

2009 HOUSE NATURAL RESOURCES

HB 1286

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1286

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 1-30-09

Recorder Job Number: 8266

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Vice Chairman Damschen – Open hearing on HB 1286.

Rep. DeKrey – In one of my counties in my district has a lot of irrigation. It has spun a lot of different industries, and one that has taken off is the small commercial gardens. The way the law is written now they are subject to all the water restriction rules and issues. You're talking about a guy whose irrigation is a 1,000 a minute on 100 acres of land compared to what these commercial gardens is substantially less. Questions?

Rep. Keiser – Why 15 acres?

Rep. DeKrey – We had to draw the line somewhere, so this is where we started. We started at 15 acres and 15 gallons of water.

Darcy Doctor – didn't sign in – I have a small garden, probably 10 acres or less. My problem is I live in an area with sandy soil. Without irrigation I can't grow my crops properly. I was told when I drilled a well it could irrigate up to 14 acres with this well, which was not true. I started irrigating probably about an acre and I got a visit from a state water commissioner and they told me I had to shut my water off, which I did. I tried to grow my garden without proper irrigation that year and it was a disaster. I'm here to support HB 1286 because I can't successfully raise a crop without irrigation. The type of irrigation I would be using is a drip

irrigation system. Most of the time it is put under plastic mulch. With the plastic mulch there is little or no evaporation that can go up into the air. There is a system for drip irrigation where you irrigate different parts of your garden and not the whole thing at one time. You're talking about around 8 gal. Of water per minute or less. There is a lot of labor involved in this gardening. If I had to apply for a water permit and go through the hassles and pay \$500 up front, I guess I will give up on doing this gardening. I got into this because I like raising the vegetables. I feel that my operation can't be successful without an irrigation system like this. I would appreciate your support on this. Questions?

Rep. Keiser – Have you or the small group you talked to ever talked a smaller fee for the water permit?

Mr. Doctor – Our concern was the timely manner of the water permit. I know people who have applied for a water permit and it has taken up to 3 years to get the permit. I feel if I'm using less than 10 gal. A minute of ground water I don't know the reason to keep track of the gallons of water I use.

Rep. Drovdal – In my area we have some aquifers that are shrinking so they are trying to know where the water is going. We are starting to lose it for our homes. Should we approach it from the angle should we make it easier or less expensive to get a water permit?

Mr. Doctor – No, I haven't tried. I have a brother who has tried to get a water permit right now. He is going through a lot of hassle and cost him a lot of money – he has been working on it for 3 years now.

Rep. Hofstad – Do you have access to a rural water system?

Mr. Doctor – No I don't. I believe it goes to the end of Burleigh Co.

Rep. Hofstad - Are you in a restricted area?

Mr. Doctor – Further testimony in support of HB 1286?

Thaine Doctor – I'm applying for a water permit and it has been going on 4 years this fall. I've spent a lot of time, I'm losing money, and equipment costs are going up. I'm looking at a full quarter, he's looking at a small acreage. He shouldn't have the hassle of the little bit of water consumption and use he is asking for to provide vegetables for the community.

Rep. Drovdal – Do you know why it is taking so long?

Mr. Smith – We live in a community close to a lake and the water commission feels there needs to be further study because response back from some local people stating it may drain the local lakes. As far as I'm concerned the ground runoff to the lake and the underground water is two different things.

Rep. Keiser – If 1 person uses 15 gallons per minute and 16 other people do it that will make a big difference.

Mr. Smith – I think it would have to be 1 mile apart therefore it shouldn't matter.

Vice Chairman Damschen – Further testimony in support of HB 1266? Opposition

Robert Shaver - **See Attachment # 1.**

Rep. Keiser – Do you offer different levels of water permits?

Mr. Shaver – Not now. The filing fee is \$200.00 per permits.

Rep. Keiser – Does it make any sense to create category for small growers?

Mr. Shaver – I don't see the necessity to do that. I believe the state engineer would entertain that if the filing fee is an issue. Possibly we could look at easing the burden at that end for very small commercial operations.

Rep. DeKrey – How was your envisioning 1 family having several of these gardens when they have to be 1 mile apart.

Mr. Shaver – The concern is with existing ND law. You don't have to be the owner of the land to apply for and hold a water permit for that land. In order to get that permit you must show

you have an interest in that land. It is very conservable, and it happen commonly a nonland owner will apply for a permit that has the economic ability to develop it. They will establish a formal agreement with the landowner and then the nonland owner can go ahead and apply for the permit and they have met the statute requirement that they have an interest in the land. We can envision, for example, should this type of small scale commercial vegetable growing take place, the interest in a large scale, it is very conservable a larger corporate entity could come in and set agreements with various land owners and have these small scale plots and be within legal framework.

Rep. DeKrey – I doubt there are that many people out there that want to work that hard. For the kind of water he is asking for, he will use fewer gallons in a day, than those center pivots loose more in evaporation on a windy day. I think we are being overwrought over not much of a deal here.

Rep. Hofstad – Is there a difference in the timeline to get a permit between a small & large system?

