

SENATE BILL NO. 2115

Introduced by

Natural Resources Committee

(At the request of the State Water Commission and State Engineer)

1 A BILL for an Act to create and enact five new sections to chapter 61-03 of the North Dakota
2 Century Code, relating to authorizing the state engineer to negotiate reserved water rights of
3 the United States and federally recognized Indian tribes.

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

5 **SECTION 1.** A new section to chapter 61-03 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Negotiation for reserved water rights.**

- 8 1. The state engineer may negotiate with any federally recognized Indian tribe
9 claiming a reserved water right in North Dakota and representatives of the federal
10 government as trustee for the federally recognized Indian tribe to define the scope
11 and attributes of rights to water claimed by the Indian tribe. The state engineer
12 may also negotiate with the federal government to define the scope and attributes
13 of non-Indian reserved water rights claimed by the federal government.
- 14 2. During negotiations conducted under subsection 1, the state engineer shall, in the
15 manner the state engineer determines appropriate:
- 16 a. Provide public notice of the negotiations; and
17 b. Allow for public input.

18 **SECTION 2.** A new section to chapter 61-03 of the North Dakota Century Code is
19 created and enacted as follows:

20 **Agreement.**

- 21 1. When the state engineer and representatives of any federally recognized Indian
22 tribe claiming a federal reserved water right in North Dakota and the federal
23 government as trustee for the federally recognized Indian tribe have completed an
24 agreement, the agreement, upon approval of the governor, must be signed by the

1 state engineer on behalf of the state of North Dakota and by authorized
2 representatives of the Indian tribe and the federal government as trustee for the
3 Indian tribe.

- 4 2. When the state engineer and the federal government with regard to non-Indian
5 reserved water rights have completed an agreement, the agreement, upon
6 approval of the governor, must be signed by the state engineer on behalf of the
7 state of North Dakota and by authorized representatives of the federal government.

8 **SECTION 3.** A new section to chapter 61-03 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Notice to persons affected by agreement.** After signing the agreement, the state
11 engineer shall give written notice to the owners of water right permits, including the holders of
12 conditional permits, who may be affected by the agreement, that the agreement has been
13 signed, the time and manner for filing an exception to the agreement, and the telephone
14 number or address at which a copy of the agreement may be requested. The notice must be
15 served in the manner allowed for service under the North Dakota Rules of Civil Procedure or by
16 depositing the notice in the United States mail or with a third-party commercial carrier, postage
17 or shipping prepaid, and directed to the owner's or holder's last reasonably ascertainable
18 address.

19 **SECTION 4.** A new section to chapter 61-03 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Effective date of agreement - Remand.**

- 22 1. An agreement negotiated under section 1 of this Act is not effective until
23 incorporated in a final order of the state engineer after the state engineer has
24 provided an opportunity for the owners of water rights, including the holders of
25 conditional permits that may be affected by the agreement, to file an exception to
26 the agreement.
- 27 2. Once an exception is filed with the state engineer, the proceeding is deemed to be
28 an adjudicative proceeding under chapter 28-32 and the provisions of chapter
29 28-32 apply to proceedings to sustain or reject exceptions. The state engineer
30 shall appoint an administrative law judge or request the office of administrative
31 hearings to designate an administrative law judge to preside over the proceedings.

- 1 3. If the administrative law judge does not sustain an exception, the state engineer
- 2 shall issue a final order incorporating the agreement as submitted without
- 3 alteration.
- 4 4. If the administrative law judge sustains an exception to the agreement, the
- 5 administrative law judge shall remand the agreement to the state engineer for
- 6 further negotiation according to the provisions of sections 1 through 5 of this Act, if
- 7 desired by the parties to the agreement.

8 **SECTION 5.** A new section to chapter 61-03 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Procedures after remand of agreement.** Within one hundred eighty days after the
11 administrative law judge remands the agreement under section 4 of this Act, the state engineer
12 shall file with the administrative law judge:

- 13 1. An amended agreement complying with section 2 of this Act, which is subject to
- 14 the procedures specified by sections 3 and 4 of this Act;
- 15 2. A motion to dismiss the proceedings without prejudice; or
- 16 3. A motion for a continuance.