

Testimony
Senate Bill 2303 – Department of Water Resources
Senate State and Local Government Committee
Senator Kristin Roers, Chairwoman
February 9, 2023

Chairwoman Roers, and members of the Senate State and Local Government Committee – I am Aaron Carranza, Regulatory Division Director of the Department of Water Resources (Department). I am here today to provide neutral testimony for Senate Bill 2303, which relates to maximum basement depths in residential properties.

Senate Bill 2303 as written uses the term “Ordinary High Water Mark” (OHWM) to define the underlying ground water table. This conflicts with the existing definition of the term “OHWM” located in North Dakota Century Code (N.D.C.C.) § 61-33-01(4) relative to the identification and management of the State’s sovereign lands.

The OHWM currently identifies the boundary between the upland areas owned by the riparian (or adjacent) landowner and the public-owned State sovereign land. The OHWM has not historically been used to describe groundwater features. From the surrounding language in Senate Bill 2303, it appears the intent is to refer to the “upper limits” of a ground water table.

Additionally, N.D.C.C. ch. 43-36 provides the definition, professional duties, and licensing requirements for a Professional Soils Classifier practicing in the State of North Dakota. I believe this to be the proper discipline to employ to make this type of professional determination.

For these reasons, I would like to recommend the following amendments to SB 2303:

A one-family or two-family dwelling constructed after August 1, 2023, may not have a basement depth of more than one foot [30.48 centimeters] below the ~~ordinary high water mark~~ upper limits of the underlying water table as

~~established~~ identified by a ~~soil scientist or~~ Professional Soil Classifier ~~as~~ provided in Chapter 43-36. The department of commerce, in cooperation with the state building code advisory committee, shall adopt rules to implement and update the state building code to comply with this section.

Thank you for your time and attention this morning. I welcome any questions you may have.