

Testimony
House Bill 1073 – Department of Water Resources
Senate Energy and Natural Resources
Senator Dale Patten, Chairman
March 2, 2023

Chairman Patten, and members of the Senate Energy and Natural Resources Committee - I am Aaron Carranza, Director of the Regulatory Division of the Department of Water Resources (Department). I am here today to provide you an overview of House Bill 1073, which would amend and reenact section 61-03-21 of the North Dakota Century Code (N.D.C.C.). This bill is part of the governor's overall red-tape reduction initiative by proposing to remove unnecessary regulations.

N.D.C.C. § 61-03-21 is titled "Plans of operation for reservoirs – Adequate structure." This 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 Department, 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 Department 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 House Bill 1073 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 in the event of failure, 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 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 separate 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.

Some dams do have operating plans or agreements that outline when and how releases of water are to be made. However, these exist when necessary and are again generally one-time documents that are outside of the operating plan requirements currently outlined in N.D.C.C. § 61-03-21.

While “water storage reservoir” is not specifically defined in existing code, N.D.C.C. § 61-03-21 pertains only to structures that fall within the existing authorities of the Department as outlined in N.D.C.C. chs. 61-03 and 61-04. Removing the arbitrary one-thousand acre-feet volume cut-off would not expand the Department’s existing authority to any other types of structures beyond what exists in code now.

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 already granted to the Department 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 Department has developed, and continues to enhance, strong dam safety and water appropriation mechanisms to fulfill the Department’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 for dam owners.

The Department of Water Resources supports the passage of House Bill 1073 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.