

**2013 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1061**

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1061  
17363-17375

1 testimony

Conference Committee

*Minutes*

Relating to penalties for violation of provisions for the appropriation of water; and to declare an emergency

### Minute

Rep. Porter: The meeting was called to order for HB 1061.

Bob Shaver: Director of Appropriation Division North Dakota State Water Commission: I am here in support of HB 1061. What we are asking is that the civil penalty which is currently \$5,000 a day for each of unauthorized use be raised up to \$15,000 a day. The impact of the change is clear. (testimony1)

Rep. Porter: Going to your first of two problems have you looked into language that would allow the suspension of a permit?

Bob Shaver: At this point the way we approached this is trying to get people into compliance and they are subject either to a civil penalty or a criminal penalty.

Rep. Porter: You said there is not ability to revoke and in your explanation you said there is.

Bob Shaver: There is; that is only for a person who doesn't hold a permit that is pumping water without a permit.

Rep. Porter: How does it trigger from the civil side to the criminal side? Who makes the determination of which process to use?

Bob Shaver: The one I am working on right now the first action that we took is a cease and desist as soon as we find out that there is unauthorized out there without a permit. Thus far they have all signed the consent agreements and we not had to pursue the criminal or the civil.

Rep. Porter: In the situation that you described an \$800,000 theft of water is a Class A misdemeanor enough or should it be a Class C felony?

Bob Shaver: That would be something in our legal systems to deal with.

Rep. Porter: When you find something like this the non-permitted and they are running their cash business on the side are you notifying the tax department?

Bob Shaver: No we have not been doing that.

Rep. Keiser: In terms of unauthorized use and you are tracking it and looking at their sales what convinces you that their selling records are accurate?

Bob Shaver: I have accepted their accountants spread sheets that they send me; it shows me the company that they sold the water to, the amount, the date so I tend to take their word their word on that. We require continuous recording inline meters for all industrial users and all irrigation also and we periodically spot those meters readings. We are asking for an additional water use manager to increase our over sight out there because for inspection purposes we need to do that. If they have a permit we do not allow them to trade to a lower purpose of use.

Rep. Nathe: Do operators selling without a permit do they sell for less per gallon then the companies with a permit? Are FRAC operators buying that are buying this water are they required to see the permit?

Bob Shaver: I don't know. With regard to our temporary permits we require that weather proof copy is posted at all times.

Rep. Nathe: Shouldn't the FRAC operators be held responsible to see that permit?

Bob Shaver: The key is if the person has a permit it is up to that person to comply with the conditions of that permit.

Bob Shaver: It would be a good idea that they should

Rep. Nathe: Is there anything in code that would hold them responsible for buying water from a person without a permit?

Bob Shaver: Not that I am aware of.

Rep. Hofstad: The temporary permit is that a permit that was issued for irrigation and have now converted it to industrial use.

Bob Shaver: That is correct.

Rep. Hofstad: Are those ever denied?

Bob Shaver: That is correct it is for a year and can be renewed the amount is based on what it is for in irrigation we give an 18 inch per acre that covers the irrigator.

Rep. Hofstad: How closely are you monitoring those temporaries?

Bob Shaver: Yes we do the way we set with the temporary surface water if it is greater than 15 acre feet per year we require them to have an inline recording meter. It is a short term use to put that to beneficial use so we are not as concerned on those temporary surface waters. Now the ones like irrigation they have continuous in line meters and all greater than the 15 acre feet.

Rep. Schmidt: On line 9 the work knowingly violates to me either you violate or you don't base on the discussion that I have just heard with the fracing and the permitting is there any reason why a person would not know they violated?

Bob Shaver: I realize that the term knowingly gives an opportunity for the first violation to be excused my thoughts are knowingly violate I don't see that as being liable wordage.

Rep. Schmidt: On page 1 line 9 in the bill my thoughts are if you don't know they should have.

Bob Shaver: I will let the attorney take over.

Jennifer Verleger: From the Attorney General Office; the knowingly may something to do with the criminal standards.

Rep. Porter: Can you look that up for us?

Jennifer Verleger: I will.

Rep. Silbernagel: How many violations did your department handle in 2012?

Bob Shaver: One and we are still waiting for the water use in and compile everything for 2012 so I can say there will be more.

Rep. Nathe: How many operators that are sellers without a permit were illegal sellers?

Bob Shaver: one.

Rep. Brabandt: You talked about 15 acre feet what is that?

Bob Shaver: That is the number we came up with that arbitrary but it puts a line in the sand that says 15 acre feet is going to have little impact.

Jennifer Verleger: The requirement of accountability are found in 12.1-02-02 intentionally, knowingly, recklessly, willfully are the different standards that are used.

Rep. Schmidt: Does that mean that the word has to be included?

Jennifer Verleger: If you take the word out it will change the meaning the statue.

Rep. Porter: Mr. Shaver can you look and see what it would look like form the stand point of what Rep. Nathe brought up that there is a violation of this civil penalty to the person that

is buying that illegal water in the non-permitted situations and what it would look like in the statute that when you guys fine them and come up with the dollar amount that you are required to notify the tax department that you have found this.

Bob Shaver: I wasn't following you as to what you want taken up.

Rep. Porter: We will take this bill up this afternoon we will see everyone this afternoon.

HB1061 P.M.

Bob Shaver: What we looked at was dealing with tax the question was for a person or persons diverting waters of the state of North Dakota without a permit the Tax Department should be notified of that action. Where we could possibly incorporate that rather than under 6103 on which this bill is dealing with 610323 civil penalties in 610430 which is a penalty a person who constructs, works for an appropriation or diverts, impounds, withdraws or uses a significant amount of water from any source without a permit and goes on to talk about subject to a class A misdemeanor. Within that paragraph you could incorporate something like the North Dakota tax Department shall be notified of any person or persons diverting waters of the state of North Dakota without a permit as required under chapter 6104 that is a possibility. I would like to work with our legal staff on this to get a --- my background is a hydro geologist.

Rep. Keiser: Somebody that sells water has to have some form of recognized permitting to get the water. In the illegal sell where you taking water and don't have proper rights to that water there is a requirement to have a permit and it is possible for that purchasing party to say "could I see your permit". The question I have is if it is gained illegally there should be civil and criminal penalties and there should be recovery and if there is recovery of those dollars there is no tax base. Taxes are paid on legal income so far.

Rep Porter: I would certainly like to have you look this over with the staff attorneys and come back to us with that information on what is done and how it would be done. The other thing is relative to the presentation of the permit putting an onerous on the truck.

Bob Shave: Rep. Nathe you were concerned the illegal pumping and then that person provides water to a water hauler who in turn takes it to a frac job and so we wanted to make those people liable also.

Rep. Nathe: If a farcing company is using somebody who is not a permanent water seller that company should also be liable.

Bob Shaver: Under this 610430 penalty we would with our legal staff on this it might be something "like any person who knowingly purchases unpermitted water; waters of the state of North Dakota as described in 6104 is guilty of a Class A misdemeanor, subject to a civil penalty as described in 610323 or both".

Rep. Froseth: Many water depots are not attended are the permits numbers posted or required to be posted at the depot sites?

Bob Shaver: We don't require that except on the temporaries because of the short term nature the full depot with the big loading points and so forth we don't require that they post the permit but it is pretty much assumed if they are going to invest it is a big investment for somebody to build loading points etc. so the odds are slim that would not have a permit.

Rep. Nathe: Why not make these depots post the permit?

Bob Shaver: Yes we could do that and I think that is a good idea, we could do that today.

Rep. Porter: Rep. Nathe do you want to look at some of those key points and come to us with some potential amendments or not.

Rep. Porter: We will close the hearing on HB 1061

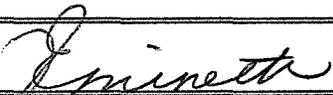
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

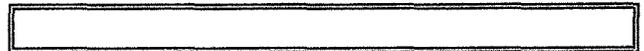
HB 1061  
Jan 24, 2013  
17675

Conference Committee



Relating to penalties for violations of provisions for the appropriation of water.

**Minutes:**



Rep. Porter: We will be HB 1061 to order.

Rep. Nathe: This amendment before you does several for you. The main one is on page 1 line 10 we strike 15 and make it 25. Rep. Keiser and I met with the tax department in regards of section 2 of the amendment having to deal people who are illegally selling water and having to be sure that if they get caught that they will have to pay the tax on those sales.

Rep. Keiser: I move the amendment.

Rep. Porter: We have a motion from Rep. Nathe and a second from Rep. Keiser on the proposed amendment to HB1061.

Rep. Keiser: We did ask the question; what if the situation where the one party was through the settlement process and fined \$800,000 that implied that there was more than that was taxable and the tax department said it would be taxable but if there is a negotiated settlement they weren't sure whether or not it would then become an expense and come off of the taxable income.

Rep. Schmidt: With respect to line 9 with word knowingly we talked about removing that. I don't see that in your memo.

Rep. Porter: We have on this amendment that is presented by Rep. Nathe; seeing none all those in favor motion carried.

Rep. Schmidt: I move that we amend line removing the word knowingly and I did check with attorney.

Rep. Porter: We have a motion from Rep. Schmidt to further amend on line 9 overstrike the word knowingly and a second from Rep. Nathe.

Rep. Schmidt: I did check with John Walstad and I also checked with the water commission attorney and by removing that word it improves the opportunity to prosecute.

Rep. Porter: Is there further discussion on that amendment? Voice vote carried. We have an amended bill in front of us. Are there any other amendments?

Rep. Nathe: I make a motion for a do pass on HB 1061 as amended.

Rep. Porter: We have a motion from Rep. Nathe and a second from Rep. Keiser for a do pass as amended to HB 1061.

Rep. Froseth: What is the difference in the clause "the industrial water user permits" and the regular permit? Is there a difference in the price of the permits?

Rep. Hofstad: I don't think there is.

Rep. Porter: When you go start the process of getting a right you start it out by getting the application stating what your use is and then it goes thru the whole process of the public hearing and the neighbors are notified that you are going to take water for something and then the state goes through that public hearing process and then grants you the permit. I don't think there is a cost and then it is perfected once you extract your first water.

Rep. Hofstad: I do believe it is the responsibility of the water commission to notify so it is there notice that goes in the paper.

Rep. Froseth: So the different kinds of permits would be the domestic, agriculture, irrigation, and industrial and different types of permits issued for each type of use?

Rep. Porter: Including and not limited to municipal because the rural water system would need a permit and then of course they move up the ladder as far as seniority.

Rep. Nathe: In the closing of the water depots that was not being done I talked to Mr. Shaver and they can do that administratively and they are going to move forward with that.

Rep. Kelsh: We also discussed whether there is duty for them to be informed of whether that operator had a permit or not.

Rep. Nathe: Yes they would make sure that there is a copy for their file.

Rep. Porter: We have a motion is front of us motion carried.

Yes 12 No 0 absent 1 Carrier Rep. Kelsh

January 24, 2013

1/25/13  
CJP

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1061

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "61-03-23" insert "and 61-04-30"

Page 1, line 2, after the semicolon insert "to provide a penalty;"

Page 1, line 9, overstrike "knowingly"

Page 1, line 10, replace "fifteen" with "twenty-five"

Page 1, after line 21, insert:

**"SECTION 2. AMENDMENT.** Section 61-04-30 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-30. Penalty.**

A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit specifically authorizing such action, except as otherwise provided in section 61-04-02; who violates an order of the state engineer; who fails or refuses to install meters, gauges, or other measuring devices or to control works; who violates an order establishing corrective controls for an area or for a source of water; who violates the terms of the permit; or who knowingly makes a false or misleading statement in a declaration of existing rights is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued. The state engineer shall inform the tax commissioner of violations of industrial use permits."

Re-number accordingly

Date: 1-24-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1061

House Natural Resources Committee

Check here for Conference Committee

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

Action Taken Move on the proposed amendment

Motion Made By Nathe Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

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

Absent \_\_\_\_\_

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

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

move on the proposed amendment *voice vote carries*

replace "fifteen" with "twenty-five"

Date: 1-24-13  
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1061

House Natural Resources Committee

Check here for Conference Committee

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

Action Taken further Amend

Motion Made By Rep Schmidt Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Huriskor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

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

Absent \_\_\_\_\_

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

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

*Voice vote carried  
further amend overstrike "knowingly"*

Date: 1-24-13  
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1061

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number Do Pass on Amended Bill

Action Taken Rep Kelsh

Motion Made By Rep Nathe Seconded By Rep Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock		
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	✓				

Total (Yes) 12 No 0

Absent 1

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

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

*Amended Bill Do Pass*

**REPORT OF STANDING COMMITTEE**

**HB 1061: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1061 was placed on the Sixth order on the calendar.

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Renumber accordingly

**2013 SENATE NATURAL RESOURCES**

**HB 1061**

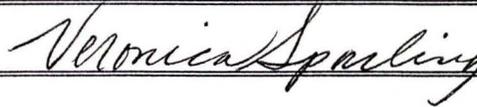
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1061  
February 22, 2013  
19392

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to penalties for violation of provisions for the appropriation of water; to provide a penalty; and to declare an emergency

### Minutes:

attachments

Chairman Lyson opened the hearing for HB 1061.

Bob Shaver, Director of the Water Appropriation Division of the State Water Commission, presented written testimony on behalf of State Engineer, Todd Sando. See attachment #1. He spoke in favor of engrossed HB 1061 and proposed an amendment to section 2 of the bill. (Ends at 05:36)

There was discussion about people who have an agricultural permit and then sell the water rather than irrigate with it.

Mr. Shaver said those people could be authorized on the temporary in lieu of irrigation program. That program was instituted in May of 2010 when the Corps basically prohibited access to the Missouri River water. There was such a demand for water and hauling water involved long travel times. Distribution was very inefficient and was creating property damage. The program allowed an irrigator on a year by year basis to convert a certain amount of that irrigation water for industrial use. They have a temporary authorization to do that. It is conceivable that the irrigators could go over that amount. Of greater concern are the ones that are not being taxed- those that hold no permits.

Chairman Lyson asked how they determine the amount of water used by one of those permit holders.

Mr. Shaver said it is patterned off a program used in the state of Kansas. Demand for irrigation water can be very changeable year to year depending on the amount of rainfall. The normal allocation for irrigation is 18 inches.

Chairman Lyson asked how the water users report their water usage.

Mr. Shaver said on every permit it states that they must have an inline water metering device. That metering requirement applies also to the water users that converted some of

their allotment to industrial usage. In addition, beginning in January of 2012 they are required to report the month end meter readings, and to file an annual report, and they are subject to random spot checks. Again, the ones they have no control over are the ones that are unauthorized. Presently he is dealing with one large unauthorized user. Generally it is hard for a large scale supplier to stay under the radar because it is a very visible operation with the truck traffic, etc.

Senator Burckhard asked how much water is in one acre foot.

Mr. Shaver said it is about 325,850 gallons.

Senator Hogue asked about the individual that Mr. Schaver referred to earlier that they may fine up to \$300,000. The individual does not have a permit so the State Water Commission cannot revoke their permit or decrease their allowable usage for the following year. He asked if it is correct that for that particular water user it would just be a straight fine.

Mr. Shaver said that is correct. The State Water Commission would provide a consent agreement. The water user would also be subject to a criminal and a civil penalty. The way they deal with it is to go with the consent agreement and if the water user signs that consent agreement which is a monetary fine then the State Water Commission doesn't pursue the criminal or civil penalty.

Senator Triplett asked how they would get around the limit of the penalty being \$5,000 per day. The threat of a lawsuit usually will be enough to get them to sign a consent agreement.

There was discussion about why "knowingly" was struck out on line 9. (13:10 to 14:11)

There was discussion about the requirements of metering and whether the meters are tamper-proof. Even with remote telemetry there is the possibility of people tampering with them. Oversight is always needed. (14:17 to 15:58)

Senator Hogue asked how many of the ag irrigators have meters. Would higher fines be a disincentive to the water suppliers? Would it make sense to have this higher fine apply only to the industrial suppliers and not the ag irrigators?

Mr. Shaver gave a history of irrigating and metering technology. (16:54 to 19:10) Concerning the fines not applying to irrigation, with farming being so climate driven, if the standards for water usage were followed very strictly, it could result in extensive damage to a crop. He cited an example of how a drought was handled in Kansas in 2012. (20:15 to 21:30) Irrigation usage is very different from industrial usage. To set a strict limit of the allotted 18" and damaging the crop by doing so is essentially wasting the first 18" of water that have been applied.

There was discussion about whether the increased fine would apply only to suppliers of industrial water. (22:00 to 23:00)

Michelle Klose, Assistant State Engineer for the State Water Commission, tried to clarify who the fine would apply to. (23:00 to 24:19)

There was further discussion about how it would apply and to whom, and also about the management of an aquifer so it can be sustainable. There are only a few aquifers that are being mined rather than sustained. (24:20 to 28:20) A study has been done 2009 to 2012 and they have projected out 30 years and the decline in water levels in the aquifers they have seen is projected to continue. There has also been a documented decrease in pressure in flowing wells in the Fox Hills area which impacts the ranching in that area. They are looking for ways to stop wasting water and to stop mining that aquifer of its water. (28:25 to 30:30)

There was discussion about the possibility of the water in Lake Sakakawea being used to take the pressure off the ground water supply. If that was made available, the rules about industrial and irrigation usage could be changed. (30:30 to 32:45)

Ms. Klose reminded the committee that the Corps has issued one easement and there were only 3 permits that were included in the environmental impact statement. There is no indication that the Corps will be giving the permission to take water from Lake Sakakawea any time soon.

There was more discussion about the fines applying to irrigation users as well as industrial suppliers. There was discussion about maybe amending the bill. They would like to further explore the Kansas model referred to earlier. They would like to further consider the maximum fine limit. (Ends at 37:00)

Chairman Lyson asked the committee to hold this bill until they could talk to the Water Commission to possibly consider some amendments.

Chairman Lyson closed the hearing for HB 1061.

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1061  
April 5, 2013  
Job Number 20920 (00:00 to 19:55)

Conference Committee

*Veronica Sparling*

### Explanation or reason for introduction of bill/resolution:

Relating to penalties for violation of provisions for the appropriation of water; to provide a penalty; and to declare an emergency

### Minutes:

Attachments

Chairman Lyson opened the discussion for HB 1061.

Senator Unruh distributed the amendments she worked on with the Water Commission and with the Attorney General's office. See attachment #1.

Jennifer Verleger, office of the Attorney General, explained first part of the amendment. (01:28 to 02:15)

Jon Patch, Assistant Division Director for the Water Appropriation Division, explained the change of date and the reason for it in the rest of the amendment (attachment #1). (02:20 to 03:45) He also submitted attachment #2 and #3.

Senator Unruh questioned Ms. Verleger about the fee for violation. (04:30 to 05:30)

Senator Hogue distributed attachment #4 and tried to clarify the differences between attachment #1 and attachment #4. (06:20 to 08:09)

Senator Unruh tried to explain the differences. (08:10 to 09:19)

Mr. Patch mentioned that the committee needs to make sure that the language in the bill would subject those that don't have a permit and those that have a temporary permit to the \$25,000 fine.

Senator Hogue distributed attachment #5.

There was discussion about whether the language in the bill would subject those that don't have a permit and those that have a temporary permit to the \$25,000 fine.

Mr. Patch described the two types of temporary permits. One is an in lieu of irrigation. They are not converting their permit to an industrial permit. On a temporary year by year basis they are allowed with permission to use their permit for industrial use in lieu of irrigating that year. That is a temporary. The other one is just a straight industrial temporary water permit.