Mr. Shaver – That is possible. This area is a highly developed area. The competition for water resources is very keen. We have other issues with surface water. The reason these larger scale permits have taken so long is we're not, at this point until we're able to collect additional response data, comfortable with issuing any more water. We are concerned that the additional increase in use could cause the resources to not be sustainable. That is one of our major management approaches. Not only to protect the rights of prior appropriators, but that that resource is sustainable. With the smaller scale there is a possibility to view it, it would not be one size fits all. We can certainly make every effort if it is in an area where it is non competitive and generally a small scale permit will not garner a lot of protest or concern, if any. If it is in an area where it's not complete and it doesn't garner a lot of protest and concern we

can address that permit very quickly. It takes very little write-up because you don't have a lot of concerns on impacting other users. We do that. In the years I've been with the commission we can take these smaller commercial, or any small use like that, if it is in a non competitive setting and it doesn't garner a lot of protest and concern, we can put that on the front burner. We can address it quickly, animalize it and get it out the door. Verse a larger scale and a competitive area or even a smaller scale. To answer your question, I couldn't say we could have a one size fits all. It would be based on cercomstances.

Rep. Drovdal – One of the concerns is the time element. How long does it take?

Mr. Shavor – It is highly variable. If the area is very competitive and we're concerned about additional appropriation, it can take many years. On the other hand if it is an area where there is very little development and very little comment and concern the minimum time where everything went perfect we could get it out the door in 70 days.

Rep. Drovdal – Do they use salt water? We have one of the greatest resource in ND lake, Sakakawea why is that a problem?

Mr. Shavor – We are pushing – indicating our aquifers can supply some of the need for oil development, it is not going to supply the full demand. Our surface water resources, other than the Missouri River and Lake Sakakawea, are very limited in terms of reliability and flow. The only true reliable resource is for the projected demand is going to be Lake Sakakawea and our Missouri River system. There is a contractor that is working a submitted water sample to various oil companies and are talking about minimal treatment. They can't use real salty water. I'm very hopeful we can push people more toward Lake Sakakawea and use that resource.

Rep. Pinkerton – The gentleman mentioned there was a meter that costs around \$15,000. Is that accurate? You talk about different kinds of irrigation, but he talked about drip irrigation. Just a quick estimate of what the number of gallons per acre for a drip irrigation.

Mr. Shavor – It depends on the soil type. The sandier soils use more. He was unable at that time to give me a finite number. He did for 15 acres. There again in a drought situation or sandy soil you would have trouble keeping up with a crop demand. We could also get along with entertaining adjusting a filing fee. We have done this. Rather than require an inline meter that would be very expensive. We could look at just putting an hour meter on the power supply and we can measure the pumping rate, and when they report their annual use they report the number of hours and the pumping rate. Then when they report their annual use they report the number of hours and the pumping rate and they can use that. For this small scale we would not impose the condition of an inline flow meter that is in fact very expensive.

Rep. Hunsakor – Costs are a concern for a small operator. If the filing fees are reduced how much money does it take beyond that to get a water permit?

Mr. Shaver – Filing fees are minimal.

Rep. Hunsakor – In a small operation what is the filing fee?

Mr. Shaver – Possibly around \$50 to \$25 range.

Michael Dwyer- ND Irrigation Association - See **Attachment # 2**.

Rep. Keiser – What about a reduced fee for these small operators?

Mr. Dwyer – I think the fees are set by statute.

Vice Chairman Damschen – Any further testimony in opposition to HB 1286? We will close the hearing for HB 1286.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1286

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 2-12-09

Recorder Job Number: 9374

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Rep. DeKrey

Rep. DeKrey – See the Amendment for HB 1286. See **Attachment #1**.

Rep. Keiser – Move the adoption of the amendment.

Chairman Porter – A motion from Rep. Keiser, a 2<sup>nd</sup> from Rep. Hofstad for the adoption of the 0102 amendment. Discussion? All in favor yea unanimous opposed none motion carries.

Rep. Hofstad – Move do pass as amended.

Chairman Porter – I have a motion for a Do Pass as Amended from Rep. Hofstad, a 2<sup>nd</sup> from Rep. Keiser. Discussion Rep. DeKrey, I have one question to ask, how does the monitoring come into play? Is it administrating done or how are they doing that?

Rep. DeKrey – It isn't going to be any different than any other water permit.

Chairman Porter – All the other provisions of a water permit apply except the fee.

Rep. DeKrey – Yes, all the other provisions apply.

Chairman Porter – Any other discussion?

Rep. Hanson – Question

Chairman Porter – Hearing the question has been called for the clerk will call the roll on a Do

Pass as Amended.



Yes 11 No 0 Absent 2 Carried Myxter

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/06/2009

Amendment to:      Engrossed  
                              HB 1286

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed House Bill 1286 with Senate Amendments increases the quantity of water that can be considered "Domestic use." There is no fiscal impact.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	328-2750	<b>Date Prepared:</b>	04/06/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/16/2009

**REVISION**

Amendment to: HB 1286

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				(\$1,750)		(\$1,750)
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed House Bill 1286 creates three different types of irrigation water permit application fees.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Prior to this bill all irrigation water permit application fees were \$200. With this bill two of the new types of irrigation permits will have an application fee of \$25.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Water Commission estimates that only 10 of the irrigation permit applications we receive per biennium would qualify for the lower \$25 fee. This would equate to a reduction of \$1,750 of special fund revenue.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	328-2750	<b>Date Prepared:</b>	02/16/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/16/2009

Amendment to: HB 1286

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Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	328-2750	<b>Date Prepared:</b>	02/16/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/13/2009

Bill/Resolution No.: HB 1286

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
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Appropriations						

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2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill exempts commercial gardens that use fifteen gallons of water per minute or less and are no larger than fifteen acres from needing a water permit. This bill has no material fiscal impact.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

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<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	328-2750	<b>Date Prepared:</b>	01/13/2009

VK  
2/12/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 61-04-04.1 of the North Dakota Century Code, relating to water permit application fees.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 61-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-04.1. Application fees.** The following fees must accompany an application and must be paid by the state engineer into the water use fund of the state treasury:

- |                   |   |        |
|-------------------|---|--------|
| 1.                | For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census                                  | \$500  |
| 2.                | For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census                                | \$250  |
| 3.                | For irrigation in excess of fifteen acres [6.07 hectares]   | \$200  |
| 4.                | For irrigation for commercial purposes not exceeding fifteen acres [6.07 hectares] or irrigation of recreation areas not exceeding fifteen acres [6.07 hectares]    | \$ 25  |
| 5.                | For irrigation of noncommercial gardens, orchards, lawns, trees, or shrubbery larger than one acre [.405 hectare] but not larger than fifteen acres [6.07 hectares] | \$ 25  |
| 6.                | For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893039.52 cubic meters] or less   | \$250  |
| <del>5.</del> 7.  | For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893039.52 cubic meters]  | \$750  |
| <del>6.</del> 8.  | For recreation, livestock, or fish and wildlife   | \$100  |
| <del>7.</del> 9.  | For commercial recreation   | \$200  |
| <del>8.</del> 10. | Water permit amendment  | \$ 50" |

Renumber accordingly

Date: 2-12-09  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1286

House Natural Resources Committee

☐ Check here for Conference Committee

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

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Hofstad Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen			Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton		
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Myxter

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

**REPORT OF STANDING COMMITTEE**

**HB 1286: Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1286 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 61-04-04.1 of the North Dakota Century Code, relating to water permit application fees.

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2. For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census \$250
3. For irrigation in excess of fifteen acres [6.07 hectares] \$200
4. For irrigation for commercial purposes not exceeding fifteen acres [6.07 hectares] or irrigation of recreation areas not exceeding fifteen acres [6.07 hectares] \$ 25
5. For irrigation of noncommercial gardens, orchards, lawns, trees, or shrubbery larger than one acre [.405 hectare] but not larger than fifteen acres [6.07 hectares] \$ 25
6. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893039.52 cubic meters] or less \$250
- ~~5-~~ 7. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893039.52 cubic meters] \$750
- ~~6-~~ 8. For recreation, livestock, or fish and wildlife \$100
- ~~7-~~ 9. For commercial recreation \$200
- ~~8-~~ 10. Water permit amendment \$ 50"

Renumber accordingly



2009 SENATE NATURAL RESOURCES

HB 1286

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1286

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10264

Committee Clerk Signature



Minutes:

**Senator Lyson** opens the hearing on HB 1286, relating to water permit application fees.

Robert Shaver, Director of Water Appropriations Division for the North Dakota State Water Commission, spoke in favor of HB 1286 (see attached testimony #1).

**Chuck Fleming**, Marketing Coordinator of the North Dakota Department of Agriculture, the bill in its original form did have some opposition and it required some major surgery to get it where it is at. The concept was that a small unit should not have to go through the entire process of notification. The application fee was reduced, but the process is exactly the same as if you were going for a quarter section of land. We want to do anything to make it easier for the people who bring their product to the farmer's market.

**Representative DeKrey** the way the bill is written now is for the owners of commercial gardens to get a permit at a discounted rate of \$25.00. This is for a gardener with a garden over 1 acre. Technically, if you have a private garden over 1 acre you should have a state water permit.

**Senator Lyson** why should a homeowner have to have a permit for a small garden?

**Representative DeKrey** I guess they do a lot of work at the agency to make up these permits and it takes a lot of man power so it will defer the cost to the person seeking the permit.

**Robert Shaver** the importance of issuing water permits is to establish a priority date. At the time you file for a permit you get a date of priority. Our state water log is such that in a time of shortage if you have to curtail pumping, the most junior permit holder has to curtail their pumping.

**Senator Triplett** we have heard from other testimony that the Water Commission is behind in its work in terms of dealing with water permit applications. Do you have any kind of abbreviated process for these smaller applicants?

**Robert Shaver** ordinarily we do have a cue that we work on. However, we have project leaders that work with the different aquifers. It is not rigidly adhered to because they can be distributed in different areas of the state. In addition, these very small applications, almost all cases do not generate any controversy. We can get to those very quick.

**Senator Triplett** their priority date is established by their filing date is that correct?

**Robert Shaver** that is correct.

**Senator Erbele** If I have a small truck garden and I want to water from my own well do I still have to get a permit and what is the difference from my cows coming home to drink?

**Robert Shaver** the key is the priority date. It is the most important aspect of your using a certain volume of water that potentially in a time of shortage you have to curtail that use. If there is a time of shortage, we would have to use the priority date when we start curtailing the usage and if you don't have one that is where the problems start.

**Senator Triplett** Can you tell us what percentages of farmers in North Dakota who don't have active center pivot irrigation have bothered to get a water permit for their wells?

