

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1148

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Demetrius Ballantyne  
Operator's Signature

10/2/03  
Date

2003 HOUSE NATURAL RESOURCES

HB 1148

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dennis G. Ball  
Operator's Signature

10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1148

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 23, 2003

Tape Number	Side A	Side B	Meter #
1		xx	-3,500
Committee Clerk Signature			

Minutes:

**Rep. Dekrey** moved the committee accept the proposed amendment to HB 1148. Seconded by **Rep. Clark**.

**Rep. Solberg:** Expressed concern over the 25 acre feet requirement for the certified engineer.

These dams are the lifeblood of the stockmans association. I will oppose this.

**Rep. Nottestad:** This is for the concern to the safty of the structure. The permit size is increasing.

**Rep. Klein:** Most dams are smaller than that area.

**Rep. Solberg:** I know of people who are very concerned with this.

**Bill Pfifer:** Wildlife Society. 900-1,000 dams put in the southwest corner of the state. 60% held water all summer long. Please hold off for a week.

**Rep. Nottestad:** How many are over 25 acre feet?

**Bill Pfifer:** None

The photographic images on this film are accurate reproductions of records delivered to Western Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Donna Baller  
Operator's Signature

10/2/03  
Date

Page 2

House Natural Resources Committee

Bill/Resolution Number 1148

Hearing Date January 23, 2003

**Rep. Solberg:** There are many dams over the 25 acre feet.

**Rep. Nottestad:** I do not see any reason a certified engineer should not sign off this. In the future there will need to be a safty evacuation plan.

**Rep. Drovedal:** I share Solberg's view on this.

Amendment passed by voice vote.

Chair closed hearing on HB 1148.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanna G. Hallmark  
Operator's Signature

1/21/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1148

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 6, 2003

Tape Number	Side A	Side B	Meter #
2			1430-2251
Committee Clerk Signature <i>Eri M...</i>			

Minutes:

Chair Nelson called the meeting to order on HB 1148.

Rep. Nottestad reported on a proposed amendment put together on a subcommittee. (See Attached Testimony and Amendments)

Rep. Keiser moves the amendment seconded by Rep. Solberg.

Passed by voice vote.

Rep. DeKrey moves a Do Pass with Amendments. Rep. Clark seconded.

Rep. Solberg: I have some constituent concerns that have been taken care of with this bill. It removes the certified engineer requirements.

The motion passed by a roll call vote of 12-0-2. Rep. Nottestad will carry.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

*Danna Holbrook*  
Operator's Signature

10/2/03  
Date

38094.0102  
Title.

Prepared by the Legislative Council staff for  
Representative Nottestad  
January 31, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1148

Page 2, line 6, replace "twenty-five" with "fifty"

Page 2, line 7, replace "30837.04" with "61674.08" and after "water", insert "or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard and high-hazard dam."

Page 2, line 9, remove "completed by a professional engineer"

Page 2, line 10, remove "registered in this state" and after the period insert "Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state."

Page 2, line 26, replace "twenty-five" with "fifty"

Page 2, line 27, replace "30837.04" with "61674.08" and after "water" insert "or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam"

Page 3, line 6, replace "twenty-five" with "fifty" and replace "30837.04" with "61674.08"

Page 3, line 7, after "water" insert "or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam"

Renumber accordingly

Deanna Hall  
Operator's Signature

1/31/03  
Date

Date: 2/6/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1148

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass with Amendments

Motion Made By DeKrey Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark	✓				
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Lyle Hanson	✓				
Rep. Bob Hunsakor	✓				
Rep. Dennis Johnson	✓				
Rep. George Keiser	✓				
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland	✓				
Rep. Darrell Nottestad	✓				
Rep. Dorvan Solberg	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Nottestad

If the vote is on an amendment, briefly indicate intent:

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dorvan Solberg  
Operator's Signature

10/2/03  
Date

REPORT OF STANDING COMMITTEE (410)  
February 10, 2003 8:31 a.m.

Module No: HR-25-2068  
Carrier: Nottestad  
Insert LC: 38094.0103 Title: .0200

**REPORT OF STANDING COMMITTEE**

HB 1148: Natural Resources Committee (Rep. Nelson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1148 was placed on the Sixth order on the calendar.

Page 1, line 14, after "easements" insert "to a political subdivision"

Page 1, line 21, after "district" insert "or other political subdivision" and after "board" insert "or the governing body of another political subdivision"

Page 2, line 6, replace "twenty-five" with "fifty"

Page 2, line 7, replace "30837.04" with "61674.08" and after "water", insert "or twenty-five acre-feet (30837.04 cubic meters) of water for a medium-hazard and high-hazard dam."

