

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

That the House recede from its amendments as printed on pages 1677-1680 of the Senate Journal and pages 1909-1911 of the House Journal and that Engrossed Senate Bill No. 2211 be amended as follows:

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 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 that line below which the presence and action of the water upon the land is continuous enough so as to prevent the growth of terrestrial vegetation, destroy its value for agricultural purposes by preventing the growth of what may be termed an ordinary agricultural crop, including hay, or restrict its growth to predominantly aquatic species.
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 inundatedsubject 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, 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. 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 10. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly