

New Rules Passed

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In June, the North Dakota Legislature passed rule changes designed to increase protection of sovereign lands that the state holds in trust for its citizens.

North Dakota's sovereign lands are those areas lying within the ordinary high watermark of navigable lakes and streams, including beds and islands. The State Engineer is responsible for administering the state's non-mineral interests on North Dakota's sovereign lands.

The goal of the State Engineer in managing this vital resource, is to manage, operate, and supervise state sovereign land for the uses that are in the best interests of present and future generations.

The North Dakota Supreme Court has interpreted that the Public Trust Doctrine imposes on the State of North Dakota the duty to manage sovereign lands to foster not only the public's right of navigation, but also other important aspects of the state's protection of public trust interests, such as irrigation, industrial, and other water supplies, bathing, swimming, recreation and fishing, and the protection and preservation of other interests including "natural, scenic, historic, and aesthetic values."

The state's navigable rivers and lakes provide the public with excellent opportunities for water-based recreation. Recreational use is high and ever-increasing, and with any public use there is always the issue of trash and litter. In May

Sovereign land along the Missouri River.

of this year, the Office of the State Engineer began ramping up its efforts to reduce littering and glass container violations on Missouri River beaches and sandbars. Signs have been erected at access points to make the public aware that it is illegal to litter or possess glass containers on sovereign lands. The fines are \$250 for littering and \$100 for possession of glass containers. The goal is not to issue a lot of citations, but to protect our waters and beaches by keeping them an attractive and safe place to recreate.

Affective July 1, it is illegal to operate a motorized vehicle on sovereign land, unless specifically authorized or exempted. Use of motorized vehicles on sovereign land is exempted when it is a necessary part of an authorized

project, when launching or loading a watercraft, when the operator or the rider is physically impaired and their vehicle displays the handicap sticker or tag, when accessing a frozen lake for ice fishing, on trails or roads authorized by the State Engineer, and by agricultural producers when herding livestock, maintaining a livestock fence, installing or maintaining an agricultural irrigation water intake, or involved in other ordinary agricultural practices. The fine for illegal motorized vehicle use on sovereign lands is \$100.

Prior to the change to the law, all riparian landowners were exempt from the law regulating motorized vehicular use. The rule change was necessary to clarify the intent of the law, and to ensure that any legitimate need to operate motorized vehicles on sovereign land is allowed, while also ensuring

Ordinary High Watermark: The line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species.

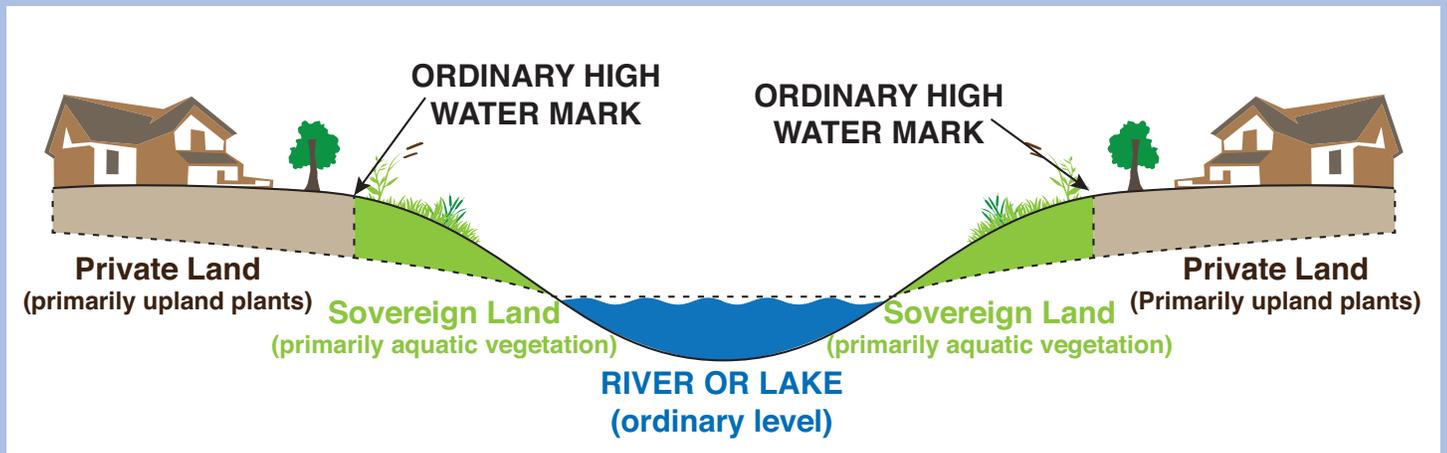
Navigable Waters: Waters that were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were, or may have been conducted in the customary modes of trade on water.

Public Trust Doctrine: The principle that certain resources are preserved for public use, and that the government is required to maintain them for the public's reasonable use.

that riparian landowners are treated equally with the rest of the public when it comes to recreational use of motorized vehicles on sovereign land.

Over the summer, the Water Commission began the process of placing signs at public access points to make the public aware of the rule and its associated fines. The

Missouri River corridor has been the primary focus of placing signs in 2014, with other waterbodies with sovereign land to be worked on in the coming years. The Commission has also engaged in an extensive public awareness campaign – including media news releases, and television and radio appearances by staff.



A simplified example of sovereign lands.



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SWC Adds New Employees To Meet Permitting Needs

The emergency commission and the Budget Section of the State Legislature have approved a request for five additional staff positions in the Water Appropriation Division - two groundwater hydrologists, two surface water hydrologists, and one full-time field inspector.

In recent years, development related to the oil boom has resulted in dramatic increases in the quantity and complexity of the permits being reviewed by the Office of the State Engineer. The numbers of temporary and conditional water permit applications received have increased dramatically in recent years, with about 550 temporary water permits and 150 conditional water permits being considered annually. Temporary applications have been growing each year and will likely exceed 1,000 this year, compared to just over 200 a few years ago.

The Water Appropriation Division had 13 hydrologists responsible for appropriation of the state's water resources. Prior to 2010, the division had three hydrologists covering the western 1/3 of the state. Existing staff were reassigned, and there are now seven hydrologists assigned to the west. These reassignments have caused backlogs and concerns in other parts of the state - particularly related to irrigation applications. The additional staff are needed to manage the significantly larger number of water permits, process the increased number of conditional water permit applications, complete required field inspections, and continue timely issuance of temporary water permits.

Active day-to-day management is key in the prudent oversight of the state's water resources. This requires a trained hydrologist familiar with the water resources and water rights within their given management areas.

North Dakota's approach to water appropriation requires due diligence to avoid over-appropriation, which includes a thorough hydrologic review and analysis. By law, the State Engineer must protect the rights of prior permitted water users, ensure the permit is in the public interest, and determine that the use is sustainable. In some parts of the state, where water has already been appropriated, or where water resources are limited, these analysis can be extremely complex and time-consuming.

Many of the contentious issues faced by other western states, especially with respect to groundwater, are not happening in North Dakota because of the proactive approach taken in the management of our water resources and water rights.

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The State Water Commission discusses sovereign lands on Prairie Public Radio.



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