

Testimony
HB 1075—Department of Water Resources
House Energy and Natural Resources
Representative Todd Porter, Chairman
January 12, 2023

Mr. Chairman and members of the House Energy and Natural Resources Committee, my name is Chris Bader. I am the Director of the Water Appropriation Division of the Department of Water Resources. I am here to support House Bill 1075.

This bill will modify sections 61-04-23 through 25 of the North Dakota Century Code concerning the statutory process for cancellation of water rights. The proposed changes will expedite the process for all parties involved with **no loss of due process** to affected parties.

Since codified in the [1963](#) legislative session, the water right cancellation process has remained essentially unchanged. The department follows the steps below for a permit subject to cancellation:

1. Schedule a water permit cancellation hearing and send notice to the permit holder and affected landowners.
2. Publish a notice of cancellation hearing in the county paper of record for two consecutive weeks.
3. Hold a cancellation hearing.
4. Make a recommendation based on the hearing to cancel or not cancel the permit.
5. Send a final decision to all affect parties
6. The decision on the water permit may be appealed under chapter 28-32 of North Dakota Century Code.

At the time this procedure was codified, it essentially followed the exact same process for applying for a conditional water permit application. And for 30 plus years, the application process for a conditional water permit and cancellation of water rights had the same process.

However, the [1999](#) legislative assembly, at the request of this agency, modified the conditional water permit application process, replacing the hearing associated with an application with a comment period, as hearings on applications were largely unattended, and had become unnecessary. For the same reason, we are now proposing changes to remove the hearing associated with cancellation of water rights and instead imposing a comment period.

The cancellation hearings have largely gone unattended. For example, from 2016 to 2020, there were cancellation hearings on 60 permits. Of those, only 6 had attendees—2 of which appeared to agree with the cancellation. So, approximately 90% of the hearings had no attendees. Similar to the changes in the 1999 legislative assembly, the proposed bill will update the cancellation process to align with the application process, so the updated procedures will be to:

1. Send notice of cancellation to the permitholder stating that a notice will be published in the county paper of record that will state when public comments on cancellation must be received. Please note, that this in no way precludes the permitholder, or any constituent communicating with the Department of Water Resources whether written, by phone, or in-person.
2. A published notice of cancellation is published in the county paper of record that will specify a comment period deadline from which all written comments must be received and that the DWR will issue a final decision on cancellation based on comments.
3. DWR issues final decision based on comments.
4. DWR decision is appealable under ch. 28-32 of North Dakota Century Code.

Finally, it is a Department of Water Resources standard procedure to draft a memorandum outlining the reasons for cancellation of the water permit and send it to the permitholder with a form for signature in agreement with cancellation that outlines all their rights afforded to them under sections 61-04-23 through 25. This form is completely voluntary. Should the form not be received, then the processes in

sections 61-04-24 and 25 are implemented. Therefore, permitholders are informed of potential cancellation even prior to the initiation of the cancellation process. This procedure will remain unchanged, as it streamlines the process in cases when the permitholder has requested or agrees with cancellation of the permit.

This concludes my testimony, and I welcome any questions the committee may have.