**Robert Shaver** no, and they wouldn't for livestock purposes. If you are using more than 12 ½ feet of water, any users have to have a water permit. If it is under 12 ½ feet a water permit is not required.

**Senator Erbele** How do you identify these small truck garden farmers?

**Robert Shaver** I have been told that there are small truck garden farmers who do not have permits. It is difficult to impose. When we become aware of them and we find that they are not permitted we bring them into compliance. Currently our database indicates that we have about 133 irrigation water permits that have been approved that are less than 15 acres.

**Senator Erbele** the way I understand it right now everyone has to go through the permit process.

**Robert Shaver** that is correct.

**Senator Erbele** is there any danger in having a quicker process saying if you are below a certain level of usage you don't have to go through all the notices and requirements, but you would still have to pay the \$25.00 fee and you would know where they were located at?

**Robert Shaver** one of the key things in water management that we will have to face one day is a 1930 style drought. That is when the management has to kick in and deal with all the conflict. When you have a permit filed for and you establish a precise priority date, when the conflict occurs you have an orderly process that you can use to manage that resource in times of shortage. If you have a number of exempt users than it become very difficult to try and have an orderly arrangement in which you try and curtail water users.

**Senator Erbele** the permitting fee is just a onetime thing and not an annual event?

**Robert Shaver** yes, just one time.

**Senator Schneider** is there a comment period that is open for so many days after the notices have been sent out?

**Robert Shaver** yes there is a 30 day period when they can send in comments if they so wish.

When they do they become a "party of record".

**Dale Frink**, State Water Commission, people within a one mile radius is the only ones who get a certified notice. We put it in the newspaper so the public knows about. So sometimes we would get a protest from someone 10 miles away. Anyone can protest it and if they do they become a party of record. Water permits are actually of great benefit to the people who have them. There are a protection for you and gives you the right to use the water. There are a lot of states that give exemptions. In that case we would try and establish a priority date for them.

**Senator Lyson** what about these small "ma and pa" gardens?

**Dale Frink** we wouldn't be the first state to issue an exemption? We like to maintain a good order of who is out there using water.

**Senator Lyson** closed the hearing on HB 1286.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1286

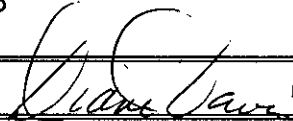
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11678

Committee Clerk Signature



Minutes: **Senator Lyson, Chairman**

Committee Work

Senator Lyson mentions the biggest discussion they had with this bill was getting permits for small gardens.

Senator Freborg mentions a lot of the farmers in the country that water their lawns are breaking the law and probably no one cares.

Senator Triplett mentions that she disagrees with Senator Freborg that no one cares because when the big drought comes and people start fighting over water they will care. She is not sure this is the right bill but does think our water law does need some work or the people need to be better informed.

Senator Erbele brings up that when they have to file for a permit it becomes a part of a total list and it may take months or years for it to get acted on. If they were at 15 acres or less it would take less time. He said he is unsure if that is reasonable or not.

Senator Lyson said maybe people would get a permit if it was a free permit so they would know it was coming in.

Senator Erbele said it is certainly better than the \$200 it was but it is the time you have to wait to get it.

Senator Freborg said a lot of people in the country water their lawns and are unaware of this.

Senator Erbele asks if everyone has a copy of what Mr. Fleming proposed. He says he would like to put that in so there can be more discussion on it.

Senator Triplett likes the idea of getting an expedited permit; they are not guaranteeing themselves any sense of assurance in drought. She likes a compromise.

Senator Lyson said he will have Levi draw up an amendment.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1286

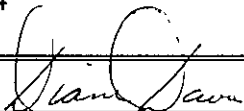
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11684

Committee Clerk Signature



Minutes: **Senator Lyson, Chairman**

### Committee Work

**Senator Triplett** - Relates to the committee what they had discussed before on this bill. She said what they did was to accept the proposal that Chuck Fleming offered that they could have an expedited permit procedure that would not get them a priority date but if they did want a priority date they would have to go through the regular procedure.

**Dale Frank**- State Engineer for Water Commission, said to always go through a priority date. The priority date in a water permit is very important to stay in business. He said it is very dangerous for an individual to invest in money without a water permit and a priority date. He said he would always get a permit if he put in a garden away from the river. He is more comfortable to give an exemption that you do not need to apply for a permit if you have a garden of 5 acres or less.

**Senator Erbele** – Asks if would pay to discuss the type of irrigation that is taken place.

**Frank** – He said no just keep it single. A water permit is different than most permits as it protects you. It establishes a date in reference to everyone else.

**Senator Erbele** – Asks about the time lag in applying for a permit.



**Frank** – Said they try to act on the garden permits sooner. Any permit out of the Missouri River is probably one day. You would still have to notify people and wait 30 days but the analysis time is one day. Outside the Missouri they try to expedite those.

