

HOUSE BILL NO. 1075

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Water Resources)

1 A BILL for an Act to create and enact section 61-04-24.1 of the North Dakota Century Code,
2 relating to comments on the cancellation of water rights; and to amend and reenact sections
3 61-04-24 and 61-04-25 of the North Dakota Century Code, relating to the notice and hearing
4 process for the cancellation of water rights.

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

6 **SECTION 1. AMENDMENT.** Section 61-04-24 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-04-24. Cancellation of water rights - Notice - Contents.**

9 1. If it appears any water appropriation or portion of an appropriation has not been used
10 for a beneficial use, or having been so used at one time has ceased to be used for
11 that purpose for more than three successive years, unless the failure or cessation of
12 use is due to the unavailability of water, a justifiable inability to complete the works, or
13 other good and sufficient cause, the department of water resources shall ~~set a place~~
14 ~~and time for a hearing. For purposes of this chapter, an incorporated municipality or a~~
15 ~~rural water system has good and sufficient cause excusing the failure to use a water~~
16 ~~permit, if the water permit reasonably may be necessary for the future water~~
17 ~~requirements of the municipality or the rural water system. Any permitholder using~~
18 ~~water from a common source of supply, any applicant for a permit to use water from a~~
19 ~~common source of supply, or any interested party may request the department of~~
20 ~~water resources to conduct a hearing to cancel any unused water rights to the~~
21 ~~common source of supply. Any decision of the department in denying a request for a~~
22 ~~hearing may be appealed in accordance with chapter 28-32. Prior to the hearings, the~~
23 ~~department shall serve notice upon the permitholder and upon the owners of land~~
24 ~~benefited by the appropriation or works, except where the lands benefited are within~~

1 ~~the geographical boundaries of a city, in which case notice must be given to the~~
2 ~~governing body of the city, to show cause by a time and at a place why the water~~
3 ~~appropriation or a portion of the appropriation should not be canceled~~give notice of
4 ~~the~~ cancellation by certified mail to the permitholder and to the owners of land benefited
5 ~~by the appropriation as indicated on the water permit.~~

6 2. ~~In addition to the time and place of hearing, the~~The notice must contain:

7 a. A description of the water appropriation.

8 b. The permit number ~~upon the records of the commission.~~

9 c. The date of priority.

10 d. ~~The point~~All points of diversion.

11 e. A description of the ~~lands~~all land benefited by the appropriation as indicated on
12 the water permit ~~on file with the commission.~~

13 f. ~~Notice that the permitholder, the owners of land benefited by the appropriation or~~
14 ~~works, and other interested parties whose right to use water may be affected by a~~
15 ~~cancellation of the appropriation are to show cause why the appropriation, or a~~
16 ~~portion of the appropriation, should not be canceled~~Notification a notice of
17 ~~the~~ cancellation will be published in the county newspaper of record indicating when
18 ~~the~~ written comments on the cancellation must be submitted to the department for
19 ~~the~~ consideration.

20 3. ~~The notice must be served personally or sent by certified mail at least thirty days~~
21 ~~before the date of hearing to the permitholder and to the owners of land benefited by~~
22 ~~the appropriation as indicated on the water permit on file with the commission, or to~~
23 ~~persons having an interest in works as they appear from the records of the county~~
24 ~~treasurer or the recorder. In addition, the notice must be published~~The department
25 ~~the~~ shall publish a notice of cancellation in the official newspaper ~~in~~of the countycounties
26 in which ~~the~~each point of diversion is located once each week for two consecutive
27 weeks ~~prior to the date of hearing. The notice of cancellation must include the name~~
28 ~~and address of the permitholder, a description of the water appropriation, the permit~~
29 ~~number, the priority date, the location of all points of diversion, and a description of all~~
30 ~~land benefited by the appropriation as indicated on the water permit. The notice must~~

1 state a person that files written comments with the department will be mailed the
2 department's final decision on cancellation.

3 4. The department shall pay the notice of cancellation publication costs.

4 **SECTION 2.** Section 61-04-24.1 of the North Dakota Century Code is created and enacted
5 as follows:

6 **61-04-24.1. Cancellation of water rights - Comments.**

7 Comments regarding the proposed cancellation must be in writing and filed by the date
8 specified by the department. The comments must state the name and mailing address of the
9 person filing the comments. Comment letters submitted electronically must state the name and
10 mailing address of the person filing the comments, and must be signed by the submitter to be
11 considered valid and part of the official record.

12 **SECTION 3. AMENDMENT.** Section 61-04-25 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-04-25. Cancellation of water rights - Hearing-- Appeal.**

15 ~~At the hearing the recommended decision of the department of water resources is prima-~~
16 ~~facie evidence for cancellation of the water permit or portion of the permit. If no one appears at~~
17 ~~the hearing, comments are submitted by the date specified by the department, the water permit~~
18 ~~or portion of the water permit must be canceled. If interested parties appear and contest the~~
19 ~~cancellation, the department shall hear the evidence and, if it appears the water has not been~~
20 ~~put to a beneficial use, or, having been put to a beneficial use at one time, has ceased to be~~
21 ~~used for the purpose for more than three successive years, unless the failure or cessation of~~
22 ~~use is due to the unavailability of water, a justifiable inability to complete the works, or other~~
23 ~~good and sufficient cause, the permit, or a portion of the permit, must be canceled. For~~
24 ~~purposes of this chapter, an incorporated municipality or a rural water system has good and~~
25 ~~sufficient cause excusing the failure to use a water permit, if the water permit reasonably may~~
26 ~~be necessary for the future water requirements of the municipality or the rural water system~~
27 comments are received, the department shall consider all written comments and issue a final
28 decision. The final decision must be mailed to the permitholder, to the owners of land benefited
29 by the appropriation as indicated on the water permit, and any person that submitted written
30 comments by the date specified by the department. If the final decision is to cancel the water
31 permit or any portion of the water permit, the order canceling the water permit or any portion of

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- 1 the water permit must be sent to the permitholder with the final decision. An appeal may be
- 2 taken from the decision of the department in accordance with chapter 28-32.