



MICHIGAN'S VOICE OF AGRICULTURE

Michigan Farm Bureau Testimony – House Natural Resources (HB 5638)

February 28, 2018

Matt Smego: Good morning, Mr. Chairman and members of the committee. My name is Matt Smego and I serve as manager of the state government relations department of Michigan Farm Bureau. Along with me today I have Laura Campbell, manager of our agricultural ecology department and three of our farmer members, Jon White, Doug Bloom and Larry Walton.

On behalf of our over 42,000 farm family members, we come to you today in support of HB 5638.

The Great Lakes represent the largest fresh water reserve in the world. They are a unique resource and we believe that they should be utilized in a responsible manner and protected for future generations and the future of Michigan agriculture. Michigan Farm Bureau along with many other stakeholders have worked tirelessly to develop policy that will not only protect but provide for a system of management of our water resources both for today and future generations. Our organization has supported the ratification of the Great Lakes Compact in Michigan law, by Congress and through International Treaty to protect the Great Lakes Basin from diversion of Great Lakes waters out of the basin. The agricultural sector was the first water user group to develop and implement water conservation practices. Further, we have spent countless hours working with a diverse group of interests to develop the first of its kind, scientific-based, water withdrawal assessment tool process that was adopted into Michigan law in 2008. This process is based on historical research and extrapolation of data from over 7,000 stream reaches to develop models to determine impacts of proposed water withdrawals to fish species during low flow conditions. This is the process that we utilize today. This system has provided a process for new large quantity withdrawals (100,000 gallons per day or larger) to evaluate their use and be able to register and report their use to the state of Michigan. This system works for the majority of proposed new water uses in the state. For those identified by the Tool as needing more data to determine whether the use will be allowed, they go through a Site-Specific Review process, in which they work with DEQ to collect and analyze further information including the removal of the 50% conservative factor of the tool. Upon the inception of the water use assessment tool process over 80% of new proposed uses were

approved through the online portion of the assessment process and 20% required additional evaluation by DEQ through a site-specific review (SSR). That number is now closer to 35% statewide and over 50% for some counties. With this growing number of staff reviews DEQ's response times have slipped. According to a report by DEQ in October 2017, the average SSR takes 35 days. The statutory requirement adopted in 2008 is 10 days. According to another report by DEQ in January of this year, there are approximately 128 SSR requests that exceeded the statutory limit of 10 days.

This process has led to frustration from farmers and other water users looking for clarity and timely decision-making. Many of which, have invested their own financial resources into additional analysis as requested by the DEQ with no clear direction on expectation for approval.

I would now like to ask for Jon White, a farmer from Cass County, to talk about some of the work that the state of Michigan and Cass County farmers have partnered to develop a pilot study on water withdrawal impacts.

Doug Bloom is a farmer from Branch County and is here to discuss some of the challenges with the current process within the SSR.

Larry Walton is farmer from St. Joseph County and has been an active participant since the beginning of many of the groups that developed our current process

Lastly, I would like Laura Campbell, Michigan Farm Bureau's agricultural ecology manager, to provide an overview of the legislation.

Laura Campbell: Good morning Mr. Chairmen and Committee members, as Matt said my name is Laura Campbell with Michigan Farm Bureau. You've heard some perspective on the history of the water use program and the challenges farmers and other registrants encounter when working through the Site Specific Review process. House Bill 5638 seeks to address some of those challenges and this is why we support it.

The first thing to note about this bill is that it does not remove anything about the current water withdrawal process: traditional Site Specific Review does not change, the permit process for the largest withdrawals does not change, and it does not remove or weaken DEQ's ability to deny any water use causing an adverse resource impact. It also does not lessen the registrant's obligation to demonstrate their proposed use will not cause an adverse resource impact.

This bill seeks to solve challenges farmers face when working through the Site Specific Review process: it clarifies how to determine whether a withdrawal is likely to cause an adverse

resource impact, it identifies new tools available to both DEQ and professionals in the field that provide a better and more accurate modeling of a withdrawal's effect on nearby streams, and it ensures DEQ will have that data to exercise its authority for oversight and enforcement.