Committee breaks.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1286

Senate Natural Resource Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2009

Recorder Job Number: 11700

Committee Clerk Signature

*Jody Hauge*

Minutes:

### Committee Work

**Senator Lyson** said they didn't know what to do with this bill and opened up the discussion to Bob Shaver.

**Bob Shaver, Director of the State Water Appropriations Division at the State Water**

**Commission** said he had visited with Mr. Fleming from the Ag Dept. who works with a lot of these small gardens and what they have come up with concerning in section 2 of the amendment. The problem with it is using 5 acre feet rather than 5 acres. He thinks they should look at acreage and adding a priority date. He thinks that is bad to say that something doesn't have a priority date. So in order to accommodate these small gardens they could make an exemption for commercial and non commercial gardens of 5 acres or less. These wouldn't have to apply than for a water permit. Most of these gardens are less than 5 acres that would be exempted. If there was an exemption you would not have to go with section 1 where we reduce the filing fee because there is an exemption. He passed out the ND Century Code chapter 61-04, Appropriation of Water. Attachment #1 He said that looking particularly at #3 all that would have to change under domestic use is changing one acre to five acres.

Under the irrigation use (#6) you could change that to 5 acres but there could be problems and

that needs to be researched is we have existing irrigators that may want to add on to their permits.

**Senator Lyson** said that they could wait until tomorrow if he wanted to get something worked on and written up.

**Mr. Shaver** replied, great.

**Senator Erbele** asked about adding the word commercial gardens in "Domestic Use" and if it should be in the definition of the domestic use.

**Mr. Shaver** said that commercial should probably be in the "Irrigation use".

Discussion followed about additional language and Senator Lyson directed Mr. Shaver, the State Water Commission and Ag Dept. to come back tomorrow with more information. He also directed the intern to help if they need it.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1286

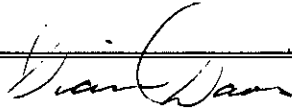
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: April 3, 2009

Recorder Job Number: 11708

Committee Clerk Signature



### Minutes:

Chairman Lyson opened the discussion on HB 1286. All members were present.

Chuck Fleming, North Dakota Ag Department, came to the podium.. He and Bob Shaver from the Water Commission, along with Levi Andrist, the legislative intern, worked together on a proposed amendment. It will solve the problem of domestic use of water for large yards (and gardens) that are over 1 acre. No fees will be required. There is still a discrepancy when over 12 ½ acre feet are used, then a permit is needed.

Senator Triplett moved a Do Pass on the Unofficial Amendment, seconded by Senator Schneider. The motion passed on a voice vote.

Senator Pomeroy moved a Do Pass As Amended on HB1286, seconded by Senator Triplett.

The motion passed 7 – 0. Senator Triplett will carry the bill.

**UNOFFICIAL PROPOSED AMENDMENTS to Engrossed HB 1286**

Page 1, line 1, after "A BILL" replace the remainder of a bill with "for an Act to amend and reenact section 61-04-01.1 of the North Dakota Century Code, relating to an exemption for water permits.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Subsection 3 and subsection 6 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

3. "Domestic Use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary use; irrigation of land not exceeding ~~one acre~~ ~~[.40 hectare]~~ five acres [2.0 hectares] in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
6. "Irrigation use" means the use of water for application to more than ~~one acre~~ ~~[.40 hectare]~~ five acres [2.0 hectares] of land to stimulate the growth of agricultural crops including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.

Renumber Accordingly

Date: 4/3/09

Roll Call Vote #: 1

## 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate \_\_\_\_\_ Natural Resources \_\_\_\_\_ Committee

☐ Check here for Conference Committee Bill Number: 1286

Legislative Council Amendment Number Unofficial Amendment - Schaeffer + Fleming

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Amendment

Motion Made By Sen. Triplett Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Carried -  
Voice Vote.*

Date: 4/3/09

Roll Call Vote #: 2

## 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

☐ Check here for Conference Committee Bill Number: 1286

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

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Amendment

Motion Made By Sen. Pomeroy Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	✓		Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett	✓	
Senator Layton W. Freborg	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Triplett

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

**REPORT OF STANDING COMMITTEE**

**HB 1286, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1286 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsections 3 and 6 of section 61-04-01.1 of the North Dakota Century Code, relating to the definitions of domestic use and irrigation use.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsections 3 and 6 of section 61-04-01.1 of the North Dakota Century Code are amended and reenacted as follows:

3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, ~~but not limited to~~ heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding ~~one acre~~ ~~[.40 hectare]~~ five acres [2.0 hectares] in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
6. "Irrigation use" means the use of water for application to more than ~~one acre~~ ~~[.40 hectare]~~ five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system."

Renumber accordingly



2009 TESTIMONY

HB 1286

**TESTIMONY ON HOUSE BILL 1286**

**House Natural Resources Committee**

**Robert Shaver, Director  
Water Appropriations Division  
North Dakota State Water Commission**

**January 30, 2009**

Mr. Chairman and members of the House Natural Resources Committee, I am Robert Shaver, Director of the Water Appropriation Division at the North Dakota State Water Commission, and I offer the following comments in opposition to House Bill 1286.

House Bill 1286 exempts commercial gardens that pump 15 gallons per minute or less and are no larger than 15 acres. A maximum pumping rate of 15 gallons per minute is too small to adequately irrigate 15 acres of land by most conventional methods. The maximum pumping rate of 15 gallons per minute to irrigate 15 acres is not adequate if drip irrigation methods are used, particularly during drought periods on sandy soils. For sprinkler irrigation methods, a pumping rate of six gallons per minute per acre irrigated is typical. For 15 acres, a pumping rate of 90 gallons per minute would be required using conventional sprinkler methods.

