



WATER DRAINAGE COMMITTEE

Wednesday, July 21, 2021
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Larry Luick, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Larry Luick, Kathy Hogan, Ronald Sorvaag; Representatives Dennis Johnson, David Monson, Marvin E. Nelson; Citizen members Jeff Frith, Sharon Lipsh, Randy Melvin

Members absent: Citizen members Clif Issendorf and Richard Johnson

Others present: Representative Jim Schmidt, Huff, and Senator Richard Wardner*, Dickinson, members of the Legislative Management

See [Appendix A](#) for additional persons present.

**Attended remotely*

Ms. Claire Ness, Counsel, Legislative Council, presented a memorandum entitled [Water Drainage Committee Study Directive - Background Memorandum](#) describing the committee's four study directives and summarizing the history of water legislation in North Dakota. She noted the committee's four study directives are:

1. Study and propose amendments to North Dakota Century Code Chapters 61-16.1, 61-21, and 61-32 to eliminate redundancy and conflicts and to provide for uniform assessment procedures for all water projects;
2. Study and recommend procedures to appeal water resource board decisions;
3. Study the structural relationship between the State Water Commission and water resource boards and identify methods for improving water resource board accountability; and
4. Study methods, including the use of an independent organization, for assessing the cost of a project in relation to the benefits received and recommend a method to ensure the cost to a landowner does not exceed the benefit to the landowner.

STUDY DIRECTIVE 1

Ms. Ness presented testimony and a memorandum entitled [Senate Bill No. 2208 \(2021\) as Introduced](#) regarding conflicts and redundancy in Chapters 61-16.1 and 61-21.

STUDY DIRECTIVE 2

Mr. Sean M. Fredricks, Attorney, Ohnstad Twichell PC, presented testimony ([Appendix B](#)) regarding water resource board project timelines and appeals from water resource board decisions. He noted it is important to merge Chapters 61-16.1 and 61-21.

Mr. Timothy J. Dawson, Director, Office of Administrative Hearings, presented testimony regarding the administrative appeals process. He noted appeals from water resource boards to the State Water Commission are conducted by the Office of Administrative Hearings at the election of the commission. He noted the Office of Administrative Hearings is capable and interested in providing administrative law judges or mediators for water resource boards.

STUDY DIRECTIVE 3

Mr. Jayme Tenneson, State's Attorney, Griggs County, presented testimony regarding counties' oversight of water resource boards. He noted:

- The chapters of the Century Code regarding water resource boards need to be overhauled and streamlined;
- Many water issues are very controversial, and county commissioners often do not want a direct role in resolving water-related conflicts;

- There should be at least one county commissioner on each water resource board to improve communication between the two bodies and motivate county commissions to take a hands-on approach to water resource board oversight;
- Many individuals do not want to serve on water resource boards because the boards have to address contentious problems, while some individuals want to be water resource board members because the individuals have a personal interest at stake in matters before the boards; and
- The State Water Commission should take a flexible approach regarding stream crossing standards and reconsider its determination that all drains in the Devils Lake Basin have "statewide impact," which makes it difficult to remove water from roads in the basin.

Mr. Aaron Carranza, Regulatory Division Director, and Mr. Matt Lindsay, Engineering Manager and Water Resources Engineer, State Water Commission, presented testimony ([Appendix C](#)) regarding the structure and functions of the State Engineer's office and the relationship between the State Engineer's office and water resource boards. Mr. Lindsay noted the State Engineer's office provides training and support for water resource boards.

STUDY DIRECTIVE 4

Dr. Duane Pool, Natural Resource Economist, State Water Commission, presented testimony ([Appendix D](#)) regarding methods available to assess costs in relation to benefits of water projects.

Mr. Kale Van Bruggen, Attorney, Rinke Noonan, presented testimony ([Appendix E](#)) on behalf of Mr. Cliff Issendorf, Member, Bottineau County Water Resource Board, regarding assessment of costs for water projects.

PRESENTATION RELATED TO ALL FOUR STUDY DIRECTIVES

Mr. Michael Anderson, Member, State Water Commission, presented testimony regarding State Water Commission research on multiple drainage and water resource board topics. He noted he was asked to participate in a workgroup with the goal of finding a path to resolve complaints legislators received about water issues. He noted he was tasked with gathering information about the effects of water issues on various stakeholders, and he spent months traveling around the state talking to many water resource boards, individual resource board members, legislators, attorneys, engineers, State Water Commission staff members, the North Dakota Water Resource Districts Association, and others. He noted his findings include:

- The life cycle of land ownership and life cycle of an assessed drain need to be considered when evaluating drain projects.
- Chapters 61-16.1 and 61-21 should be combined to remove confusion and redundancy.
- Chapter 61-32 may need to be revised.
- Landowners expressed a need for clarification of the assessment project process and a feeling they are being taxed without representation for assessment projects.
- District courts should not be the only option for landowners to appeal water resource board decisions. Other options include having the State Water Commission hear the appeals, provided it has sufficient resources, or having the State Water Commission be part of a broader appeal committee, including a technical engineer and others.
- The State Water Commission should partner with water resource boards to ensure worthy water projects are implemented, especially when a state cost-share is requested by a water resource board.
- The method for allocating costs of assessment projects generally is a distribution of costs rather than a determination of benefits.
- The simple majority threshold for approving assessment projects may need to be increased.

NEXT MEETING DATE

Chairman Luick noted the next meeting will be Wednesday, October 13, 2021.

No further business appearing, Chairman Luick adjourned the meeting at 3:15 p.m.

Claire Ness
Counsel

ATTACH:5