Senator Unruh explained the amendment. (17:01 to 17:42)

Senator Unruh made a motion to adopt the "Unruh" amendment.

Senator Burckhard: Second

Motion carried by voice vote.

Senator Unruh: Do Pass as Amended

Senator Burckhard: Second

Senator Triplett clarified that she did not have concerns about the bill. She was just trying to encourage Mr. Schaver over the long term to develop the plan that he was describing that another state had adopted to have a more comprehensive plan to manage irrigation waters on a year by year basis.

Roll Call Vote: 7, 0, 0

Carrier: Senator Unruh

April 5, 2013

4/5/13  
TD

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1061

Page 1, line 1, after "61-03-23" insert ", 61-04-27,"

Page 1, line 2, remove "penalties for violation of provisions for the appropriation of"

Page 1, line 2, after "water" insert "rights"

Page 1, line 12, after the period insert "The civil penalty for violation of an irrigation appropriation permit may not exceed five thousand dollars for each day the violation occurred and continues to occur."

Page 1, after line 21, insert:

**"SECTION 2. AMENDMENT.** Section 61-04-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-27. Information filed with state engineer - Installation of measuring devices.**

On or before the ~~first thirty-first~~ day of ~~February~~March of each year all persons holding a water permit, ~~including irrigation districts, federal agencies, and political subdivisions,~~ shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such persons to install measuring devices, which must conform to the state engineer's specifications, at all points specified by the state engineer."

Renumber accordingly



Date: 4-5-13  
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES <sup>enr</sup>  
 BILL/RESOLUTION NO. 1061**

Senate Natural Resources Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider ~~Unruh~~

Motion Made By Unruh Seconded By Burckhard

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Unruh

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

**REPORT OF STANDING COMMITTEE**

**HB 1061, 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 1061 was placed on the Sixth order on the calendar.

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**61-04-27. Information filed with state engineer - Installation of measuring devices.**

On or before the ~~first~~thirty-first day of ~~February~~March of each year all persons holding a water permit, ~~including irrigation districts, federal agencies, and political subdivisions,~~ shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such persons to install measuring devices, which must conform to the state engineer's specifications, at all points specified by the state engineer."

Renumber accordingly

**2013 CONFERENCE COMMITTEE**

**HB 1061**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee  
Pioneer Room, State Capitol

HB1061  
April 12, 2013  
21132

Conference Committee

Committee Clerk Signature
---------------------------

## Explanation or reason for introduction of bill/resolution:

Conference Committee

Relating to penalties for violations of provisions for the appropriation of water.

## Minutes:

Rep. Anderson: We will open the conference committee on HB 1061. This bill is about the misuse of some water permits. We think this bill is necessary for the people that misuse the industrial water permit because they are able to sell enough water to pay the fine and still make money. We want to be sure we have the language right on lines 8-13.

Senator Unruh: We had concerns expressed in committee that the \$25,000 increase for the fee would apply to irrigation permit holders. We drafted a couple of different amendments and in the end we adopted the amendment that was written by the attorney general's office. The way it was worded it would limit the irrigation permit holders to a \$5,000 and anybody else who is misusing water could be subjected to the \$25,000 fee.

Rep. Anderson: If they are using the water for irrigation purposes I don't think that is as serious, because they probably wouldn't misuse their permit but the people that misuse these permits we need to stop them.

Rep. Silbernagel: Irrigation permit holders can get an industrial temporary use permit and my concern was that once a farmer receives a temporary and violates that permit he would fall under the \$25,000.

Rep. Anderson: If he has an industrial permit he is an industrial seller of water and would fall under the \$25,000 fine.

Senator Lyson: The problem with the way it was written is that the farmers that have the irrigation permits were not a problem until they started to get a waiver to sell water and to be able to regulate how much water they are selling they might go over their limit. We are not there to hurt the farmer. We are here to make the people not to break the law and fine them take the permit.

Rep. Anderson: What about the selling of \$15,000 worth water and pay a \$5,000? Even if they have a temporary permit to me that is misuse.

Senator Unruh: It was our understanding in committee when we adopted this amendment as explained by the Attorneys Office and the State Water Commission that those temporary permits were also covered under this.

Rep. Anderson: If that is the case I think we are fine with the way the language is. We want to be sure that they are using water for industrial use that if they misuse it they pay the fine.

Senator Lyson: I think the wording is right because the Attorney General came and worked with us on this. They know how much they can sell and they are careful because they don't want to lose their permit.

Rep. Anderson: Even if they don't lose their permit they can lose a % of what of what they went over the permit.

Rep. Silbernagel: As long as all industrial permit users are treated the same I am fine with that.

Senator Unruh: It was the understanding that was the key.

Rep. Kelsh: I make a motion for the house to accede to the senate amendments.

Rep. Silbernagel: Second.

Rep. Anderson: Voice vote carried.

# 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy and Natural Resources

Bill/Resolution No. HB 1061 as (re) engrossed

Date: 4-12-13

Roll Call Vote #: \_\_\_\_\_

**Action Taken**

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1310 ..

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Kelsh Seconded by: Rep. Silhernagel

Representatives	Y-12	Yes	No	Senators	Y-12	Yes	No
<u>Rep. Anderson</u>	✓	✓		<u>Stan Lyson</u>	✓	✓	
<u>Rep. Kelsh</u>	✓	✓		<u>James D. Hester</u>	✓	✓	
<u>Rep. Silhernagel</u>	✓	✓		<u>Phillip Murphy</u>	✓	✓	
				<u>Murphy</u>			

Vote Count Yes: 6 No: 0 Absent: \_\_\_\_\_

House Carrier Rep. Anderson Senate Carrier Senator Lyson

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted  
Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1061, as engrossed:** Your conference committee (Sens. Lyson, Unruh, Murphy and Reps. Anderson, Silbernagel, S. Kelsh) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1310 and place HB 1061 on the Seventh order.

Engrossed HB 1061 was placed on the Seventh order of business on the calendar.

**2013 TESTIMONY**

**HB 1061**

**TESTIMONY ON HOUSE BILL NO. 1061****House Natural Resources Committee****Bob Shaver – Director, Water Appropriation Division  
North Dakota State Water Commission****January 17, 2013**

Mr. Chairman and members of the Natural Resources Committee, my name is Bob Shaver and I am the Director of the Water Appropriation Division for the State Water Commission. On behalf of State Engineer, Todd Sando, I am here in support of House Bill No. 1061.

Although the impact of the change is clear, the impetus for the change and the reason for the particular penalty amount invite explanation. As everyone is aware, water sales in North Dakota continue to feed the activity in the oil patch. While widespread, large-scale unauthorized use is not occurring, on occasion depot operators exceed their allocated amount.

