

Testimony
Senate Bill 2036 – Department of Water Resources
Senate Agriculture and Veterans Affairs Committee
Senator Larry Luick, Chairman
January 20, 2023

Chairman Luick, and members of the Senate Agriculture and Veterans Affairs Committee – I am Matt Lindsay, Engineering & Permitting Section Manager of the Department of Water Resources (Department). I am here today to provide general support for Senate Bill 2036, which proposes to amend portions of North Dakota Century Code title 61, relating to water-related definitions and regulatory oversight.

Senate Bill 2036 was created by the Interim Water Drainage Committee as a result of SB 2208 passed by the 67th legislative assembly. In particular, the committee was charged to study and answer certain questions to optimize water and drainage law in North Dakota.

Senate Bill 2036 largely addresses local Water Resource District and Board actions. The Department previously provided comments for consideration to the Interim Water Drainage Committee on this bill, as well as now-titled Senate Bill 2037, which are attached. As a result, the Department has identified a couple of sections within Senate Bill 2036 worth highlighting for this committee.

In Section 1, the incorporation of a “waterway” definition was completed with Department engagement. The Department created an exhibit during the interim committee work, which is attached to this testimony for additional context. Again, a “waterway” is proposed to mean all natural features that convey surface water, while a “watercourse” is a special type of “waterway” with specific legislative jurisdictional considerations. The Department supports the proposed language in Section 1.

Related to Section 2, the Department believes there may have been a drafting misunderstanding with use of the proposed term “waterway.” After discussing with interested parties, the Department would support an amendment to replace all uses

of the term “waterway” with the term “watercourse” on page 2, lines 3 through 22 of Senate Bill 2036.

Also in Section 2, the State Water Commission, as an appointed board, is not set up to execute the referenced administrative and regulatory water management functions. As is done for drainage (N.D.C.C. § 61-32-08) and construction (N.D.C.C. § 61-16.1-53.1) complaints and complaint appeals, the Department is the more appropriate state administrative remedy with regulatory authority. The Department would support an amendment to replace “state water commission” with “Department of Water Resources” on page 2, line 8 of Senate Bill 2036.

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