MINUTES

Regulation of Non-Meandered Waters

Representative Lee Qualm, Chair
Senator Brock Greenfield, Vice Chair

Second Meeting, 2017 Interim
Tuesday-Wednesday, May 9-10, 2017

Berggren Hall, Johnson Fine Arts Center
Northern State University, Aberdeen, SD

The second meeting of the Regulation of Non-Meandered Waters Interim Study Committee was called to order by Representative Lee Qualm on May 9, 2017, at 9:00 a.m. in Berggren Hall, NSU, Aberdeen, SD.

A quorum was determined with the following members answering roll call: Representatives Hugh Bartels, Mary Duvall, Spencer Gosch, Spencer Hawley, 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. Excused: Representative Steven McCleerey.

Staff members present include Amanda Jacobs, Senior Research Analyst; Jessica LaMie, Legislative Attorney; and Lucas Martin, Fiscal Analyst.

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/.*

Introductions and Chair's Opening Remarks

Representative Lee Qualm said the non-meandered water issue has been going on for a long time and everything came to a head with the Supreme Court opinion. This is a great committee with great ideas and the committee decided to come to the area most affected to hear the public's great ideas for resolving this issue.

Senator Brock Greenfield expressed his appreciation for all the people who came today to testify.

Public Testimony

Michael Carpenter, Lily, thanked the committee on behalf of the citizens of northeast South Dakota for coming to the area. He covered three main points he believed could be potential solutions for the issue of non-meandered water; payment for farmers, tax relief, and set offs or safety zones *(Document #1)*.

Ken Medenwald, Aberdeen, stated that setbacks were a good idea, however, he explained of a situation around Pierre where a farmer put up a fence for bulls that then would have prevented hunting in that area because of the setback.

Shawn Lyons, South Dakota Retailers Associations, Pierre, said it is important for the committee to consider the economic impact on businesses because of closing access to the non-meandered waters. A survey was sent to all industries in various counties where it was believed there would be an economic impact including: convenient stores, gas stations, restaurants, lodging, hardware stores, sporting goods, boat dealers and grocers. Mr. Lyons said the survey responses are still coming in. Various concerns were expressed through the survey responses. The responses range from concerns about decreased boat sales, reduced sales tax, less out-of-state fishermen coming to the area, and fewer customers at the convenience store to purchase snacks and supplies.

Representative Spencer Hawley asked how many communities have submitted responses. Mr. Lyon said they have heard back from Waubay, Redfield, Brookings, Webster, Watertown, Lake Norden, Aberdeen, Arlington, Bowdle, and Britton; however, he is surprised more communities have not responded.

Senator Joshua Klumb asked how the Association proposes to balance the economic impact on farmers, which is also a business. Mr. Lyons stated it is a balance, and small businesses in the affected communities also serve the agriculture industry.

Jay Pereboom, owner, Pereboom's Café, Webster, said he understands why Game, Fish and Park (GFP) pulled the boat ramps out of the non-meandered lakes. GFP deserves recognition for keeping the fisheries in the state for as long as they have been. However, sales were down over 30% last month and some other businesses in the area were down as much as 85%. Businesses set their budgets based on the previous year and this time last year the town was bustling; this year it is extremely quiet. Mr. Pereboom stated that people need to come together, recognize there is a problem, and let people fish. Everyone prospers from sales tax dollars. He has talked with some farmers, and to them it is unclear what the tax breaks are. He asked the committee for a reprieve.

Representative Herman Otten asked Mr. Pereboom how this is affecting his employees. Mr. Pereboom replied that he has thirty-five employees and he cannot let any of them go because they are good employees. However, one employee had their electricity turned off due to being unable to pay the bill because they are not getting enough hours.

Bill Antonides, Aberdeen, said he currently has eighty acres of non-meandered water over his property. He is a retired conservation officer, and understands both sides of the issue. Because of the Desert Land Act, no living landowner owns the water over their land, including himself. He believes that any legislation needs to include language that recreation is a beneficial use of non-meandered waters; that will fix the immediate short term problems and then issues of landowner's rights could be fixed overtime. The problem with SB169 from 2014 was it tried to fix everything all at once. No one has the right to give natural resources away and those resources need to be preserved for our children, grandchildren, and great-grandchildren. The committee needs to consider how these laws affect the future.

