

Memorandum

From: Michael Carpenter, York Township, Day County
To: Sen. Jason Frerichs and Rep. Steven McCleerey
Cc: Frank James
Date: May 8, 2017
Subject: Regulations of Non-Meandered Waters

Background: The state of South Dakota's website states that in 2015 the agricultural industry had a \$25.6 billion dollar economic impact in SD. In comparison, the impact of the tourist industry in 2015 was \$3.8 billion from visitor spending and \$5.9 billion in total business sales. Clearly, agriculture is the leading economic engine within our state. Tourism is also important. Thus, the effort of GF&P to increase tourism by promoting hunting and fishing is part of that department's mandate and should be encouraged. However, in the writer's opinion, GF&P has overreached when it encourages people to go onto public waters over private lands. The SD 5th Circuit Court has agreed. The Supreme Court has for the second time declined to make law leaving that decision properly for the legislature.

Here are suggested points for a legislative solution to the non-meandered waters problems raised by the South Dakota Supreme Court in *Duerre v. Helper*.

- **Tax Relief:** I have been informed that SD farmers may apply for a reduced real estate tax on productive land under water to be taxed as marsh land at a reduction of about 90%. However, there remains a tax on the land under water. In the writer's view, the tax should be abated, as was the practice in Day County from the mid-1990's until 1999.
- **Payment to Farmers:** If the State wants to use the farmer's land, it can do it the old fashion way, it can pay for it. The foregoing paraphrases a statement made by the Circuit Court in *Parks v. Cooper*. GF&P discussed a program that fits this comment in its April 2017 publication: *Landowners Matters*. This publication discussed "Landowner Fisheries Management Authorization" noting that the program applies only to created, man-made impoundments that have no legal public access. Also discussed is a Revised Fisheries Management Agreement that provides for payments for public access. Changing the two limitations in this program, i.e. man-made and no public access, to include non-meandered water and payment for public access would go a long way toward a solution to the current non-meandered water problem.
- **Safety Zones:** South Dakota law, as stated in the *South Dakota 2016 Hunting and Trapping Handbook*, restricts the discharge of a fire arm along a public highway within 660 feet of a dwelling. Similarly, fishing on non-meandered waters could be restricted within a similar distance from a dwelling and/or livestock.