



WATER DRAINAGE COMMITTEE

Wednesday, December 8, 2021
Brynhild Haugland 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, Marvin E. Nelson; Citizen Members Jeff Frith, Clif Issendorf, Richard Johnson, Sharon Lipsh, Randy Melvin

Member absent: Representative David Monson

Others present: Senator Rich Wardner*, Dickinson, member of the Legislative Management
See [Appendix A](#) for additional persons present.

**Attended remotely*

It was moved by Senator Sorvaag, seconded by Representative Johnson, and carried on a voice vote that the minutes of the July 21, 2021, meeting be approved as distributed.

UPDATE ON FEDERAL WATERS OF THE UNITED STATES LEGISLATION AND REGULATIONS

Senator Kevin Cramer, North Dakota, presented testimony (Appendices [B](#), [C](#), [D](#), [E](#), [F](#), [G](#), [H](#), [I](#), [J](#), and [K](#)) regarding the federal Waters of the United States (WOTUS) legislation and regulations, wetlands easements, and his efforts to inform policymakers regarding the needs of North Dakotans.

Chairman Luick noted the state, not the federal government, should control the regulation of land. He also noted there are concerns about attempts to restrict agriculture practices.

Senator Cramer noted federal policymakers need to understand modern agriculture and conservation practices and work with landowners on water management and land management.

In response to questions from committee members, Senator Cramer noted it is important to provide comments on proposed rules that would restrict the application of chemicals within a certain distance of wetlands. He noted because the definition of "waters of the United States" developed by President Barack Obama's administration was discarded by federal courts, the current definition is the one used before 2015. He also noted he appreciates the trip by Mr. Michael Regan, Administrator, Environmental Protection Agency, to North Dakota for a listening session on WOTUS and other issues, and the engagement by employees of the United States Bureau of Fish & Wildlife on WOTUS.

STUDY DIRECTIVE 2

Ms. Andrea Travnicek, Director, Department of Water Resources, presented testimony ([Appendix L](#)) regarding resources of the Department of Water Resources available for potential roles in drainage management. She noted the Department of Water Resources should be the last resort in the appeals process, and most drainage issues should be handled at the local level.

COMMITTEE DISCUSSION REGARDING ISSUES TO ADDRESS

Mr. Melvin noted there are questions regarding who has jurisdiction over a natural waterway that is not part of an assessment district. He noted amendment 21.0194.01001 to Senate Bill No. 2208 (2021) may have addressed this issue but was not adopted.

Ms. Lipsh noted county highway departments have concerns about having to bear costs for drainage projects without having input or authority to make decisions about the projects. She noted there are multiple questions regarding jurisdiction over and responsibility for maintenance of drainage projects. She noted parties with drainage conflicts should be able to mediate before going to court.

Mr. Frith noted condensing and cleaning up drainage statutes would be helpful. He noted water resource board members are dedicated and hardworking.

Mr. Johnson noted water resource boards need to ensure a landowner whose land is assessed for a water project is consulted before the project is approved, and the process for approving drainage projects needs to be fair for water resource boards and landowners.

Mr. Issendorf noted the committee should address roads with drainage ditches on both sides which lack real outlets for water.

STUDY DIRECTIVE 1

Ms. Claire Ness, Senior Counsel and Code Revisor, presented a memorandum entitled [Assessment Project Timelines Under North Dakota Century Code Chapters 61-16.1 and 61-21](#). She noted Chapter 61-16.1 includes provisions related to assessment "projects," which is defined to include drains, and Chapter 61-21 includes provisions specifically related to assessment drains. She noted there are inconsistencies between the chapters, and the committee is required to propose a uniform assessment procedure for all water projects.

The committee members discussed each line of the chart and provided direction to Ms. Ness to create a bill draft establishing a uniform assessment procedure for water projects.

Senator Sorvaag noted the committee should develop multiple bill drafts instead of one omnibus bill draft for all study directives.

STUDY DIRECTIVE 4

Dr. Duane Pool, Natural Resource Economist, Department of Water Resources, presented testimony ([Appendix M](#)) regarding calculations of costs and benefits.

In response to questions from members of the committee, Dr. Pool noted any entity that performs cost-benefit analyses uses a monetary definition of benefit. Dr. Pool noted the potential for a future benefit generally is an indirect benefit and cannot be predicted.

The committee members provided direction to Ms. Ness to create a bill draft defining "benefit," requiring use of the cost-benefit tool from Dr. Pool's presentation, and allowing assessment of a political entity such as a county highway department only if the political entity has an opportunity to weigh in on the project for which it will be assessed.

No further business appearing, Chairman Luick adjourned the meeting at 1:40 p.m.

Claire Ness
Senior Counsel and Code Revisor

ATTACH:13