Currently under N.D.C.C. § 61-03-23, the state engineer has the authority to 1) fine up to \$5,000 per day and 2) modify or revoke the appropriation permit. In each situation that has arisen so far, the permit has been modified to reduce a user's appropriation for the following year by the amount of the over-appropriation. For example, if a permit holder is allocated 100 acre-feet for a year and they use 120 acre-feet, the next year their appropriated amount will be reduced to 80 acre-feet. This allows the system to remain balanced so that the aquifers will still be protected, but also keep water supplies available to the oil industry. Keeping water supplies available remains particularly important as long as the Army Corps of Engineers continues to

deny the state access to the river water flowing through the boundaries of Lake Sakakawea.

In addition to modifying the permit, the state engineer has also fined over-appropriators. However, two problems arise. First, when a person simply allocates water without a permit, there is no ability to modify or revoke the permit and the state engineer's only remedy is a fine. Second, water is currently selling in oil country for approximately 1.5 cents per gallon. With fines limited to \$5,000 per day, this equates to a pumping rate of 231.5 gallons per minute.

$$(\$5,000/\text{day} = \$0.015/\text{gallon} * 24 \text{ hrs}/\text{day} * 60 \text{ mins}/\text{hr} * \mathbf{231.5 \text{ gal}/\text{min}})$$

For comparison:

$$(\$15,000/\text{day} = \$0.015/\text{gallon} * 24 \text{ hrs}/\text{day} * 60 \text{ mins}/\text{hr} * \mathbf{694.4 \text{ gal}/\text{min}})$$

At many depots, pumping rates exceed 231.5 gallons per minute. Thus, the potential exists to exceed water sales of \$5,000 per day depending on daily operational times. The point is clear that the fines the state engineer currently has authority to charge for misappropriation of water are significantly less than the potential profits to be made from such misappropriation.

Thank you for the opportunity to comment on this matter and I will be happy to answer any questions you might have.

# /

TESTIMONY ON ENGROSSED HOUSE BILL NO. 1061

Senate Natural Resources Committee

Bob Shaver – Director, Water Appropriation Division  
North Dakota State Water Commission

February 21, 2013

Mr. Chairman and members of the Natural Resources Committee, my name is Bob Shaver and I am the Director of the Water Appropriation Division of the State Water Commission. On behalf of State Engineer, Todd Sando, I am here in support of Engrossed House Bill No. 1061 and to propose an amendment to Section 2 of the bill regarding N.D.C.C. § 61-04-30.

Although the impact of the bill is clear, the impetus for the change and the reason for the particular penalty amount invite explanation. As everyone is aware, water sales in North Dakota continue to feed the activity in the oil patch. While widespread, large-scale unauthorized use is not occurring, on occasion depot operators exceed their allocated amount.

Currently under N.D.C.C. § 61-03-23, the state engineer has the authority to 1) fine up to \$5,000 per day, and 2) modify or revoke the appropriation permit. In each situation that has arisen so far, the permit has been modified to reduce a user's appropriation for the following year by the amount of the over-appropriation. For example, if a permit holder is allocated 100 acre-feet for a year and they use 120 acre-feet, the next year their appropriated amount will be reduced to 80 acre-feet. This allows the system to remain balanced so that the aquifers will still be protected, but also keep water supplies available to the oil industry. Keeping water supplies available remains particularly important as long as the Army Corps of Engineers continues to deny the state full access to the river water flowing through the boundaries of Lake Sakakawea.

In addition to modifying the permit, the state engineer has also fined over-appropriators. However, two problems arise. First, when a person simply diverts water for industrial use without a permit, there is no ability to modify or revoke the permit so the state engineer's only remedy is a fine. Second, water is currently selling in oil country for approximately 1.5 cents per gallon. With fines limited to \$5,000 per day, this equates to a pumping rate of 231.5 gallons per minute.

$$(\$5,000/\text{day} = \$0.015/\text{gallon} * 24 \text{ hrs}/\text{day} * 60 \text{ mins}/\text{hr} * 231.5 \text{ gal}/\text{min})$$

For comparison:

$$(\$25,000/\text{day} = \$0.015/\text{gallon} * 24 \text{ hrs}/\text{day} * 60 \text{ mins}/\text{hr} * 1,157 \text{ gal}/\text{min})$$

At many depots, pumping rates exceed 231.5 gallons per minute. Thus, the potential exists to exceed water sales of \$5,000 per day depending on daily operational times. The point is clear that the fines the state engineer currently has authority to charge for misappropriation of water are significantly less than the potential profits to be made from such misappropriation.

In addition, N.D.C.C. § 61-04-30 was amended by the House to read: "The state engineer shall inform the tax commissioner of violations of industrial use permits." Although small in number, some industrial use water permit holders exceed the permitted annual use. Permit exceedence generally is less than a few acre-feet. It is likely that permit holders operating depots will report total income to the tax department. Therefore, it is not necessary to report water use exceedence by existing water permit holders to the tax commissioner. However, if a person diverts water for sale for industrial use without holding a water permit, the tax commissioner should be informed because the potential exists that income from these sales would not be reported. Therefore, an amendment to consider in Section 2 of Engrossed House Bill No. 1061 is:

The state engineer shall inform the tax commissioner of violations of persons diverting and selling water for industrial use permits without water permit authorization.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1061

Page 2, line 12 replace "violations of" with "persons diverting and selling water for"

Page 2, line 12, replace "permits" with "without water permit authorization"

Renumber accordingly

#/

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1061

Page 1, line 1, after "61-03-23" insert ", 61-04-27,"

Page 1, line 2, remove "penalties for violation of provisions for"

Page 1, line 12, after the period insert "The civil penalty for violations of irrigation appropriation permits may not exceed five thousand dollars for each day the violation occurred and continues to occur."

