

2015 HOUSE ENERGY AND NATURAL RESOURCES

HB 1096

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1096
1/15/2015
Job #22044

- Subcommittee
 Conference Committee

Committee Clerk Signature *Kenneth M. Tabak*

Explanation or reason for introduction of bill/resolution:

Relating to the term and inspection of a water permit, reservation of waters, and weather modification permits.

Minutes:

Attachments #1

Chairman Porter opened hearing for HB 1096.

Jon Patch, Director-Water Appropriations Division of the Office of the State Engineer/State Water Commission

Attachment 1

I am here in support of HB 1096, which affects ND Century Code 61-04, "Appropriation of Water," and also makes a small change in NDCC 61-04.1, "Weather Modification."

Rep. George Keiser: You're creating a new definition of "domestic rural use." And it means two or more family units. Is there a point in rural use that that number would become commercial? And this would circumvent it being considered commercial? In family units, 164-unit complex? But with housing in a rural area? Would that be a commercial or would it fall under this?

Jon: That would still be considered a domestic use. And I know it was confusing because we were requesting adding a definition that we later said, "No, wait a minute. We can just include that definition within an existing definition." But in your example, that would still be considered a domestic use because the use is primarily for domicile use. If that water would be sold or used in some other commercial fashion, that would change the use definition. But if it's being used primarily for domestic purposes...

Chairman Porter: About the limitations that it can be used for, how do we come up with the limiters, how we're saying this can be used, and why do we even care what size their garden is as long as it's not a commercial garden?

Jon: Technically, in your example, that would require an irrigation permit.

Chairman Porter: So it's 5 acres for everything?

Jon My interpretation would be a total of 5 acres for all of their irrigation use that's covered by their domestic use.

Chairman Porter Why do we care, as long as it's not for commercial and it's only for their domestic use?

Jon. The bill started out higher, I believe 15 acres for not needing a permit to irrigate the gardens and so forth, and it was reduced to 5. There might be an opportunity for multiple people to each carve out a five-acre tract, and end up irrigating a very large tract of land that could be watered without a permit.

Chairman Porter: How many complaints have you guys dealt with in the last few years on someone doing six acres?

Jon: I can't think of one.

Chairman Porter: How would you ever catch them without someone calling in? And then, how would you know if I'm watering my trees unless you caught me in the act?

Opposition:

Hearing Closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1096
1/23/2015
22396

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to the definition of domestic rural use and relating to the term and inspection of a water permit, reservation of waters and weather modification permits.

Minutes:

Chairman Porter: Opened the hearing on HB 1096. From my standpoint I feel there is an issue where an unpoliced component to this just from the standpoint that we are telling someone that they can have a five acre garden, and if it is 5.1 acres of garden that they can't have it and if their trees are more than 5 acres they can't water them. That's my opinion.

Representative Keiser: If you would look at page three lines 16-19 that is fraught with language that allows a lot of dissention and disagreement. I don't know what to do with that but it gives a lot of authority and it really doesn't define one sound decision making. I know that is not in the code. These are very judgment types of calls and we will see this bill come back to us if that language stays in as written.

Chairman Porter: I agree. I did have concerns with the language. Inside the water commission's testimony, any time they start out their testimony out by saying they are aligning the century code to match their administrative rules, my flag goes up. This would be a reverse of the process that we pass the laws and they should align their rules to our laws. Not only did they say it but they put it in print. Did we want to deal with the official county newspaper requirement? Yesterday there was a little discussion on that on the floor. I can live with the five acre component, there already is a component in there, and I just think that it is truly unenforceable for noncommercial gardens and those kinds of things. It isn't something that can be enforced inside of the law. Representative Keiser if you would want to make a motion regarding page three and get this thing on its way.

Representative Keiser: I am not comfortable doing that actually because I would like to hear the water commissions response to that language. Perhaps we could carry this over and request that they come in and provide additional information.

Chairman Porter: Well there is no fiscal note to this so there is no rush. We can certainly do that another day when they are here. Closed the hearing on HB 1096.

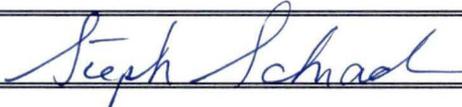
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

1096
1/23/2015
22445

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the definition of domestic rural use and relating to the term and inspection of a water permit, reservation of waters, and weather modification permits.

Minutes:

Attachments 

Vice Chairman Damschen opens the hearing.

Jon Patch, Director of the Water Appropriation Division, North Dakota State Engineer's Office I'm here to answer any further questions you might have on the proposed language.

Rep. George Keiser: My primary question is on page 3, subsection 2, lines 16-19, that language is so subjective that it bothers me. What's the definition of sufficient evidence? What's the definition of sound decision making? It could really be open to disagreement.

Patch: If you look at the current law, that language is in there. The intent was to take that portion that talks about withdrawing waters from available appropriation, outside of the requirement of going through the extensive rule making process and the holding of hearings, I imagine the reason it's never been done is because it's very time consuming. We hold waters until we have enough information to make a sound decision. We put a permit application in a deferred status, so we are holding those waters from appropriation. Until we can determine, with surety, that there won't be significant risk to a prior appropriator.

In answer to your question, I'm not sure how to make it less vague than what it says. The language is already in law. What we're asking to do is use our ability outside of the stringent guidelines, to withdraw water. One more point is that if we have to put it into regulation, we have go through that rule making process to get it in. We would then have to go through that same rule making process to get it out, I would imagine.

Rep. George Keiser: I do apologize; I do see it's not new language.

Vice Chairman Damschen: Are there any further Questions? Any other area of the bill you have questions about?

Patch: Bill Schuh, Assistant Director of the Water Appropriation Division, North Dakota State Engineer's Office has some comments.

Bill Schuh, Assistant Director of the Water Appropriation Division, North Dakota State Engineer's Office

It might be helpful if we give an example of how this system works physically. With ground water we are working with a resource that has been laid down thousands of years ago. We can't see what is there. We have a very aggressive, on-going exploratory program. We also have a lot of studies that were done by US Geological Survey. Our knowledge is always incomplete. But by using professional hydrologists and constant monitoring, we are using our best professional judgment, that is the subjectivity written into the law.

When you put in an application, you may not get approved because it's on deferred status. Won't it be better to have the Water Commission or the State engineers office be able to tell you this portion of this aquafer is on deferred status. It's not a good bet for you.

Vice Chairman Damschen: This was information gathering. We have HB1096 before us.

Rep. Curt Hofstad: Could we get John Patch for an additional question. We have many domestic using that water in a commercial setting, There are many farmers out there that are using thousands of gallons of water for agriculture. In some instances maybe a neighboring farmer uses the same facilities. Is that violating the domestic use definition?

Patch: No. unless the volumes exceed 12.5 acre feet per year.

Rep. Curt Hofstad: How many gallons is 12.5 acre feet?

Patch: It's about four or five million gallons.

Rep. George Keiser: Moves to pass

Rep. George Keiser: Withdraws move to pass

Rep. George Keiser: moves to adopt the amendment.

Rep. Corey Mock: Second.

Vice Chairman Damschen: All those is favor of amendment? Opposed?

Vote: Yes 12, No 0, Absent 1.

Vice Chairman Damschen: The amendment is approved.

Rep. Curt Hofstad: Moves for a do pass on HB 1096, as amended.

Rep. Dick Anderson: Second.

Vice Chairman Damschen: Is there any more discussion? If not the clerk with take the roll on do pass as amended of HB1096.

Vote: Yes 12, No 0, Absent 1.

