Minister, and the Minister only, under these amendments to this act. Is that an agreement, and are you in concurrence with that as a farmer, first of all, and secondly as a member of your organization bringing forward this proposal?

* (20:00)

Mr. Lawrence Dyck: We are in agreement in principle, contingent on the implementation of watershed districts. We feel that the situation is becoming urgent, and we really feel that the Government needs to move on the watershed boards, and bring that control back to the local level, based on watersheds, because each watershed has its own needs. In some watersheds, it may be retention, and in some it may be drainage.

Mr. Jack Penner: Having had numerous discussions over the last week about this bill with various farm groups and individuals, it appears that there is a significant amount of fear that the rights of the individuals within this bill will be impeded, and the decision-making process, which sometimes needs to be done, as you know, within hours, to get rid of excess water on a given quarter section when we have heavy rains and unplug plugged drains, that that right of that decision-making process will be taken away. I wonder, Mr. Dyck, whether you concur that it would need a ministerial licence before you could open a drain on your own farm to get rid of excess water after heavy rain.

Mr. Lawrence Dyck: That is why I mentioned in my presentation that the problem of emergency drainage and maintenance of existing drainage needs to be addressed in the Act.

Mr. Cummings: Would you agree, then, that if drainage responsibility and licensing went to watershed boards, they should be eligible for provincial funding to be able to pick up asso-

ciated costs that might go with not only the management and the control, but putting in place some infrastructure?

Mr. Lawrence Dyck: Yes, we believe that the Province, as well as the federal government, needs to be involved in the funding of projects.

Mr. Cummings: I know that KAP operates very carefully to make sure it represents all parts of the province. We currently have a situation where not all parts of the province are served equally in the sense of how they have historically developed. There are parts of the province where there are long-standing conservation districts that do, by the way, meet the criteria that KAP laid down. The local governments and members at large, which are generally from the community, which would be largely farming, in other parts of the province where there are not watershed districts, of course, then it is a provincial responsibility where there is, in fact, infrastructure. Does KAP believe, or have you had the discussion around support of a province-wide network of conservation districts, and for those districts to be funded by provincial government?

Mr. Lawrence Dyck: We believe that the conservation districts could fill the Bill, except that only two of the current conservation districts have a drainage mandate. I believe that only two of them have boundaries based on the watershed. The rest of the conservation districts have boundaries based on municipal boundaries. These do not follow watersheds. What we have heard in the last three years is that all the planning needs to be done on a watershed basis. Each watershed is unique, needs to have its own board. What we are saying is, if the conservation district is willing to form along a watershed basis, we are pleased with that and accept all responsibility for water issues, not just water retention on one case, and drainage on another case, but all water issues.

Mr. Cummings: I appreciate your last comment where you referenced taking responsibility. I would argue that some of them, even though they do not strictly follow basin lines, they also do, in the main, cover a portion of a basin. Nevertheless, my point in raising that is: Should they have the authority for drainage and water

management within their jurisdiction, or has KAP considered whether or not there needs to be an overarching provincial authority?

Mr. Lawrence Dyck: Our position is that each watershed management board should have control of all water within that watershed, but that the Province needs to have authority overall.

Mr. Jack Penner: How would you relate that, then, to the issuing of permitting of drainage works on farm? Would that authority remain with the Province or would that authority be given to the watershed board?

Mr. Lawrence Dyck: With the development of a watershed management plan, once that plan is in place, if a drainage project came up that was within the plan, it should be a matter of days to issue a licence for it. It should remain in the watershed board.

Madam Chairperson: Thank you. That concludes our 10 minutes of questions.

Jake Voth, do you have copies you wish to circulate?

Mr. Jake Voth (Private Citizen): No, I do not.

Madam Chairperson: That is fine. Please proceed with your presentation.

Mr. Voth: I will get fairly straight to the point. Basically, the amendments the way I see them, I will just get to sections 3 and 4, and they seem fairly cumbersome and heavy-handed. I live just west of Winnipeg in R.M. of Rosser. It may be familiar to Winnipeg; it may not be. It is heavy clay, flat. Drainage is a part of management program. Surface drain is part of management program. Everyone does it. They have to. As Mr. Penner alluded to before, unplugging a drain during the rains here, it would get far too cumbersome. On the heavy-handed part, I guess, if the penalty is heavy enough, all my neighbours and myself would have free room and board for the winter. So I just do not see that as being a workable solution at that point. That is the main thing that I see to start with.

Otherwise, it should be tiered management. I have my job to do. The municipality has their

job to do. The Province has their job to do. Sturgeon Creek runs right through my home section. I gather that it is not totally harmonized. We seem to have a conflict with the city. That is part of the harmonization that should take place also, so that we get expedient waterflow. Those, basically, are my comments.

Madam Chairperson: Thank you. Are there any comments of the presenter?

* (20:10)

Mr. Cummings: Thank you for your comments. Just to reinforce with us your feeling about a tiered management, in your thinking about this, does that also include almost another third party, I suppose, but does that include the concept of a drainage basin board doing the management for the water within the specific area?

Mr. Voth: Would that be then for each area, a board, or a central board. How would you envision that?

Mr. Cummings: I should be clear. I am sorry. I was referring to watershed basin management boards, of which there are sub-regions, of course, within them, or conservation district boards, depending on the terms that people use. There are areas of the province that have them in place now. I do not believe there is one right in your area. I am just wondering if you would support that concept if it were a possibility?

Mr. Voth: It possibly could be a workable solution. I guess the other, to get the picture a little clearer, I am jammed between Grants Lake and Sturgeon Creek. Well, I will give you a little picture. There seems to be a little bit of conflict as to what the ducks need for water and what we feel is a proper flow. Grants Lake could be a very nice retention pond, but possibly a second hatch of ducks could get damaged. We are not sure who gets priority, the ducks or the farmers, at times.

Mr. Cummings: Just so I do not mislead you, the concept that we are talking about, conservation district or watershed basin management district, it would likely fall to their judgment, based on local people being on the board, as to how the management regime would unfold. That

was why I was asking if that concept had any warmth for you.

Mr. Voth: Possibly. I prefer the free enterprise system with a little bit of challenge. I will do my job, the municipality should do their job, and the province should do their job. If everyone gets challenged a little bit and the water moves along expediently, then that is about as good as it can get, I see.

Mr. Enns: Mr. Voth, I am familiar with your farm and your land and the area. I like what you just said a moment ago, everybody doing their bit. I do want to acknowledge that in a good part of agri-Manitoba, particularly the part that you and I live in, the central part, or Rosser, Meadows, south Interlake, a good part of the Red River Valley, we have, over the years since the '60s essentially developed a system that has the municipality playing their role bringing waters together that then get carried into the major provincial water drains, of which we have a number. You mentioned the Sturgeon; the Grassmere is a little further north; the Long Lake Drain. These are the kinds of drains that in the future accommodate Mr. Gowan's concerns about being able to carry away surplus waters from the municipal drains and enabling the individual, the farmer, to do his field drainage into.

I just want to ask you this question. I know that there are some situations involved with the Sturgeon. You raised the issue of Grants Lake. You raised the issue of harmonization with the city of Winnipeg in terms of how much water can flow through there. But if everything worked well and everything was maintained up to standards, that system worked. I am troubled with the thought that if it ain't broke, why fix it. For a good portion of agri-Manitoba, I appreciate in some parts of Manitoba, the west, southwest where we have not had that infrastructure investment, but the people of Manitoba and the government of Canada have invested millions of dollars in these major drains, by and large, the system works.

Is that not right, Mr. Voth?

Mr. Voth: As far as the basic pattern or structure, it could work. I may be a little critical

here. I grew up in that area. I can vaguely remember when Sturgeon Creek was constructed in 1948; FRED project in 1968 to do an update. My feeling right now is we are probably driving a 1968 model provincial drain here, because a lot has been added from Woodlands, et cetera. I feel the outline of it, so far, is correct. It is just a matter of probably some updating because it is 32 years since the last major part of the creek was updated.

Mr. Enns: I certainly accept that. The other thing that has changed of course that you farmers are only too well aware of is that in this post Crow era our farmers are being driven to risking more in growing in specialty crops, whether it is corn or beans or some things like that. The rewards can be there but the risk is greater and the loss is greater if we in governments; municipal, provincial, federal do not support the farmer in providing the infrastructure costs. That is probably not a question but a statement.

Madam Chairperson: Did you wish to respond Mr. Voth?

Mr. Voth: I will give Mr. Penner an opportunity.

Mr. Jack Penner: The comment was made at this committee when we first started sitting, the first day we started sitting by Mr. Enns that this bill or amendment is an attempt by the Government to make sure that they have the political power to go back to court to take on one Mr. Hildebrandt. And the Province having lost that court case, it would appear that we need new legislative powers to ensure that that not happen again; that the Province does not lose that kind of case again.

You as an individual farmer and I as an individual farmer in the southern part of this province, upstream of Winnipeg on the Red River Valley, know what it is like to invest a minimum of \$200 an acre before you see any returns at all from your labours at the end of the day, if there are any. Prices being what they are today, one wonders even then whether they are even if you get a full crop. Should the province of Manitoba, if the Province takes on the total responsibility of licensing even the drainage on

your own farm, forcing you to have a licence before you can pull a track down a field to drain water off your field, off of a field of beans, even though that might have cost you \$400 an acre to put it in, and you cannot pull a tractor into that field until you get a permit from the Minister, should the Province then bear the cost of those damages that incur from the time that you apply for the licence until you are actually issued the licence?