Page 1, after line 21, insert:

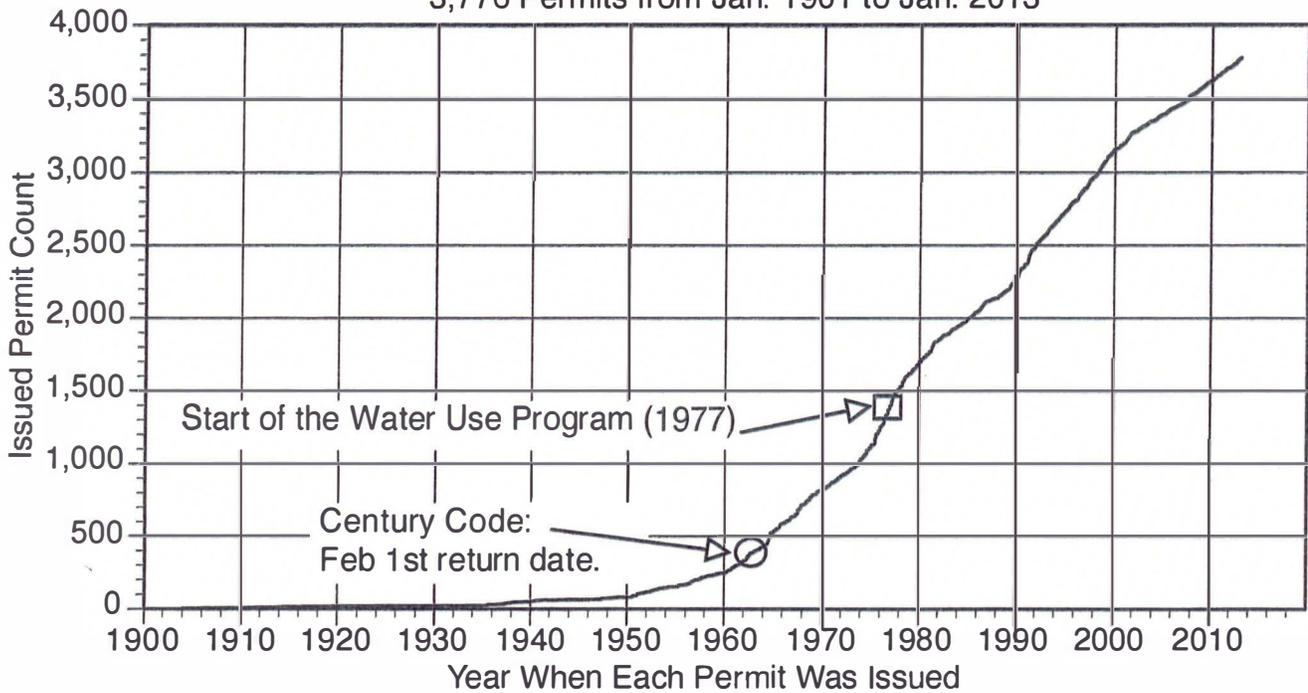
**"SECTION 2. AMENDMENT.** Section 61-04-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-27. Information filed with state engineer – Installation of measuring devices.**

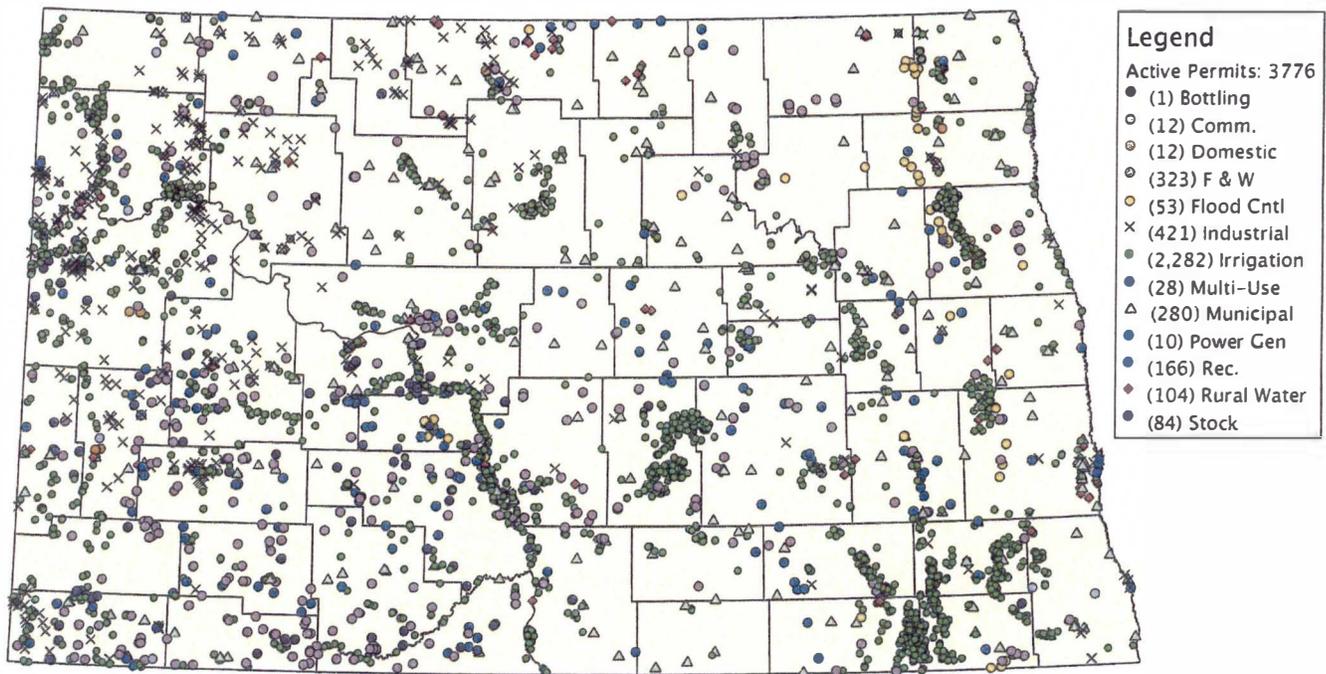
On or before the ~~first~~ thirty-first day of ~~February~~ March of each year all persons holding a water permit, ~~including irrigation districts, federal agencies, and political subdivisions,~~ shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such persons to install measuring devices, which must conform to the state engineer's specifications, at all points specified by the state engineer."

Renumber accordingly

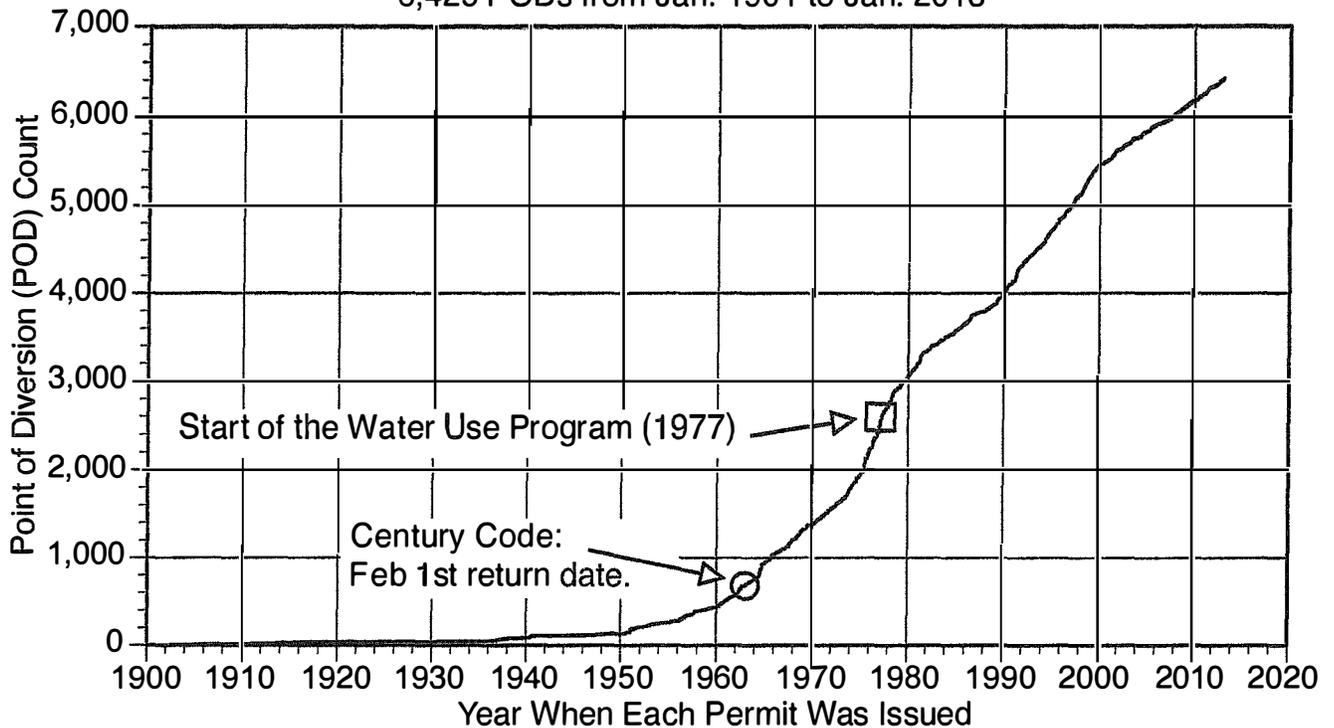
### Cumulative Count of All **Currently Active** Water Permits Issued (Perfectured, Conditional, Held in Abeyance) 3,776 Permits from Jan. 1901 to Jan. 2013



### All **Active** Water Permits (Perfectured, Conditional, Held-in-Abeyance) as of January 2013



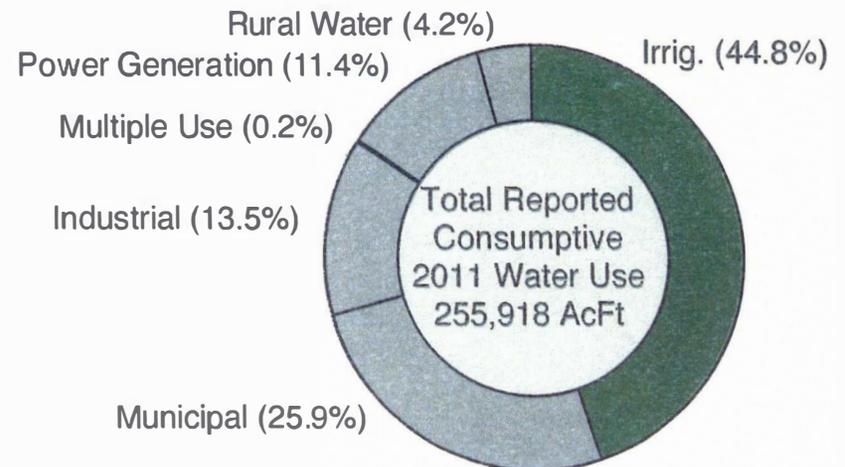
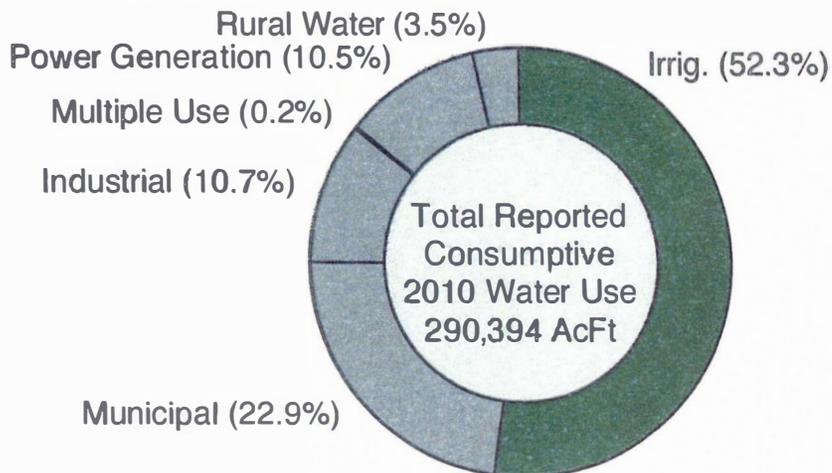
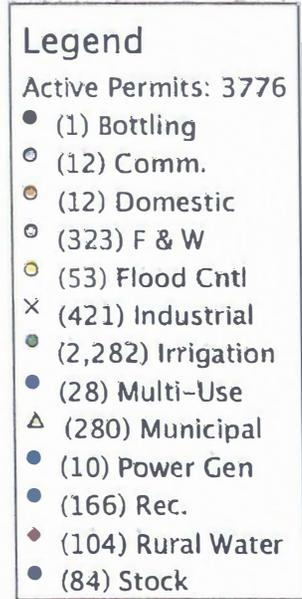
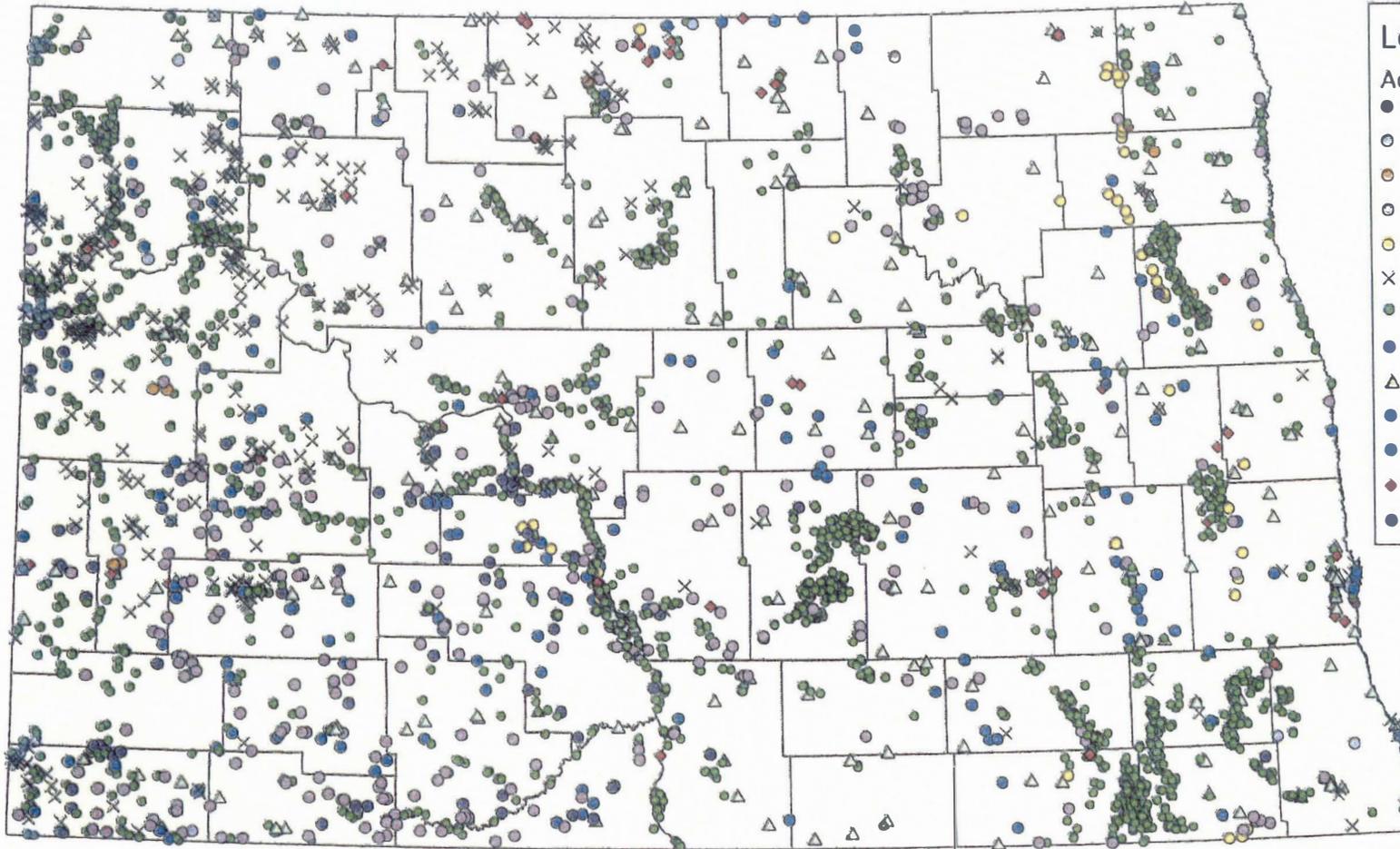
Cumulative Count of All Points of Diversion for **Currently Active** Water Permits Issued  
 (Perfectured, Conditional, Held in Abeyance)  
 6,425 PODs from Jan. 1901 to Jan. 2013