Vice Chairman Damschen: Motion carries

Carrier: Rep. Dick Anderson

January 23, 2015

AS
1-23-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1096

Page 1, line 1, remove "create and enact a new subsection to section 61-04-01.1 of the North"

Page 1, line 2, remove "Dakota Century Code, relating to the definition of domestic rural use;
and to"

Page 1, line 2, after "reenact" insert "subsection 4 of section 61-04-01.1,"

Page 1, line 3, after the second comma insert "and"

Page 1, line 4, after "to" insert "the definition of domestic water use,"

Page 1, replace lines 7 through 14 with:

"SECTION 1. AMENDMENT. Subsection 4 of section 61-04-01.1 of the North
Dakota Century Code is amended and reenacted as follows:

4. "Domestic use" means the use of water by ~~an individual, or by at least~~ one family unit; or household; obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household 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.~~

Renumber accordingly

Date: 11/23/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.**

House Energy and Natural Resources HB1096 Committee

LC 15.8016.01001

Subcommittee

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Keiser Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Bob Hunsakor		
Vice Chairman Damschen			Rep. Corey Mock		
Rep. Dick Anderson			Rep. Naomi Muscha		
Rep. Roger Brabandt					
Rep. Bill Devlin					
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. George Keiser					
Rep. Mike Lefor					
Rep. Mike Nathe					

Voice Vote

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep

If the vote is on an amendment, briefly indicate intent:
To define "domestic use."

Date: 1/23/15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.**

House Energy and Natural Resources ^{HB} 1096 Committee

LC 15.8016.01001

Subcommittee

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Hofstad Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter		A	Rep. Bob Hunsakor	✓	
Vice Chairman Damschen	✓		Rep. Corey Mock	✓	
Rep. Dick Anderson	✓		Rep. Naomi Muscha	✓	
Rep. Roger Brabandt	✓				
Rep. Bill Devlin	✓				
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. George Keiser	✓				
Rep. Mike Lefor	✓				
Rep. Mike Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Anderson

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

REPORT OF STANDING COMMITTEE

HB 1096: 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 1096 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new subsection to section 61-04-01.1 of the North"

Page 1, line 2, remove "Dakota Century Code, relating to the definition of domestic rural use; and to"

Page 1, line 2, after "reenact" insert "subsection 4 of section 61-04-01.1,"

Page 1, line 3, after the second comma insert "and"

Page 1, line 4, after "to" insert "the definition of domestic water use,"

Page 1, replace lines 7 through 14 with:

"SECTION 1. AMENDMENT. Subsection 4 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

4. "Domestic use" means the use of water by ~~an individual, or by at least one family unit, or household, obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household 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.~~

Renumber accordingly

2015 SENATE ENERGY AND NATURAL RESOURCES

HB 1096

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1096
3/12/2015
24716

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the definition of domestic water use, the term and inspection of water permit, reservation of waters, and weather modification permits.

Minutes:

1 Attachment

Chairman Schaible called the committee to order and opened the public hearing on HB 1096. Jon Patch was on hand to introduce the bill.

Jon Patch: Division Director of the Water Appropriation Division of the Office of the State Engineer/State Water Commission. See attachment #1. (.23-8:39)

There were no questions for Mr. Patch and Chairman Schaible closed the hearing on HB 1096.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1096
3/19/2015
25105

- Subcommittee
 Conference Committee

Committee Clerk Signature *Kato Olive*

Explanation or reason for introduction of bill/resolution:

Relating to the definition of domestic water use, the term and inspection of water permit, reservation of waters, and weather modification permits.

Minutes:

Chairman Schaible called the committee to order and a Senator Armstrong made a motion for a do pass with a second by Vice Chair Unruh, there was no discussion, roll was taken, the motion passed on a 6-0-1 vote with Senator Triplett carrying the bill to the floor.

