

Testimony
Senate Bill 2079 - State Water Commission
Senate Energy and Natural Resources
Senator Kreun, Chairman
January 7, 2021

Chairman Kreun, and members of the Senate Energy and Natural Resources Committee - I am Aaron Carranza, Director of the Regulatory Division of the State Water Commission (Commission). I am here today to provide you an overview of Senate Bill 2079, which would amend and reenact section 61-03-21 of the North Dakota Century Code (N.D.C.C.).

N.D.C.C. § 61-03-21 is titled “State engineer may require plan of operation – Adequate structure.” The section currently does two main things. It requires the operators of all water storage reservoirs with a capacity of more than one thousand acre-feet to submit an annual operating plan to the State Engineer, and it requires such operators to maintain adequate structures. The operating plan requirement further details when the operating plan should be filed, and procedures for an interim operating plan if the state engineer determines an emergency to exist in connection with operation of the reservoir. The adequate structures requirement also provides a procedure for a hearing to address cancellation of the water use permit if the operator fails to maintain and operate adequate structures.

The changes proposed in Senate Bill 2079 will:

- Eliminate the annual operating plan requirement for water storage reservoirs having a capacity of more than one thousand acre-feet.
- Remove the one thousand acre-foot capacity cut-off from the remaining section addressing adequate structures.
- Remove the emergency interim operating plan procedures.
- Remove reference to cancellation of the water use permit from this section.

The requirement for annual operating plans is impractical for both dam owners and the State, while adding no benefit to the regulation of dams in North Dakota. An operations and maintenance plan for a dam is something that is best developed when a dam is built. This is a one-time document, rather than annual, and is best addressed as a requirement through the dam safety construction permitting process.

In addition, the need for such an operations and maintenance plan is better tied to the hazard presented by the dam, rather than an arbitrary volume such as the one thousand acre-feet criteria currently presented in N.D.C.C. § 61-03-21. Many low hazard dams, those which present little to no hazard downstream, meet the one thousand acre-foot threshold. Many structures such as lake outlet control structures and low-head dams also fall into this category. However, there is no value to life safety or protection of the public in requiring an annual operating plan for those structures. Removing this requirement will eliminate an unnecessary and unbeneficial burden from dam owners.

Similarly, the emergency interim operating plan procedures detailed in N.D.C.C. § 61-03-21 provide no practical benefit to the regulation of dams in North Dakota. Emergency procedures for dams are currently outlined in a dam's emergency action plan, which is a requirement under N.D.C.C. § 61-03-25.

The language in N.D.C.C. § 61-03-21 goes on to address the need for operators of water storage reservoirs to maintain adequate structures. Currently, this language applies only to water storage reservoirs with a capacity of more than one thousand acre-feet. It is possible for dams smaller than one thousand acre-feet to present a hazard downstream. The modified language will remove the arbitrary one thousand acre-foot volume cut-off, requiring operators of all water storage structures to maintain adequate structures.

The language in N.D.C.C. § 61-03-21 referencing cancellation of a water use permit if the operator fails to maintain and operate adequate structures is unnecessary as it

is redundant with the authority granted to the State Engineer under N.D.C.C. ch. 61-04. In addition, removing this language further clarifies the concept that it is necessary to maintain adequate structures in all cases, regardless of size or association with a water use permit.

The Office of the State Engineer has developed, and continues to enhance, strong dam safety and water appropriation mechanisms to fulfill the State Engineer's mission to manage water resources of North Dakota for the benefit of its people. These proposed changes to N.D.C.C. § 61-03-21 will greatly clarify and streamline this section of code, and will eliminate unnecessary and impractical requirements from dam owners.

The State Water Commission supports the passage of Senate Bill 2079 and fully supports the sound management of water resources across municipal, county, and state jurisdictions.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.