Senator Jim White asked for clarification if the emphasis should be on beneficial use or recreational use. Mr. Antonides responded the emphasis needs to be on both terms. The waters can only be used for beneficial use but recreational use has never been defined as a beneficial use.

Representative Larry Rhoden asked if landowners received some form of compensation, whether it be tax abatement or compensation, would most landowners allow public access. Mr. Antonides did not believe he could answer that because he believes the water belongs to the public so long as it can be legally accessed.

Representative Rhoden asked what is considered taking water away. Mr. Antonides responded that previous attempts at legislation would have cut off public access to a non-meandered body of water under forty acres.

Karen Johnson, owner, Lynn Lake Lodge, Webster, said her business has seen a decrease in income of 86% from last year. Ms. Johnson has had minimal business since the decision of *Duerre v. Hepler*. The immediate problem is people not knowing whether or not they can fish the non-meandered lakes. Ms. Johnson said that when she has tried to seek clarification from GFP she is told, "they can't say you can fish and they can't say you can't fish." People do not know what to do and she is asking the committee for a reprieve.

Representative Hawley inquired as to how many bodies of water are around Lynn Lake Lodge. Ms. Johnson said there are twenty-four lakes close to them; four are closed, two of those are within a mile of the lodge. An owner of one of those lakes has a pay access point that he has not opened.

Representative Burt Tulson asked if the closed ramps are on leased land. Ms. Johnson responded that they have no land on Lynn Lake, the access they used was though a local farmer but he has not made it available because he has questions regarding his liability if he does.

Senator Gary Cammack inquired if they could make arrangements with a landowner on Lynn Lake to gain private access. She responded she is not familiar with the landowners because she has had no reason to make contact. The one landowner they have dealt with is unsure of his responsibility if he does put his ramp in the water.

Representative Tulson asked what are the agreements with the ramps that are closed**. Tony Leif, Director, Division of Wildlife, Department of Game, Fish and Parks,** responded that most ramps with restricted access are on state land but there are some on leased land. Representative Tulson asked if the ramp on Dry Lake 2 is owned by the state. Mr. Leif said the land is owned in fee title by the state.

Travis Sichmeller, Aberdeen, said finding a solution needs to be a team effort. The landowners need to be on the same team as the sportsmen and the sportsmen want landowners on their team. Landowners need to be a part of the discussion. People coming into South Dakota to hunt and fish could be potential South Dakotans. However, he is afraid that paying extra to hunt and fish could hurt the next generation. If there is going to be a fee it needs to be the same across the board and not a certain amount to fish a certain lake and a different amount to fish a different lake.

Representative Hawley asked what should be considered recreational use on non-meandered waters. Mr. Sichmeller believed there are more problems with hunting than with fishing and believed that the waters should be open to the public to fish but permission should be required from the landowner to hunt.

Sean Weaver, Brookings, said Duerre Slough and Long Lake have not been accessible and the water has essentially been taken away. Nature is something that cannot be predicted or controlled and that does not change that the water is public.

John Knebel, Eden, said all water is public but that does not necessarily mean it is for public use and someone can run a boat across your slough. He has not seen any tax abatements and has only received one payment in twenty-five years. There needs to be a compromise for the people of Webster because they rely on the lakes but it is time for the landowners to be fairly compensated. Out-of-state fishing licenses are too cheap and doubling the license fee would not stop them from coming to South Dakota.

Representative Otten asked for clarification on how he was not getting a reduction in taxes if there is an application for an abatement authorized by state law. Mr. Knebel explained that if there is a reduction on the land that is underwater the tax is still there it just gets spread across the county.

Senator Cammack asked if he was considering opening his personal boat ramp. Mr. Knebel stated that he would not open it to the public but may if someone asked permission. To access the ramp, it requires going through gates.

Representative Rhoden asked if landowners received a complete tax abatement what percentage of the landowners would allow public access. Mr. Knebel estimated a very low number if access still includes hunting and about 50% if access is only for fishing.