There was no further discussion and Chairman Schaible closed the committee work on HB 1096.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1096**

Senate Energy and Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Armstrong Seconded By Vice Chair Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy	X	
Vice Chair Unruh	X		Senator Triplett	X	
Senator Armstrong	X				
Senator Hogue					
Senator Laffen	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Triplett

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

REPORT OF STANDING COMMITTEE

HB 1096, as engrossed: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1096 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1096

#1

TESTIMONY ON HOUSE BILL NO. 1096

House Energy and Natural Resources Committee

**Jon Patch, Director - Water Appropriations Division
Office of the State Engineer/State Water Commission**

January 15, 2015

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is Jon Patch. I am the Director of the Water Appropriation Division of the Office of the State Engineer/State Water Commission. On behalf of State Engineer Todd Sando, I am here in support of House Bill No. 1096, which affects N.D.C.C. chapter 61-04 "Appropriation of Water" and also makes a small change in N.D.C.C. chapter 61-04.1 "Weather Modification".

Section 1 was meant to add a definition of "domestic rural use" to the Century Code to align the Century Code with a definition that already exists in the Administrative Code. "Domestic rural use" was meant to cover those instances where two or more households are obtaining water from the same system. Upon further consideration and discussion with legal counsel, it was concluded that a separate definition of "domestic rural use" is not necessary, and that "domestic rural use" can be included within the definition of "domestic use." I have attached proposed amendments to Section 1 of House Bill 1096 that redefine "domestic use" to include both single and multiple households. With these changes to the Century Code, the definition of "domestic rural use" will be removed from the Administrative Code. Other than in the definition sections, the term "domestic rural use" does not appear in the Century Code or the Administrative Code.

Section 2 does not change meaning or intent; it simply clarifies language.

Section 3 involves changes recommended by the recent audit of the water permitting process performed by KPMG, Inc., at the request of the Legislative Audit and Fiscal Review Committee in 2013. The auditors believed that the present language could imply that inspection of a water right must take place before the beneficial use date of the permit. In practice, an effective inspection requires that the diversion system be operating, and the State Engineer has waited until the year of the beneficial use date before starting the inspection process. The proposed changes remove the confusion and align the law with what has been actual practice. The proposed changes will not diminish the requirement or degree of the inspection itself. There will be no impact to existing permit holders or loss of rights with the proposed changes.

Section 4 relates to language that authorizes the State Engineer to reserve and set aside waters of the state for future use or to withdraw waters of the state from additional appropriations until sufficient data is available to make sound decisions.

Reservation for future use and withdrawing from available appropriation are two distinctly different acts, and should be treated separately. The present language places the same requirements on both, that being a complex process involving rule making and public hearings in each county affected.

In the case of reserving and setting aside waters for future use, the doctrine of prior appropriation (first in time, first in right), which is the underlying structure of our state water appropriation law, is being preempted. Legislative oversight in the rulemaking process along with the public involvement is necessary and appropriate in this case and should be retained. However, in the case of withdrawing waters from available appropriation until sufficient data is available for making sound decisions, the order of appropriation (prior appropriation doctrine) is not being preempted. Applications can still be received establishing priority dates so that when water is determined to be available, if it is determined to be available, permits will be granted in the appropriate order.

The practice of withdrawing water sources from appropriation is currently employed using N.D.C.C. § 61-04-06 (criteria for issuing a permit), where permit applications are being held until sufficient data is available to make a sound decision concerning impacts to prior appropriators, sustainability, and public interest. Water permit applications where existing data and the best professional judgment of the managing hydrologist indicate a substantial risk of violating the criteria of state law and rule are currently placed in a deferred status. Evaluation of an application in deferred status can take considerable time before the applications ahead of it have been processed and sufficient information is collected to justify granting the permit. In some cases, where water use has been highly developed, a water permit application may never be granted. Applicants, however, are often unaware of the reasons for delay in receiving their water permits. In some cases applicants may have unrealistic expectations when purchasing property or planning future development in areas that require water where it is scarce or limited by existing development.

The proposed language will enable the State Engineer to better communicate that status of all water sources to applicants and to the public by allowing areas of limited water availability to be identified and the nature of the limitation to be clearly defined. The present law has never been employed, likely because requirements of time and effort are prohibitive.

Another disadvantage of using the current law to withdraw waters of the state from appropriation is that doing so would make it very difficult and time consuming to re-open the water sources for appropriation should future information or conditions justify reopening those withdrawn sources. If waters were withdrawn using the current language, which involves administrative rules and hearings, the same process would have to be engaged to reestablish their availability in the case where sufficient data becomes available for sound decision-making or when water becomes available through the cancellation or abandonment of existing water rights. Applicants would have to wait for the lengthy rule-making process and public hearings, in addition to the

hearing and evaluation process already required under state law, to receive their water permits.

The proposed language enables the State Engineer to more effectively manage limited water resources and staff time, and better communicate the status or water availability with the public.

Section 5. The North Dakota Aeronautics Commission statute no longer requires pilots to register with the state. Our proposed amendment reflects that change.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1096

Page 1, line 1, remove "create and enact a new subsection to section 61-04-01.1 of the North"

Page 1, line 2, remove "Dakota Century Code, relating to the definition of domestic rural use; and to"

Page 1, line 2, after "reenact" insert "subsection 4 of section 61-04-01.1,"

Page 1, line 4, after "to the" insert "definition of domestic use,"

Page 1, replace lines 7 through 14 with:

"SECTION 1. AMENDMENT. Subsection 4 of section 61-04-01.1 of the North Dakota Code is amended and reenacted as follows:

4. "Domestic use" means the use of water by an individual, ~~or by a~~ at least one family unit, or household, obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household 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.~~

Renumber accordingly

North Dakota's Water Permitting Process

Amount impounded diverted or withdrawn is greater than 12.5 acre-feet, is being used to irrigate 5 or more acres of land, or is being utilized for industrial use.

NO

No permit required, but State Engineer must be notified of location and volume before facilities are constructed.

YES

YOU NEED A PERMIT So What's Next?

1 Obtain and complete the application. Priority date is established when the application is received by the State Engineer.

2 Applicant is then required to send a "Notice of Application."

Sent to real property and water permit holders within one mile of the point of diversion, and public water facilities within 12 miles.

4 State Engineer publishes notice for two weeks, and any person has 30 days from date of first notice to comment.

3 Applicant provides the State Engineer with an affidavit of notice - listing names and addresses of those sent the "Notice of Application."

5 Once a recommended decision is made by the State Engineer, there is a 30-day comment period for parties of record (those who provided initial comments).

6 If an adjudicative proceeding is requested and granted, the State Engineer will designate a time and place.

8 When water is put to beneficial use and after inspection, a perfected permit can be issued.

7 If permit is granted, the permittee is generally given one to three years to put water to beneficial use.

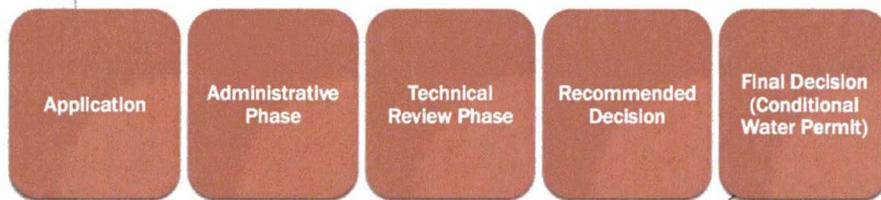
9 Record at county records office. A water right is a property right.

For Additional Information

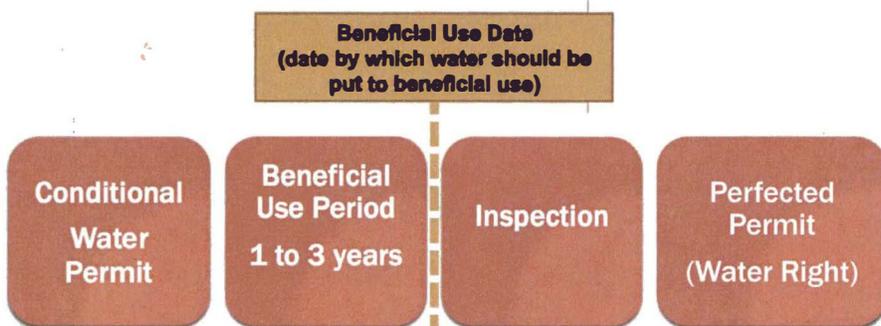


ND STATE WATER COMMISSION
900 E. BOULEVARD AVE., DEPT 770
BISMARCK, ND 58505
(701) 328-2754 · www.swc.nd.gov
Email swc@nd.gov

