

MINUTES **Amended 6-2-2017**

Regulation of Non-Meandered Waters



Representative Lee Qualm, Chair
Senator Brock Greenfield, Vice Chair

**Third Meeting, 2017 Interim
Wednesday, May 24, 2017**

**Room 414 – State Capitol
Pierre, SD**

The third meeting of the Regulation of Non-Meandered Waters Interim Study was called to order by Representative Lee Qualm at 10:00 a.m. in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Hugh Bartels, Mary Duvall, Spencer Gosch, Spencer Hawley, Steven McCleerey, Herman Otten, Larry Rhoden, Burt Tulson; Senators Gary Cammack, Jason Frerichs, Craig Kennedy, Joshua Klumb, Jim White; Senator Brock Greenfield, Vice Chair; and Representative Lee Qualm, Chair.

Staff members present include Amanda Jacobs, Senior Research Analyst; Jessica LaMie, Legislative Attorney; Lucas Martin, Fiscal Analyst; Fred Baatz, Principal Research Analyst; and Cindy Tryon, Senior Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://www.sdlegislature.gov/>.

Approval of Minutes

A MOTION WAS MADE BY SENATOR CAMMACK, SECONDED BY REPRESENTATIVE DUVALL, TO APPROVE THE MINUTES OF THE MAY 9-10, 2017, REGULATION OF NON-MEANDERED WATERS INTERIM STUDY COMMITTEE MEETING. The motion prevailed on a voice vote.

Introductions and Chair's Opening Remarks

Representative Lee Qualm summarized the first two committee meetings, saying that the success of the second meeting held in northeast South Dakota led to the drafting of the legislation to be discussed at this committee meeting.

Draft Legislation

Representative Qualm distributed copies of the proposed legislation drafted to address the issues of the non-meandered waters ([Document #1](#)).

Mr. Matt McCaulley, Lawyer, Sioux Falls, and Mr. Nathan Sanderson, Director of Policy and Operations, Governor's Office, presented a PowerPoint presentation regarding the draft legislation ([Document #2](#)). Mr. McCaulley and Mr. Sanderson presented the legislation explaining each section of the bill.

Mr. McCaulley reported the South Dakota Farm Bureau is in support of the draft legislation.

A MOTION WAS MADE BE SENATOR GREENFIELD, SECONDED BY SENATOR KLUMB, TO AMEND THE DRAFT BILL AS FOLLOWS: *On page 1 of the printed draft, delete lines 10 to 13, inclusive, and insert: "(2) Because the State holds the waters in trust for the benefit of the public, the Legislature must balance the interests of recreational*

users and the rights of private property owners to provide a constitutionally sound and manageable basis for establishing public recreational use of water overlying private property in accordance with this Act." On page 7, line 21, after "." insert "However, any contact between recreational equipment and private property underlying any nonmeandered lake that is incidental to a lawful recreational use is not a criminal trespass." The motion prevailed on a voice vote with Senator Kennedy voting no.

Mr. McCaulley and Mr. Sanderson answered questions from the committee; as did Mr. Jack Hieb, former State's Attorney; Secretary Kelly Hepler and Mr. Tony Leif with the Department of Game, Fish and Parks (GFP); and Secretary Steve Pirner, Department of Environment and Natural Resources.

Public Testimony

Mr. Lorin Pankratz, SD Soybean Association, Sioux Falls, and Mr. Jerry Schmitz, SD Soybean Association, Vermillion, said the SD Soybean Association conducted a survey regarding the non-meandered waters issue. A summary of the responses to the survey was distributed to the committee members ([Document #3](#)).

Mr. Pankratz said the members of the SD Soybean Association are optimistic about the proposed legislation. Mr. Schmitz said showing landowners respect means giving the landowners the right to decide who is on their property.

Mr. Mike Schmidt, Moody County, said this same type of issue was addressed thirty-five years ago regarding the fencing of properties by water. Mr. Schmidt said they learned then and it is true today that the Sheriffs' departments do not have the funding or the manpower to try to find and charge the sportsmen who trespass or cause property damage, and GFP will only get involved after several complaints and they tend to chastise the landowner for fencing the land. Mr. Schmidt said nothing is done to help the landowners when damage is done to their property.

Mr. George Vandell, SD Waterfowl Association, Pierre, said the historical public use aspect of these waters needs to be considered, people have used these areas for years for subsistence. Mr. Vandell said he respects the landowners' rights, but the Supreme Court said the water and access to water is an inherent public trust right.

Mr. Eric Cleveringa, SD Wildlife Federation, distributed an informational memo to the committee members ([Document #4](#)). Mr. Cleveringa said the SD Wildlife Federation opposes the draft legislation proposed at this meeting; this bill does not represent the sportsmen. Mr. Cleveringa said the SDWF's biggest concern with this legislation is there is no allowance for petitioning to open waters, only to close waters.

Ms. Donna Bumann, Business Owner, Lake Preston, said she learned about the closing of the lakes from one of her out-of-state customers. Ms. Bumann said she called GFP to obtain more information regarding this issue and has yet to have her phone call returned. Ms. Bumann asked the committee to go with what they can accept, to do something now; her hotel business is a fourth of what it was last year at this time and her bait business is only half of what it was last year. Ms. Bumann said if nothing is done soon she does not know how she will be able to pay her mortgage.