Tom Jones, Britton, has worked on water issues in both North and South Dakota at both the state and federal levels. Tax abatement is fundamentally different than a pay-to-access system. Paying for access to the water implies that the landowner has something to convey and goes against the public trust doctrine. He believes that

the terms meandered and non-meandered are arbitrary because when the meander lines were drawn that was just a snapshot in time 130 years ago and does not change that the water is held in trust for the public. He asked the committee to reaffirm what has been the status quo which is if a person can access the water from a legal right of way then that person has the right to use the water for any purpose. Any potential solution cannot split hairs because that will further divide people and it needs to be a solution that applies across the board.

Representative Rhoden asked when the meander lines were drawn the land under those waters were public and people acquired rights in land outside of the meander lines, and is that not a valid consideration. Mr. Jones replied that it was a decision at a point in time that does not reflect the conditions 130 years later.

Joe Honer, Eden, believes that the biggest problem is the respect for landowners is missing. Landowners and fishermen agree that landowners paying taxes on the affected land is an issue. If the public is using the water, then landowners should be compensated by the state. For the lakes that are a priority, someone needs to get the perspective of the landowners on those lakes of how many would allow public access. There is always going to be a landowner with a specific problem but it is disrespectful to all landowners to make rules rather than agreements regarding the water. Mr. Honer recommended starting with potential solutions for the priority lakes and abate the taxes on those lands. If the problem continues the landowner will be the enemy of the sportsmen, the sportsmen will be the enemy of the nonresident, and GFP is stuck in the middle.

Dave Solberg, Watertown, referenced laws that already protect landowner's rights and referenced SDCL 43-16-1, 41-9-1 and 50-13-3 and argued those statutes should apply to the non-meandered waters. He believes calling the water public is an unconstitutional taking. He proposed the state should offer to rent or purchase the property and mark those boundaries where people can hunt and fish. If a landowner chooses not to participate that portion should be off limits. The penalty for trespassing should be severely increased and then people will quickly figure out the boundaries. He also proposed a temporary solution of removing the restricted access on the twenty-five lakes and the public should stay off the lakes under injunction.

Ryan Anderson, Cottonwood Lake Association, Redfield, stated there are over 150 property owners around Cottonwood Lake and they cannot get their boats in the water. He understands the landowner, but Cottonwood Lake is a special exception because the land was subdivided years ago. He is hoping for a quick solution so people can get boats on the lake.

Gary Roth, Union Township, was surprised that Scatterwood Lake was ever considered a non-meandered lake and was wondering how that could be changed. He believed that the committee should look at changing the meander lines that were drawn 130 years ago.

Representative Hawley clarified that people do own land under Scatterwood Lake.

David Sigdestad, Pierpont, said farmers are not asking for a lot, just a little control of who is on the water over their land.

Taylor Anderson, Groton, came back to South Dakota after college because of the opportunities to hunt and fish, while most of his classmates went to bigger cities for bigger salaries. There has been difficulty in recruiting teachers and health care professionals to South Dakota and getting them to stay. He urged the committee to keep in mind the ramifications on keeping young professionals in the state as they move forward.

Paul Halverson, Valley Township, farmed south of Bristol but in 1993 it rained and he has never seen that pasture land again. He quoted Article 6 paragraphs 1 and 3 of the South Dakota Bill of Rights and SDCL 41-9-1 to support his opinion that there is no way to separate the land from the water. If you control the water then you control the property under it, however, the landowner still pays taxes on the land. He should not have to maintain his portion

of township roads and pick up trash just for sportsmen to block his driveway. If it is determined that the public can go where they want on the water, then the counties and townships should be compensated for maintenance to the roads to access the water.

Lloyd Hodgin, Aberdeen, believes the public should not have to pay for access to the water but that does not mean there is not another solution. The State could provide landowners compensation for the sequestered nature of the water on their land. GFP also pays taxes on the land and if those taxes were abated GFP could make payments to the landowners in lieu of paying taxes.

Rich Hilgemann, Aberdeen, asked the committee to consider the property values of those with houses on Cottonwood Lake. Homeowner's property values are likely decreasing because they cannot access the water. He would like to see people being able to recreate on those waters.

Fran Esser, Redfield, said people that live around Cottonwood Lake need the tax dollars for improvement to the schools and utility lines. If a farmer does not get a crop they will get a disaster payment, however, business owners do not receive a disaster payment and for that reason is it important to act immediately. The state cannot afford to lose any more businesses.