There are several difficulties with this bill that should be considered:

1. If the proposed exemption were to be approved, the State Engineer would not be aware of these exempt commercial irrigators. Both the spacing and the water use limitations would be unverifiable and unenforceable. There is no method for registration of exempt commercial irrigation developments.
2. House Bill 1286 specifies a person may only operate one exempt commercial garden under this section. This requirement can be circumvented by having relatives or other combined interests receive the exemption. The exemption could, under some circumstances, provide a loophole in the water-appropriation law for the combined effect of distributed small exemptions to extract a substantial amount of water, with potential harm to permitted water users under periods of extended drought.
3. House Bill 1286 would provide a more lenient standard for a commercial water user than for private water users. Currently, all irrigation for commercial agriculture requires a water permit, while irrigation in excess of one acre of land for private non-commercial use requires a water permit. Why would a commercial irrigation project exceeding one acre be exempt, while non-commercial irrigation projects would not be exempt?

4. Failure to establish a water right and a priority date could cause confusion during periods of critical shortage that would be harmful to both exempt and permitted water users.

Protecting the rights of a prior appropriator is an important feature of the Prior Appropriation Doctrine, which is the basis of water management in North Dakota. It is through the water permitting process that a water user obtains a priority date, that a specified amount of water is allocated for beneficial use at a specified pumping rate, that all of the works (well, pipelines, water meters) are inspected, and that all conditions specified by the State Engineer under the Conditional Water Permit are certified to have been met. The permitting process allows the water user to establish a water right, the rights of which must be protected on the basis of priority date in times of water shortage.

When a new request for a water permit is filed with the State Engineer, the project hydrologist must identify existing water appropriators in the potential area of influence of the proposed water permit application. This information allows the hydrologist to evaluate the effects, if any, on the existing water use that may occur as a result of pumping by the new permit applicant. During times of critical water stress, water use is curtailed in the reverse order of water permit priority date. For the exempt water user, it would be difficult to determine the priority date. In addition, there likely would be no documentation of how much water has been put to beneficial use. If a formal water right has not been established by the water permitting process, protecting the rights of prior, non-permitted water users becomes more difficult and time consuming, and in cases where the exempt water user is not identified, undue harm may occur to both exempt and non-exempt water users.

5. Even small water users could cause problems in some circumstances. Effects of pumping on neighboring interests must be considered and weighed.

Under current state law and administrative rule the public and potentially impacted parties are provided with an opportunity to comment on a proposed water appropriation. Procedures established under state law and administrative rule allow for other potentially affected water users to protect their interests. For example, an exempt irrigation diversion, as proposed in the bill, could be located adjacent to another well. Pumping from the exempt well could effect water level changes in a nearby well. Particularly during a period of prolonged drought, the total amount of water available for pumping in a thin area of the aquifer could be limited, and the amount of water diverted at a maximum pumping rate of 15 gallons per minute over a full growing season could be critical. In the exemption case, the owner of the adjacent well is not notified of the proposed irrigation diversion, and has no opportunity for public comment. Increased concern about public interest issues has arisen in North Dakota as greater demand is placed on water resources. Exemption as proposed would omit public interest considerations.

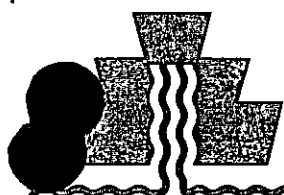
6. In the future, numerous, small scale, commercial agricultural units could be developed in a region that collectively, could divert a large volume of water on an annual basis without a water permit. For some hydrologic settings, a large volume of exempted water appropriation may cause undue harm to prior (senior) water appropriators (existing water permit holders). Attached is the front cover of the November-December 2008 *Arizona Water Resource* newsletter. Note the article concerned with well owners along the lower Colorado River that are facing stricter enforcement of water laws. The article states: "Collectively these small-scale users, most of whom are householders taking care of domestic water needs, consume a significant amount of Colorado River water, an amount estimated at between 9,000 and 15,000 acre-feet."

In the January 2009 *Western Water Law and Policy Reporter*, I quote the following in a case involving stock watering and small scale water use exemptions in Washington state:

The small withdrawal exemption was enacted to save both the state and the small appropriators the trouble and expense involved in the permitting process since these small withdrawals were viewed as unlikely to have a significant impact on the water system or to affect the outcome of disputes.... The exemption in the groundwater code recognizes that the benefits of a system for tracking de minimis water users might be outweighed by the cost to the state and to the users of processing the paperwork. This may not always be the case, given the population growth in this state.

*Dennis and DeVries v. Ecology*, Washington Dep't of Ecology, Pollution Control Hearings Bd., No. 01-073, Summary Judgment Order (Sept. 27, 2001).

Although at first blush, the implications of the proposed exemption appear to be small, under conditions of critical water stress associated with drought, the rights of both exempt water users and permitted prior appropriators as proposed under House Bill 1286 may not be fully protected. During drought periods, the water permitting process provides for an orderly curtailment of pumping based on priority date. For the exempt water user, the determination of a priority date is not formally established. Also, exemption, as proposed, would eliminate the opportunity for public notification and comment and consideration of public interest issues. Finally, the potential exists for significant impact on water sources from small-scale, commercial agricultural units, should this type of agricultural production become more widespread. Based on the above, the Office of the State Engineer opposes House Bill 1286.



