

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 1, after "enact" insert "section 61-33-01.1 and"

Page 1, line 2, remove "and"

Page 1, line 3, after "sections" insert "61-33-01 and 61-33.1-02, subdivision e of subsection 3 of section 61-33.1-03, sections"

Page 1, line 3, replace the second "and" with a comma

Page 1, line 3, after "61-33.1-05" insert ", and 61-33.1-07"

Page 1, line 4, after "to" insert "sovereign lands, determining the ordinary high water mark, and"

Page 1, line 4, replace "inundated" with "subject to inundation"

Page 1, line 5, after "dams" insert "; to provide a contingent appropriation; to provide for application; and to declare an emergency"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Ordinary high water mark" means the continuous line along the banks of navigable rivers and lakes where the presence and action of waters of the navigable river or lake are so common and usual, and so long continued in all ordinary years, as to mark upon the bank of a navigable river or lake a character distinct from that of the abutting upland. The ordinary high water mark line must be continuous in elevation or gently sloping, following the gradient of the river.
4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.
- 4-5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 2. Section 61-33-01.1 of the North Dakota Century Code is created and enacted as follows:

61-33-01.1. Ordinary high water mark determination - Factors to be considered.

The state engineer shall maintain ordinary high water mark delineation guidelines consistent with this section.

1. When determining the ordinary high water mark for delineating the boundary of sovereign lands, vegetation and soils analysis must be considered the primary physical indicators. When considering vegetation, the ordinary high water mark is the line below which the presence and action of the water is frequent enough to prevent the growth of terrestrial vegetation or restrict vegetation growth to predominately aquatic species. Generally, land, including hay land, where the high and continuous presence of water has destroyed the value of the land for agricultural purposes must be deemed within the ordinary high water mark.
2. When feasible, direct hydrological and hydraulic measurements from stream gauge data, elevation data, historic records of water flow, high resolution light detection and ranging systems, prior elevation and survey maps, and statistical hydrological evidence must be considered when determining the ordinary high water mark. The state engineer shall establish appropriate guidelines, technical standards, and other criteria, including use of light detection and ranging systems or other future technological advancements, as necessary, for conducting hydrologic and hydraulic modeling required by this section.
3. Secondary physical indicators, including litter, debris, or staining, may be considered to supplement the analysis of the ordinary high water mark investigation but may not supersede primary physical indicators unless primary physical indicators are deemed inadequate or inconclusive. Physical indicators directly affected by influent non-navigable tributaries, adjoining water bodies, or wetlands may not be used to delineate the sovereign land boundary of a navigable body of water.

SECTION 3. AMENDMENT. Section 61-33.1-02 of the North Dakota Century Code is amended and reenacted as follows:

61-33.1-02. Mineral ownership of land ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams. (Retroactive application - [See note](#))

The state sovereign land mineral ownership of the riverbed segments ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark. The state holds no claim or title to any minerals above the ordinary high water mark of the historical Missouri riverbed channel ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams, except for original grant lands acquired by the state under federal law and any minerals acquired by the state through purchase, foreclosure, or other written conveyance. Mineral ownership of the riverbed segments ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams which are located within the exterior boundaries of the Fort Berthold reservation and Standing Rock Indian reservation is controlled by other law and is excepted from this section.

SECTION 4. AMENDMENT. Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- e. Subsection ~~34~~ of section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner."

Page 3, line 11, replace "acreage determinations were approved" with "payments were made"

Page 3, after line 26, insert:

"SECTION 8. AMENDMENT. Section 61-33.1-07 of the North Dakota Century Code is amended and reenacted as follows:

61-33.1-07. State engineer regulatory jurisdiction. (Retroactive application - [See note](#))

This chapter does not affect the authority of the state engineer to regulate the historical Missouri riverbed channel, minerals other than oil and gas, or the waters of the state, provided the regulation does not affect ownership of oil and gas minerals in and under the riverbed or lands above the ordinary high water mark of the historical Missouri riverbed channel ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams.

SECTION 9. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - REIMBURSEMENT OF LEGAL EXPENSES.

1. There is appropriated out of any moneys held in reserve in the strategic investment and improvements fund for mineral title disputes, not otherwise appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to the commissioner of university and school lands for the purpose of reimbursing legal expenses as provided in subsection 2, for the biennium beginning July 1, 2019, and ending June 30, 2021.
2. The commissioner of university and school lands shall use funds appropriated in subsection 1 to reimburse actual legal and expert fees incurred and requested by any private mineral owner, or the owner's successors in interest, who reserved the mineral rights, through deed or condemnation order from the court, when the United States acquired the owner's property as part of the land acquisitions for Garrison Dam and its reservoir, Lake Sakakawea, and who filed a lawsuit against the state of North Dakota after December 31, 2011, but before December 31, 2016, and which lawsuit was pending as of February 1, 2017, claiming title to reserved mineral rights. The legal and expert fees may not be reimbursed until the final adjudication, settlement, or other resolution of the lawsuit for which they were incurred.

SECTION 10. APPLICATION. Sections 1 and 2 of this Act do not apply to the ordinary high water mark study required for the historical Missouri riverbed channel in chapter 61-33.1. This Act does not affect or limit the authority of the state engineer to regulate waters of this state.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly