

**ARTICLE 89-01
GENERAL ADMINISTRATION**

Chapter
89-01-01 Organization of Water Commission and Department of Water Resources

**CHAPTER 89-01-01
ORGANIZATION OF WATER COMMISSION
AND DEPARTMENT OF WATER RESOURCES**

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89-01-01-01 Organization and Functions of the Water CommissionHistory
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89-01-01-01. Water Commission organization and functionsHistory.

1. ~~Commission history.~~ The North Dakota state water commission was established in 1937, as an emergency measure during the prolonged drought. The legislation, codified as North Dakota Century Code chapter 61-02, contains a preamble that provides an insight into the legislative intent for creating the commission, a state agency. North Dakota Century Code section 61-02-01 states:

~~It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation, management, development, and control of waters in this state, public or private, navigable or nonnavigable, surface or subsurface, the control of floods, and the management of the atmospheric resources, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.~~

The office of the state engineer was established in 1905. As initially created, the state engineer had many responsibilities, including as an ex-officio state coal mine inspector, as well as the chief engineer and secretary for the newly created highway commission. Eventually the state engineer's focus shifted to water-oriented responsibilities.

The water commission was created as a separate state agency in 1937, as an emergency measure during the prolonged drought. The law originally provided the state engineer was the commission's chief technical adviser, but that such responsibilities would be in addition to the engineer's regular duties through the office of the state engineer. In 1941, the law was amended to provide the state engineer would be the commission's secretary and chief engineer.

From 1937 through approximately 1977, the legislative assembly often vested either the water commission or state engineer with particular authority regarding water-related issues without any expressed reason or clear consistency. This comingling of regulatory authority created confusion, and likely led to the convention of referring to both the water commission and the office of the state engineer collectively as the commission. Finally in 1981, the legislative assembly passed a bill amending several sections and chapters of law to clarify the intent that:

[w]henever the term "water conservation commission", "water commission", or "commission", or any derivative of those terms, which when used in context, indicates an intention to refer to that commission regarding [regulatory duties, those terms] shall be construed as granting full administrative and enforcement authority to the state engineer.

1981 N.D. Sess. Laws ch. 365 § 6. As such, the office of the state engineer, rather than the water commission, iswas the agency charged with enforcing manymost water-related regulations.

In August 2021, House Bill 1353 of the 67th legislative assembly replaced the office of the state engineer with the department of water resources, which is led by a director. The department's primary functions are to promote statewide water management policies, enforce water related regulations, and provide staff and engineering services for commission initiatives.

History: Amended effective August 1, 1983; November 1, 1985; October 1, 1987; November 1, 1989; December 1, 1989; February 1, 1992; February 1, 1993; April 1, 1994; December 1, 1997; February 1, 2003; April 1, 2014; _____.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

89-01-01-02. Water commission organization and functions.

~~2.1.~~ **Commissioners.** North Dakota century code section 61-02-04 regulates commission membership. Two commissioners, the governor and the agriculture commissioner, are statewide officials elected for four-year terms. Eight commissioners representing the eight major drainage basins are appointed by the governor for staggered six-year terms. ~~The~~Under North Dakota century code section 61-02-05, the governor is the commission's chairman, and the governor designates a vice chairman.

~~3.2.~~ **Commission secretary.** From 1941 through July 2021, Thethe state engineer iswas the commission's statutory secretary ~~and chief engineer.~~ On August 1, 2021, the director of the department of water resources became the commission's statutory secretary. The secretary assists the commission by coordinating commission operations and relieving individual commissioners of administrative detail.

~~4.~~ **Commission divisions.** The commission consists of the following divisions:

~~— a. Administrative and support services.~~

~~— b. Atmospheric resources.~~

~~— c. Planning and education.~~

~~— d. Regulatory.~~

~~— e. Water appropriation.~~

~~— f. Water development.~~

~~5.3.~~ **Commission division functions.**

~~a. Administrative and support services. The administrative services division provides accounting, budget, and fiscal control services, personnel functions, support services for other agency divisions, and other administration functions; provides coordination in water resource programs with federal agencies, state agencies, and local entities; provides support services, including the agency's information technology infrastructure and related technology resources development and maintenance.~~

~~b.—Regulatory. The regulatory division assists and advises the state engineer in state law, administrative rule, and policy enforcement on the state's sovereign land; authorizes surface water management projects, such as dikes, dams, and drainage features; facilitates the state's participation in the Federal Emergency Management Agency's dam safety, national flood insurance, and cooperating technical partners programs; coordinates the state's participation in the army corps of engineers' silver jackets program; and provides technical and programmatic assistance to water resource districts.~~

~~c.—Planning and education. The planning and education division develops and maintains the state water management plan; participates in international, regional, state, local, interagency, and interoffice planning efforts; manages the agency's water education programs; provides technical assistance; coordinates environmental reviews; and manages the cost share and municipal, rural, and industrial programs. When activated, the division also manages the state drought disaster livestock water supply project assistance program.~~

~~d.—Water appropriation. The water appropriation division assists and advises the state engineer in appropriating and managing the state's waters for beneficial use; collects, stores, interprets, and disseminates hydrologic and water quality data and uses that data to evaluate and make recommendations concerning water permit applications; conducts investigations and exploratory studies to optimize the state's water resources use and administers and enforces state law, administrative rules, and policies pertaining to water use.~~

~~e.—Water development. The primary water development division functions involve water resource management and water resource project development, with emphasis on 2 surface water. This includes hydrologic investigation, special studies, and water management project construction, such as dams, dikes, ditches, irrigation projects, water supply systems, and pump structures.~~

