

TESTIMONY OF

Aaron Carranza, Division Director, Regulatory Division

Chairman Luick and members of the Senate Agriculture and Veterans Affairs Committee, I am Aaron Carranza the Regulatory Division Director of the Department of Water Resources. I'm here today to provide neutral testimony on Senate Bill 2325.

Senate Bill 2325, specific to the Department, mandates the Department "determine the ordinary high-water mark of the area" in relation to all past and future wetland easements.

To be clear, the Department does not currently conduct ordinary high water mark delineations of wetlands, does not have any Certified Wetland Delineators on staff, nor does the Department employ any Professional Wetland Scientists.

The only thing the Department currently does that may be similar to the proposed "ordinary high-water mark" delineation is facilitate Ordinary High Water Mark (OHWM) determinations of the state's 17 Navigable Waters, as codified in N.D.C.C. § 61-33-01.1 (see Department's Navigable Waters Guide available on the Department's website and in my testimony online).

Consequently, the Department does not currently have any existing responsibility, staffing resources, or expertise associated with establishing "ordinary" elevations relating to wetlands or wetland easements. It is likely that the OHWM delineations specific to the state's navigable waters differs from determining a normal/typical "high" elevation of a wetland.

This bill will result in a substantial increase in regulatory responsibilities for the Department. As a result, the Department believes a fiscal note to account for the expected costs to address the new regulatory expansion is necessary. While the full scale of workload is unknown, the Department is anticipating at least three (3) additional FTEs will be necessary to account for the estimated substantial increase in regulatory actions.

An alternative to FTEs would be an ongoing appropriation to facilitate contracting the wetland elevation delineation work out on behalf of the Department on an as-needed basis. While the Department does not know an exact dollar amount for such work, similar contracts have cost the Department millions of dollars.

A sample area of the state is shown in Figure 1 below. The wetlands shown in red in the image were pulled from the US Fish and Wildlife Service's National Wetland Inventory (NWI) through the associated Wetlands Mapper portal. In the 12 sections bounded in yellow, there are over 400 wetlands identified.