Doug Sombke, Groton, said there are three big issues he hears from farmers. First, taxes must be fair. Some school districts were receiving dollars from name plate tax on the wind farms in the area, but with the funding formula that money is now spread across the state and he believes that is not fair. Second, landowners should be relieved of liability. Third, there needs to be a way to ensure that roads leading to access points are not damaged and if they are repairs should be paid for through a form of compensation.

Marcus Qualm, Webster, said he has a fishing guide business and with access to some of the non-meandered lakes being restricted he is concerned about his business. There are a lot of sales being lost across the state and he is fearful of what that means for the future.

Forest Stanton, Watertown, said the water is public and the Legislature is responsible for telling the public what they can and cannot do with the water. The Legislature is going to set in stone how the non-meandered water is handled not only today but for years to come. He cautioned the committee on privatizing a public resource. He said if there is going to be a stamp to access the water it should not be only on hunters and anglers because there are other forms of recreation that do not have a burden of getting a license. He recommended inserting language into SDCL 46-1-3 stating that recreational use of non-meandered water is a beneficial and lawful use.

The committee meeting went into recess at 12:05 pm on Tuesday May 9, 2017.

Tour of the Area Affected

The committee took a bus tour of areas of non-meandered and meandered waters. The committee was taken to Jesse Slough, Duerre Slough, Parks Slough by Thad Duerre and LaRon Herr to show the committee how those bodies of water have affected their land and other land in the area.

GFP led the tour to show committee members Reetz Lake and Bitter Lake. Reetz lake is a non-meandered body of water that had a public access boat ramp prior to the Duerre v. Hepler opinion. GFP leases the land that the boat ramp was on. Reetz lake is also a trophy walleye lake, by agreement with the landowners no walleye under 28 inches can be removed from the lake. Bitter Lake is a meandered body of water that has expanded from 4,000 acres to around 18,000 acres. Bitter Lake is still open to public access but no boats were on the water when the committee was visiting. This time last year, 30-40 boats would have been out on the water.

Finally, the committee ended the tour in Webster and heard from business owners on the economic impact due to the reduction of fishing in the area. The committee stopped at Pereboom's Café, the Sportsman's Cove, and Lynn Lake Lodge.

Reconvene Public Testimony

On Wednesday, May 10, at 9:05 am **Representative Lee Qualm** reconvened the meeting and again opened the committee meeting to public testimony.

A MOTION WAS MADE BY REPRESENTATIVE GOSCH, SECONDED BY REPRESENTATIVE HAWLEY, TO APPROVE THE MINUTES OF THE APRIL 27, 2017, REGULATION OF NON-MEANDERED WATERS INTERIM COMMITTEE MEETING. Motion prevailed on a voice vote.

Charlie Hoffman, Former Legislator, McPherson County, Eureka, said every current and former legislator has one piece of legislation they are proud of and helps a lot of people and one piece they could not fix and drives them crazy, and, for him, it is non-meandered waters. If fishing is allowed on non-meandered waters he suggested possible speed limits on water, and time limits or time frames on ice fishing. He also suggested landowners who do not want people hunting and fishing should be required to post signs.

Michael Herr, Day County, Bristol, said the simple solution is to enforce the laws that are already in place and that private property is private. Landowners purchased the land, make improvements and pay taxes on the land where the water is sitting. Farmers and ranchers are large contributors to the recreation industry by letting sportsmen hunt and fish, usually for free. He feels the sportsmen and GFP are acting with extreme greed and it is pitting people against each other.

Frank James, Day County Commission, Lily, said he at one time put fence across the grounds of Parks Slough and farmed parts of Duerre Slough and Lake Lily before the land was covered with water. The Day County Commission should have been invited on the tour and he was offended that they were not. He believes GFP is the most unregulated department in state government. This is a landowner issues and landowners should be able to manage what happens on their property. There will still be hunting and fishing even without public access to non-meandered waters and it will be quality hunting and fishing not quantity.

Representative Qualm clarified that there were locals from Day County on the tour that showed the committee different affected areas in the county. Mr. James believed the commission still should have been invited.

Senator Jason Frerichs asked about issues with county roads that lead to some of the access points. Mr. James stated counties have spent a lot of money on at least four lawsuits brought by GFP regarding the vacating and closing of roads. Senator Frerichs asked about the issues that exist when the roads are used as boat ramps. Mr. James responded that the fishermen have no respect for the roads and will back their boats in wherever they can and block driveways and roads. He said there was one situation where he hit a pickup with a combine because the vehicle and boat trailer was partially blocking a gravel road.

Maureen Wegenke, South Dakota Association of Towns and Townships, Huron, said the counties and townships are the ones taking responsibilities and liability for the access roads. Speaking for the townships she recommended: clarifying that maintaining access does not require construction and maintenance of roads on all section lines leading to non-meandered waterbodies; limiting the number of required access roads that lead to a particular body of water to a reasonable number; clarifying and strengthening the authority of township boards to close roads classified as no maintenance roads or other unsafe roads for public safety and to limit travel on those

roads; increasing penalties for travel and damage to closed or barricaded roads; requiring provisions for parking at publicly recognized boat docks and facilities; increasing boat registration fees or license fees to help pay for maintenance of access roads; and adding a surcharge to hunting and fishing licenses for the privilege of hunting and fishing on non-meandered waters and being provided the access roads. She said that some of those suggestions were in SB 169, but not all of them.

Kenneth Anderson, Day County, Lynn Township, Webster, said landowners need compensation for water over their land and not just in certain places but wherever people are going to fish. Landowners are compensated for hunting walk ins and it should be the same for fishing.

Don Roehr, Marshall County, Britton, said he deals with water issues and lost five quarters of land out of seven to water, which bankrupted him. If the public owns the water, then the liability for the water should go with it.

Senator Frerichs asked what would be adequate public access to the non-meandered water. Mr. Roehr replied that if a section line leads to a non-meandered body of water the township should furnish a road. It would be the same if a house was in the same place as the water. In his opinion, if there is a section line leading to the water, access to the water should not be closed off.

David Ganje, Farmers Union, Rapid City, said he recognizes that the water is public and the Farmers Union would work with that concept. Mr. Ganje proposed providing authority for GFP to determine and set the definition of recreational use, through the rules making process. He pointed out the distinct issues of uniform taxation for land under non-meandered water, landowner immunity from liability which should also be extended to lessees of the land, and abuses and damage to township roads. There are some statutes that deal with damage to township roads but they are not well written and did not consider the current uses to access the non-meandered water. Language should be added to statute that any willful damage to a township road done by any vehicle, not just a motor vehicle, would be liable for civil damages. GFP has been responsive to ideas from the Farmer's Union including ramp agreements regarding usage and access.

Randy Grismer, Aberdeen, said being a tourist does not necessarily mean the person is coming from outside of the state, but includes state residents going from county to county. In-state tourists are a large portion of those visiting the affected areas. Recreation should be an intended use of the waters.

Bob Whitmyer, Webster, cited SDCL 43-16-1 and 41-12-2 to support the idea that landowners own the water above their land. He believes that GFP can open the water that sits above the land they own and mark off the land they do not, similar to the Waubay National Wildlife Refuge. He has a long history of working with GFP to raise and help wildlife but he is unsure if he will renew his CRP contract with GFP in four years, because of the current situation with non-meandered waters.

Jerry Mork, Day County, Pierpont, said he would like to reinforce property rights which are a foundation of our state. The land under the non-meandered water was previously farmed and now GFP is profiting off the land and nothing is being returned to the landowners. He quoted SDCL 43-1-6 and the Tenth Commandment to support the idea that landowners own the water over their land. According to Mr. Mork, anyone who supports GFP is in favor of abolishing private property rights.

Michael Held, South Dakota Farm Bureau, Huron, said it is difficult to discuss concepts but easier to talk about a specific bill. In 1992, the Legislature appropriated dollars for South Dakota and GFP to make purchase offers to landowners, and it was done in almost every instance. At that time, some landowners declined and the land is still covered with water, but at least they were given an opportunity to sell. The policy for access to non-meandered waters should be with landowner permission only. The Farm Bureau has tried to come to a reasonable agreement in the past but would not support SB169 today because it takes away from landowner's rights. Mr. Held suggested

not taking on too many issues in one bill. He also suggested removing the word navigable from statute and instead use the terms non-meandered and meandered. Any statute should be clear that meandered waters are open for recreational use. GFP should be authorized to enter discussions with landowners of non-meandered waters on an individual basis. Finally, some landowners would be interested in tax abatement on the land, and to some owners it is very important. However, the committee needs to look at what was done with taxes in Day, Marshall, and Clark counties in 2004. Until the committee knows how taxes were handled in 2004 they cannot find a solution.

Representative Hawley asked if tax abatement would be a good way to thank the landowners. Mr. Held replied that to some owners it would be but to others it would not, it depends on the person. Some owners are concerned about the kinds of recreation taking place on the non-meandered water and that is why GFP should be able to enter negotiations with landowners to address individual concerns.

Representative Rhoden asked if all property tax dollars stay in the county, what role should the state play. Mr. Held replied that it may be possible for the state to contribute to help with the loss of tax dollars in the counties. The state funds local education at 60% and adding a few dollars to that funding to assist with a flooding natural disaster program would not be a large burden. Representative Rhoden commented that it would not be a large burden unless the state is going to respond to every natural disaster equally, including drought.

Representative Tulson commented that if the Legislature establishes a fee system, landowners could receive a payment from GFP to help pay taxes. Mr. Held agreed, however, compensation is not the most important thing to all landowners but it is to a lot. He suggested legislation similar to hunting walk in land.

Dari Schlotte, Director of Equalization, Day County, Webster, the county tried abatement from 1995-1997 for flooding. A law created by the Legislature re-classifies flooded acres to marshland if the land was inundated for three growing seasons and certain income qualifications are met. The reduction used is not the same in every county because the top dollar for crops is different in each county, in addition to a blended rating system. Public meandered waters should be open to public use; however, access to non-meandered waters should be up to the landowners to decide. He does not believe that landowners are after monetary gain and abating taxes may not work to resolve the issue.

Representative Hawley asked if it was accurate to say that $342 an acre is paid on marshland in Day County. Mr. Schlotte replied there is no exact number. The process takes the value of the land and reduces it to the marshland rating. The average paid in Day county is $250 an acre.

Representative Tulson asked if the rate paid was 10% of the value. Mr. Schlotte said that is the rate in Day County and he believes that is the rate paid across the state.

Representative Qualm asked when land valued at $3,000 an acre is reduced to a value of $250 where are the taxes shifted to. Mr. Schlotte replied the county does not lose the taxes, someone else is paying it, and it would shift to other agricultural land or other members of the community.

Representative Hawley asked how the situation would be handled with 40 landowners and 35 say the water is open to the public and 5 say no it is not. Mr. Schlotte responded people can clearly see where the lines are and that private land is private. He does not believe the term navigable should be used. Just because the water can be accessed or is navigable does not mean there is a right to use it.

Ken Hallstrom, Aberdeen, said he is unclear what criteria was used to establish the meander lines and suggested that a panel reexamine the meander lines rather than making new laws. Mr. Hallstrom said he does not understand how the meandered lines were drawn and why it stops at that point in time. Mr. Hallstom said some

landowners want to privatize, however some people cannot afford private hunting and have to rely on what is public.

Representative Frerichs clarified that, when the meander lines were drawn, the land within the line was public and everything else was up for sale.

John Kneble, Eden, said meandered water that has flooded still lies over private land.

Senator Craig Kennedy said landowners with land under meandered water that spread over private property did not lose title to their property.

Senator Greenfield said that in the late-1800s the federal government was charged to determine the meander lines. The Legislature cannot go back and redraw the meander lines because it would create a constitutional takings issue. There is always the possibility the water could recede and the land underneath the water would not be public and would be farm land or grazing land again.

Mr. Hodgin commented that on the tour the committee noticed there were no boats on Bitter Lake when normally there would have been thirty or forty, meaning this issue is not just affecting non-meandered lakes. People from outside of the community are confused and that is leading to economic hardship in the area. The issue with the *Duerre* Supreme Court opinion is that there is evidence of what uses the Legislature intended. There are rules regarding almost all hunting and fishing activities, and those apply to all waters in the state and not meandered or non-meandered waters. For years, the Legislature has authorized hunting and fishing on all waters. It does not make sense to distinguish by person or by lake. The Supreme Court also established that no one person has a superior right and if one person has access, everyone has access. That cannot be done if the decision over access is given to private individuals or groups of individuals.

Senator Frerichs commented that the Rules Review Committee is not a policy making committee and asked how the Legislature has authorized the uniform use of all the waters in the state. Mr. Hodgin replied that departments, such as GFP, have some autonomy but they receive their authorization from the Legislature. Senator Frerichs clarified that the Legislature has never given legislative direction to GFP and the Legislature has not successfully addressed the issue of non-meandered waters.

Larry Lewis, Brown County, Hecla, said he has observed the change of dry hay lands to wetlands during flood events. Mr. Lewis said all waters should be open to public recreation and that most people just want to recreate legally without imposing on someone else's rights.

Mark Vogt, Redfield, said he lives on Cottonwood Lake and is amazed that access to the lake was restricted by GFP.

Mr. Knebel believes permission goes a long way with landowners and all sportsmen should do is ask, and he recommended keeping the water public but not necessarily open to public access. Mr. Knebel said the Legislature cannot force landowners into something they do not want to be a part of.

Dave Ochs, Aberdeen, recommended the committee look at using Eminent Domain to purchase the land under non-meandered waters, and if the water recedes the landowner can buy back the land for the same price.

Representative Rhoden asked where money to purchase the land is going to come from. Mr. Ochs responded that the land would be purchased at a set value and the land that is underwater is not worth thousands of dollars an acre. Money to make the purchases could come from adding five to twenty dollars to hunting and fishing licenses because that amount will not stop people from purchasing those licenses.

Dan Heinz, Aberdeen, said he deals with both farmers and sportsmen. Mr. Heinz said the Legislature cannot make everyone happy but the focus should be on finding the best middle ground. Mr. Heinz said he believes the law enforcement is not working together because GFP says one thing and the local Sheriff says something different.

Mike Carpenter, Day County, Lily, said water should be used for the benefit of everyone, not just sportsmen.

Glenn Spitzer, Aberdeen, said he believes there is misinformation concerning the *Duerre* decision. The last full paragraph of the decision applies only to the plaintiff's land and no other lakes. GFP restricting access to the twenty-five non-meandered lakes is extreme and the Legislature should open those lakes and grant immediate relief.

John Sigdestad, Lynn Township, Bristol, said landowners own the air above their land they should also own the water that sits above their land.

Mr. Schlotte said he believes there is a possible misunderstanding about the public trust doctrine and that it is the responsibility of the state to protect the water from pollution and to preserve habitat and not that the public has a right to use the water.

Joe Berreth, Aberdeen, said a small number of people have ruined use of non-meandered waters for everyone; people could pay a little more to use those waters and creating harsher penalties for wrongdoing would reduce the number of abuses on and around those waters.

Justin Bartel, Aberdeen, said he is an avid outdoorsman and through his time working with high schools and universities he has observed a lot of students staying in South Dakota or coming to South Dakota specifically for the hunting and fishing.

Kenneth Erickson, Aberdeen, said he believes that if it was not for the landowners taking care of the land the public would not have it for hunting and fishing.

Bob LeGrand, Aberdeen, apologized to the landowners for the sportsmen that create problems, like leaving trash, because it is wrong. The Legislature should keep in mind the potential influence legislation may have on recruiting and keeping young professionals in the State. Whichever path the Legislature decides to take will not just be for northeast South Dakota but the whole state.

Committee Discussion and Staff Direction

Representative Qualm thanked everyone who testified on both meeting days, saying that everyone was respectful even though the issues of non-meandered waters are not easy for anyone. There are many things to take into consideration and everyone may be a little unhappy with the best solution.

Representative Tulson thanked everyone for coming and providing their input. The impression is that the South Dakota Supreme Court opinion only applied to the bodies of water that were the subject to the litigation and not all non-meandered waters in South Dakota.

Representative Mary Duvall cautioned the committee to not interfere with water rights, water law, and the abilities of the Department of Environment and Natural Resources and GFP, and thanked those who came forward with balanced solutions. Landowners do not get to control public water and recreationalists need to mind their manners. Breaking down legislation into several smaller bills is likely the best solution.

Senator Greenfield expressed his gratitude and appreciation to everyone who participated; the committee heard opinions from across the spectrum and have a lot to consider. The goal is to have a reasonable solution by early June.

Representative Gosch thanked everyone for their testimony and said they have restored his confidence in South Dakotans. Everyone is being hurt by the current situation and a solution must take something from everyone to have a workable solution.

Senator Frerichs expressed his appreciation to the Chair, Vice Chair, and the committee for their work. If someone brings ideas to the committee, they want to challenge those ideas to make sure that it is the best and most workable solution and to please not take that as being critical. He believes that it is clear the Supreme Court opinion did not apply to the other twenty-five lakes closed by GFP and does not like the fact that the Legislature is boxed in because of the lingering issues created by the closed lakes.

Senator Cammack said the testimony was extremely relevant to the issue at hand. Because he is a businessman, operates a ranch, and puts time and effort into wildlife conservation, he understands the many sides of the issue. Any legislation must make the rights of landowners and the rights of sportsmen clear, but the solution should be simple in order to get passed by the entire Legislature. Legislation also should include direction to GFP and give GFP the authority to address the issues of non-meandered waters.

Representative Rhoden said this was the most extensive public testimony of any committee he has seen during his time in the Legislature. He cautioned that complexity is the enemy and that all issues regarding non-meandered waters cannot be resolved in a short time. If GFP is willing to work with the Legislature, it is possible to find a solution that honors sportsmen's rights and landowners' rights.

Senator White complimented the committee on handling the process in a way that has encouraged people to come and testify rather than intimidating them. Successful legislation is going to come down to common sense and be something that appeases both landowners and sportsmen. The issue has many facets to it but the process of common sense can be the basis for success.

Representative Hawley recommended starting with three issues: deciding that recreational use is a beneficial use, limiting landowner liability, and allowing GFP to negotiate with landowners.

Senator Kennedy said that as trustees of the water the Legislature has a different responsibility because it owes a fiduciary duty to the public. He agreed that a solution needs to be simple and straight forward and the committee should keep in mind the role of the Legislature as trustee and the ultimate benefit to the public.

Representative Otten thanked everyone for testifying and also the Duerre's and Mr. Herr for joining the tour. He agreed that trying to solve all issues at once will not work. However, the Legislature needs to declare the waters public and open; if not the access to those waters will remain restricted.

Senator Greenfield thanked LRC staff and everyone who worked with them to arrange the tour because an planned three hour tour turned into a five and a half hour tour. All options will be considered by the committee.

Senator Frerichs asked how recreational use being defined as a beneficial use would affect landowners using the water for irrigation purposes.

Senator Kennedy read from the Supreme Court opinion that the state holds the water in trust for benefit of the public but the landowners are riparian owners and that neither has a superior right to the water.

Defining Recreational Use

Representative Rhoden questioned if defining recreational use needs to be included in legislation because that would open a can of worms as to what is recreation and would ignore property owner's interests.

Representative Hawley responded that the legislature needs to decide what is a beneficial use because that was a specific charge from the Supreme Court. Recreation will need to be clarified but they may be difficult to accomplish during a special session. Representative Hawley recommended LRC come up with 2-3 different drafts of legislation for committee discussion.

Access

Senator Frerichs said that it has become clear that the restricted access to the non-meandered lakes not subject to any injunction is unnecessary.

Representative Tulson asked if anyone could remove the restricted access on the twenty-five non-meandered lakes. Representative Qualm responded that the Governor would be able to lift those restrictions.

Senator Frerichs recommended access to non-meandered waters be through a developed access point not just where the water comes up to a public road.

Safety Zones

Representative Hawley asked if a limitation of six hundred and sixty feet is necessary.

Senator Greenfield responded that may be better decided in negotiations with landowners rather than setting an arbitrary number.

Senator Cammack said he does not recommend setting a number and the committee should focus on keeping it simple.

Representative Hugh Bartels pointed out that people would not be able to fish along shorelines with a safety zone.

Future Meeting Dates and Sites

The committee agreed that the next meeting will be held May 24, 2017, at the State Capitol in Pierre.

Adjourn

A MOTION WAS MADE BY SENATOR KLUMB, SECONDED BY SENATOR GREENFIELD, THAT THE REGULATION OF NON-MEANDERED WATERS STUDY COMMITTEE BY ADJOURNED. The motion prevailed on a voice vote.

The committee adjourned on May 10, 2017, at 1:35 PM.