2,394 Permits with	1 POD	(63.4 % of Total Permit Count)
754 Permits with	2 PODs	(20.0 % of Total Permit Count)
347 Permits with	3 PODs	( 9.2 % of Total Permit Count)
150 Permits with	4 PODs	( 4.0 % of Total Permit Count)
57 Permits with	5 PODs	( 1.5 % of Total Permit Count)
33 Permits with	6 PODs	
17 Permits with	7 PODs	
3 Permits with	8 PODs	
5 Permits with	9 PODs	
6 Permits with	10 PODs	
3 Permits with	11 PODs	
1 Permits with	12 PODs	
2 Permits with	13 PODs	
1 Permit with	14 PODs	
1 Permit with	15 PODs	
1 Permit with	21 PODs	
1 Permit with	30 PODs	

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 3,776 : Total Permit Count

All Active Water Permits (Conditional, Perfected, Held in Abeyance) as of January 2013



#3

## Annual Acre-Feet of Industrial Water Depot Use Related To The Oil Industries Water Needs in Western North Dakota

March 2013 Office of the N.D. State Engineer	Current Allocation (Ac-Ft)	2012 Water Use (Ac-Ft)	2013 Pending Permits (Ac-Ft)
<b>Conditional / Perfectured Permits</b>	58,321	6,540	105,129
<b>Temporary Permits</b>	14,498 (33,170 in 2012)	4,438	N/A
<b>Industrial In-Lieu- Of Irrigation Permits</b>	4,509 (5,067 in 2012)	4,100	N/A
<b>Municipal Permits</b>	Zero : See Note*	1,519	21,650
<b>Non-Permitted Use **</b>	N/A	39	N/A
<b>Tribal Use ***</b>	N/A	200	N/A
<b>Totals</b>	77,328	16,836	126,779

\* Four municipal permits are being used to supply water to industrial water depots while their pending industrial permits are being evaluated. Crosby #6195 for 400 AcFt; Kenmare #6378 for 250 AcFt; Parshall #6147 for 1,000 AcFt; Williston #6294 for 20,000 AcFt.

The City of Williston provided 1,331.7 acre-feet of the 1,519 municipal depot water use.

The City of Williston has a pending industrial application request for 20,000 acre-feet.

\*\* One entity was found to be selling water to the oil industry without a water permit. Corrective action has been taken.

\*\*\* Two known water depot locations are owned by tribal entities. These entities are exempted from State Water Laws which require water permits for these sources. Hence, the water use amounts are estimates based on driller log pumping rates.

Note: 325,851 Gallons = 1 Acre-Foot of water

Note: N/A = Not Applicable

#4

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1061

Page 1, line 1, after "61-03-23" insert ", 61-04-27,"

Page 1, line 2, remove "penalties for violation of provisions for"

Page 1, after line 21, insert:

**"SECTION 2. AMENDMENT.** Section 61-04-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-27. Information filed with state engineer – Installation of measuring devices.**

On or before the thirty first day of ~~February~~ March of each year, all persons holding a water permit, ~~including irrigation districts, federal agencies, and political subdivisions,~~ shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such persons to install measuring devices, which must conform to the state engineer's specifications, at all points specified by the state engineer."

Re-number accordingly

#5

13.8036.02001  
Title.

Prepared by the Legislative Council staff for  
Senator Hogue

March 21, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1061

Page 1, line 10, remove the overstrike over "five"

Page 1, line 10, remove "twenty-five"

Page 1, line 11, after "occur" insert "or twenty-five thousand dollars for each day the violation occurred and continues to occur for violation of an industrial use permit"

Renumber accordingly