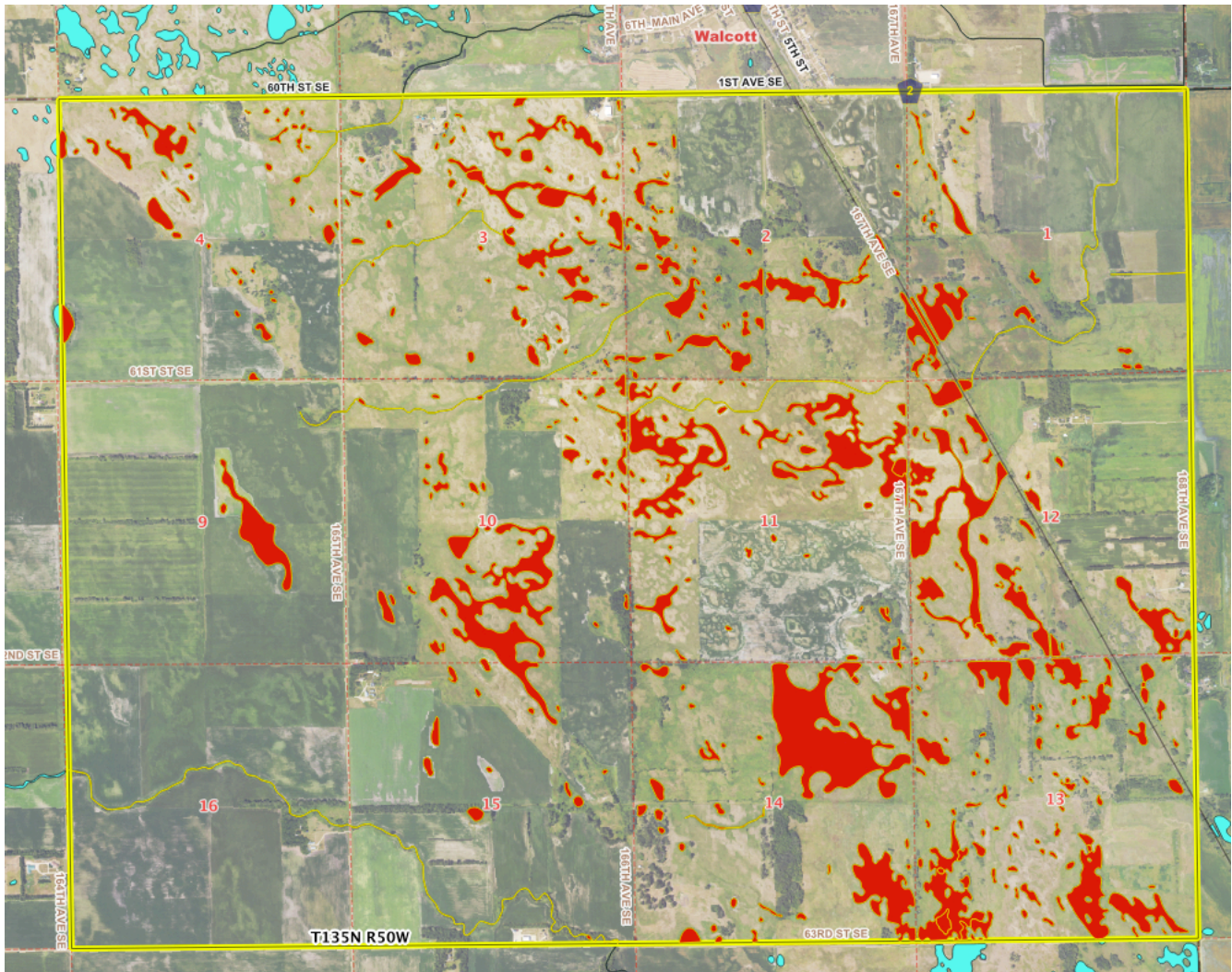


Figure 1: Example Wetland Data

According to the NWI, North Dakota has well over 2 million identified wetlands of varying classification. While not every wetland will be subject to the proposed Department OHWM review, the Department estimates a significant number of requests associated with this new regulatory responsibility.

Thank you for the opportunity to testify, and I'm happy to answer any questions.



To Navigating North Dakota Navigable Waters

GUIDE

To Navigating North Dakota Navigable Waters

For more information about sovereign lands or anything else related to enjoying North Dakota's waters:

**North Dakota State Water Commission
Sovereign Lands Program**
[www.swc.nd.gov/reg_approp/
sovereignlands/](http://www.swc.nd.gov/reg_approp/sovereignlands/)

North Dakota Game & Fish
(701) 328-6300
www.gf.nd.gov/boating

BOATING ON NAVIGABLE WATERS

- ▶ North Dakota owns the bed and banks of these waters below the OHWM.
- ▶ You are NOT trespassing while you are boating on these waters, as long as you stay **BELOW** the OHWM.
- ▶ You must access the river legally, via section line, public property, or with landowner permission.
- ▶ Fences are only allowed across navigable rivers by the issuance of a Sovereign Land Permit from the OSE, the permittee must abide by general conditions set forth by the OSE, which includes safety precautions for boaters.
- ▶ Shore usage such as hiking, fishing, and short-term camping is permitted on sandbars and shorelines which are below the OHWM.
- ▶ When in doubt, ask, and **ALWAYS** be courteous.



THREATENED & ENDANGERED SPECIES

- ▶ North Dakota provides crucial nesting habitat to Piping Plovers and Least Terns; small shorebirds which are protected under the Endangered Species Act.
- ▶ Shore use is prohibited in areas marked by "Area Closed Endangered Bird Nesting Site" signs.
- ▶ Sandbars within the Missouri River and Lake Sakakawea are utilized by these birds.
- ▶ Please respect nesting areas and do not use these sandbars for camping or recreation.



BOATING ON NON-NAVIGABLE WATERS

- ▶ When in doubt, ask, and **ALWAYS** be courteous.
- ▶ On the state's non-navigable waters, the landowners adjacent to the waterbody own the bed and banks of that waterbody.
- ▶ You **MUST** access the waterbody legally via section line, public land or with landowner permission.
- ▶ You are **NOT** trespassing if you do not exit the watercraft while on the waterbody.
- ▶ Popular examples of non-navigable waters include the Little Missouri, Apple Creek, and Little Heart Rivers.
- ▶ Shore usage is **NOT** permitted unless landowner permission is granted, unless you are on non-posted or public lands.
- ▶ Be aware of hazards including fences, potential portages, and legal launching locations.
- ▶ The State has several federally managed reservoirs, such as Lake Oahe, Lake Sakakawea, and Lake Tschida that offer public boating, kayaking, and canoeing opportunities. Please contact the managing federal agency for more information.