This legislation works by presenting an alternative to traditional Site Specific Review. Data collection and analysis under this alternative needs to be done by a professional hydrologist or hydrogeologist. It depends on two essential types of data being collected: the first is geologic data, information about the material under the soil surface, which identifies whether there are clay layers or other characteristics that would change the movement of water through the soil. The second type of data to be collected is the movement of water during withdrawal, through an Aquifer Performance Test. A monitoring well with sensors is placed between the stream and the test site. Measurements are taken before, during and after pumping to measure both the effects of pumping itself and how quickly water levels recover to previous levels.

With these two sets of information, the professional hydrologist can analyze the proposed withdrawal using the next generation of models to calculate streamflow depletion, developed by the same researcher who created the model that the current Water Withdrawal Assessment Program uses, Dr. Bruce Hunt, and his students and colleagues, Drs. Ward and Lough. These models provide a better and more accurate calculation of a withdrawal's potential impact on a stream, because they take into account the geologic variability that our current system, based off earlier initial research, cannot.

The analysis using these improved models will provide the information about whether a proposed use is likely to cause an adverse resource impact. If the analysis shows that a proposed use is likely to cause an adverse resource impact, the withdrawal cannot forward. DEQ is not forced to accept withdrawals that would cause an adverse resource impact, and this bill does not grant the registrant any ability to skirt the law. Only if the analysis demonstrates that a proposed withdrawal is not likely to cause an adverse resource impact would a registrant move forward. If the analysis shows the withdrawal should be allowed, the registrant will send the analysis and all relevant data to DEQ for acknowledgment. This acknowledgment serves as the same rebuttable presumption as traditional Site Specific Review, which means that DEQ can still at any time stop a water use that causes an adverse resource impact.

As an additional safety factor and to ensure DEQ can continue to monitor and keep an eye on withdrawals registered under this alternative method, the agency can require the registrant to continue submitting data from that monitoring well for the next two years. This helps the DEQ to maintain oversight and gives them additional valuable information about the aquifer.

This bill addresses two other issues which I hope to clarify. First, it reestablishes that withdrawals from bedrock would be passed under the online Tool. This was how the program

was originally started, and was a provision removed by DEQ because of research by the USGS showing that in some cases, water could move through bedrock layers to affect a stream. We support Representative Miller's proposal to restore this provision of the program, because the research showing that water could move through bedrock layers only produced those results after simulations of 5 YEARS of continuous full capacity pumping with no recharge, which is not a realistic scenario except under conditions that would require a permit for withdrawal anyway.

This is emerging research and more may yet be done on it – that is the nature of science – but we support this provision because if bedrock withdrawals need to be changed, they should only be changed after thorough scientific review and approval of the Legislature.

The second issue I want to address is the bill's provision to protect agricultural data collection from the Freedom of Information Act. Other sections of this law already exempt agricultural information from FOIA. This is done for a very important reason: in the modern era of terrorism, our society has adopted many measures to restrict information that might expose infrastructural vulnerabilities. There is no place a farm is more vulnerable than its water supply. People who have detailed information about the location, geology, pumping schedules, and water use of family farms all over the state, could do a lot of damage either by crippling or contaminating that supply. Food safety and security is why FOIA protection was built into other sections of this law for agricultural water use, and it's why it is in this section as well.

DEQ will still get this data, and it will not hamper their ability to provide oversight and enforcement exactly the way they are intended. This provision simply keeps this extensive, detailed data out of the hands of those who would misuse it.

Overall, DEQ already relies on submission of proposed water use data from the private sector. It's how registration through the Water Withdrawal Assessment Tool works. They also already rely on collection of data by the private sector: DEQ staff do not do the field work used in Site Specific Review, they rely on registrants to submit the information. The analysis of that data is the only real change this bill makes. By allowing professionals qualified to perform this work to do so, it reduces the pressure on DEQ staff to compete with professional hydrologists for every single review that needs analysis. It allows DEQ to get back to what we can all agree their real job should be: overseeing and enforcing Michigan's environmental laws, and protecting our natural resources.

Thank you for your time and attention. We are happy to take any questions you have.