Page 2, line 9, remove "completed by a professional engineer"

Page 2, line 10, remove "registered in this state" and after the period insert "Except for low-hazard dams less than ten feet (3.05 meters) in height, the plans and specifications must be completed by a professional engineer registered in this state."

Page 2, line 26, replace "twenty-five" with "fifty"

Page 2, line 27, replace "30837.04" with "61674.08" and after "water" insert "or twenty-five acre-feet (30837.04 cubic meters) of water for a medium-hazard or high-hazard dam"

Page 3, line 6, replace "twenty-five" with "fifty" and replace "30837.04" with "61674.08"

Page 3, line 7, after "water" insert "or twenty-five acre-feet (30837.04 cubic meters) of water for a medium-hazard or high-hazard dam"

Renumber accordingly



2003 SENATE NATURAL RESOURCES

HB 1148

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanna Hall  
Operator's Signature

10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1148

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-28-03

Tape Number	Side A	Side B	Meter #
1	X		16.1 - 26.0
Committee Clerk Signature <i>Janet James</i>			

Minutes:

**Senator Thomas Fischer**, Chairman of the Senate Natural Resources Committee opened the hearing on HB 1148 relating to dam construction, dam construction permits, and dike and dam removal notices and hearings.

All members of the committee were present.

**Milton Lindvig**, Director of the Water Appropriation Division for the State Water Commission appearing on behalf of the State Engineer testified in support of HB 1148 (See attached testimony). He also presented an amendment that will change one word on Page 2, Line 8 that replaces "and" with "or" (attached).

There was no opposing or neutral testimony on HB 1148.

**Senator Fischer** closed the hearing on HB 1148.

**Senator Stanley Lyson** made a motion to accept the amendment as presented by Milton Lindvig.

**Senator Michael Every** second the motion.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

*Dan Hall*  
Operator's Signature

10/2/03  
Date

Page 2  
Senate Natural Resources Committee  
Bill/Resolution Number HB 1148  
Hearing Date 2-28-03

Roll call vote # 1 was taken indicating 6 YEAS, 0 NAYS AND 1 ABSENT OR NOT VOTING.

Senator Lyson made a motion for a Do Pass as Amended of HB 1148.

Senator Every second the motion.

Roll call vote #2 was taken indicating 6 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Fischer will carry HB 1148.

Senator Fischer closed the hearing on HB 1148.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dawnna Hall  
Operator's Signature

10/2/03  
Date

38094.0201  
Title.0300

Adopted by the Natural Resources  
Committee  
February 28, 2003

*JB*  
2-28-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1148

Page 2, line 8, replace "and" with "or"

Renumber accordingly

Page No. 1

38094.0201

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

*Dan na G. Baller*  
Operator's Signature

*10/2/03*  
Date

Date: 2-28-03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1148

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amend. Do Pass

Motion Made By Lyson Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp		
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanna O'Connell 10/2/03  
Operator's Signature Date

Date: 2-28-03  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1148

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended.

Motion Made By Lynn Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 7 ~~6~~ No 0

Absent 0

Floor Assignment Fischer

If the vote is on an amendment, briefly indicate intent:

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dan Marshall  
Operator's Signature

10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 3, 2003 8:30 a.m.

Module No: SR-37-3703  
Carrier: Fischer  
Insert LC: 38094.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**  
HB 1148, as engrossed: Natural Resources Committee (Sen. Fischer, Chairman)  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1148  
was placed on the Sixth order on the calendar.

Page 2, line 8, replace "and" with "or"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-37-3703

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

*Danina Goldsmith*  
Operator's Signature

10/2/03  
Date

2003 TESTIMONY

HB 1148

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

*Deanna Hall*  
Operator's Signature

10/2/03  
Date



**TESTIMONY ON HOUSE BILL 1148**

**HOUSE NATURAL RESOURCES COMMITTEE**

**Milton Lindvig, Director, Water Appropriations Division  
State Water Commission**

**January 17, 2003**

Mr. Chairman and Members of the House Natural Resources Committee, I am Milton Lindvig, Director of the Water Appropriation Division for the State Water Commission, appearing on behalf of the State Engineer and in support of House Bill No. 1148. This bill amends N.D.C.C. § 61-02-14.1 and two sections of N.D.C.C. chapter 61-16.1, and creates a new section to N.D.C.C. chapter 61-16.1.

Section 1 of the of the bill amends N.D.C.C. § 61-02-14.1. This section currently authorizes the State Water Commission (SWC) to release easements granted to the state for the construction, operation, and maintenance of dams, if the dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful and will not be reconstructed. This bill provides the authority to the SWC to assign such easements when it would be in the best interests of the state. Many of the easements held by the SWC date back to Works Progress Administration and Civilian Conservation Corps projects of the 1930s and early 1940s. Most of the currently functioning dams constructed by these programs are now the responsibility of the respective county water resource districts or they are in poor repair or washed out so they no longer store water. In some instances other entities are interested in repairing these dams for fish, wildlife, and recreation purposes. In certain cases it would be most effective to have the easement held by the same entity that is responsible for the dam, which in most instances is the county water resource board.