* (20:20)

Mr. Voth: Do you want a narrow answer or do you want my full opinion? If you just want an answer for that one, yes, but I would like to expound a bit on that.

Madam Chairperson: Yes. We have one minute left in this.

Mr. Voth: I would rather have the freedom to do my management. Let us forget about Mr. Hildebrandt. Let us go on and get updated and get to work together here. That is my feeling. That was my main concern. Too cumbersome. We could get to a point where we could have a "1-800 turn in your neighbour" because I am right at the bottom end of the creek there and I just want a good system.

Madam Chairperson: Questions? Seeing none, thank you very much. Call in Edwin Peters. Mr. Peters, do you have anything you wish circulated?

Mr. Edwin Peters (Orthez Channel Committee): No, I do not.

Madam Chairperson: That is fine. Please make your presentation.

Mr. Peters: Thank you. Ladies and gentlemen, I would like to begin by introducing myself. I am from the southwest of Manitoba. I grain farm there as well as serve as the chairman of a committee called the Orthez Channel Committee. This is a committee that was established with our municipality with the local Department of Natural Resources and farmers to co-ordinate the drainage into a channel which later flows into Pelican Lake and from there through Rock Lake and is part of the Pembina watershed.

We have been able to make some small improvements to the drainage system. The conservation district also has co-operated with this process. We have been able to make some small improvements to that drainage system, but it has unfortunately been very dependent on very active local involvement. We had some drainage licences that were pending. Whenever the individual farmer attempted to move these through the process, we were constantly stalled. It was, we have 175 others ahead of you, these kind of comments. It was absolutely impossible for this process to work until the local municipal council, who had felt that Natural Resources should be directly involved with this process and were committed to that, got on the side of those applying. At that point there actually were some licences issued.

My point here is that if we remove local involvement from this system, this system has no prayer of working. It is only the local people. This is a little bit like asking me to phone the Minister when I need gravel on the road fast in front of my house because it is so mucky I cannot get out after a two-inch rain. We have had a few of those, it seems, lately. So we need to have local involvement, because it is the local people who know what is happening there and what the issues are. My first appeal would be for local involvement. I recognize that there is hesitancy on the part of municipal councils to be saddled with the total decision-making policies simply because sometimes this can be neighbours against neighbours.

I would like to refer to the example that has already been referred to, and that is the Ontario situation, where rather than having the right to block drainage, we would have the right to drain. I am not saying this would eliminate all the problems, but the point is that drainage would become a fundamental part of the process. Now, it seems to be, as has been referred to several times, more so here in the Red River Valley. It is a part of the right of the farms, seems more so anyway. At least from where we look in the west, it certainly looks that way. Without infrastructure it is very hard not to offend your neighbour downstream. One of the priorities I think of this bill should be to provide infrastructure for farmers who lack that. The West is certainly one of those areas.

Now, we are not suggesting that we drain the whole province. If you go for a bike ride in the park just north of Winnipeg here, Birds Hill, there are some big placards which talk about the percentage of land that is agricultural in this province and the percentage that is non-agricultural. Over 70 percent has no potential of ever seeing drainage in this province in terms of agricultural drainage. So if we have less than 30 percent and agriculture is the backbone of our community, then let us not hogtie that 30 percent.

Now, the other thing I have a major concern about is I do believe that there has to be some government involvement because, after all, water does not stop at the edge of one municipality. It does go to the next municipality. But we constantly seem to come up with the fact that the Department of Natural Resources, or I believe it has been changed to the Department of Conservation, is going to be the Department that is involved here, at least to a large extent. I think if this is agricultural drainage, the Department of Agriculture should be overseeing this. Why hire a fox to guard the hen house? We do not do well, at least the hens do not do well, when the fox is hired to take care of this. *[interjection]* Very nervous.

So I really believe that the Department of Agriculture is the Department to oversee this.

Floor Comment: Where is the Minister?

Mr. Peters: I would appreciate to see her here as well. The Department of Agriculture is a department that could understand the needs of agriculture. Just like I said the local representatives must stay involved with this, similarly, the Department of Agriculture must be involved because they understand the needs of agriculture.

We are not talking about the drainage or the water management on the 70 percent of this province or over 70 percent. I am not even saying that when there is a high percentage—for instance, in my area there is the Turtle Mountains. They are a great asset to our area and there are some wonderful parks there. I appreciate the work that the Department of Conservation does in keeping up those parks. But when we get down from the park and we are into

agricultural land, we need the Department of Agriculture involved. We need to have people who understand the issues. That is why we need to stay local, and we also need to stick with the Department of Agriculture.

Now I have already referred to my last point. Those are really my two main points: local involvement and the Department of Agriculture being involved in overseeing this. The last, of course, is the one I had already referred to. We do not want to be second-rate cousins out in the West. We want to be treated like our friends in the East, and that means that we need infrastructure like they need infrastructure. So I make an appeal for that. Those are basically the three points that I wanted to bring you today.

Madam Chairperson: Thank you, sir. Questions from the Committee?

Mr. Jack Penner: Thank you very much, Mr. Peters. I could not agree with you more on your statement that the Department of Agriculture should be very involved in this discussion and this debate. I am quite surprised that the Minister of Agriculture is not sitting at this committee and listening today to what is being said.

Point of Order

Mr. Struthers: The Member for Emerson knows a lot better than to put that kind of information on the record here at the Committee. He knows that *Beauchesne's* cites that you are not supposed to comment on the presence or the absence of any other MLA. I think that the Member should withdraw what he just said and apologize for what he said.

Mr. Jack Penner: On the same point of order, I think the Honourable Member will find that if he reads *Beauchesne's*, he will find that that does not pertain to committee. That only pertains to attendance in the House. This is a committee outside of the Chamber's hearing. This is a public committee and the Minister has every right to be here; as a matter of fact, should be here. We have every right to make note of her absence in this committee. I say to you I believe that if you look and read *Beauchesne*, you will find that what I have said is correct. Therefore, I think there is no point of order.

Madam Chairperson: On the point of order, I am advised it does apply to committees. So I would request then that Members not refer to the presence or absence of a member.

* * *

Madam Chairperson: Proceeding. We have Mr. Penner from Emerson, on your question.

Mr. Jack Penner: Thank you very much.

Madam Chairperson: Excuse me, I am advised that you must apologize.

Proceed with your question.

*(20:30)

Mr. Jack Penner: In respect to some of the comments that you made regarding the individual's rights, it is our view that citizens' rights should be very carefully guarded, specifically in the right for an individual to make a livelihood off of his or her investment, and whether that investment is an industrial investment, a service station at a corner, or a quarter section of farmland. It would appear to us that the rights of those individuals need to be very carefully guarded, and especially in the industry of food production. So we appreciate what you have brought to this committee.

My question to you is how would you implement a process of ensuring that there would be an ongoing body of planning? Would you concur with the presentation made by the Keystone Agricultural Producers that there should be a watershed district planning board established and that there should be agrarian-type people sitting on that committee to help with the planning of drainage processes and drainage plans within that given watershed area?

Mr. Peters: Well, again, I would reiterate that if the primary use of that watershed district is agriculture, then I think any watershed districts that are established within that, there should be protection to make sure that agricultural interests are protected within that watershed district.

Sometimes there are very vocal people on certain sides of issues which tend to sway the

day, and I think the actual legislation should protect the number of agriculturally oriented people who serve on those watershed districts. I think the focus should be to use that land for food production, and if it is going to be protected for food production, then even the watershed policies that that watershed district can implement have to lean that way.

This is not to suggest that there cannot be water bodies within that. We all want them. We want the lakes. We want some marshes. We want bodies of water. We are not talking about turning these areas into corner-to-corner agriculture, because some areas within the agricultural area are not suitable, but, still, the focus of some areas in this province are agriculture, and that should be protected.

Mr. Harold Gilleshammer (Minnedosa): I think our presenter has made some excellent comments about the importance of agriculture, and I wonder if the Minister of Conservation (Mr. Lathlin) would commit to bring these remarks that will be in Hansard to the attention of the Minister of Agriculture (Ms. Wowchuk).

Hon. Oscar Lathlin (Minister of Conservation): I would like to advise the Member that I will be making comments after everybody has made their presentations this evening. Perhaps during that time, I will make comments requested by the Member.

Mr. Gilleshammer: I thank the Minister for those remarks, that he has made a commitment to respond at that time.

Madam Chairperson: Further questions? Seeing none, thank you very much, sir. The next presenter is Henri Marion. The next presenter is David Oster. Mr. Oster, I see you have copies. Please proceed.

Mr. David Oster (Reeve, Rural Municipality of West St. Paul): Madam Chairperson, members of the panel, I thank you very much for giving me the opportunity to make our submission.

What I am going to circulate are going to be two photographs. These are two photographs of farmland in the R.M. of West St. Paul, and I am

the Reeve in West St. Paul. We hear a lot about agricultural land, and, certainly, agricultural land is one of the reasons that I am here today. But I am also concerned about all people who are impacted by water problems. I will say to you today, I would much rather stand here and deal with water quantity than the lack of water. So with that in mind, we have water problems and we will share with you, but I am also really here today so that we can start leading towards the solutions to these problems. I would like to think that we would be leading towards more immediate solutions.

As you look at the two pictures, I am going to ask you to pretend. What you are doing is you are travelling south. You are actually at Parks Creek which is approximately four kilo-metres north of the Perimeter Highway. You are on No. 8 Highway. What you are going to do is, if you look to the right and you are on the highway, this is exactly what you will see in terms of agricultural land. It is important to look at the one where you can actually see the high-way first.

