

2023 HOUSE ENERGY AND NATURAL RESOURCES

HB 1075

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1075
1/12/2023

Relating to comments on the cancellation of water rights

3:00 PM Chairman Porter opened the hearing; roll call was taken and the bill was read.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Roers Jones, and Ruby.
Absent: Representative Olson

Discussion Topics:

- Water permits

Chris Bader, Director of Water Appropriation Division, ND Department of Water Resources in favor -Testimony #12995

Dani Quissell, Water Appropriation Division of ND Department of Water Resources, In favor - Testimony #13011

3:11 Chairman Porter closed the hearing.

Representative Ruby moved a Do Pass on HB 1075

Representative Roers Jones seconded.

Roll Call vote:

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	AB
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

Yes 12 No 0 Absent 2 Motion carried.

Representative Ruby will carry the bill.

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3:14 PM Chairman Porter closed the meeting for HB 1075.

Kathleen Davis, Committee Clerk by Risa Berube

REPORT OF STANDING COMMITTEE

HB 1075: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB
1075 was placed on the Eleventh order on the calendar.

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1075

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1075
3/2/2023

A bill relating to comments on the cancellation of water rights; relating to the notice and hearing process for the cancellation of water rights.

10:14 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Beard, Boehm and Magrum are present. Senator Kannianen is absent initially but joined the meeting at 10:21 AM.

Discussion Topics:

- Expediting process
- Permits
- Notice of cancelation
- Hearings
- Recommendations
- Appeals
- Conditional permits

10:15 AM Chris Bader, Department of Water Resources, Water Appropriation Division, introduced the bill and provided written testimony #21818.

10:28 AM Dani Quissel, North Dakota Irrigation Association, testified in favor of the bill and provided written testimony #21530.

10:30 AM Chairman Patten closed the public hearing.

10:30 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1075
3/17/2023

A bill relating to comments on the cancellation of water rights; relating to the notice and hearing process for the cancellation of water rights.

9:11 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Boehm and Beard are present. Senators Magrum and Kannianen are absent.

Discussion Topics:

- Committee action

9:11 AM The committee has discussion on the bill.

9:11 AM Senator Kessel moves to Do Pass the bill. Motion seconded by Senator Beard.

9:12 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	AB
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	AB
Senator Greg Kessel	Y

Motion passes 4-0-2.

Senator Kessel will carry the bill.

This bill does not affect workforce development.

9:12 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1075: Energy and Natural Resources Committee (Sen. Patten, Chairman)
recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB
1075 was placed on the Fourteenth order on the calendar. This bill does not affect
workforce development.

TESTIMONY

HB 1075

Testimony
HB 1075—Department of Water Resources
House Energy and Natural Resources
Representative Todd Porter, Chairman
January 12, 2023

Mr. Chairman and members of the House Energy and Natural Resources Committee, my name is Chris Bader. I am the Director of the Water Appropriation Division of the Department of Water Resources. I am here to support House Bill 1075.

This bill will modify sections 61-04-23 through 25 of the North Dakota Century Code concerning the statutory process for cancellation of water rights. The proposed changes will expedite the process for all parties involved with **no loss of due process** to affected parties.

Since codified in the [1963](#) legislative session, the water right cancellation process has remained essentially unchanged. The department follows the steps below for a permit subject to cancellation:

1. Schedule a water permit cancellation hearing and send notice to the permit holder and affected landowners.
2. Publish a notice of cancellation hearing in the county paper of record for two consecutive weeks.
3. Hold a cancellation hearing.
4. Make a recommendation based on the hearing to cancel or not cancel the permit.
5. Send a final decision to all affected parties
6. The decision on the water permit may be appealed under chapter 28-32 of North Dakota Century Code.

At the time this procedure was codified, it essentially followed the exact same process for applying for a conditional water permit application. And for 30 plus years, the application process for a conditional water permit and cancellation of water rights had the same process.

However, the [1999](#) legislative assembly, at the request of this agency, modified the conditional water permit application process, replacing the hearing associated with an application with a comment period, as hearings on applications were largely unattended, and had become unnecessary. For the same reason, we are now proposing changes to remove the hearing associated with cancellation of water rights and instead imposing a comment period.

