MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2126

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.

Theresa A. Lee
Operator's Signature

10-16-03
Date

2003 SENATE NATURAL RESOURCES

SB 2126

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2126

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 1-9-03

Tape Number	Side A	Side B	Meter #
1	X		17.5-31.9
Committee Clerk Signature	Janet James		

Minutes:

All member of the Senate Natural Resources Committee were present.

Senator Thomas Fischer opened the hearing on SB 2126, relating to the definition of irrigation use, water permit applications, and water permit hearings.

Milton Lindvig, Director of the Water Appropriations Division of the State Water Commission, appeared on behalf of the State Engineer and testified in support of SB 2126. (See attached testimony).

Senator John Traynor asked if a golf course has their own well, under present law do they need a permit to water their grounds.

Milton Lindvig answered that a water permit is still required in this case but it will be classified as an irrigation use if it is not owned by a municipality. Private courses have been developed in the state and the water used for those have been classified as irrigation use. Other times a

municipalities have developed or improve a golf course and a municipal water use permit was issued.

Senator Traynor questioned if under the present law if a golf course would need a hearing and this bill would change that procedure.

Milton Lindvig explained that a hearing is only required if someone requests one, however the permit application process is still required. The propose of the SB 2126 is to clarify "irrigation" in the statute.

Senator Fischer asked for any testimony opposing SB 2126.

Senator Fischer asked for any neutral testimony of SB 2126.

Senator Fischer closed the hearing on SB 2126.

Senator Fischer did ask Mr. Lindvig that being this bill deals with more of a commercial venture that is either owned or not owned by a municipality what is the procedure for water appropriations.

Milton Lindvig responded that the definition of domestic use covers the irrigation of up to one acre for the proposes of keeping a yard nice. After one acre a water permit is required although this is not being searched out.

Senator Joel Heitkamp commented that this bill is really very simple and it makes it easier so they isn't the long delay for a permit. He also said that these categorizations are necessary.

Senator Heitkamp made a motion for a DO PASS of SB 2126.

Senator Ben Tollefson second the motion.

The roll vote was taken indicating 7 YEAS, 0 NAYS, 0 ABSENT OR NOT VOTING.

Senator Heitkamp will carry SB 2126.

Date: 1-9
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2126

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Heitkamp Seconded By Tollefson

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 No 0

Absent 0

Floor Assignment Heitkamp

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

REPORT OF STANDING COMMITTEE (410)
January 9, 2003 11:23 a.m.

Module No: SR-03-0404
Carrier: Heitkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2126: Natural Resources Committee (Sen. Fischer, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2126 was placed on the Eleventh order on the calendar.

2003 HOUSE NATURAL RESOURCES

SB 2126

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2126

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 27, 2003

Tape Number	Side A	Side B	Meter #
1	xx		2907-5146
Committee Clerk Signature			

Minutes:

Milton Lindvig: introduced SB 2126. Director of Water Appropriation appearing on behalf of the State Engineer. **(See Attached Testimony)**

Rep. Klein: What was the 12 mile part about?

Milton Lindvig: This was a situation that developed in Barnes County a proposed appropriation in Stuttsman county. This was 3-4 miles from the rural water district well. This solution was satisfactory to them. It really made no difference to us.

Rep. Nottestad: I can see turf fights with irrigation rights. Do you see these kind of fights Developing?

Milton Lindvig: The key is that this has to be relevant to the standards of whether a water permit is allowed.

Rep. Nottestad: You can rule accordingly.

Milton Lindvig: Yes

Chair Nelson: Section 3 seems to have the most questions. How defined is the aggrieved party portion of the process?

Milton Lindvig: We accept letters from the aggrieved parties. They only have to describe the reasons they believe there to be a problem.

Chair Nelson: In the 3 cases you described. The first case there would have been no change in that process. The second case would be at issue under the new legislation. In this case the person has no interest.

Milton Lindvig: There would have no interest. There would have been no difference. The concerns were not concerning water. There were 2 conflicting businesses and an altercation. This was used as a tool to get back at someone.

Chair Nelson: There has not been a specific situation that you have brought forward that would have been impacted.

Milton Lindvig: Not directly this is to set up guidelines as to how this can occur in the future.

Rep. DeKrey: Most of the time these water hearings people come to the hearing thinking they are being aggrieved and after the hearing they come back feeling unaggreived.

Milton Lindvig: The difference is that it would be formalized with a description smoothing out the process.

Chair Nelson closed the hearing on HB 2126.

Rep. DeKrey moved a **Do Pass** on SB 2126 seconded by **Rep. Nottestad**. The motion carried by a vote of 11-0-3. **Rep. Nottestad** will carry.