I will be diverting a fair amount from my presentation. The reason for that is very simple. I was looking in Saturday's paper, whether it was Saturday or Sunday, and all of a sudden I came across the article, Bill 15. I have to acknowledge that maybe it is a fault of my own or maybe it is the fault of the way it was advertised, but very little information, and I did go back to my office staff and I asked them, did we not receive any information on Bill 15, that I have to discover Bill 15 through the paper? So there is something in communication that has to be worked upon. Again, I will assume as much fault as perhaps whoever was responsible for the publication that went out.

Bill 15 is very, very important to our municipality. The reason it is so very important is because, I think in my address to you, you will soon discover why I as a reeve and why our council have real concerns. I think it is most important that municipalities have control over land drainage in their respective areas. Equally, I think it is very important that municipalities be accountable for their actions. At the same time, I believe that the Province has a role. The provincial legislation and involvement has to be an

appeal process to make sure the interests of all are looked after.

Our role is to provide for improved drainage for many people, not just the interests of one or two, but for many people, as well as for the maintenance of existing drains that run through private property. That is one of my major, major concerns. Years like 1993, 1996, 1997 demanded many improvements to drainage in the area of West St. Paul. I am going to be very specific to the area that I represent. Year 2000 is no exception. The picture that we are circulating is an indication of exactly that.

Municipalities like ours should not have to declare a state of emergency in order to access drains on private property that are sediment-ridden or overgrown with bulrushes and other plant material. Municipalities should, equally, not be threatened by private landlords with respect to closure of drains. Yes, we have had both. I can tell you that in my very early term as reeve in 1993, I crawled into a drain, knocking down bulrushes. It should never have happened.

Municipalities also need control over drainage to protect people downstream. I appreciate, I understand and I accept the fact that water upstream, there are concerns. They have to get rid of it. But the people downstream are impacted very negatively when there is no control. Today with wetlands being drained upstream, it is no surprise that we as one municipality downstream, next to the Red River, just north of the city of Winnipeg, take much longer to drain our agricultural land.

* (20:40)

The pictures that you are watching, it is now 10 days, actually today, 10 days since the last rain that we had, and that was July 6 and 7. That farmland which we refer to in our area as productive farmland certainly does not look as though it is going to be very productive this particular year. Our agricultural land along McPhillips and Blackdale has not seen a noticeable drop in the ditches for 10 days after the last major rain of July 6 and 7.

I can tell you that, in 1993, I really appreciate one of the big improvements made on Main

Street on Northumberland road with the capacity of a 60-inch culvert. I can tell you, though, we have a lot, lot more work to do. The land in question, I have always maintained McPhillips Highway, No. 8 Highway is a dike. The land drains to Parks Creek and basically drains to Grassmere Creek. It never gets there. You have got proof before yourself today. I also would challenge anybody to drive down the highway and take a look for themselves. The farmers there have really nothing left for themselves.

I would also add that, no doubt, productive land is being lost. Farming in our area is becoming a non-viable option. Insurance claims can only last so long. I have to say to you that this is most unfortunate.

Having people such as Mr. Topping, and people such as John Arthur and his department issue licences to negotiate construction of new drains is very important. However, due to past practices, major improvements are necessary downstream immediately.

My reference to The Water Rights Act, not having looked at it very closely, I felt that my purpose tonight would be to share what is actually happening in the field. What is happening in the field is, there is a lack of concern for downstream. Farmers in our area now are in a position whereby they might as well write this year off. We have declared a state of emergency. What you have is, if they have 40 percent left of production, that is all they are going to have. That is wishful thinking at this point.

Where is improvement that is really necessary? Well, McPhillips Highway to Parks Creek and of course, in this case, to Grassmere Creek. What is the dilemma? As we improve waters to the west, that means it takes so much longer so we can release our own waters. We are fortunate. We have beautiful Grassmere Creek. We have beautiful, in this case, Parks Creek. But the water has a hard time to get—we know there is a delay factor. The other water has to pass through. We are downstream. We are the last people. The nature of the drainage along the provincial highways leaves so much to be desired that we might as well forget it. The more I hear farmers tell me: Well, what is the point? It is just not working. They are certainly right in that respect.

What I have attached is a listing of only a few drain requirements that I made a note of with council that needs immediate attention that really involves the Department of Highways. That really, when we talk about the Department of Highways, we talk about the Department of Conservation, we talk about the Department of Agriculture. As I sat and I listened today, the one thing becomes really, really obvious. Are we in it together, or are we not? Whether it is the Department of Agriculture, whether it is the Department of Conservation, Department of Highways, I would like to think that whether it is provincial, federal, or municipal, we really consciously make that effort that is necessary to see the results that we are looking for.

What is our role? I think we are vital. We are the ones who know exactly what is happening at the ground level. What is the role of the provincial government? The provincial government has to be the body which we can appeal in the event that within the conservation districts, or the committees, whether we have committees or conservation districts, people working together, communicating and seeing how they can resolve it is the answer that I would like to see happening.

But I think we need an overseer. That is the role of the provincial government, the Department of Conservation. Because, sometimes, water bodies or people themselves have a difficult time coming to a consensus. With the role also the federal and the provincial, we need funding. There has to be funding put in place to be able to provide for the drains that are necessary.

So, there is room. There is work for all of us. If we want to squabble and bicker with each other, then good luck to the rest of us because we are not going to get the results. But if we actually look and say: What is our plan? I will honestly say to you that the plan with John Arthur and with Steve Topping's department, right now, is in the right direction. We have to look at the global, at the whole picture. We cannot just stand back and say—the most common answer I keep hearing is we have no money. I will just basically stop at that point.

Madam Chairperson: Thank you, sir. Are there any questions from the Committee members? Questions?

Mr. Cummings: Thank you for your presentation. I was interested if you have any thoughts on water basin or watershed management districts, if they would be a management tool that would be useful?

Mr. Oster: We do not belong to a conservation district, but we do have a committee. We belong to—

Madam Chairperson: Mr. Oster. Sorry. Mr. Oster.

Mr. Oster: Thank you. My apologies. West St. Paul and areas around us do not belong to a conservation district, but we have a north Interlake group. We have a south Interlake. We divided. We have two committees that look after the needs within their respective communities. We believe they serve as a conservation district.

We did not see fit to go to the full degree of a conservation district. We want to communicate with each other. We want to work, and I think we have been very successful in looking at resolves. We certainly know, and I do not want to elaborate to any great degree, but we certainly would not want to be excused from funding that would be available to help us correct our problems.

We think our problems are as serious as any other problems. Whether it is a committee or whether it is a conservation district, I think the fact that people are working together is what is important.

Mr. Cummings: I asked about conservation districts, but a committee you are indicating could serve the same purpose. Should it be responsible for the regulation in the area for the management of what would be considered public infrastructure, I guess, and/or private drainage?

Mr. Oster: Very difficult question. You certainly realize when it comes to a committee, and if the committee does not see fit to re-treat what you consider or what I consider my

priority, that is where the difficulty would rest with individual organizations.

I think the licensing process that is used is important. I think that we often look back, and we say if I was five out of six years odd-man-out and I could not get any money for my drainage I would have a hard time to support a committee or a conservation group. I think there is evidence of things like that happening already.

Therefore, somehow or other, there has to be a provincial process where all municipalities can realize or reap some of the benefits that are necessary to do improvements. The difficulty with a committee where a group makes a decision, and we are downstream, we get the full impact. I can honestly say with the farmers in my area this year they will say to you, yes, even if we had the drainage, this year is one year of record where it has been wet repeatedly. It would not help all that much but at the same time this year is very unique, and we respect the fact that it is unique.

We also know that the difficulty with a body or an organization, given the sole right to decide who gets the water, for every time there is a plus, there is always a negative.

Mr. Cummings: Yes, I would agree that, in many cases Mark Twain was right, water is made for fighting over, not for drinking. The problem that I am opposed to, however, is—while it might be agreed that there needs to be more funds expended and there might well need to be some municipal funds as part of that but if we set the funding issue aside for a minute, would you sooner that the municipality had the lead responsibility or can it be a shared responsibility? Is that the thrust of what you were saying earlier, that it can be a shared responsibility with the Province?

Mr. Oster: Very much in terms of a shared responsibility. Municipalities should have the responsibility, but there has to be an appeal process. If other municipalities feel that this is at their detriment, there has to be an appeal process whereby you can go to at the provincial level, and say an appeal process where it is not acceptable.

The licensing does grant the opportunity whereby we can regulate what is happening, and the regulation has to occur. I think that it is important we control what is happening. If my actions are going to be at the detriment, and not likely when you are downstream that they are going to be at the detriment really of anyone, but if my actions are going to be detrimental to somebody down-stream, then I think there has to be a process in place. We cannot leave it totally to the municipalities.

The municipalities have to realize there is a recourse, as is true of private property. Pretty sad if one of the residents in our area drown and we have drains that go through private property. I have had a resident threaten me and say I will be blocking this drain if you do not allow my subdivision. There has to be a process where you can turn to and say there are laws in place to protect, to make sure drains are maintained and the drains are flowing.

* (20:50)

The drains today, the last one that is always ignored, the drains are improved because that is what has not happened in the last 30 or 40 years. We have improved water getting to the drains, but the improvement in the drains has not really occurred. I have been using McPhillips Street, perfect example, west side, east side. When was the last time anything was done to McPhillips to improve it so we can get water to Parks Creek and get water, in this case, to Grassmere?