STEPS TO A CONDITIONAL WATER PERMIT



STEPS TO A WATER RIGHT



1.1

House Bill No. 1096
Senate Energy and Natural Resources Committee hearing
March 12, 2015

Comments by Jon Patch, Office of the State Engineer

Mr. Chairman, members of the Energy and Natural Resources Committee, my name is Jon Patch, I am the Division Director of the Water Appropriation Division of the Office of the State Engineer/State Water Commission.

This bill affects NDCC 61-04 "Appropriation of Water" and also a small change in 61-04.1 "Weather Modification".

Section 1 redefines "Domestic Use" to include both single and multiple households, thereby eliminating the need to have a separate definition of "Domestic Rural Use." With this change to Century Code in place, the definition of "Domestic Rural Use" will be removed from administrative code. Other than in the definition sections, the term "Domestic Rural Use" does not appear in Century or Administrative Code.

Section 2 does not change meaning or intent, it simply clarifies language.

Section 3 involves changes recommended by the recent audit of the water permitting process performed by KPMG, Inc. at the request of the Legislative Audit and Fiscal Review Committee in 2013. The auditors believed that the present language could imply that inspection of a water right must take place prior to the beneficial use date of the permit. In practice, an effective inspection requires that the diversion system be operating, and the State Engineer has waited until the year of the beneficial use date before commencing the inspection process. The proposed change removes the confusion and aligns the law with what has been actual practice. The proposed changes will not diminish the requirement or degree of the inspection itself. There will be no impact to existing permit holders or loss of rights with the proposed changes.

Section 4 pertains to language that authorizes the state engineer to reserve and set aside waters of the state for future use or to withdraw waters of the state from additional appropriations until sufficient data is available to make sound decisions. Reservation for future use and withdrawing from available appropriation are two distinctly different acts, and should be treated separately. The present language places the same requirements on both, that being a complex process involving rule making and public hearings in each county affected.

In the case of reserving and setting aside waters for future use, the doctrine of prior appropriation (first in time, first in right), which is the underlying structure of our state water appropriation law, is being preempted. Legislative oversight in the rulemaking process along with the public involvement are necessary and appropriate in this case and should be retained. However, in the case of withdrawing waters from available appropriation until sufficient data is available for making sound decisions, the order of appropriation (prior appropriation doctrine) is not being preempted. Applications can

still be received establishing priority dates so that when water is determined to be available, if it is determined to be available, permits will be granted in the appropriate order.

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The proposed language will enable the state engineer to better communicate that status of all water sources to applicants and to the public by allowing areas of limited water availability to be identified and the nature of the limitation to be clearly defined. The present law has never been employed, likely because requirements of time and effort are prohibitive.

Another disadvantage of using the current law to withdraw waters of the state from appropriation, is that doing so would make it very difficult and time consuming to re-open the water sources for appropriation should future information or conditions justify reopening those withdrawn sources. If waters were withdrawn using the current language, which involves administrative rule and hearings, the same process would have to be engaged to reestablish their availability in the case where sufficient data becomes available for sound decision-making or when water becomes available through the cancelation or abandonment of existing water rights. Applicants would have to wait for the lengthy rule-making process and public hearings, in addition to the hearing and evaluation process already required under state law, to receive their water permits.

The proposed language enables the state engineer to more effectively manage limited water resources and staff time, and better communicate the status or water availability with the public.

Section 5. The North Dakota Aeronautics Commission statute no longer requires pilots to register with the state. We are requesting an amendment to our code to reflect that change.