The cancellation hearings have largely gone unattended. For example, from 2016 to 2020, there were cancellation hearings on 60 permits. Of those, only 6 had attendees—2 of which appeared to agree with the cancellation. So, approximately 90% of the hearings had no attendees. Similar to the changes in the 1999 legislative assembly, the proposed bill will update the cancellation process to align with the application process, so the updated procedures will be to:

1. Send notice of cancellation to the permitholder stating that a notice will be published in the county paper of record that will state when public comments on cancellation must be received. Please note, that this in no way precludes the permitholder, or any constituent communicating with the Department of Water Resources whether written, by phone, or in-person.
2. A published notice of cancellation is published in the county paper of record that will specify a comment period deadline from which all written comments must be received and that the DWR will issue a final decision on cancellation based on comments.
3. DWR issues final decision based on comments.
4. DWR decision is appealable under ch. 28-32 of North Dakota Century Code.

Finally, it is a Department of Water Resources standard procedure to draft a memorandum outlining the reasons for cancellation of the water permit and send it to the permitholder with a form for signature in agreement with cancellation that outlines all their rights afforded to them under sections 61-04-23 through 25. This form is completely voluntary. Should the form not be received, then the processes in

sections 61-04-24 and 25 are implemented. Therefore, permitholders are informed of potential cancellation even prior to the initiation of the cancellation process. This procedure will remain unchanged, as it streamlines the process in cases when the permitholder has requested or agrees with cancellation of the permit.

This concludes my testimony, and I welcome any questions the committee may have.



North Dakota Irrigation Association

P.O. Box 2254
Bismarck, ND 58502
701-223-4615
701-223-4645 (fax)

Dedicated to strengthening and expanding irrigation to build and diversify our economy

January 12, 2023
House Energy and Natural Resources Committee
Testimony on HB 1075
Dani Quissell, North Dakota Irrigation Association

Good afternoon, Chairman Porter and members of the House Energy and Natural Resources Committee. Thank you for the opportunity to testify on HB 1075. I am Dani Quissell, the Executive Director of the North Dakota Irrigation Association. The Association is made up of irrigators, irrigation equipment dealers, businesses and others interested in supporting irrigation and irrigation development.

The Irrigation Association is supportive of the changes proposed in HB 1075. The process for cancelling a water permit is necessarily deliberative with opportunity for public feedback. Cancelling a permit not only has an impact on the permit holder, but also landowners who have put permit applications in but have not had those approved yet. In areas of the state where there is no 'new water', that is water that is not permitted, the only way someone can get a permit approved is if a permit is cancelled. We have members who are in this very situation right now. They are waiting for a permit to be approved, but that is unlikely to happen unless a permit in their area is cancelled.

We appreciate the careful consideration the Department gave to proposing these updates. As they have indicated, transitioning from a public hearing to a notice and comment period could provide a smoother, more expedited process, while maintaining that opportunity for public consultation.

Thank you for the opportunity to provide testimony. I'd be happy to stand for any questions.



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March 2, 2023
Senate Energy and Natural Resources Committee
Testimony on HB 1075
Dani Quissell, North Dakota Irrigation Association

Good morning, Chairman Patten and members of the Senate Energy and Natural Resources Committee. Thank you for the opportunity to testify on HB 1075. I am Dani Quissell, the Executive Director of the North Dakota Irrigation Association. The Association is made up of irrigators, irrigation equipment dealers, businesses and others interested in supporting irrigation and irrigation development.

The Irrigation Association is supportive of the changes proposed in HB 1075. The process for cancelling a water permit is necessarily deliberative with opportunity for public feedback. Cancelling a permit not only has an impact on the permit holder, but also landowners who have put permit applications in but have not had those approved yet. In areas of the state where there is no 'new water', that is water that is not permitted, the only way someone can get a permit approved is if a permit is cancelled. We have members who are in this very situation right now. They are waiting for a permit to be approved, but that is unlikely to happen unless a permit in their area is cancelled.

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Testimony
HB 1075—Department of Water Resources
Senate Energy and Natural Resources
Senator Dale Patten, Chairman
March 2, 2023

Mr. Chairman and members of the House Energy and Natural Resources Committee, my name is Chris Bader. I am the Director of the Water Appropriation Division of the Department of Water Resources. I am here to support House Bill 1075.

This bill will modify sections 61-04-23 through 25 of the North Dakota Century Code concerning the statutory process for cancellation of water rights. The proposed changes will expedite the process for all parties involved with **no loss of due process** to affected parties.

Since codified in the [1963](#) legislative session, the water right cancellation process has remained essentially unchanged. The department follows the steps below for a permit subject to cancellation:

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