I challenge you and say to you that we have got a lot more water going through our municipality. Is it not interesting that where we are downstream and yet the improvements—I look at Miller Road, the intersection that you were at was Miller Road. Parks Creek is only approximately a mile and a half away, two and a part kilometres. All we need is some adequate widening, improving and enlarging the drain. Three culverts, two culverts doubled in size, widening the ditch and putting a culvert through Miller Road. I would tell you you would have your improvement and it would solve the problem.

There are examples of this that are really reasonable, down-to-earth, but nothing has

happened. We were in 1993 showing pictures. I took West St. Paul and I triked it in 1993. I went through the fields to see how bad they really were. We need what is called better drainage to the main drain. We have the main drains. We have to get the water to these main drains through provincial right-of-ways.

Madam Chairperson: Further questions?

Mr. Jack Penner: I think many of us would agree on what you are saying. I toured last week the area of La Broquerie, which was badly hit first of all by, I think, some 12 to 13 inches of rain, and then another 5 inches on top of that. We looked at one of the provincial drains that was badly in need of maintenance. There was a tree that I would suggest one could not put his arms around, growing in the middle of the drain. So it was not that the drainage had not been maintained over the last year or the last five years or the last ten years. Obviously, it takes more than 30 years to grow a tree of that size, and I understand that the drain that we are speaking of was constructed during the 1930s. So, obviously, one would suspect that the tree probably started growing almost immediately after it was constructed and nobody ever touched it. I think that is something that we are hearing constantly.

When I listened to the International Joint Commission, which was charged with the responsibility of looking at the historical flooding in the Red River Valley and making recommendations to federal and provincial governments on both sides of the border, I found it interesting that they were not allowed to make comment on drainages and/or water storages and how that would affect the flow or holding back of water.

I pay a great deal of attention to what you are saying because I agree with much of what you have said. When we listened to individual farmers, we get almost exactly the same response from individuals, saying that they need the right, as individuals, as you say, municipalities do and/or jurisdictions do to ensure that water gets to the provincial drain. There needs to be proper funding. I think nobody argues the proper funding requirement. However, the question I have: How do you structure a system such as this from a provincial perspective to

ensure that there will be orderly flows without impeding the individual's rights to make a living on his or her farm operation?

Madam Chairperson: We have one minute.

Mr. Oster: In answer to that, first of all, you cannot negatively impact anybody downstream. You can do all the improvements upstream at whose expense? That is not the answer. So when we have to have trust in our natural resources to make sure that there is a plan, and the plan is start downstream. Work all the way down. The answer for the flow of water today when we do shoulder cuts in roads, and in this case the ditches along the highways are supposed to be the way the water gets to Parks Creek, for example, or in this case to Grassmere drain and the ditches are fully grown with bulrushes and everything else. We are just not doing our job, I hate to say. So we have a lot of room in front, and we have to start attending to those things.

Madam Chairperson: Thank you, Mr. Oster.

Mr. Oster: Thank you very much for giving me the opportunity. I apologize for a couple of the corrections. It was very short notice, and I said to the office that, look, if you get it ready, and I realized that I had to make a couple of changes. So the changes that I noted, Madam Chairperson, to yourself, I do apologize. We did not have all the information that we required up front. So thank you very much for hearing us.

Madam Chairperson: Thank you, Mr. Oster.

The next presenter, Michael Waldron. Michael Waldron. The copies are being circulated. Please proceed, Mr. Waldron.

Mr. Michael Waldron (Private Citizen): Ladies and gentlemen, first of all, I was wondering if we would make it here tonight. We were three hours away, and I was at a funeral this afternoon, and my car, the belt in the engine broke. A friend of mine picked me up. He drove me, and he had a little errand to run. So we started on the errand. We spent a half an hour beside Sprucewoods Park to try and find a way around it, and then as we got around it. We had a flat tire. So we were having our difficulties getting here this evening.

As the Committee, I am sure is well aware, the reason that you are here tonight is because the Manitoba Court of Appeal made a decision in the Ray Hildebrandt case. The amendments that you are looking at are actually amendments caused because of that case. I was the lawyer that represented Ray during those proceedings. I hope you do not hold that against me. I also hope you had not put it far enough behind you that you would not at least listen to the comments that I am going to make tonight.

First of all, I just want to make it clear, I know that the Government can do whatever it wants. I mean, the provincial government has absolute jurisdiction over this and possibly any other areas we are talking about. So it is not a case of saying, well, you can or you cannot. Of course you can. I mean, this is your roll, and you can do it. So I am well aware the Government can do that.

My only intention here tonight is to try and bring another perspective on what you are attempting to do. Now, one of the things that I wanted to do was I was going to address one issue before I got to what I wanted to talk about with respect to the law. But what I wanted to talk about was just a common sense issue.

When you are dealing with farmland, I think most of you know that farmland is set up on a grid system. You have sections. You have quarter-sections. It is set up in squares. The road system is set up in that same grid system. So what happens is you will have municipal roads or you will have provincial roads running along those particular divisions. You will have municipal roads, primarily, whether they be paved or gravelled or dirt. You will have provincial highways, which are primarily paved roads, that run from major community to major community. As I think you all know, the provincial roads are under provincial jurisdiction. The municipal roads are under municipal jurisdiction.

The reason for that is fairly straightforward. The municipalities know the concerns of the people in the area. They know what the roads need. Basically the province knows the same thing about its provincial highways. In other words, they know what is required for a provincial highway.

What I would like to do is to kind of draw an analogy between that and the system that we have for drainage, because, as you all know, when you drive along a road, on the side of the road is the drainage ditch, and most of the drainage in the province actually happens through the drainage ditches on the side of the road. So in fact you are talking about exactly the same grid system and you are talking about exactly the same areas of responsibility.

The highway division of jurisdiction works well. I mean, the municipalities look after what they do. The Province looks after what they do. I think that actually that is something that works well with the drainage system as well.

I heard a comment here tonight that the Province lost the case. They did not lose the case. What happened at that case was—you may take issue with that—that the Court of Appeal simply ruled what the legislation that the Province had passed actually said. That is all it did. The decision that I have given you in front of you actually is the decision of the Court of Appeal. All it is is a summary of the Court's opinion of what the legislation actually says. So this is what you are changing. The amendments that you are doing here are basically changing what the system is that is set out in that decision.

* (21:00)

Now what I would like to do is to make it clear that we have only talked about two pieces of legislation. We have talked about The Water Rights Act, which you are proposing to amend, and we have talked about The Municipal Act, which you are proposing to say is not relevant here. In other words, there is a section in the amendments that says we are not going to deal with The Municipal Act. It is basically over-ruled.

There are three pieces of legislation that are involved. There is The Municipal Act, The Water Rights Act and there is also The Water Resources Administration Act, which is being totally ignored up till this point in time. Now I do not want to get into the law because I know it is probably boring and it is probably something that, at the end of this long evening, is not going

to be all that relevant. But I do want to point out that The Water Rights Act, in the court's opinion, was never designed to deal with drainage. The word drainage was never mentioned in the Act. The Water Resources Administration Act, which is provincial legislation, did deal with drainage and the court makes it very clear that that act deals with drainage.

I am not even sure how the Committee is aware of this, but the fact is that the Province, right now, has absolute jurisdiction over drainage in the province. Did you know that? And the reason you have absolute jurisdiction is because The Water Rights Administration Act basically says that the Province has complete, total and absolute jurisdiction over anything in the province that is being designated as a provincial waterway. The Province, in addition to that, also has the right to designate any particular body of water in the province as a provincial waterway, which means that if the Province has any interest in any body of water, all they have to do is say it is a provincial waterway. They have absolute jurisdiction over it; the municipality has no jurisdiction over it. So the Province, right now, has the very jurisdiction that apparently these amendments are trying to take over.

All that the Court of Appeal did was basically say what those three pieces of legislation said. That is all the Court of Appeal did was say exactly what those pieces of legislation said. They did not take away any jurisdiction that the Province right now has. So the Province, right now, still has that.

I wanted to deal with a couple of things, but the time will not let me on that. But one of the things I did want to mention was that in connection with the case, and I do not want to go into it, but two facts came out of the case that we actually went through. Number 1, the Department basically, at one point stepped in and stopped municipal road construction. So that was one of the results of the case. The second thing that happened was that the farmer that had three acres of slough on his land now has 80 or 90 on the same quarter and it was basically a result of the decision of the resources officer to put a plug in the drain. So there were some pretty serious

consequences because of the actions of the officer in that case.

Now the amendments that are being proposed do two things that I will mention: No. 1, they make a mockery of any sections in The Municipal Act that deals with drainage, which are there. They also make a mockery of the sections in The Water Resources Administration Act, which, by the way, is not mentioned anywhere. But those two provincial pieces of legislation are in conflict with the amendments that are being proposed.

Madam Justice Helper, in the Court of Appeal, said the following in the decision that I have given you: "If a farmer proceeds to drain water within the boundaries of his own land, from one part to another, without first having obtained a licence under the WRA, he would, according to the Crown's submission, be guilty of an offence. It was surely not the intent of the legislature, in enacting this piece of legislation, to regulate that form of activity."

Yet that is exactly what these amendments to The Water Rights Act are going to do. Number one, I am asking: What is the significance of the Province to a farmer draining from one slough on his quarter to another slough on the same quarter? Where is the provincial significance in that? Secondly, should a conservation officer have the right to shut down municipal road construction? Thirdly, and I think almost most importantly: Does a conservation officer have the right to stop drainage on a farmer's field and create wetlands on that farmer's field depriving him of his ability to farm?

In my view, this amounts to expropriation without compensation, without process, without appeal. I do not think that is about the Province's interest in drainage. They have that already. I think that that is basically not giving any respect to the farmer's desire to farm the land and to stay away from the wetlands.

The main comment that I wanted to make here tonight was that the system of legislation that you have right now, the three pieces of legislation that you have right now are in fact a fairly good system of jurisdiction that has been

set up by the provincial government. It clearly delegates authority to the municipalities over minor drainage, and it clearly gives authority to the province over major drainage, so there is already that logical division of jurisdiction.

The amendments that are being sought to The Water Rights Act right now are being passed, I would submit, as a knee-jerk reaction to the case.

Madam Chairperson: One minute, sir.

Mr. Waldron: Pardon me.

Madam Chairperson: One minute left, sir.

Mr. Waldron: Thank you. I think that the decision has been made that if the existing system of law will not give the power that the officers desire, they want changes to the law to do so. I am not quite sure why they would need them, because we are only talking about minor drainage. We are not talking about the major drainage.

My opinion is and the final point that I would like to leave with the Committee is that I think this proposed amendment needs a lot more input from people that know. I think it needs a little more careful consideration, because quite frankly, for instance, you have a flaw right in the amendments. There is nothing mentioned about The Water Resources Administration Act, and those two pieces of legislation are in conflict. Right in the proposed amendments, you already have a flaw to the legislation.

It needs more work and I think it needs more thought. I thank you for the chance to make my comments known.

Madam Chairperson: Thank you, sir.

Mr. Jack Penner: I wonder, Madam Chair, whether it would be the Committee's will to give the gentleman a few more minutes to put on the record maybe some of the other thoughts that he has set aside, because I find this extremely interesting. The comments that the gentleman is putting on the record are extremely interesting, and I wonder whether there would be consent to

extend the gentleman's hearing for just a few minutes?

Madam Chairperson: Is there leave? No. There is not leave. Questions are open.

Ms. Marianne Cerilli (Radisson): I was just going to make the offer to the Opposition that if they want the presenter to use the 10 minutes of question time to make further remarks that we would be open to that, and then they would be forfeiting their opportunity to ask questions.

Mr. Enns: Just one question to Mr. Waldron.

Madam Chairperson: Before we proceed, Mr. Enns, could we see if there is agreement in the Committee to the suggestion.

An Honourable Member: There is no agreement.

Madam Chairperson: There is no agreement. So questions are open.

Mr. Enns: It is your opinion then, having worked with this case over a period of time that the legislation you refer to, the division of responsibilities that that legislation spells out, whether it is in The Municipal Act or whether it is the water administration act, is in fact adequate. The carrying out of every party's responsibility, whether it is maintenance of a particular drainage structure on the part of the municipality or on the part of the Province, I am not asking you to comment on that, but you are suggesting to this committee that the legislative structure is in place and is adequate to what your client, for instance, required in correcting a situation of perhaps an error in judgment by a conservation officer in that particular individual piece of property.

Mr. Waldron: That is a difficult question to answer, because I think as the gentleman pointed out earlier, water primarily does lead to a lot of fighting. It is a very difficult issue. That being said, I think the system that is in place right now is probably better than the system that is being proposed. The reason I make that comment is because if the Province has any interest in a particular body of water or any particular concern in anything, whether it be a municipal

drain, a creek, a stream, a man-made ditch, they can declare it to be a provincial waterway right now under today's law, and they have total power, jurisdiction and control over that ditch. Absolute.

* (21:10)

Mr. Enns: You anticipated my second question which I think is not adequately clear to everybody in this Legislature and perhaps in the general public, that is, that the Province does have that right. If they coveted or if they want it for overall provincial land use or other reasons, total control of that particular piece, that flow of water, that land, they could by legislation now on the books designate it as a provincial waterway.

Mr. Waldron: That is very correct. The thing that I find will not be as good under the proposed amendments and the thing that I am most concerned with, if the province has a problem with a major waterway, there is absolutely no difficulty in the province taking control of it. The thing I have the problem with is the farmer who digs his little ditch, because when he digs his little ditch, he now has to go to the province to get a licence to dig his little ditch, and I can tell you from experience that he is unlikely to get that, certainly in the current year, and it will take him at least a year or two by the time he finally gets that ditch dug.

So what I am saying is for the little ditches, for the little drainage problems, those should be municipal problems. Those are not provincial problems. That is the point I am trying to make.

Madam Chairperson: Questions?

Mr. Jack Penner: The point you make, Mr. Waldron, is very similar to the questions I was asking a presenter before, the right of the individual, and I use in quotation marks, "farmer," out there trying to make a living on a property that produces food.

As far as I am aware, under the current legislation, and correct me if I am wrong, the individual does have the right to pull a ditch or drive a tractor across a field making a ditch to drain water off his field into a municipal ditch,

and if the municipality would pass a by-law prohibiting that or restricting that, the municipality today has the right to do that. Is that correct?

Mr. Waldron: Yes, that is correct, and this was something that was addressed when the Court of Appeal heard the arguments, was the fact that if a municipality has a by-law concerning drainage, then, of course, that is the regulation of exactly that kind of activity. If the municipality does not choose to pass a by-law, then, in effect, there is not any control over drainage; but if the Province has any concerns, then when it hits a provincial waterway, they basically have control over that.

I guess one of the things I look at a lot of times if there is a problem, then whatever body is responsible, the municipality or the province, will take steps. I mean, that is usually what happens. If there is not any problem, you will not be taking any steps. The municipality, if there is no problem, will not be passing the by-law. There will be a vacuum because there is no need for it. But if there is a problem, the municipality will pass a by-law, and they will have to regulate the activity.

Now, there may, in fact, at some point be a role for, and I am not speaking to that because I am not an expert, but there may be a role for a conservation district. There may be a role for the province to play in certain governing bodies over certain major diversion works or that sort of thing, but that is something that I think should be set up with further input from other people who know what they are talking about and put that program together. But I think that would be vastly preferable than to have an officer going out and to have licences being issued out of Winnipeg for minor drainage problems on a farmer's field in Emerson or wherever.

Mr. Cummings: Could you give us any thoughts about how the relationship between municipalities should be handled, if, in fact, the receiving municipality believes they are getting too much water? What is their recourse, or what would you envisage we could or should do regarding those situations that might arise out of that?

Mr. Waldron: Those are actually dealt with under The Municipal Act right now under inter-municipal drains, so that you have actually provisions for municipalities working together or not working together and with the final appeal to the Municipal Board if, in fact, there is no agreement. That is my understanding of how that works.

Mr. Cummings: There has been some considerable discussion about whether or not this sets up a liability between municipalities. Do you believe that the remedy is as you described, that the only remedy they would have is the Municipal Board, or is there potential for liability? I have examples: lower areas that become flooded within three days of a rain, whereas it used to be two weeks where drainage has been improved, and the recipients are looking for somebody to sue, to put it bluntly.

I am just wondering if you have any advice, because that is one question that I foresee is going to be troublesome for whatever administration.

Mr. Waldron: That is a difficult question, and I am going to hesitate to answer it. Yes, there are definitely liabilities that attach in different situations, but every situation is different. It depends an awful lot on whether you are dealing with a natural water course or a drainage ditch that was dug or what the improvements were and what the negligence may or may not have been in doing the work that was done.

But I think the point is that you cannot take the position that we are going to plug everything up, because we are afraid somebody is going to get sued here. I apologize for my profession, if I have to, that we create these problems. But the fact of the matter is that people have a right to try and farm their land and that means, in some cases, that they are going to have to drain it, and there should be some accommodations made to do that.

Mr. Cummings: Just very briefly, and I still have some unease. I believe it is my understanding at least that the insurance companies have, at least in one point, indicated to the municipalities that there could, in fact, be some increased liability, depending on how the laws

unfold over the next few years. Obviously, I guess I am repeating the same principle in the question. I just wondered if that is a concern that has crossed your screen at all.

Madam Chairperson: We have a minute and a half. Mr. Waldron.

Mr. Waldron: I think that the municipality's liability is probably going to be the same—excuse me. The liability is not going to change an awful lot from what it is right now. The fact of the matter is if you do something and it causes damage to somebody and there is a right there, that right will exist before or it will exist after. It depends on who does the work as to who may be liable for that. So if anything, there would be maybe decreased liability on the municipality if the Province ends up stepping in and taking over this. Quite frankly, if the Province is the one doing the authorizing and the drain is allowed, then the Province would be the one that is on the hook if there are damages.

Madam Chairperson: Further questions?

Mr. Gilleshammer: Yes, I just wanted to confirm. I am very impressed with your perspective on this case, but you are presenting here as a private citizen tonight.

Mr. Waldron: Yes.

Mr. Gilleshammer: Thank you. Appreciate that.

Madam Chairperson: Further questions? Seeing none, then, thank you very much, sir.

Mr. Waldron: Thank you.

Madam Chairperson: That concludes the list of presenters that I have before me this evening. Are there any other persons in attendance who wish to make a presentation? Seeing none, is it the will of the Committee to proceed with detailed clause-by-clause consideration of Bill 15? *[Agreed]*

Mr. Gilleshammer: Madam Chairperson.

Madam Chairperson: Yes, Mr. Gilleshammer.