AQUATIC NUISANCE SPECIES






- ▶ Aquatic Nuisance Species (ANS) are those plant or animal species not naturally found in an area, which cause a wide variety of negative impacts to waterbodies, native plants, animals, habitat, and even infrastructure.
- ▶ There are four species of ANS which are managed in North Dakota: the zebra mussel, silver carp, curlyleaf pondweed, and eurasian watermilfoil.
- ▶ Please inspect watercrafts for ANS, remove plants and ANS, and drain all water from your watercraft after each use.
- ▶ For more ANS information, contact the North Dakota Game and Fish Department.
- ▶ To view a map of currently infested waters: www.gf.nd.gov/ans#regs



Credit: USGS

GENERAL RULES & SAFETY







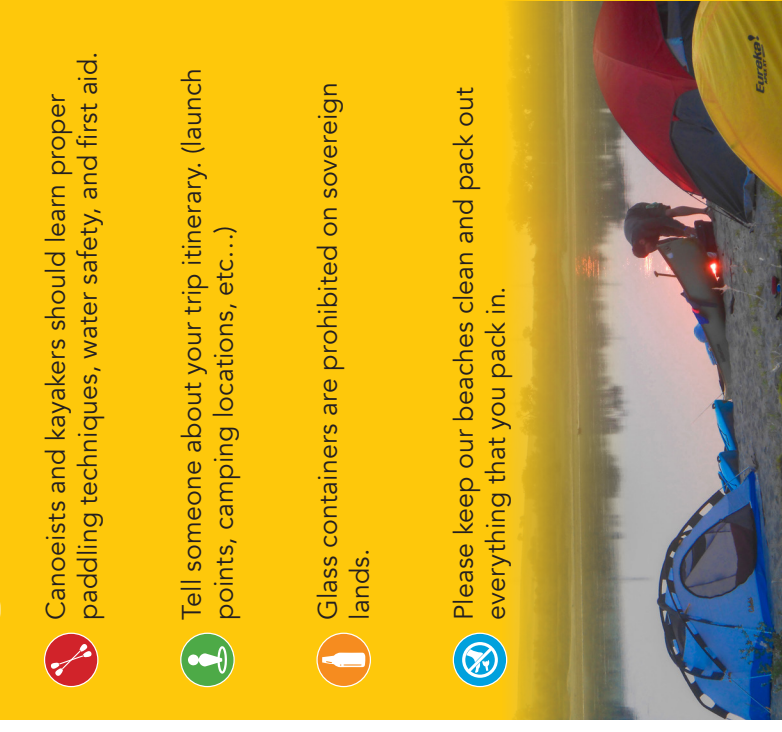
-  Lifejackets are required by North Dakota law for all users of personal watercraft.
-  Be aware of changing weather conditions, wind speeds, and direction.
-  Always follow boating rules and regulations and stay aware in busy boating corridors.
-  Boating under the influences of drugs or alcohol is illegal in ND. (NDCC § 20.1-01-02).
-  Never exceed the weight capacity of your watercraft.