Date: 2/27/03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2126

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Do Pass

Action Taken

Motion Made By DeKrey Seconded By Nottestad

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 Hunskor					
Rep. Dennis Johnson	✓				
Rep. George Keiser	✓				
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland	✓				
Rep. Darrell Nottestad	✓				
Rep. Dorvan Solberg					

Total (Yes) 11 No 0

Absent 3

Floor Assignment Nottestad

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

REPORT OF STANDING COMMITTEE (410)
February 27, 2003 10:51 a.m.

Module No: HR-35-3559
Carrier: Nottestad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2126: Natural Resources Committee (Rep. Nelson, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2126 was placed on the Fourteenth order on the calendar.

2003 TESTIMONY

SB 2126

TESTIMONY ON SENATE BILL 2126

Senate Natural Resources Committee

Milton Lindvig, Director, Water Appropriation Division
State Water Commission

January 9, 2003

Same testimony to the House

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 Senate Bill 2126.

Senate Bill 2126 amends three sections of N.D.C.C. chapter 61-04. Amendment of subsection 6 of N.D.C.C. § 61-04-01.1 expands the definition of "irrigation use." The definition of "irrigation use" in this subsection currently applies only to agricultural crops. Water is also used to maintain the growth of grass, shrubs, trees, and flowers on athletic fields, golf courses, parks, and similar types of areas. The use of water for these areas does not meet the current definition of irrigation use. In recent practice, the State Engineer has issued either a municipal use water permit for golf courses when owned by the municipality, or an irrigation water use permit if the facilities are not owned by a municipality. The legislative history for the definition of municipal use indicates that the use of water by a municipality for a golf course was considered to be a use for a municipal purpose. The proposed amendment specifically identifies the water used for the maintenance of the described types of areas as an irrigation purpose.

Subsection 3 of N.D.C.C. § 61-04-05 currently requires that notice of a water permit application be provided by certified mail to all public water use facilities in the county in which the proposed appropriation is to occur. When the proposed appropriation site is near a county line, the public water use systems in the adjacent county are not notified, even though its point of appropriation may be quite close to the proposed appropriation site in the other county. The amendment will require notification of public water use facilities within a radius of 12 miles of the proposed appropriation instead of those in the entire county. This will ensure that those public water use facilities that may have an interest in a proposed appropriation will be notified.

Section three of the bill amends a statute relating to the procedure for requesting a hearing. Currently, the statute authorizes any person to request a hearing on a recommended decision for a water permit application regardless of whether the proposed appropriation of water will have an impact on that person. The statute provides that if a request for a hearing is made, the State Engineer must hold a hearing. Subsection 3 of N.D.C.C. § 61-04-05.1 currently states in part:

> Within thirty days of service of the recommended decision, the applicant and any person who filed written comments may file additional written

> comments with the state engineer or request a hearing on the application, or both. . . . If a request for a hearing is made . . . the state engineer shall designate a time and place for the hearing . . .

The amendment requires that the persons who are entitled to a hearing are the applicant and those who would be aggrieved by the proposed appropriation. The amendment also requires the person requesting a hearing to identify in writing how the proposed appropriation may affect the interests of that person and provide the issues and facts to be presented at the hearing. The issues must be relevant to the water permit application process and the provisions of N.D.C.C. § 61-04-06, which provides the criteria that must be met when evaluating a water permit application.

By providing such information with the request for a hearing, the State Engineer can assess the relevancy of the issues and related facts before proceeding with the hearing process. When a hearing is scheduled, the Administrative Agencies Practices Act, N.D.C.C. § 28-32-21, requires the notice of the hearing sent to the parties to contain a written document identifying or explaining the issues to be considered and determined at the hearing. Requiring the person requesting the hearing to identify the issues in the request for a hearing will assist the State Engineer in preparing the necessary notice. The parties to a water permit proceeding generally include the applicant and those who have raised concerns or objections to the application in writing. Requiring the person requesting a hearing to identify the issues will also assist the other parties to the proceeding to respond to the request for a hearing and to prepare for the hearing.

In the three years since this section of the law became effective, three requests for hearings on recommended decisions have been filed. In one instance a hearing was held by the Office of Administrative Hearings, and a decision was reached by the Administrative Law Judge and the State Engineer. One of the parties to the hearing appealed that decision to the district court where it was subsequently dismissed. Including the appeal, the entire hearing process involved 14 months. The persons objecting, however, did have a sufficient interest in the matter entitling them to a hearing. In the second instance, a hearing was requested by a party who had filed written comments on a water permit application for an industrial purpose. However, the person had no interest in the water source for the proposed appropriation and the issues raised were not relevant to the water appropriation process. In the most recent instance the person made statements relative to the effects the proposed appropriation may have on the water supply for which he held a water right. Because the statements contradicted information that the Office of the State Engineer had been collecting for more than 20 years, supporting information was requested before preparing the notice of hearing. However, no information was provided. As a result, the State Engineer denied the request for a hearing. The Office of the State Engineer is working with the person to demonstrate that his water supply is not being affected by the new appropriation.

We ask for your favorable consideration of this bill. Thank you.