Mr. Gilleshammer: I was given to understand the Minister was going to make a comment on some of the testimony that has been heard here tonight. I wonder if he would—

Madam Chairperson: Yes, I was just going to call on him.

Mr. Gilleshammer: Thank you.

Madam Chairperson: So the Minister responsible then for Bill 15, do you have an opening statement?

Mr. Lathlin: Madam Chairperson, yes, I have some opening remarks that I want to make. First of all, I want to thank all of those people who have come here last week and this evening to present their views and comments on Bill 15. I, myself, am pleased to again have the opportunity to speak on Bill 15, The Water Rights Amendment Act.

I would like to say that this is an issue that is important to all of us, to all Manitobans. So therefore that is why I am pleased that you have all come here to give us your ideas.

Bill 15 contains a number of amendments to The Water Rights Act. The main purpose of this bill is to restore the Province's long-standing jurisdiction in matters of land drainage.

As most of my colleagues will know, in March of this year the Manitoba Court of Appeal handed down a ruling which examined provincial legislation relating to land drainage. In that case, which dates back to 1997, a landowner had initially been acquitted of charges in Provincial Court involving draining water off his land into municipal drainage ditches without a licence under The Water Rights Act.

The government of the day then, in 1998, appealed the acquittal of this farmer to the Court of Queen's Bench. The previous government launched the appeal to the original Hildebrandt decision. They obviously believed the system made sense, but now some members of that former government seem to have changed their minds.

* (21:20)

The respondent subsequently launched a further appeal to the Court of Appeal, which

brings us to today. The effect of the Court of Appeal decision was to declare that the Province of Manitoba does not have jurisdiction over drains and drainage apart from provincial waterways.

Since the 1930 Natural Resources Transfer Act, ownership and management of Manitoba's water resources has rested with the provincial government. This management of the Province's water resources has always included the regulation of drainage works, for good reason too, as flooding can have disastrous consequences for downstream landowners. Manitobans are not well served by a patchwork of local drainage by-laws without any overseeing regulatory authority to protect all downstream users, whether they be farmers, First Nations, or other populated areas.

As it stands right now, many municipalities do not even have any drainage by-laws. The Province has an important function to perform in ensuring that drainage and diversion activities do not cause problems beyond the boundaries of a particular landowner or municipality.

This bill reinstates and clarifies provincial authority over land drainage activities in several ways. First, it creates a new definition, water control works, which expressly includes the concepts of drain and drainage. The new term "water control works" is then inserted throughout the Act to make the provisions of the Act applicable to this type of water control.

For example, section 3 of the Act, as amended by section 4 of the Bill, will clearly establish that a license is required for drainage. Section 5 of the Act as amended by section 6 of the Bill will clarify that the licensing of water control works for drainage is included in the Legislation.

This bill adds the new term "water control works" or related terminology throughout the Act wherever necessary to restore provincial authority. In addition, section 16 of the Bill adds a clause to ensure that where there is a conflict between The Water Rights Act and The Municipal Act that The Water Rights Act would prevail.

The amendments in this bill will address the present situation where there is uncertainty

across the province as to who has authority over drainage over the longer term. Our government has committed to a wide area of planning process as recommended by the COSDI report. This is, I believe, perfectly consistent with what we have heard from the AMM and KAP.

We will be initiating a full water strategy development process this fall. This process will be watershed-based, inclusive and locally driven. Whether at the end of the day this will result in a new system of watershed boards as recommended by the Association of Municipalities will all be up for discussion during our public consultations. However, we cannot rush into such a complex and important initiative without taking the time to clearly think through and discuss the options with all stakeholders. In the meantime, the amendments contained in the Bill are required now to address the current uncertainty the Court of Appeal has created in this case.

I should also like to say what this bill is not about. It is not a conservation districts act. There is such an act, and it allows for conservation districts to take control of drainage. It is not anti-drainage. The Province recognizes the need for drainage. It recognizes the need for speedy decisions. The licensing system under the previous government did not work well, and we have heard that time and time again.

We are going to significantly improve this system. It is not intended to solve all the water problems we have either. The Government is committed to developing a water management strategy which will be watershed-based, as I said earlier. We believe this must be developed in consultation with all the stakeholders. I think it would be irresponsible for us to try to quick-fix all of those problems in this one bill. In principle, we agree with AMM and KAP.

It does not remove any long-standing rights enjoyed by individuals or local governments or conservation districts. It restores, for now, a system that has been in place for many, many years.

In closing, I look forward to a swift passage of this bill to ensure that the issue of regulatory authority over the important matter of land

drainage is clarified, letting us move on to a more thorough review of The Water Rights Act and land-drainage issues, as I said, in the fall.

Those are my opening remarks, Madam Chairperson.

Madam Chairperson: Thank you, Mr. Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Enns: Madam Chairperson, I move, seconded by my colleague the Honourable Member for Ste. Rose (Mr. Cummings), that this bill not now be considered and considered six months hence.

Madam Chairperson: I would ask the Committee if we could take a 10-minute recess while certain things are verified? Is it agreed? *[Agreed]*

The Committee recessed at 9:28 p.m.

The Committee resumed at 9:37 p.m.

Madam Chairperson: The Committee will reconvene, please.

It has been moved by Mr. Enns and seconded by Mr. Cummings that this Bill 15 be reported six months hence. I am advised that a hoist motion is not moved in the committee stage, only in second or third reading stage.

Mr. Enns: With the greatest respect, Madam Chairperson, I feel I must challenge that ruling.

Madam Chairperson: The Chair is challenged.

Voice Vote

Madam Chairperson: Those who sustain the ruling of the Chair, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: Those who are opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Yeas have it. So the ruling of the Chair is sustained.

* * *

Madam Chairperson: Did the critic from the Official Opposition have any other opening statement?

Mr. Enns: I thought my statement was pretty clear and pretty decisive; however, it was not accepted. Let us proceed with the Bill.

Madam Chairperson: We thank the Member. During consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? [*Agreed*]

On page 1, shall clauses 1 and 2 pass?

Mr. Jack Penner: I have, Madam Chairperson, an amendment to section 2. That is what we are dealing with right now, 1 and 2. I have an amendment for section 2 of the Bill.

I move, seconded by the Honourable Member for Minnedosa (Mr. Gilleshammer), no?

Madam Chairperson: Proceed. We do not need seconders.

Mr. Jack Penner: We do not?

Madam Chairperson: Proceed.

* (21:40)

Mr. Jack Penner: Okay. I have always thought we had to have seconders. There we go. I move,

THAT section 2 of the Bill be amended by adding the following definition in alphabetical order:

"agricultural drainage" means the drainage of water from private land that is used, and is intended to be used in the future, for agricultural purposes, including

- (a) growing plant crops of any kind,
- (b) raising or keeping bees or livestock, or
- (c) aquaculture; ("drainage agricole")

Madam Chairperson: Speaking to your amendment, Mr. Penner?

Mr. Jack Penner: In speaking to the amendment, I am a strong believer that this bill—

Madam Chairperson: Excuse me, Mr. Penner. I am advised that we should look at Clause 1 then, since you are amending Clause 2, to see if the Committee would want to pass Clause 1 at this point.

Clause 1—pass.

Now, Mr. Penner, Emerson, on your amendment, speaking to it.

Mr. Jack Penner: Do we need to read back into the record the proposal for an amendment?

Madam Chairperson: The amendment is in order, and reading it into the record then.

Motion presented.

Madam Chairperson: The amendment is in order, speaking to it.

Mr. Jack Penner: It is very evident that the intention of this bill and by the Minister is clear in that it intends to limit or restrict entirely any drainage works that farmers take for granted has to be done, especially in areas where there is difficulty in ensuring that lands can be worked in a meaningful way, in a timely fashion, either in the spring of the year or the fall of the year, or indeed that they are allowed to exercise proper cropping and agrarian practices. For that reason, Madam Chairperson, I am moving that the definition, this part of the Act be amended by adding this definition of agricultural drainage to this bill in order to ensure that the individuals

maintain their, which I believe, rights under the Constitution that one must be given the right of practice in an agrarian situation on one's own property.

Madam Chairperson: Speakers on the amendment?

Mr. Gilleshammer: I am wondering if the Minister would take a question.

Mr. Lathlin: This type of an amendment is obviously a prelude to further amendments that would serve to try to stop the Bill. So I do not think we can allow that kind of an amendment to go without seeing those further amendments to the Bill. If the Member wishes to share with us those further amendments that he is contemplating, then we can have a look.

Mr. Gilleshammer: Well, I would like to ask the Minister. We heard a knowledgeable presenter say that there is existing legislation that is adequate, and that this amounts to a knee-jerk reaction to a court case that seems to me maybe was prosecuted under the wrong act, and that The Water Resources Administration Act covers all that the Minister intends to accomplish in this bill. So I am wondering if he has advice from his staff or from Legislative Counsel, which would acknowledge that The Water Rights Administration Act really already accomplishes this.

Mr. Lathlin: The comments made by the lawyer when he was making his presentation here, if the Member will recall, committee members asked questions towards the end of his presentation and he himself is not sure. As he says, that is a tough question; I do not know. So I take that to mean that even the presenter was not exactly sure as to the answers to the questions that the members of the Committee asked him earlier.

But let me say this. The Water Resources Administration Act does allow the Province to designate any drain a provincial waterway. This allows the province the right to take over all of the expenses, maintenance of these drains. It is good for the farmer and the local government because they will end up having the provincial government pay for all of the expenses of such projects. What this act does not do is allow the

Province to prevent or manage drainage that would harm downstream interests, for example. Only once when someone has dug a drainage ditch did the Province take it over under The Water Resources Administration Act.