GENERAL RULES & SAFETY

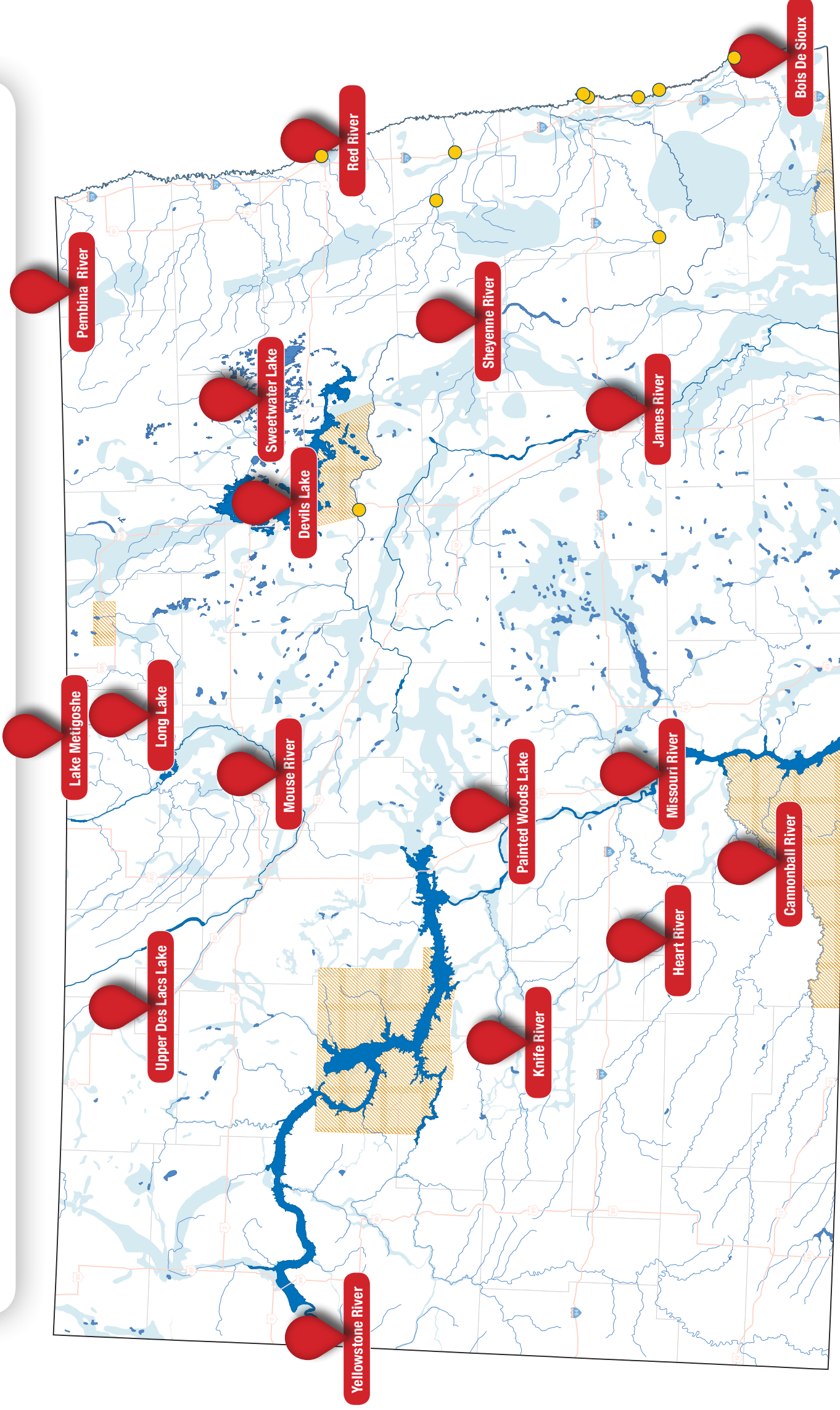


-  Canoeists and kayakers should learn proper paddling techniques, water safety, and first aid.
-  Tell someone about your trip itinerary. (launch points, camping locations, etc...)
-  Glass containers are prohibited on sovereign lands.
-  Please keep our beaches clean and pack out everything that you pack in.



NORTH DAKOTA'S NAVIGABLE WATERS

There are amazing opportunities for boating, canoeing, and kayaking on North Dakota's lakes and rivers. Many of these waters are termed as "navigable," which means both water and land owned by public offering public access opportunities beyond what's allowed in and around non-navigable waters. This guide has been developed to assist boaters, canoeists, kayakers, and other recreational water enthusiasts to safely, legally, and respectfully enjoy North Dakota's navigable and non-navigable waters.



LEGEND

Navigable Waters

Modified Low Head Dam*

* "Modified" with rock ramp fish passage. Sound judgement should be used at all times.

All other waters not listed are considered to be non-navigable at this time. List updated May 2018. For a list of boat docks, visit gf.nd.gov/boating/access.

- ▶ Missouri River ▶ Lake Metigoshe
- ▶ James River ▶ Knife River ▶ Painted Woods Lake
- ▶ Sheyenne River ▶ Heart River ▶ Sweetwater Lake
- ▶ Pembina River ▶ Cannonball River ▶ Upper Des Lacs Lake
- ▶ Mouse River ▶ Yellowstone River ▶ Long Lake (Bottineau County)
- ▶ Red River ▶ Devils Lake



ORDINARY HIGH WATER MARK (OHWM)

That line below which the action of the water is frequent enough either to prevent the growth of vegetation, or to restrict its growth to predominantly wetland species.



NAVIGABLE WATERS

Waters that were usable for commerce, such as moving goods on a boat, at the time of North Dakota statehood.



SOVEREIGN LANDS

Those areas, including the beds and islands, lying within the ordinary high watermark of navigable lakes and streams. These publicly-owned lands are managed for the benefit of the citizens of the state.

The Office of the State Engineer (OSE) is responsible for managing activities in and around the state's navigable waters.

BE AWARE OF LOW HEAD DAMS

- ▶ Usually simple concrete or rock masonry structures that span the width of the river or stream.
- ▶ Under the right conditions, water flowing over the dam can cause a "roller effect" on the downstream side.
- ▶ Strong recirculating currents can trap and drown boaters, swimmers, or other water users.
- ▶ Watch for low head dam signs, portage around all dams and re-enter well downstream of the boil.
- ▶ For more information about low head dams: www.swc.nd.gov/reg_approp/damsafety/