A R I Z O N A

# WATER RESOURCE

Volume 17, Number 2

November-December 2008

## Saltcedar Found to be Friend, not Foe of Western Waterways

Water waster, pest plant, an alien invader, the saltcedar or tamarisk is known as a truly villainous plant, the plant that is drinking the West dry. Recent research, however, finds that the much maligned plant can be a valuable and productive member of a riparian plant community. Scientists are concerned, however, that the message has not reached many natural resource managers.

More is at stake here than the reputation of the saltcedar. Also at issue is the contribution of science to land and water management. Are resource managers using the latest research when determining water management issues? Are they even aware of such research? What must be done to get word out so that research is widely known and used?

This is an issue that concerns Ed Glenn, researcher in the University of Arizona's Environmental Research Laboratory. Glenn is part of a research network that includes scientists from the UA, Arizona State University, U.S. Geological Survey and other agencies and institutions that have studied the saltcedar for over ten years; they argue that the environmental benefits of saltcedar outweigh arguments to eradicate the plant.

In advocating this position they are tak-

*Continued on page 3*



*The above painting, titled Tamarisk, was done by Elizabeth Poulin Alvarez. Once considered a scourge of western waterways, tamarisk or saltcedar may actually benefit western riparian areas. Researchers, and at least one artist, have discovered the oft overlooked value of saltcedar. A better view of Ms. Alvarez painting is available at <http://www.epoulinalvarez.com/?showimage=23>*

## Well Owners Along Lower Colorado River Face Stricter Enforcement of Water Laws

*Reclamation identifying wells that pump river water without legal entitlement*

by Joe Gelt

It is no doubt a sign of the drought-struck times that efforts to strictly account for lower Colorado River water use are now focusing on individual landowners and homeowners who have drilled wells and pump water along the lower Colorado River. Up to now, efforts to regulate Colorado River water use have mainly been directed at the big water users: states, Indian nations and irrigation districts.

Collectively these small-scale water users, most of whom are householders taking care of domestic water needs, consume a significant amount of Colorado River water, an amount estimated at between 9,000 and 15,000 acre feet. Most of this water is pumped from the floodplain but also includes water pumped directly from the river.

### Water laws violated

The U.S. Bureau of Reclamation is concerned since much of this water is being taken without an entitlement. In other words, many of these water users are violating

*Continued on page 2*



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TESTIMONY ON HOUSE BILL 1286  
Presented to the House Committee on Natural Resources  
9:30 a.m.  
January 30, 2009

Presented by Michael Dwyer  
Executive Director ND Irrigation Association

Mr. Chairman and members of the committee my name is Mike Dwyer, Executive Director of the North Dakota Irrigation Association. House Bill 1286 creates a new section in chapter 61-04 NDCC which establishes a commercial garden as a new category of water use and exempts it from requiring a water permit. HB 1286 would allow for the irrigation of a maximum of 15 acres using up to 15 gallons per minute of water.

Section 61-04-01.1 provides a definition of "domestic use" and states in part "irrigation of land not exceeding one acre in area for noncommercial gardens, orchards, lawns, trees, or shrubbery". It also defines "irrigation use" as "the use of water for application to more than one acre of land to stimulate the growth of agricultural crops or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system".

The acreage and the pumping rate stated in the bill cannot be reconciled. One day of pumping at 15 gallons per minute totals 21,600 gallons. Assuming an average evapotranspiration rate of .25 inch per day over 15 acres the volume of water consumed daily would be approximately 102,000 gallons. Using a growing period of 50 days at an evapotranspiration rate of .25 inch per day, the total volume of water needed for 15 acres would be almost 15.6 acre-feet. This volume would likely be an average needed to produce a vegetable or fruit crop with good yield and quality. Therefore, the volume of water stated in the bill is not adequate to support the irrigation of 15 acres of garden crops.

The North Dakota Irrigation Association believes that persons engaged in small to moderate sized irrigated commercial fruit and vegetable production need to secure a water permit to establish their standing to use the water and to protect their investment.

The production of fruit and vegetable crops locally and regionally is becoming more common due to transportation costs and food safety issues. Farmers markets are becoming common as outlets for local producers. The ND Irrigation Association believes the expansion of the production of fruit and vegetable crops is a good thing and support it wherever and whenever we can. However, in this case we do not believe the passage of House Bill 1286 would result in good water management and ask that the Committee give it a "do not pass" recommendation.

**TESTIMONY ON HOUSE BILL 1286**

**Senate Natural Resources Committee**

**Robert Shaver, Director  
Water Appropriations Division  
North Dakota State Water Commission**

**March 5, 2009**

Mr. Chairman and members of the Senate Natural Resources Committee, I am Robert Shaver, Director of the Water Appropriation Division at the North Dakota State Water Commission, and I offer the following comments in support of House Bill 1286.

Currently state law, as described in N.D.C.C. § 61-04-04.1, requires a filing fee of \$200 for any commercial irrigation water permit application and non-commercial irrigation water permit applications greater than one acre. Thus, a small two-acre truck garden irrigation application has the same filing fee as that of a 135-acre center pivot irrigation water permit application. House Bill 1286 seeks to reduce the filing fee of small (less than 15 acres) irrigation water permit applications from \$200 to \$25. The \$200 filing fee will remain for irrigation water permit applications in excess of 15 acres.