So what The Water Resources Administration Act does not do, then, is provide for local sharing in the support of local drainage works. That is why this act only designates those major drains as provincial waterways, those that the Province should be legitimately paying 100 per cent of the cost.

* (21:50)

Mr. Gilleshammer: The Minister has just indicated that he thought Mr. Waldron in his presentation was ambivalent and was not sure. I thought he made a very clear comment that under the three acts, that the legislation is adequate as it now exists. I wonder if the Minister would take this back to Legislative Counsel and get a legal opinion to confirm what Mr. Waldron has said, that under these three acts, the legislation is adequate and it does accomplish what this act sets out to accomplish, what this bill sets out to accomplish.

Mr. Lathlin: Madam Chair, sorry for the delay. I just wanted to make sure I had this right.

I want to advise the Member that we have gone for legal advice. We talked to the legal department, Civil Legal Services, and based on all the legal advice that we could muster, this amendment was developed. So, at this point, I am not prepared to go back to our lawyers and seek another legal opinion, because we have gone through that before already. Furthermore, we do not believe that this question is a legal question. Rather, it is a policy question, because it deals with the question as to whether who pays, the provincial government, municipal governments.

The Municipal Act already has provisions. As the Member probably knows, the municipal governments have their by-law making abilities and capabilities. They have the capacity to do that, but very few of them choose to go the route of a drainage by-law because, for one thing, they do not want all the heavy duty responsibilities

that are inherent in such a by-law. As well, they do not have the ability to make a by-law that would be applicable, for example, in the adjacent municipality, intermunicipal drainage there would be a problem. So, therefore, for the most part they have decided that they did not want to do that and would rather see an overall governing authority be responsible.

Mr. Gilleshammer: It seems to me that using the three existing acts, you would have a balance between the rights of the individual, the rights and obligations of the municipality and the authority of the provincial government. This new bill would throw that balance out of kilter and it would make individuals wanting to do drainage on their own property liable to sanctions by government without a licence. I am wondering, we clearly heard a very knowledgeable lawyer, who has been involved with this case, indicate that the legislation we have now is adequate, and again that this was a knee-jerk reaction to a specific case.

I just would ask the Minister if he would be prepared to step back for awhile and have departmental staff and legal people take a thorough look at this to see if that balance cannot be maintained. This bill is going to upset that balance, and I would submit that if this case had gone forward under The Water Rights Administration Act it probably would have had a different outcome, which perhaps would have meant that this bill would not be required.

Mr. Lathlin: We do not agree with the Member's assertion that this bill would create all kinds of imbalance, as he says, the individual municipal and the provincial government. We view this legislation as returning to a system that had been there before. Even when the Member was on the government side, it was in place. The balance had been there, so now we are merely reverting back to that system where there was balance.

* (22:00)

I would also like to say to the Member that he was in government for over 10 years. He, of all people, should be very aware or at least understand how legislation is raised by government. In other words, you do not wake up one

morning and by nine o'clock you have a bill. There is a whole process that one goes through, as I am sure the Member is aware. There is a whole process that has to have been gone through before the Bill is actually on the Minister's desk. There is a lot of consultation, there is a lot of review. You talk to the lawyers. You get opinions, and after all of that has been gone through, then you sit down and look what is on your desk and then bring it forward. So it is not an overnight process, like, he seems to want to give the message that I thought this over last night and he is here today. That is clearly not what happened.

Mr. Gilleshammer: Yes, I would certainly like to correct the Minister on that. I have the utmost respect for staff in the Department of Natural Resources and Legal Counsel. All I am saying is that we had a presenter here tonight that, I think, presented very well, that with perhaps some new administration, that it might be a wise thing on the part of the Minister just to step back and have members of Legislative Counsel take a look at this under the Act that was referenced.

We all know that government has the majority and that the will of government will be done. But I am just suggesting that it may be wise to further contemplate this and take a look at the presentation that was made by Mr. Waldron and see if, in fact, this legislation is unnecessary.

Mr. Lathlin: Madam Chairperson, let me just say to the Member, again, there has been full legal advice given to the Department leading up to the preparation of this legislation. Advice was given to the Department on what is needed to achieve the policy objectives, and that is to restore the system that had been in place for many years.

If the Member wants my opinion, my opinion is that we have received all the legal advice that we require, and there is no further legal advice required.

Mr. Cummings: Following on the questions of my colleague, in Estimates earlier today, it seemed to me that the Minister acknowledged that there were no additional resources going into this area to administer and meet the demand,

and it is well known that there has been some backlog in approvals. There were, as an example, some arrangements in process to provide delegation of authority to municipalities, in some cases, to deal with approvals.

Does the Minister have any sense of, when this bill is passed, how, or if he will be dealing with the backlog that will be associated with it?

Mr. Lathlin: Madam Chairperson, yes, I recognize a very serious problem that is there. I listened to the Member for Emerson (Mr. Jack Penner) one morning on the radio talking about the very serious problems that exist in the Department of Conservation as a result of reduction policies of the past 10 to 12 years, but we are committed to make sure that this legislation can be implemented properly and adequately. For example, we have positions that have been vacant for a long time in the Department, so we are going to fill those.

We also are going to be partnering with the conservation districts. We have already been in discussions with conservation districts. For example, the conservation district of Whitemud is co-operating with us. They are willing, as part of their responsibilities as a conservation district, to provide some inspection services. We are also going to be working with the municipalities to co-operatively set priorities. You know, what are we going to do first? Finally, we are going to resort to redeploying resources wherever it is appropriate, wherever they are needed the most.

Mr. Jack Penner: Madam Chair, I always find it interesting that when one is straightforward and honest in one's approach, whether it is in Estimates or in other discussions, one is always reminded later of what one has said, and I maintain what I said during Estimates, the process. The Department of Natural Resources is sadly underfunded for one reason.

In 1988, when the Conservative Party took office, we inherited what was apparent could not go on. We knew that when Mr. Schreyer was first elected that government was rife with money. As a matter of fact, their revenue flows were so great that they could not find enough projects to spend money on. But nobody during that time, during Mr. Schreyer's administration,

paid any attention to fixing the roofs on the buildings they were building. When revenues started downturning, the shingles on the roofs started deteriorating and somebody had to find money to fix the roof, and there was no money. When Mr. Pawley came along, he said that is simple; in order to fix the roof and carry on with health care and all the other services, we will just borrow money. And the NDP borrowed and borrowed and borrowed.

By the time the Conservatives were elected to power, there was so much debt that it became impossible for the taxpayers to further carry the debt load, and the administration at that time was forced to make a decision. Where are the priorities of governing going to be? Are they going to be health care? Are they going to be education? Are they going to be social services? Are they going to be agriculture? Are they going to be resources, or are they going to be mining and all those 16 other departments that were in government at the time?

The decision of government, Mr. Minister, was that No. 1 would be health care, first priority; the second priority would be education; the third priority was social services. All of those would receive priorities. There have been increases in spending in all three of those departments year over year ever since the Conservative administration came along.

* (22:10)

Who took the brunt of the decisions? The Department of Natural Resources, the Department of Agriculture and all the other departments.

What suffered was drainage and agricultural drainage and all those other things that pertain to the operations of the rest of government which are, in large part, the largest revenue-producing and generating areas of the Province. The health care, Department of Education and social services are the three big spenders, and they have always every year received an increase, regardless of what the current government says.

Now, Mr. Minister, I was being very honest with you during Estimates, saying your department has been decimated over the last while

because of what Mr. Schreyer and Mr. Pawley did and the decisions they made. So, now, we are faced with the situation whereby you are legally going to try and fix something that should not be fixed this way.

Madam Chairperson: On a point of order, Ms. Cerilli.

Point of Order

Ms. Cerilli: On a point of order, I think that we have to call the Member for Emerson to order on a question of relevance. We are here debating the water rights legislation. If the Member for Emerson wants to talk about balanced budget legislation or balanced budgets, we can maybe do that another time.

I would ask you to call the Member to order.

Madam Chairperson: On the point of order, I would remind all the members to please speak to the amendment as it is being discussed.

* * *

Madam Chairperson: On that, continuing then, Mr. Penner, Emerson.

Mr. Jack Penner: Thank you very much, Madam Chairperson. I thought I had returned to the issue at hand.

But I will conclude by saying we have put forward an amendment to clause 2 of the Bill, which I think will give some comfort, in large part, to many or virtually all farmers in this province and ensure that they at least have the right to farm their land without the imposition of the Minister's permission every time they want to turn a tractor wheel when it is wet.

Madam Chairperson: Is the Committee ready for the question?

Some Honourable Members: Yes.

Madam Chairperson: The question before the Committee is as follows: It has been moved by Mr. Penner, Emerson, the proposed amendment to Bill 15, The Water Rights Amendment Act, that Section 2 of the Bill be amended—

An Honourable Member: Dispense.

Madam Chairperson: To dispense. Agreed? *[Agreed]*

THAT section 2 of the Bill be amended by adding the following definition in alphabetical order:

"agricultural drainage" means the drainage of water from private land that is used, and is intended to be used in the future, for agricultural purposes, including

- (a) growing plant crops of any kind,*
- (b) raising or keeping bees or livestock, or*
- (c) aquaculture: ("drainage agricole")*

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Madam Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

* * *

Madam Chairperson: On clause 2.