~~f.—Atmospheric resources. The atmospheric resource board was created by the legislative assembly in 1975, and was known as the weather modification board. The weather modification board was a division of the state aeronautics commission. In 1981, the board was placed under the water commission's direction and supervision. The primary atmospheric resources division functions involve regulation of weather modification operations regulation, monitoring, and evaluation and weather modification research and development. The atmospheric resource board consists of the state aeronautics commission director, a department of environmental quality representative, the state engineer, and seven additional members appointed by the governor from seven districts within the state. The commission's primary functions are to review and consider cost-share requests from project sponsors seeking financial assistance, and to foster and promote water resources development throughout the state, including Southwest Pipeline project construction, Northwest Area Water Supply project construction and operation, and operation and maintenance of the Devils Lake Outlets.~~

~~6.—Inquiries. Inquiries regarding the water commission and state engineer may be addressed as follows:—~~

~~—North Dakota State Water Commission
—State Office Building
—900 East Boulevard Avenue
—Bismarck, North Dakota 58505-0850
—(701) 328-2750
—www.swc.nd.gov~~

~~7.—Organizational chart. The commission's descriptive organizational chart is attached to this section as an appendix.~~

History: Amended effective August 1, 1983; November 1, 1985; October 1, 1987; November 1, 1989; December 1, 1989; February 1, 1992; February 1, 1993; April 1, 1994; December 1, 1997; February 1, 2003; April 1, 2014; _____.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

89-01-01-03. Department of Water Resources organization and functions.

1. **Director.** The department is now headed by the director, who is a member of the governor's cabinet. The director provides overall leadership and decision-making, has hiring responsibilities, and oversees the department staff. The director also acts as a liaison between the department and the legislative and executive branches of state government, as well as a liaison between the governor and the federal government on water related issues.
2. **State Engineer.** The state engineer, under North Dakota century code section 61-03-01.3(2), is responsible for associated technical duties related to public safety and property protection, including dam safety, water appropriations, and construction and drainage permits. The state engineer may also act as the director's designee at the director's discretion when implementing any provision of this title.
3. **Department functions.** The department consists of several divisions, with the division directors reporting to the department's director. Several of the divisions are responsible for providing staff support to the commission functions, including management of the cost-share assistance program; maintaining a water project inventory and water development plan; representing the commission on regional, national, and international natural resources planning bodies; assisting water resource boards; preparing engineering and feasibility reports and designs for construction, maintenance, and major repair of water resources projects throughout the state; and general accounting, budgeting, information technology, and support services.

Other divisions are responsible for assisting and advising the director and the state engineer in state law, administrative rule, and policy enforcement. The responsibilities of these regulatory enforcement divisions include: reviewing and making recommendations on permit applications for drains, dikes, dams, and sovereign lands; administering the state's dam safety program; assisting communities with floodplain management; conducting navigability determinations and ordinary high water mark delineations; conducting analysis and providing recommended decisions on water permit applications; monitoring and balancing water use and availability throughout the state; enforcing the water permitting system; and developing and maintaining permit records.

The commission also supervises the Atmospheric Resources Board (ARB), which is a quasi-judicial, quasi-legislative advisory and rule-making board that functions as a division of the department. ARB licenses weather modification contractors and permits cloud seeding operations and research activities; conducts research into atmospheric research and cloud seeding technology; and monitors, collects, and disseminates precipitation and climate data.

History: _____.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

**ARTICLE 89-02
DRAINAGE OF WATER**

Chapter	
89-02-01	Drainage of Ponds, Sloughs, Lakes, Sheetwater, or Any Series Thereof
89-02-02	Drainage of Wetlands [Repealed]
89-02-03	Wetlands Bank [Repealed]
89-02-04	Drainage Complaint Appeals
89-02-05	Licenses for Emergency Drainage [Repealed]
89-02-05.1	Emergency Drain Permits

**CHAPTER 89-02-01
DRAINAGE OF PONDS, SLOUGHS, LAKES, SHEETWATER, OR ANY SERIES THEREOF**

Section	
89-02-01-01	Intent [Repealed]
89-02-01-02	Definitions
89-02-01-03	Permit Required
89-02-01-04	Permits for Assessment Drains [Repealed]
89-02-01-05	Exceptions to the Need for a Permit
89-02-01-06	Determination of Watershed Area
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89-02-01-08	Referral of Applications to Appropriate District
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89-02-01-09.1	Board Procedure for Processing Applications to Drain
89-02-01-09.2	Evaluation of Applications - Factors Considered
89-02-01-09.3	Time for Determination by Board
89-02-01-09.4	Evaluation of Applications by the State Engineer <u>Director</u> of Statewide or Interdistrict Significance - Information to Be Used
89-02-01-09.5	Procedure, Availability, and Contents of Notice of State Engineer's <u>Director's</u> Decision to Grant or Deny Application of Statewide or Interdistrict Significance
89-02-01-09.6	Request for State Engineer's <u>Department's</u> Hearing
89-02-01-09.7	Notice of State Engineer's <u>Department's</u> Hearing
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89-02-01-09.10	Consideration of Evidence Not Contained in the State Engineer's <u>Department's</u> Record
89-02-01-09.11	Conditions to Permits
89-02-01-09.12	Extending Time to Complete Construction of Drain
89-02-01-10	District Hearing on Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-11	Emergency Drainage [Repealed]
89-02-01-12	Notice of District Hearing [Repealed]
89-02-01-13	Content of Notice of Hearing [Repealed]
89-02-01-14	Affidavit of Mailing and Affidavit of Notice [Repealed]
89-02-01-15	Time for Determination by Board of Managers [Repealed]
89-02-01-16	Consideration by the State Engineer and Districts [Repealed]
89-02-01-17	Approval of Drainage Permit Applications by District [Repealed]
89-02-01-18	Denial of Application by the District [Repealed]
89-02-01-18.1	Notice by State Engineer of Public Hearing on Application of Statewide or Interdistrict Significance [Repealed]
89-02-01-18.2	Evidence Presented at the State Engineer's Public Hearing [Repealed]
89-02-01-19	Consideration by State Engineer of Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-20	Criteria to Determine Whether Drainage Will Adversely Affect Lands of Lower Landowners [Repealed]

