

State of South Dakota

NINETY-SECOND SPECIAL SESSION LEGISLATIVE ASSEMBLY, 2017s

553A0004

SENATE CONCURRENT RESOLUTION NO. 1

Introduced by: Senators Nelson, Jensen (Phil), and Tapio and Representative Pischke

1 A CONCURRENT RESOLUTION, to instruct the Governor to re-open many of the
2 nonmeandered lakes closed by the Department of Game, Fish and Parks for recreational use
3 to give the Legislature more time to come to a workable solution.

4 WHEREAS, in August, 2014, certain landowners filed a lawsuit against the Department of
5 Game, Fish and Parks and the State seeking an injunction and declaratory relief that the public
6 did not have the right to use the water and ice overlying their private property; and

7 WHEREAS, the nonmeandered lakes at issue in the case were Duerre Lake and Jesse Slough
8 in Day County; and

9 WHEREAS, through the appeals process the case made it to the Supreme Court of South
10 Dakota and the court issued the opinion of *Duerre v. Hepler*, 892 N.W.2d 209 (2017); and

11 WHEREAS, the court held that, "until the Legislature acts, neither the public nor the
12 Landowners have a superior right to use the waters and ice overlying the Landowners' private
13 property. Similarly, until the Legislature acts, the GF&P and other State defendants cannot
14 facilitate access for members of the public to enter or use the waters and ice overlying the
15 Landowners' private property for recreational purposes,"; and



1 WHEREAS, the court decision should have only applied to the two nonmeandered lakes in
2 the court case; however, in response to the Duerre decision the executive branch unnecessarily
3 decided to restrict access to twenty-five popular nonmeandered lakes across the state; and

4 WHEREAS, several local business owners are being greatly and negatively affected
5 because the executive branch, through the Department of Game, Fish and Parks, is no longer
6 facilitating public recreational access to nonmeandered lakes in the state; and

7 WHEREAS, many businesses are suffering a substantial loss of income from sportsmen,
8 some as high as an eighty-five percent income loss from this point last year; and

9 WHEREAS, unless the twenty-five nonmeandered lakes are opened in the immediate future,
10 many local small businesses will be irreparably harmed by the lack of tourism and recreational
11 dollars coming into the community:

12 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Ninety-Second Special
13 Legislature of the State of South Dakota, the House of Representatives concurring therein, that
14 the Legislature urges the Governor to exercise his authority and re-open the nonmeandered lakes
15 of: Casey's Slough, Cottonwood GPA, Dry #1, Dry #2, and Swan in Clark County; Deep and
16 Goose in Codington County; East Krause, Lynn, Middle Lynn, and Reetz in Day County; North
17 Scatterwood in Edmunds County; Three Buck in Hamlin County; Bullhead and Cattail-Kettle
18 in Marshall County; Keisz in McPherson County; Grass, Loss, Scott, and Twin in Minnehaha
19 County; Twin in Sanborn County; Cottonwood and Mud in Spink County; Cottonwood in Sully
20 County; and Dog Ear in Tripp County; and

21 BE IT FURTHER RESOLVED, if the nonmeandered lakes are opened to recreational access
22 local business will be able to get back to business as usual and the Legislature will have the time
23 it needs to craft a more workable solution that is fair to all.