Mr. Jack Penner: I have one further amendment to clause 2.

Madam Chairperson: Clause 2. Proceed.

Mr. Jack Penner: I would move, Madam Chairperson,

THAT section 2 of the Bill be amended by adding the following definitions in alphabetical order: "commission" means a watershed management commission established under section 4.1; ("commission") "watershed management area" means a region of the province designated as a watershed management area in the regulations; ("zone de gestion des bassins versants).

Madam Chairperson: I am advised that the amendment is out of order, because it is beyond the scope of the clause of the Bill, and it would cost money to implement it. Further, Mr. Cummings.

Mr. Cummings: Well, just on the ruling, I am not challenging your ruling, but I am questioning the interpretation of the implications of these definitions. There are existing watershed management and commissions out there. I guess, I am challenging how this is seen as an expense. It does not reference any funding to either one of these organizations, and they both exist.

Madam Chairperson: Again, as Chair, I would rule that this is beyond the scope of the Bill.

Mr. Emerson, Penner—Mr. Penner, Emerson. Sorry.

Mr. Jack Penner: Madam Chairperson, it is interesting how many names I have received during my term in office, but never before Mr. Emerson. I do not mind the name Mr. Emerson. I think he was a very influential and distinguished man.

I would sincerely question the ruling to the point where I might even challenge the ruling, because under this definition, this is not a direction. This is clearly just a definition of the meaning of the word we are adding.

"THAT section 2 of the Bill to be amended by adding the following definitions in alphabetical order" does not direct any expenditure of any monies anywhere. It refers only to the meaning of the word—"commission" means a watershed management commission established under section 4.1; ('commission')."

And then "'water management area' means a region of the province designated as a watershed management area in the regulations." It refers only to a meaning of what "watershed management" area means.

Nowhere does it direct, Madam Chair, any expenditure of any funds whatsoever. Therefore, I simply fail to understand the ruling. I would ask whether the Chairperson might want to change her mind on this ruling, I am asking.

Madam Chairperson: I appreciate your comments. I have sought advice twice. Are you challenging the Chair on this?

Mr. Jack Penner: Yes, I am.

Madam Chairperson: The Chair is challenged then on the ruling.

Voice Vote

Madam Chairperson: Those in favour of sustaining the ruling of the Chair, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: Those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Yeas have it.

* * *

Madam Chairperson: Clause 2—pass. Shall clauses 3 and 4 pass? Clauses 3 and 4 are accordingly passed.

Mr. Jack Penner: I am sorry. I would like to propose an amendment to clause 4.

Madam Chairperson: Clause 3—pass. Clause 4.

Mr. Jack Penner: I would move, Madam Chair, THAT the following be added after section 4 of the Bill:

4.1 The following be added after section 3(2):

Exception for agricultural drainage

3(3) Clause (1)(c) does not apply to a person who owns or occupies private land and who controls water or constructs, establishes, operates or maintains any water control works on such land for the purpose of agricultural drainage.

Motion presented.

Madam Chairperson: The motion is in order.

* (22:20)

Mr. Jack Penner: Madam Chairperson, I think the motion is rather self-explanatory and again reflects the individual's rights on private lands held for the purposes of producing agricultural goods. Very often we have to, whether we like it or not, take actions on our own lands to either construct, establish or maintain systems that we would find, that farmers would find almost impossible to get a permit for every little action that one would want to take on one's own private property. And we believe that the Act, the way it is drafted, would require a person to seek permission from the Minister directly on virtually any kind of action on the land that one would take because it might be perceived as being something other than what the private person might in fact be doing.

We believe that the person should have a right to maintain and control the actions on one's own property. I wonder, Madam Chair, whether this might in fact be an infringement of one's constitutional rights. Before I would want to be very firm on that, I would have to seek legal advice on that. But I truly believe this reflects clearly on a person's ability to do business on one's own property.

Madam Chairperson: On the amendment, seeing no speakers, is the Committee ready for the question?

Some Honourable Members: Question.

Madam Chairperson: The question before the Committee is as follows: It has been moved by Mr. Penner, Emerson that the following—dispense.

THAT the following be added after section 4 of the Bill:

4.1 The following be added after section 3(2):

Exception for agricultural drainage

3(3) Clause (1)(c) does not apply to a person who owns or occupies private land and who controls water or constructs, establishes, operates or maintains any water control works on such land for the purpose of agricultural drainage.

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: No.

Madam Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion the Nays have it.

An Honourable Member: On division.

Madam Chairperson: A recorded vote is requested. On division, okay. Defeated on division, then.

Clause 4—pass; Shall clauses 5(1), 5(2) and 5(3) pass?

Mr. Jack Penner: Madam Chair, I would move

THAT the following be added after section 5 of the Bill:

5(1) The following is added after subsection 4(7):

Establishment of water management commissions

4.1(1) There is hereby established for each watershed management area in the province a watershed management commission.

Appointment of members

4.1(2) A commission shall consist of no fewer than five and no more than nine members appointed by the Lieutenant Governor in Council.

Composition of commission

4.1(3) In determining the composition of a commission, the Lieutenant Governor in Council shall consider the needs of the watershed management area and, where possible, include

- (a) representatives of municipalities located in the watershed management area;
- (b) members of local conservation districts located in the watershed management area; and
- (c) persons with relevant technical expertise familiar with water management issues in the water management area.

Madam Chairperson: As Chair, I would rule that this—

Mr. Jack Penner: Just a minute, Madam Speaker, one more:

Appointment of staff

4.1(4) Such advisors and assistants as may from time to time be required to enable a commission to discharge its duties may be appointed as provided in the Civil Service Act.

That finalizes the proposal.

Madam Chairperson: Thank you, Mr. Penner, Emerson. I would rule that this amendment is out of order. It is beyond scope, adding a new water commission, and it would cost money to implement.

Clause 5(1)—pass; clause 5(2)—pass; clause 5(3)—pass; clauses 6, 7, 8(1), 8(2) and 9—pass.

Mr. Jack Penner: I would move, Madam Chair,

THAT section 6 of the Bill be struck out and the following substituted:

6 Subsection 5(1) is repealed and the following is substituted:

Issue of licences

5(1) Subject to section 7, the commission in the watershed management area in which water is to be used or diverted or where the works or water control works are to be located may issue a licence to an applicant authorizing:

- (a) the use or diversion of water for any purpose;
- (b) the construction, establishment, operation or maintenance of works for any purpose; or
- (c) the control of water and the construction, establishment, operation or maintenance of water control works for purposes not related to agricultural drainage.

Madam Chairperson: First, I would like to ask leave of the Committee to revert to section 5(1), which has previously been passed. Is there leave? Leave has been denied. Carrying on.

Clause 6—pass; clause 7—pass; clause 8(1)—pass; clause 8(2)—pass; clause 9—pass; clauses 10, 11, 12(1), 12(2), 13 and 14—pass; clauses 15, 16, 17 and 18—pass.

* (22:30)

Mr. Cummings: Having gone this far in the passing of this act, I would like to ask the Minister if a farmer decided to drain a pothole that contained about a quarter acre-foot of water into a neighbouring pothole on his own property to give it a total reservoir of one acre-foot of water, let us say, what procedure would he have to follow?

Mr. Lathlin: None.

Mr. Jack Penner: Well, Madam Chairperson, I am surprised at the Minister's answer, because if we read the Act, the Act clearly indicates any diversion of water is subject to permitting under the Act.

Mr. Lathlin: Well, the simplest way that I can answer that question or concern is that whatever that farmer or individual is going to do on his land, within the boundaries of his land, and if it is not going to affect me, who is living down-

stream, or a municipality downstream, then there is no problem. But the minute that you start to do drainage and it starts to affect me as a downstream neighbour or a downstream municipality, then we have got some problems.

Mr. Jack Penner: Well, I just want to make sure that the Minister understands the Act that this committee has just said we should pass. Under section 2, if the Minister means what this act says, it says: "'construct,' in relation to works and water control works, including alter, reconstruct or improve;" "'maintain,' in relationship to works or water control works, includes keep in existence;" and then third, "'water body' means any location where water flows or is present, whether the flow or the presence of water is continuous, intermittent or occurs only during a flood and includes wetlands and aquifers;" then continues on the next page to "water control works," which "means any dyke, dam, surface . . . drain, drainage, improved natural waterway, canal, tunnel, bridge, culvert, borehole or contrivance for carrying or conducting water, that (a) temporarily or permanently alters or may alter the flow or level of water including but not limited to water in a body of water by any means including drainage."

Madam Chairperson, I think the Minister is wrong in his statement because this act clearly prohibits without permit a diversion of any puddle of water from one part of a field to

another, and that is why I proposed the amendment, and that is why I asked you, Minister, to amend this definition area.

If we would have amended the definition area, the farmer could do exactly what the Member just asked, but now, under this act, the way it is drafted, that cannot be legally done. The farmer would break the law if he diverts one puddle of water from one corner of a quarter to another quarter. He would break your law, Minister.

Mr. Lathlin: If the Member would read the entire act, he would find in section 5(1) where it says issue of licences—I am not talking about this thing; I am talking about the entire act. It says: subject to section 7, the Minister may issue a licence to any person who applies, therefore authorizing the use or diversion of water for any purpose. I think the word there is "may," and there is some discretion there.

Madam Chairperson: Preamble—pass; title—pass. Bill be reported.

That concludes the business before the Committee. Thank you very much to the members.

Committee rise.

COMMITTEE ROSE AT: 10:36 p.m.