Section 2 of the bill creates a new section to N.D.C.C. chapter 61-16.1. It provides the authority to the water resource districts to release easements assigned to them from the state if the dams are no longer useful.

Sections 4 and 5 are proposed amendments to N.D.C.C. §§ 61-16.1-38 and 61-16.1-53 raising the requirement for a construction permit from a capacity of 12 1/2 acre-feet of water to 25 acre-feet and to require plans and specifications from a registered professional engineer for any project meeting the permitting threshold.

Currently, N.D.C.C. § 61-16.1-38 requires a permit for any dike, dam, or other device for water conservation, flood control regulation, watershed improvement, or storage of water capable of retaining, obstructing, or diverting more than 12 1/2 acre-feet. The majority of the projects for which these construction permits are issued are for dam or dikes. A smaller number of diversion ditches, ponds, and lagoons are also permitted by the State Engineer under this authority.

The current permitting threshold of 12 1/2 acre-feet is lower than most other states. The states of Montana, South Dakota, Nebraska, and Minnesota require permits for any dams storing more than 50 acre-feet or greater than 25 feet in height. National Dam Safety criteria require reporting for those structures storing more than 50 acre-feet or those greater than 25 feet in height. Requiring permits for dams storing only 12 1/2 acre-feet subjects small projects to a regulatory burden that is probably unjustified by any threat to public safety. Although many other states use 50 acre-feet as their threshold, we feel that 25 acre-feet strikes a more reasonable balance between the need to protect public safety and the desire to reduce unnecessary regulatory restrictions on the project proponents.

In most other states, it is common to require a design prepared by a registered professional engineer for any projects meeting the permitting threshold. Currently North Dakota statutes do not establish a threshold for requiring the input of a registered professional engineer. Current administrative rules require preparation of plans and specifications by a professional engineer for any high hazard, medium hazard, or low hazard dam greater than 24 feet in height. We feel that requiring a professional engineer for any project meeting the permitting threshold simplifies the standard and further protects public safety for those larger structures, which typically represent the greater risk.

N.D.C.C. § 61-16.1-53 addresses the removal of non-complying dikes or dams. Currently, if a water resource board determines that a dam or other device capable of retaining, obstructing, or diverting more than 12 1/2 acre-feet of water has been constructed contrary to N.D.C.C. title 61, the board shall order its removal. We are proposing the amendment of N.D.C.C. § 61-16.1-53 to reflect the changed permitting threshold from 12 1/2 acre-feet to 25 acre-feet.

I request your favorable consideration of this bill. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1148

Page 1, line 14, after "easements" insert "to a political subdivision"

Page 1, line 21, after "district" insert "or other political subdivision" and after "board"  
insert "or the governing body of another political subdivision"

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanna Ballantyne  
Operator's Signature

10/2/03  
Date

## MEMORANDUM

**To:** Representative Nottestad

**From:** Craig Odenbach, Chief, Regulatory Section  
North Dakota State Water Commission

**Subject:** House Bill 1148

**Date:** January 28, 2003

House Bill 1148 addresses two issues: the assignment and release of easements for the construction of dams and the permitting and engineering requirements for permits to construct water control devices.

The legislation provides authority to the State Water Commission to assign easements granted to the state for the construction, operation and maintenance of dams. Many of the easements held by the SWC date back to Works Progress Administration and Civilian Conservation Corps projects of the 1930's and early 1940's. Most of the currently functioning dams constructed by these programs are now the responsibility of the respective county water resource districts. In certain cases it would be most effective to have the easement held by the same entity that is responsible for the dam. The bill also provides a mechanism for the county water resource districts to release these easements if the projects are abandoned. The amendment provided additional clarification specifically stating that the easements may be assigned to political subdivisions of the state.

The other portion of the bill deals with permitting and engineering requirements. The bill would increase the size of water control devices that may be constructed without requiring a permit from the state engineer. Current law requires a permit for any device with a diverting capacity greater than 12 1/2 acre-feet. The originally proposed legislation would have increased that threshold to 25 acre-feet. The amended legislation would increase that threshold to 50 acre-feet, except for medium or high hazard dams, which would require a permit if they stored more than 25 acre-feet.

The amended legislation also requires that those devices capable of diverting more than 50 acre-feet, or 25 acre-feet for medium or high hazard dams, shall require plans and specifications prepared by a professional engineer registered in the state. This requirement is waived for low-hazard dams less than 10 feet in height. Originally the proposed legislation required plans and specifications prepared by a professional engineer registered in the state for any structure capable of diverting more than 25 acre-feet, but the proposed amendment significantly relaxes that requirement in response to concerns raised by the US Fish and Wildlife Service. The National Dam Safety Program uses a cutoff of 50 acre-feet and six feet in height and those same standards have been adopted by many other states as the threshold for requiring professional engineering services.

*Dan Hall*  
Operator's Signature

1/28/03  
Date

**TESTIMONY ON ENGROSSED HOUSE BILL 1148**

**Senate Natural Resources Committee**

**Milton Lindvig, Director, Water Appropriation Division  
State Water Commission**

**February 28, 2003**

Mr. Chairman and Members of the Senate Natural Resources Committee, I am Milton Lindvig, Director of the Water Appropriation Division for the State Water Commission, appearing on behalf of the State Engineer and in support of Engrossed House Bill No. 1148. This bill amends N.D.C.C. § 61-02-14.1 and two sections of N.D.C.C. chapter 61-16.1, and creates a new section to N.D.C.C. chapter 61-16.1.

Section 1 of the bill amends N.D.C.C. § 61-02-14.1. This section currently authorizes the State Water Commission (SWC) to release easements granted to the state for the construction, operation, and maintenance of dams, if the dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful and will not be reconstructed. This bill provides the authority to the SWC to assign such easements to a political subdivision when it would be in the best interests of the state. Many of the easements held by the SWC date back to Works Progress Administration and Civilian Conservation Corps projects of the 1930s and early 1940s. Most of the currently functioning dams constructed by these programs are now the responsibility of the respective county water resource districts or they are in poor repair or washed out so they no longer store water. In some instances other entities are interested in repairing these dams for fish, wildlife, and recreation purposes. In certain cases it would be most effective to have the easement held by the same entity that is responsible for the dam, which in most instances is the county water resource board.

Section 2 of the bill creates a new section to N.D.C.C. chapter 61-16.1. It provides the authority to the water resource districts to release easements assigned to them from the state if the dams are no longer useful.

Sections 3 and 4 are proposed amendments to N.D.C.C. §§ 61-16.1-38 and 61-16.1-53 raising the requirement for a construction permit from a diverting capacity of 12 1/2 acre-feet of water to 25 acre-feet for medium and high hazard dams and 50 acre-feet for all other structures and requiring plans and specifications from a registered professional engineer for any project meeting the permitting threshold, except for low hazard dams less than 10 feet in height.

Currently N.D.C.C. § 61-16.1-38 requires a permit for any dike, dam, or other device for water conservation, flood control regulation, watershed improvement, or storage of water capable of retaining, obstructing, or diverting more than 12 1/2 acre-feet. The

majority of the projects for which these construction permits are issued are for dams or dikes. A smaller number of diversion ditches, ponds, and lagoons are also permitted by the State Engineer under this authority.

The current permitting threshold of 12 1/2 acre-feet is lower than most other states. Many states do not require a permit for any structure with a diverting capacity less than 50 acre-feet. National Dam Safety criteria require reporting for those structures storing more than 50 acre-feet. Requiring permits for dams storing only 12 1/2 acre-feet subjects small projects to regulatory requirements that are probably unjustified by any threat to public safety. We believe that, for low-hazard structures, 50 acre-feet strikes a more reasonable balance between the need to protect public safety and the desire to reduce unnecessary regulatory requirements. In cases where the project's location warrants a medium or high hazard rating, 25 acre-feet represents a more appropriate threshold. Typically medium or high hazard structures are situated such that their failure can be expected to result in loss of life.

In most other states, it is common to require a design prepared by a registered professional engineer for any projects meeting the permitting threshold. Currently North Dakota statutes do not establish a threshold for requiring the input of a registered professional engineer. Current administrative rules require preparation of plans and specifications by a professional engineer for any high hazard dam, any medium hazard dam, or any low hazard dam greater than 24 feet in height. We believe that requiring a professional engineer for projects meeting the permitting threshold simplifies the standard and further protects public safety for those larger structures, which typically represent the greater risk. Exempting low hazard dams less than 10 feet high allows construction of dams for which failure represents little downstream risk, due to their low height, without requiring the services of a registered professional engineer. This type of exception is typical in other states. South Dakota exempts dams less than six feet in height.

N.D.C.C. § 61-16.1-53 addresses the removal of non-complying dikes or dams. Currently, if a water resource board determines that a dam or other device capable of retaining, obstructing, or diverting more than 12 1/2 acre-feet of water has been constructed contrary to N.D.C.C. title 61, the board shall order its removal. The proposed amendment reflects the changed permitting threshold.

We ask for your favorable consideration of engrossed House Bill 1148. Thank you.

*Dennis G. Hall*  
Operator's Signature

10/2/03  
Date