The reduced filing fee for small irrigation water permit applications will not pose a significant reduction in agency revenue. As a result, the Office of the State Engineer supports of House Bill 1286.



600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

March 5, 2009

### **Some information that may help clarify the law regarding HB1286**

#### **Current law:**

- 1- Any rancher using less than 12.5 acre feet of water **does not** have to apply for a water permit.
- 2- Section 61-04-01.1 provides a definition of "domestic use" and states in part "irrigation of land **not exceeding one acre** in area for **noncommercial** gardens, orchards, lawns, trees, or shrubbery" are not required to get a water permit. That means if a person does not sell products commercially, they can irrigate up to one acre without applying for a water permit.
- 3- If you are a "commercial" operator you need to get a water permit no matter how small your acreage. Technically, if you have a garden where you applied water and sell one tomato at a farmers market, you are considered commercial and must go through the same procedure as a commercial farmer wishing to irrigate a quarter section of land.
- 4- Procedure for getting a water permit includes notifying your neighbors by certified letter and signing an affidavit to the Water Commission stating you have done so. The Commission then must print a notice in the official county paper a couple of times. Then the Water Commission does its administrative duties no matter the size of the water permit request.

Our office does not want to get into a fight with the Water Commission. As I indicated in testimony this morning, we are advocates for the small fruit and vegetable producers. We also recognize the importance of the work of the Water Commission to protect the water resources of the state. In the opinion of many they are overworked, resulting in a backlog of water permit applications.

The original bill exempted the need for a landowner of under 15 acres to make application for a permit. The Water Commission objected to that. Even though ranchers are exempt if under 12.5 acre feet, we believe there should be a permit required so the Water Commission knows what is out there.

It does seem to make sense that a less complicated procedure could and should be applied for these small requests for water. Currently, with the \$200 fee and the work required to get a permit, many of the very small fruit and vegetable producers are not filing for a permit and thus could be breaking the law.



**Here is a potential compromise that would be helpful for the fruit and vegetable producers and not be a burden to the Water Commission.**

1-Require every commercial producer to apply for a water permit.(Current law)

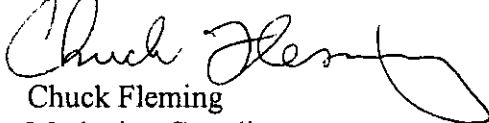
2-If the request is for under – say 5 acre feet of water (for livestock it is 12.5) the permit is handled expeditiously without all of the requirements and notifications currently in law. (Sort of like you get a motor vehicle license- quick and easy- fill out the form and send it in.)

3- People applying for this special permit would not have the priority date established like the applications that go through the full process. In the event of a water shortage, they would be at the bottom of the priority list.

4-Set the fee for this expedited permit at \$25 that is currently contained in the engrossed bill.

I regret that I need to represent Commissioner Johnson at the Ag Coalition meeting this afternoon so I cannot attend your committee meeting this afternoon.

I would be available at another time to visit with you further.



Chuck Fleming  
Marketing Coordinator  
ND Dept of Agriculture

701-328-4759

[cfleming@nd.gov](mailto:cfleming@nd.gov)

#1

## NORTH DAKOTA CENTURY CODE

### CHAPTER 61-04 APPROPRIATION OF WATER

**61-04-01. Petitions, reports, surveys, and other documents filed in office of commission.** Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter shall be filed in the office of the commission in the city of Bismarck, where they shall be kept on file under the control of the state engineer.

**History:** Enacted 1941; amended 1977

**61-04-01.1. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
2. "Commission" means the state water commission.
3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding ~~one~~ <sup>5</sup> acre[s] [.40 hectare] in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
4. "Fish, wildlife, and recreation" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
5. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including but not limited to manufacturing, mining, or processing.
6. "Irrigation use" means the use of water for application to more than one acre [.40 hectare] of land to stimulate the growth of agricultural crops or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.

7. "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals, kept for commercial purposes.
8. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
9. "Person" includes political subdivisions, corporations, limited liability companies, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.
10. "Rural water system" means a water supply system designed to serve regional needs.
11. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

**History:** Enacted 1977; amended 1981, 1989, 1993, 1997, 2003.

**61-04-01.2. Right to use water - Basis.** A right to appropriate water can be acquired for beneficial use only as provided in this chapter. Beneficial use shall be the basis, the measure, and the limit of the right to the use of water.

**History:** Enacted 1977.

**61-04-02. Permit for beneficial use of water required.** Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses the water user shall notify the state engineer of the location and acre-feet [1233.48 cubic meters] capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet [15418.52 cubic meters] of water per year will be appropriated. In those cases where a permit is not required of a landowner or the landowner's lessee to appropriate less than twelve and one-half acre-feet [15418.52

UNOFFICIAL PROPOSED AMENDMENTS to Engrossed HB 1286

Page 2, after line 10 insert:

11. For an expedited permit issued under section 2 of this Act \$ 25

**SECTION 2. AMENDMENT.** A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

**Expedited Permit.** Notwithstanding section 61-04-02 or any other provision of law to the contrary, the state engineer shall establish a procedure for an applicant to obtain an expedited permit for the use of 5 acre feet of water or less. A permit issued under this section does not have priority under section 61-04-06.3. The state engineer must grant or deny an application under this section within 60 days of the filing of the application.

Renumber Accordingly