89-02-01-20.1	Time for Determination by the State Engineer [Repealed]
89-02-01-20.2	Consideration of Evidence Not Contained in the Record [Repealed]
89-02-01-21	Conditions to Permits [Repealed]
89-02-01-22	Requirements for a Valid Permit to Drain [Repealed]
89-02-01-23	Procedure Upon Complaint of Violation [Repealed]
89-02-01-24	Enforcement Action Without Receipt of Complaint [Repealed]
89-02-01-25	Criminal Complaint [Repealed]
89-02-01-26	Ditches or Drains Existing for Ten Years or More [Repealed]
89-02-01-27	Notice of Drainage Application Denials to Commissioner of Agriculture [Repealed]
89-02-01-28	Landowner Assessment Appeal to State Engineer <u>Department</u>

89-02-01-01. Intent.

Repealed effective January 1, 2015.

89-02-01-02. Definitions.

Unless the context otherwise requires, the following definitions apply:

1. "Assessment drain" is defined in North Dakota Century Code section 61-16.1-02.
2. "Board" is defined in North Dakota Century Code section 61-21-01.
3. "District" means water resource district.
4. "Drain" is defined in North Dakota Century Code section 61-21-01.
5. "Department" is defined in North Dakota Century Code 61-03-01.2.
6. "Director" is defined in North Dakota Century Code section 61-03-01.2.
- ~~5-7.~~ "Emergency" means a situation that will cause significant damage to people or property if not addressed immediately and that would not occur under normal circumstances. An emergency may exist because of an extremely wet hydrologic cycle. Damages caused by deliberate acts may not constitute an emergency.
- ~~6-8.~~ "Lake" means a well-defined basin that characteristically holds water throughout the year. Lakes go dry only after successive years of below normal runoff and precipitation.
- ~~7-9.~~ "Lateral drain" is defined in North Dakota Century Code section 61-21-01.
- ~~8-10.~~ "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.
- ~~9-11.~~ "Parties of record" means each person named or admitted as a party or properly seeking and entitled to be admitted as a party.
- ~~10-12.~~ "Pond" means a well-defined land depression or basin that holds water in normal years throughout the summer. Ponds generally go dry only in years of below normal runoff and precipitation.
- ~~11-13.~~ "Pond, slough, lake, sheetwater, or any series thereof" means ponds, sloughs, lakes, or sheetwater that are hydrologically linked.
- ~~12-14.~~ "Sheetwater" is defined in North Dakota Century Code section 61-32-03.
- ~~13-15.~~ "Slough" includes two types:

- a. Seasonal slough: a depression that holds water in normal years from spring runoff until approximately mid-July. In years of normal runoff and precipitation, a seasonal slough is usually not tilled, but can be used for hayland or pasture. In low runoff, dry years, these areas generally are tilled for crop production, but commonly reflow with frequent or heavy summer or fall rains.
- b. Temporary slough: a shallow depression that holds water from spring runoff until approximately early June. In years of normal runoff and precipitation, a temporary slough is usually tilled for crop production. In years of high runoff or heavy spring rain, a temporary slough may not dry out until mid-July and generally would not be tilled, but may be used for hayland or pasture. A temporary slough frequently refloods during heavy summer or fall rains.

~~44-16.~~ "Supplemental hearing" means a hearing held to review evidence not contained in the record of the ~~state engineer's~~department's public hearing.

~~45-17.~~ "Watercourse" is defined in North Dakota Century Code section 61-01-06.

~~46-18.~~ "Watershed" means the area that drains into a pond, slough, lake, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-03. Permit required.

In addition to North Dakota Century Code section 61-32-03, a permit is required for:

1. An assessment drain.
2. Construction of a lateral drain.
3. Modification of a previous permit, which includes deepening, widening, or extending a drain.
4. Pumping, gravity, or placement of fill.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-04. Permits for assessment drains.

Repealed effective February 1, 1997.

89-02-01-05. Exceptions to the need for a permit.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.
2. The provisions of section 89-02-01-03 do not apply to any drain constructed under the direct and comprehensive supervision of the following federal or state agencies:
 - a. The state water commission;
 - b. The department;
 - ~~b-c.~~ The army corps of engineers;

- e.d. The natural resources conservation service for projects constructed under the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001];
- d.e. The bureau of reclamation for projects that are part of the originally (1965) authorized Garrison diversion unit authorized;
- e.f. The state department of transportation for federal aid projects; and
- f.g. The public service commission for surface mining projects.

However, these agencies must notify the state engineer department of any proposed drainage projects under their direct supervision during the planning stages.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; April 1, 2004; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-06. Determination of watershed area.

The determination of the watershed area must be made using the best available maps or surveys. LiDAR information or a survey conducted under the supervision of a registered land surveyor are preferred. Published seven and one-half minute topographic maps may also be utilized. This information may be supplemented by aerial photographs of the watershed or by an onsite investigation requested by the applicant or board or if the state engineer department determines it is necessary.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07. Filing application.

Any person desiring a drainage permit must file an application with the state engineer department on a form provided by the state engineer department. If requested by the state engineer department or the board, the applicant must provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis may need to include a determination of the drain's and receiving watercourse's capacities and a volume and timing comparison of predrainage and postdrainage flows. If the application is incomplete or the information is insufficient to enable the state engineer director or board to make an informed decision on the application, it will be returned to the applicant for correction.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-08. Referral of applications to appropriate district.

Upon receipt of a properly completed application, the state engineer department must determine whether the application involves drainage of statewide or interdistrict significance under section 89-02-01-09. The state engineer department must attach to the application any comments, recommendations, and engineering data that may assist the district in making a determination on the application. The application must then be referred to the district within which a majority of the watershed of the pond, slough, lake, sheetwater, or any series thereof is found.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09. Criteria for determining whether drainage is of statewide or interdistrict significance.

In determining whether the proposed drainage is of statewide or interdistrict significance, the ~~state engineer~~department must consider:

1. Drainage affecting property owned by the state or its political subdivisions.
2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
3. Drainage having a substantial effect on another district.
4. Drainage converting previously noncontributing areas (based on the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year event - four percent chance) into permanently contributing areas.
5. For good cause, the ~~state engineer~~department may classify or refuse to classify any proposed drainage as having statewide or interdistrict significance.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015;

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.1. Board procedure for processing applications to drain.

1. The board must use the following procedure to process a drainage permit application of statewide or interdistrict significance:
 - a. Upon receipt of an application to drain, the board must set the date, time, and place for a meeting at which it will receive testimony pertinent to the application. At the applicant's expense, the board must give notice by mail at least twenty days before the date set for the meeting to:
 - (1) The applicant.
 - (2) All record title owners and holders of a contract for deed whose property the proposed drain would cross.
 - (3) All downstream riparian landowners who the board determines have the potential to be adversely impacted.
 - (4) Any board whose district would be substantially affected.
 - (5) The state game and fish department.
 - (6) The department of environmental quality.
 - (7) The department of transportation, county commissioners, or board of township supervisors if the proposed drain will affect or cross the right of way of any public highway, street, or road within their jurisdictions.
 - (8) The ~~state engineer~~department.
 - (9) The natural resources conservation service.

- (10) Any person who has made a written request for notification of the project and has advanced the cost of providing that notification.
- b. Notice must be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published between five and fifteen days before the date set for the meeting.
- c. The notice must give the essential facts of the proposed drain, including:
 - (1) Name and address of applicant;
 - (2) Legal description of the area to be drained;
 - (3) Drain purpose;
 - (4) Watercourse into which the water will be drained;
 - (5) Legal description of the drain's confluence with the watercourse into which the water will be drained;
 - (6) The time, date, and place of the board's consideration of the meeting; and
 - (7) The location and date of availability of information regarding the project.
- d. At least fourteen days before the meeting, the applicant must submit to the board all documentary information the applicant intends to present at the meeting. The board must immediately place the information in the board's office if the office is open for public access at least twenty hours each week. If the board's office is not open to the public at least twenty hours each week, the information must be immediately placed with the county auditor of the county in which the majority of the watershed of the drain will be built. The information must be available for public review. The board must notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the auditor's office, the auditor must return the information to the board one working day before the meeting.
- e. The board must allow submission of all relevant oral or written evidence.
- f. In evaluating applications, the board must consider the factors in section 89-02-01-09.2.
- g. The board must stenographically or electronically record the meeting at which it receives information concerning the application. If the board approves the permit application, the record and all documentary information the board received must be transferred to the ~~state engineer~~department. The board must provide a meeting transcript at the request of the ~~state engineer~~department. The cost of providing a transcript must be borne by the applicant.
- h. At the meeting's conclusion, the board must announce that:
 - (1) The board's permit denial constitutes final denial. Appeals must be taken to the district court within thirty days.
 - (2) A board-approved application will be forwarded to the ~~state engineer~~department.
 - (3) Those who wish to be notified of the board's decision must provide their names and addresses in writing to the board at the end of the meeting.

- (4) The board must send notice and a copy of the board's determination and rationale to all parties of record, anyone who has requested in writing to be notified, and the ~~state engineer~~department.
 - i. If the board denies the application, it must return the application to the applicant, along with a copy of the board's determination and rationale. A copy of the board's determination and rationale must also be sent to all parties of record, anyone who has requested in writing to be notified, and the ~~state engineer~~department.
 - j. If the board approves the application, the approval must be noted on the application and a copy of the determination and rationale sent to the applicant. The board must send notice and a copy of the board's determination and rationale to all parties of record and anyone who has requested in writing to be notified. The application, a copy of the determination and rationale, and all information reviewed by the board in considering the application must be forwarded to the ~~state engineer~~department for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and surface acre size of ponds, sloughs, and lakes to be drained by the proposed drain.
 - k. The board's notice to an applicant must state that the application approval is not a permit to drain until the ~~state engineer~~director approves the application.
2. The board must use the procedure in this subsection to process a drainage permit application that is not of statewide or interdistrict significance:
 - a. The board must review the permit application and any supporting documentation and determine whether public and private interests would be better served by a specific public meeting to consider the project.
 - b. If a specific public meeting is necessary, the board must process the permit application under procedures established by the board.
 - c. If a specific public meeting is unnecessary, the board must consider the project under the criteria in section 89-02-01-09.2 and must deny or grant the application and any modifications or conditions based upon those criteria. Written notice of the board's decision must be provided to all parties of record, anyone who has requested in writing to be notified, and the ~~state engineer~~department.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.2. Evaluation of applications - Factors considered.

All applications to drain, must consider the following factors:

1. The water volume proposed to be drained and its impact upon the watercourse into which it will be drained.
2. Adverse effects that may occur to downstream landowners. This factor is limited to the project's hydrologic effects, such as erosion, flood duration, sustained flows impacts, and downstream water control device operation impacts.
3. The engineering design and other physical aspects of the drain.
4. The project's impact on flooding problems in the project watershed.

5. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values.
6. The project's impact on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-01-26, 61-16.1-10(3), 61-32-03

89-02-01-09.3. Time for determination by board.

The board must make a determination on the application within one hundred twenty days of receipt. This time limit may be extended only with the written consent of the ~~state engineer~~director. A request for a time extension must be in writing to the ~~state engineer~~department and must set forth the reason for the request. If no determination has been made and no extension has been requested, unless the ~~state engineer~~director determines that a unique or complex situation exists, the application is void.

For applications involving assessment drains, the one hundred twenty-day time period does not begin until the date the assessments are established by the board and no longer subject to appeal.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.4. Evaluation of applications by the ~~state engineer~~director of statewide or interdistrict significance - Information to be used.

In the ~~state engineer's~~director's evaluation of statewide or interdistrict significance applications, the ~~state engineer~~director must use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The ~~state engineer~~director may use any information in the files and records retained by the ~~state engineer's office~~department or engineering information developed or obtained through investigation of the project area by the ~~state engineer's~~department's staff.

The ~~state engineer~~director may also request information or comment from independent sources, but is not required to delay the decision for more than thirty days from the date of request while waiting for comment from these sources. All information used must be relevant and is part of the record.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.5. Procedure, availability, and contents of notice of ~~state engineer's~~director's decision to grant or deny application of statewide or interdistrict significance.

1. The ~~state engineer~~department must provide a copy of the determination to the parties of record. ~~Other members of the public may view the record at the office of the state engineer, 900 east boulevard, Bismarck, during normal business hours.~~
- ~~2. Upon written request, one copy of the determination may be provided to any person not provided a copy under subsection 1.~~
- ~~3.2.~~ The notice of decision must include:
 - a. The name of the drain;

- b. The applicant's name;
- c. Whether the application was granted or denied;
- d. The date of the decision;
- e. The availability of the full text of the decision;
- f. That a hearing may be requested on the project within thirty days of the date of service of the ~~state engineer's~~director's decision; and
- g. The request for a hearing must be in writing, specifically state facts from which the person requesting the hearing is factually aggrieved by the ~~state engineer's~~director's decision, and what material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-03

89-02-01-09.6. Request for ~~state engineer's~~department's hearing.

All requests for a formal hearing on a project must be made in writing to the ~~state engineer~~department within thirty days of the date of service of the ~~state engineer's~~director's decision. The request must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the ~~state engineer's~~director's decision and must state which material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.7. Notice of ~~state engineer's~~department's hearing.

If the ~~state engineer~~director determines that a request for a hearing on an application of statewide or interdistrict significance is valid and well-founded, the ~~state engineer~~department must set a date for a hearing and publish notice in the official newspaper of the county where a majority of the drainage basin is located. Publication must be once a week for two consecutive weeks. One of the publications must be published at least twenty days before the hearing. The person requesting the hearing must give notice by certified mail to the department of environmental quality, the state game and fish department, the state department of transportation, and all parties of record to the board's hearing at least twenty-one days before the hearing. If such notice is not provided, the hearing will not be held. The notice must give essential information about the proposed drainage application, including the date, time, and location of the hearing. All hearings will be held in Bismarck.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-05

89-02-01-09.8. Evidence at the ~~state engineer's~~department's hearing.

Evidence at the ~~state engineer's~~department's hearing may be confined to the matters raised by any request of hearing described in section 89-02-01-09.6.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.9. Time for determination by the ~~state engineer~~director - Copies of decision.

Unless the ~~state engineer~~director determines the hearing raises complex or unique issues, the ~~state engineer~~director must render a decision within thirty days of the close of the hearing. A copy of the decision must be served on all parties of record either personally, or by certified mail, regular mail, or email. The ~~state engineer~~department will retain a certificate of service indicating upon whom a copy of the decision was served.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 28-32-13, 61-03-13

Law Implemented: NDCC 28-32-13

89-02-01-09.10. Consideration of evidence not contained in the ~~state engineer's~~department's record.

The record of the ~~state engineer's~~department's hearing must be closed at the conclusion of the ~~state engineer's~~department's formal hearing. It is in the ~~state engineer's~~director's discretion to receive testimony and evidence not contained in the record. However, before considering any evidence not contained in the record, the ~~state engineer~~department must provide notice to the parties of record where the evidence may be obtained for their examination and comment. Written comment or a request for a supplemental hearing must be submitted to the ~~state engineer~~department within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the ~~state engineer~~director to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by personal service, certified mail, or email must be given to the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

History: Effective February 1, 1997; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-07

89-02-01-09.11. Conditions to permits.

Unless otherwise specifically stated:

1. All permits must include the following conditions:
 - a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
 - b. Construction must be completed within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.
2. All permits of statewide or interdistrict significance must include the following conditions:
 - a. All highly erodible drainage channels must be seeded to a sod-forming grass.
 - b. Vegetative cover must be adequately maintained for the life of the project or control structures must be installed.
 - c. Receipt of a permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.

The ~~state engineer~~director or board may attach other conditions to the permit if necessary.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.12. Extending time to complete construction of drain.

If the two-year period expires before construction is complete, the permit recipient may make a written request to the board for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the expiration date and must specifically state why construction has not been completed. If the request is for an extension relating to a permit of statewide or interdistrict significance, the extension must be submitted to and approved by both the ~~state engineer~~director and the board.

History: Effective February 1, 1997; amended effective April 1, 2004; January 1, 2015; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-13, 61-32-03

89-02-01-10. District hearing on applications of statewide or interdistrict significance.

Repealed effective February 1, 1997.

89-02-01-11. Emergency drainage.

Repealed effective February 1, 1997.

89-02-01-12. Notice of district hearing.

Repealed effective February 1, 1997.

89-02-01-13. Content of notice of hearing.

Repealed effective February 1, 1997.

89-02-01-14. Affidavit of mailing and affidavit of notice.

Repealed effective December 1, 1979.

89-02-01-15. Time for determination by board of managers.

Repealed effective February 1, 1997.

89-02-01-16. Consideration by the state engineer and districts.

Repealed effective February 1, 1997.

89-02-01-17. Approval of drainage permit applications by district.

Repealed effective February 1, 1997.

89-02-01-18. Denial of application by the district.

Repealed effective February 1, 1997.

89-02-01-18.1. Notice by state engineer of public hearing on application of statewide or interdistrict significance.

Repealed effective February 1, 1997.

89-02-01-18.2. Evidence presented at the state engineer's public hearing.

Repealed effective February 1, 1997.

89-02-01-19. Consideration by state engineer of applications of statewide or interdistrict significance.

Repealed effective February 1, 1997.

89-02-01-20. Criteria to determine whether drainage will adversely affect lands of lower landowners.

Repealed effective February 1, 1997.

89-02-01-20.1. Time for determination by the state engineer.

Repealed effective February 1, 1997.

89-02-01-20.2. Consideration of evidence not contained in the record.

Repealed effective February 1, 1997.

89-02-01-21. Conditions to permits.

Repealed effective February 1, 1997.

89-02-01-22. Requirements for a valid permit to drain.

Repealed effective December 1, 1979.

89-02-01-23. Procedure upon complaint of violation.

Repealed effective February 1, 1997.

89-02-01-24. Enforcement action without receipt of complaint.

Repealed effective October 1, 1982.

89-02-01-25. Criminal complaint.

Repealed effective October 1, 1982.

89-02-01-26. Ditches or drains existing for ten years or more.

Repealed effective December 1, 1979.

89-02-01-27. Notice of drainage application denials to commissioner of agriculture.

Repealed effective August 1, 1994.

89-02-01-28. Landowner assessment appeal to ~~state engineer~~ department.

A landowner's appeal to the ~~state engineer~~ department claiming that the landowner will receive no benefit from the construction of a new drain must be made within ten days after the assessment hearing. The appeal must be in writing and must specifically state the facts upon which the claim is based.

History: Effective April 1, 2000; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-21-22

CHAPTER 89-02-04 DRAINAGE COMPLAINT APPEALS

Section

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89-02-04-01. Scope of chapter.

This chapter contains the procedure for appealing the decision of a water resource board on a complaint of drainage constructed without proper approval.

History: Effective October 1, 1988; amended effective January 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-02. Definitions.

Unless the context otherwise provides, the following definitions apply:

1. "Affected landowner" means a person with any property interest, including a lease in land where the drain complained of is located or land that is affected by the drain complained of.
2. "Aggrieved party" means any individual or entity who participated in the ~~state engineer's department's~~ or board's consideration of an appeal and who is actually damaged by the board's or ~~state engineer's~~ director's decision.
3. "Appeal" means an appeal from the decision of a board concerning a drain constructed.
4. "Board" means the board of the water resource district in which the complaint is brought.
5. "Complaint" is a document which alleges drainage has been conducted without proper authorization. It is filed on a form supplied to the water resource board by the ~~state engineer~~ department.

6. "Party" includes the petitioner and any respondent, the board from which the decision is appealed, and any entity or individual that participated in the complaint process in front of the board. The designation as a party does not bestow standing to appeal a decision of the board to the ~~state engineer~~department or the decision of the ~~state engineer~~director to a court of law.
7. "Petitioner" means any aggrieved party who files a timely and proper appeal, or an affected landowner who files a timely and proper demand for hearing with the ~~state engineer~~department.
8. "Respondent" is a person who, within twenty days of notice of an appeal of a board's decision on a drainage complaint, files a notice with the ~~state engineer~~department of the person's intent to participate in the appeal. The person who filed the complaint, and the person against whom the complaint was filed, must be either a respondent or a petitioner. These persons and the board must be allowed to participate whether or not any notice of participation is filed with the ~~state engineer~~department. A person may not be a respondent to an appeal of a board's decision unless the person participated by providing information to the board for its consideration.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-03. Filing of complaint.

All complaints are filed with the water resource board in the county where the drainage is located. Complaints filed with the ~~state engineer~~department will be forwarded to the appropriate board, unless the complaint is filed because of the board's inaction on a complaint under section 89-02-04-04.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-04. Complaint to ~~state engineer~~department - ~~State engineer's~~Director's action when board fails to act.

If a board does not make a decision upon a drainage complaint within one hundred twenty days of its filing with the board, the person filing the complaint with the board may file a request for ~~state engineer~~director action with the ~~state engineer~~department. The request must include a copy of the complaint filed with the board and any documentation the landowner wishes the ~~state engineer~~department to consider. The ~~state engineer~~director must then determine whether to commence action against the board or conduct an investigation.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-05. Form of appeal.

If a board makes a decision on a drainage complaint, any appeal to the ~~state engineer~~department by an aggrieved party must be made within thirty days from the date notice of the board's decision was received in writing on the form prescribed by the ~~state engineer~~department, and must include:

1. The identity of all parties to the complaint.
2. Petitioner's interest in the water resource board's decision, including a statement of the impact the decision will have upon the petitioner.
3. The relief petitioner seeks.

4. A statement identifying the errors in the water resource board's decision that entitle the petitioner to the relief sought.
5. All facts presented to the water resource board that support the petitioner's position.
6. A legal description of the drainage area involved.
7. A map depicting the drainage area and identifying the drainage complained of.
8. A cashier's check to cover the cost of preparing a transcript of the proceedings before the board.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-06. ~~State engineer's~~Department's review of board's decision.

Upon receipt of an ~~written~~ appeal on a form provided by the department by an aggrieved party from a decision of a water resource district under North Dakota Century Code section 61-32-07, the ~~state engineer~~department must review the board's decision. In the review, ~~the state engineer~~department will consider only:

1. Ownership of the land on which the drain is located.
2. Topographic maps and aerial photographs of the area.
3. Any existing surveys of the area.
4. The documentation and testimony given to the board for its consideration.
5. Any pertinent rules of the appropriate board.
6. The board's decision.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-07. Sufficiency of information on appeal.

1. Once the ~~state engineer's~~department's review under section 89-02-04-06 is complete, the ~~state engineer~~department will determine whether the information reviewed is sufficient to make a sound decision.
2. If the information is not sufficient, the ~~state engineer~~department will either conduct further investigations or return the record to the board for its further investigation.
3. If the information is sufficient, the ~~state engineer~~director must determine whether a drain, lateral drain, or ditch has been opened or established contrary to North Dakota Century Code title 61 or any rules adopted by the ~~state engineer~~department or the board. If so, the ~~state engineer~~director will take one of the three actions set forth in North Dakota Century Code section 61-32-08. If the drain has not been opened contrary to North Dakota Century Code title 61 or a drainage rule, the complaint will be dismissed. In either case the ~~state engineer~~department will notify all parties of the ~~state engineer's~~director's decision ~~by certified mail or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom the decision was served~~. The notice of decision will include the names and addresses of all parties.

History: Effective October 1, 1988; amended effective August 1, 1994; January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-13, 61-32-08

89-02-04-08. State engineer's Department's independent investigation.

After reviewing the board's decision and the items identified in section 89-02-04-06, the ~~state engineer~~department may conduct an investigation if the information is insufficient. The investigation may include an onsite inspection and survey of the property involved and other activities deemed appropriate by the ~~state engineer~~department. Any investigation the ~~state engineer~~department undertakes in response to a complaint filed with the ~~state engineer~~department because a board has not acted will be conducted under this rule.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-09. Demand for hearing by affected landowner.

Hearings demanded under North Dakota Century Code section 61-32-08 by an affected landowner must be made ~~by certified mail~~ within fifteen days of notice of the ~~state engineer's~~director's decision. The affected landowner must also notify all parties ~~by certified mail~~ of the landowner's demand for hearing within fifteen days of the ~~state engineer's~~director's decision. Hearings will be conducted as set forth in sections 89-02-04-11 through 89-02-04-23. The demand must state the issues to be addressed at the hearing.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-32-08

89-02-04-10. Request for hearing by others than affected landowners.

Any aggrieved party may request a hearing on the ~~state engineer's~~director's decision. A request for a hearing must specifically state the reason for the request, and a copy of the request must be sent ~~by certified mail~~ to the ~~state engineer~~department and to each party within fifteen days after notice of the ~~state engineer's~~director's decision. If granted, the hearing must be conducted as set forth in sections 89-02-04-11 through 89-02-04-23.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-11. Appointment of hearing officer.

Upon receipt of an appeal or demand for a hearing, the ~~state engineer~~director will appoint a hearing officer to:

1. Determine if the appeal is timely and proper.
2. Preside over the hearing.
3. Administer the prehearing activities.
3. Prepare a recommended decision.

History: Effective October 1, 1988;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-12. Purpose of hearing.

If the hearing officer determines a hearing should be held, one will be conducted to:

1. Obtain further testimony from the parties.
2. Allow the ~~state engineer~~department to examine other witnesses and evidence.
3. Provide the parties with an opportunity to cross-examine witnesses called by the ~~state engineer~~department.
4. Allow the parties to call other witnesses to present evidence.

History: Effective October 1, 1988;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-13. Qualifications of witnesses at ~~state engineer's~~department's hearings.

Unless agreed to by both petitioner and respondent and allowed by the hearing officer, people who failed to participate in the water resource board's determination under North Dakota Century Code section 61-32-07 may not be called to present evidence or testimony for consideration. However, the ~~state engineer~~department may call witnesses on the ~~state engineer's~~department's own motion without the agreement of any party if the ~~state engineer~~department feels information known by the person will assist the hearing officer in making a recommended decision.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-14. Notice of hearing.

When the hearing officer determines a date for a hearing, the hearing officer will notify the water resource board, the petitioner, and the respondent of the time and date of the hearing. In the case of a demand by an affected landowner under section 89-02-04-09, the hearing officer must give the notice of the hearing date within fifteen days of the demand. The notice must be given ~~by certified mail~~ at least forty-five days before the date set for the hearing. All hearings will be held in Bismarck, North Dakota.

The notice must state that parties may present testimony at the hearing, petitioner and respondent may call witnesses at the hearing, and of the hearing officer's appointment as hearing officer. The notice must also state that each party must identify the position it is urging the ~~state engineer~~director to adopt. Those urging the ~~state engineer's~~director's decision should be affirmed must be designated respondents. Those urging reversal or modification of the ~~state engineer's~~director's decision must be designated petitioners.

History: Effective October 1, 1988; amended effective August 1, 1994; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-05, 61-03-22, 61-32-08

89-02-04-15. Issues limited to those contained in notice.

The notice of hearing will identify the issues to be addressed and identified in the demand or the request for a hearing. Evidence and testimony at the hearing will be limited to the issues set forth in the notice of hearing.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-08, 61-03-22, 61-32-08

89-02-04-16. Notice of witnesses at hearing - Time Frame.

At least thirty days before the date set for the hearing, the petitioner must notify other parties, the board, the ~~state engineer department~~, and the hearing officer ~~by certified mail~~ of all witnesses the petitioner will call and the content of their testimony. At least thirty days before the date set for the hearing, the respondent must notify other parties, the board, the ~~state engineer department~~, and the hearing officer ~~by certified mail~~ of witnesses to be called by the respondent and the content of their testimony. Within twenty days of the date of the hearing, the petitioner must notify the parties, the board, the ~~state engineer department~~, and the hearing officer ~~by certified mail~~ of any rebuttal witnesses to be called and the content of their testimony. At least forty-five days prior to the date set for the hearing, the parties may agree to and submit an alternative scheduling order, as approved by the hearing officer. The ~~state engineer department~~ must notify the parties, the board, and the hearing officer of any witnesses the ~~state engineer department~~ intends to call in the notice of hearing. However, if testimony or evidence not provided to the board and not considered in the ~~state engineer's director's~~ determination will be presented by others, the failure of the ~~state engineer department~~ to identify a witness should not preclude the ~~state engineer department~~ from providing other testimony and evidence of a technical nature.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-17. Subpoena of witnesses.