Mr. Shawn Lyons, Executive Director, SD Retailers Association, said the financial impact is not just on the businesses near the lakes that have been closed, but also to the communities and the state because of the loss of sales tax revenue. Mr. Lyons said his organization believes this legislation is a step in the right direction and that it is time to move forward in addressing these issues.

Representative Steven McCleerey asked Mr. Lyons what will happen if nothing is done by this fall. Mr. Lyons said if nothing is done now, many businesses will be devastated and not acting before this fall could put several out of business.

Ms. Nancy Hilding, Prairie Hills Audubon Society, Black Hawk, said her association is opposed to the legislation, as they see it shifting control to the landowners and going in opposition to the recreators. Ms. Hilding said the committee must get the Native American input before making a final decision.

Mr. Bill Antonides, Future Generations, Aberdeen, said the real problem is the privatization and commercialization of our waters and the water must be held in trust for the best use of everyone. Mr. Antonides asked the committee members to be thinking decades ahead when making their decision.

Mr. Bill Simonson, Farmer, Roslyn, said he feels badly that the businesses around these lakes have had to suffer, but that is because of the way the closing of access to the lakes was handled. Failure to get the actual information out to the public led to out-of-state sportsmen hearing rumors and reacting by not coming to South Dakota to visit lakes that still have open access. Mr. Simonson said giving the landowners the right to close access does not mean they will all choose to do so. If the landowners have more rights, they will be more willing to work with the sportsmen. Mr. Simonson concluded his testimony by saying there needs to be more working with each other.

Ms. Michele Brich, SD Innkeepers Association, Pierre, said the Innkeepers would like to see the access to the waters reopened, and doing nothing will be detrimental to businesses in that part of the state.

Mr. Jeremy Schuster, Farmer, Eden, said he lives on Cattail Lake and the farmers in that area feel like GFP has been stepping on them over the years. Mr. Schuster said the farmers felt they won with the Supreme Court decision but this draft legislation takes away that feeling by putting control back in the hands of GFP.

Committee Discussion and Staff Direction

Representative Spencer Gosch said to have the bill go into effect immediately, it must pass the full Legislature by 2/3 vote. Representative Gosch asked if the Governor's Office would be willing to open access to the lakes before the 90 days it would take for the law to go into effect, should the Legislation pass through a Special Session without the emergency clause. Mr. Sanderson said he did not know the answer to that question.

Senator Brock Greenfield said the need for this legislation is to find a proper balance and he believes this draft bill addresses that need. Senator Greenfield said this legislation establishes a starting point and additional issues can be addressed during the 2018 Legislative Session. Issues Senator Greenfield said should be addressed in the future are setting stronger penalties for those breaking these laws, and counties and townships vacating roads used for access.

Senator Gary Cammack said the worst thing that can happen is nothing, and he hopes the result will be something that best serves the citizens of South Dakota. Senator Cammack explained the legislation that comes out of this committee will be subject to amendments once it reaches the full legislature.

Representative Herman Otten said today's public testimony demonstrates that there are people on both sides of the issue who do not like this legislation. Representative Otten said he would like to have some of the legislation reworked and the committee should meet again to act.

Representative Spencer Hawley said he believes the committee is close to finding a solution but there needs to be a little more time. Representative Hawley said he would like to be able to study this legislation further and visit with constituents to get their input before acting.

Representative Larry Rhoden said the objectives are to have the waters opened while honoring property owners' rights, and the answer seems to be close but the committee needs a little more time before making their final decision. Representative Rhoden added that he believes most of the closed access to the waters will be opened.

Senator Jim White said more time is needed, but it needs to be a very short period of time; action needs to be taken very soon.

Representative Burt Tulson said opening access to these lakes is important to businesses, the state, and to landowners; it is time to move and get access opened.

Senator Jason Frerichs said he challenges the committee to look at ways the legislature can have some oversight of the GFP regarding the non-meandered waters issues. Senator Frerichs said the GFP Commission is appointed by the Governor and the Department of Game, Fish and Parks falls under the Executive Branch. Senator Frerichs said he believes the Legislative Branch should have some oversight and accountability especially when it comes to Section 9 of the draft legislation.

Senator Frerichs said he and Senator Greenfield agree that Reetz Lake is a unique situation and should not be on the list in Section 8 of the draft legislation unless an agreement is in place.

Senator Craig Kennedy said the committee recognizes the need to solve this problem quickly, but the members need to be mindful that we have to protect the public trust with which the committee has been charged.

Representative Hugh Bartels said he agrees that more time is needed before making a decision on this legislation, and he requested an attorney from the Attorney General's Office attend the next meeting to answer any legal questions the committee members may have.

Future Meeting Dates and Sites

Based on input from the committee members, Representative Qualm said the next meeting of the Regulation of Non-Meandered Waters Study Committee will be June 2, 2017, and the Governor's Office will be asked to call a Special Legislative Session on June 12, 2017.

Adjourn

A MOTION WAS MADE BY REPRESENTATIVE DUVALL, SECONDED BY REPRESENTATIVE RHODEN, THAT THE REGULATION OF NON-MEANDERED WATERS STUDY COMMITTEE MEETING BE ADJOURNED. The motion prevailed on a voice vote.

The committee adjourned at 2:40 PM.