



A compromise on water use

After years of controversy, South Dakota Legislature navigates deal protecting landowners and recreational access to public

by South Dakota House Majority Leader Lee Qualm

It was coming up on the final week of the 2017 legislative session, and I knew that the South Dakota Supreme Court had heard a case regarding a long-running dispute over our state's non-meandered waters.

Who has the right to control use of these waters? When would the court issue its ruling?

With only four days before adjournment, I got the answer to the latter question. Justices issued their decision but, in doing so, provided no definitive answer to that first question. In *Duerre v. Game Fish & Parks/Secretary Hepler*, the court stated that neither the landowners, who had lost land with the flooding that created the non-meandered waters, nor the sportsmen, who were using the waters for fishing and hunting, had a "priority of use."

To resolve the dispute, the state Supreme Court tasked the Legislature with establishing the statutory language that would resolve this "priority of use" question. We did so earlier this year, though only after forming a special task force to explore the issue, holding hearings to gather input from all affected groups, and then meeting in special session.

Now, I'm sure some of you are wondering what the difference is between meandered waters and non-meandered waters?

When our state was founded in 1889, surveyors were directed to plot the whole state's section lines and to establish which bodies of water were permanent and, therefore, would belong to the state of South Dakota. These were called meandered waters because the surveyors "meandered," or walked around them.

This lawsuit dealt with "non-meandered waters," a term that refers to the lakes that sprang up in the 1990s after tremendous rainfall and snowfall in the northeast part of South Dakota. Tens of thousands of acres of privately owned land were flooded. When that happened, there was much dispute as to who had authority over these newly formed bodies of water.

Our South Dakota Department of Game, Fish & Parks believed it could do whatever it wanted with these new lakes, with very little regard to the landowners who had lost their very livelihood. The department's argument centered on the Legislature's broad policy that the public has a right to use state waters and that recreation is a beneficial use of water.

On the other hand, the landowners believed that since they had lost all of these acres due to flooding, and were still required to pay taxes on them, they should have a say as to who could use this water for fishing and hunting.

When our state Supreme Court issued its 2017 ruling, Game, Fish & Parks completely shut down all access to 25 of these non-meandered lakes because it didn't have authority to allow access to them anymore.

The negative financial impact to nearby hotels, convenience stores, restaurants, boat mechanics, grocery stores, etc., in northeast South Dakota was immense — and potentially devastating due to very few fishermen and hunters coming to the area.

How legislators addressed a long-running dispute over 'non-meandered waters'

✓ **The controversy:** Who has the right of use over "non-meandered waters" — bodies of water that sprang up in the 1990s after tremendous rainfall and snowfall?

✓ **The court decision:** In a ruling earlier this year, the South Dakota Supreme Court left to the Legislature the task of resolving the controversy over whether members of the general public "may enter or use any of the [non-meandered] water or ice located on private property for any recreational use such as hunting or fishing."

✓ **The legislative response:** After the court ruling, lawmakers formed a special committee, held hearings on non-meandered waters, and met in special session in June.

✓ **The legislative solution:** Signed into law in June, HB 1001 reflects a compromise reached on the use of non-meandered waters. It immediately opened 25 bodies of water to the public while giving landowners the ability to post and close certain areas of non-meandered waters.



Time for Legislature to act, quickly

Since the issue first arose in the 1990s, we had several summer legislative studies and bills brought forth regarding non-meandered waters, with no resolution reached.

The Supreme Court's 2017 ruling, however, marked the first time that the Legislature was really directed to fix the problem, and it needed to be resolved quickly. Otherwise, businesses in the northeast part of the state would not survive the summer.

The Legislature's Executive Board formed a task force to help settle this extremely emotional and financially impactful issue. As chair of this task force, I knew that we needed to resolve the issue before the 4th of July; with that in mind, I set the first meeting for the end of April.

Our first meeting, held in the state capital of Pierre, featured a lot of information sharing and gathering. In addition, we heard testimony from Game, Fish & Parks; affected retailers; lawyers who represented affected landowners; and sportsmen's groups.

With all this background information, I decided we needed some extended time to get additional testimony, and we moved our second meeting to a location more easily accessed by affected individuals, businesses and groups. At that second meeting in Aberdeen, we heard from more than 70 individuals and organizations that would be directly impacted by the decision before us.

After one more information-gathering session, we began to work on ideas for potential legislation.

By mid-May, we had a bill put together. It gave landowners the ability to tell Game, Fish & Parks that they did not want anybody fishing or hunting on the water above their property. The landowners would have to mark off their property lines with buoys, and would not be able to charge sportsmen a fee to access the water above their property.

We also gave Game, Fish & Parks the authority to negotiate with any landowner who restricted

water access to see what could be done to regain public access. Lastly, we inserted a sunset clause of June 2021 to allow an appropriate time frame to evaluate whether the law was working.

With much discussion, our task force passed this bill on a bipartisan vote, 14-1.

With this decision made, we then had to find a date for the special session, one that would work for our part-time Legislature. It was June 12, and on that day, HB 1001 passed with a wide margin of support and was signed into law.

During the special session, several amendments to the bill were brought forward, but only one passed. It changed the sunset clause from June 2021 to June 2018. As a result, we will have to address this issue again during next year's legislative session.

As of today, this new law is working very well — a reflection of the work of legislators in bringing together Game, Fish & Parks, sportsmen and landowners to find a compromise over non-meandered waters. This was something never before accomplished.

I am hopeful we can pass a bill next session to return the sunset provision to 2021 in order to let this long-needed legislation for non-meandered waters work for the good of the people of South Dakota. ✨

South Dakota Rep. Lee Qualm, a Republican from Platte, served as chairman of the Legislature's Regulation of Non-Meandered Waters Interim Study Committee. He also is the majority leader in the South Dakota House.

Submissions welcome

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