If any party desires the hearing officer to subpoena any witness for attendance at the hearing, the hearing officer must be notified of the intent to subpoena the witness at least seven days before the date of the hearing. The hearing officer may not subpoena a witness unless the request for a subpoena:

1. Is written.
2. States the subject matter of the testimony to be given.
3. States the time and date that the witness is to appear.
4. Is accompanied by a certified check for the fees allowed by law for one day for the witness. The fees allowed by law include mileage to and from the hearing, per diem, and in the case of the ~~state engineer's department's~~ staff, the salary for that individual.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-05(13), 61-03-13

Law Implemented: NDCC 28-32-09, 61-03-05, 61-32-08

89-02-04-18. Prehearing conference.

A prehearing conference to clarify issues, resolve any conflicts, and stipulate to any matter will be held at least seven days before the date of the hearing. At the conference the parties must provide sufficient copies of exhibits to be presented to all parties, the board, the ~~state engineer department~~, and the hearing officer. The hearing officer may allow the prehearing conference to be held by telephone if exhibits are provided to all parties, the board, the ~~state engineer department~~, and the hearing officer at least three days before the prehearing conference.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-19. Order of presentation at hearing.

At the hearing the petitioner must present the petitioner's case first. The respondent then presents the respondent's case, followed by the board and the ~~state engineer~~department. After all participants have presented their case, a participant may present other evidence or testimony to rebut that presented by another participant.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-20. Cross-examination.

Oral cross-examination of adverse witnesses will be allowed by the petitioner and the respondent. The petitioner and respondent must designate one individual to cross-examine witnesses that side did not call. In addition, the ~~state engineer~~department and the board may cross-examine any witnesses they did not call. However, if a party demonstrates to the hearing officer that the party's position is not adequately represented by any other party it may be allowed to cross-examine witnesses on the party's own.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-21. Record of hearing - Consideration by hearing officer.

After the hearing is over the record will be closed. The hearing officer will consider only material contained in the record and will not accept and consider any information after the hearing unless the evidence was not provided at the hearing because of circumstances beyond the control of the party presenting the evidence. Information submitted after the hearing may be considered by the ~~state engineer~~director in making the ~~state engineer's~~director's decision, but only under North Dakota Century Code section 28-32-25.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-07, 61-32-08

89-02-04-22. Recommendation of hearing officer.

After the hearing officer completes the consideration required under section 89-02-04-20, a written recommendation must be made to the ~~state engineer~~director.

History: Effective October 1, 1988;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-08

89-02-04-23. Decision of ~~state engineer~~director on record of hearing.

The ~~state engineer~~director will review the record, the hearing officer's recommendation, and any additional evidence received under North Dakota Century Code section 28-32-25, and make a final determination. If the conclusion is the drain, lateral drain, or ditch was constructed contrary to a board rule or title 61, the ~~state engineer~~director will take one of the actions prescribed by North Dakota Century Code section 61-32-08.

If the report concludes the drain, lateral drain, or ditch was lawfully constructed, the complaint will be dismissed.

History: Effective October 1, 1988; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-07, 61-32-08

CHAPTER 89-02-05.1 EMERGENCY DRAIN PERMITS

Section

89-02-05.1-01	Scope of Chapter [Repealed]
89-02-05.1-02	Definitions [Repealed]
89-02-05.1-03	Permit to be Temporary
89-02-05.1-04	Emergency Defined [Repealed]
89-02-05.1-05	Application Form
89-02-05.1-06	Consideration of Permit Application
89-02-05.1-07	Decision on Permit Application - Conditions
89-02-05.1-08	Requirement for Permanent Permit Application
89-02-05.1-09	Closure of Drain
89-02-05.1-09.1	Extension of Permit
89-02-05.1-10	License Does Not Absolve Liability for Damages [Repealed]

89-02-05.1-01. Scope of chapter.

Repealed effective January 1, 2015.

89-02-05.1-02. Definitions.

Repealed effective January 1, 2015.

89-02-05.1-03. Permit to be temporary.

Emergency drain permits received under this chapter are only valid for six months plus any valid extensions.

History: Effective June 1, 1998; amended effective January 1, 2015.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-04. Emergency defined.

Repealed effective January 1, 2015.

89-02-05.1-05. Application form.

An emergency drain permit application must be written and include:

1. Landowner's name and address.
2. Legal description of land where the emergency drain will be located.
3. A map showing the drain location.
4. An estimate of the surface acreage of the pond, slough, lake, sheetwater, or any series thereof and the volume of water to be drained by the emergency drain.
5. A list of all downstream adjacent landowners for a distance of one mile [1.6 kilometers] from the discharge point, along with the addresses and telephone numbers of these landowners.
6. Copies of any written permission received from downstream landowners.
7. A compilation of any written or oral permission and refusals from downstream landowners.
8. A description of the emergency.

9. Written permission allowing the ~~state engineer~~department and board to inspect the drain.

History: Effective June 1, 1998; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-06. Consideration of permit application.

An emergency drain permit application must be sent simultaneously to the board and the ~~state engineer~~department. The application will be reviewed for completeness by the board and the ~~state engineer~~department. The ~~state engineer~~department must make a preliminary determination as to the existence of an emergency. As soon as possible, a ~~conference call or onsite~~ meeting among the board, the ~~state engineer~~department, and other affected parties as determined by the ~~state engineer~~department must be held. The applicant or any other affected party may make a statement concerning the emergency drain permit application during the ~~conference call or onsite~~ meeting. Any ~~conference call or onsite~~ meeting must be electronically recorded. During the ~~call or onsite~~ meeting, but after all parties have been given an opportunity to present their views, the board must make a recommendation to the ~~state engineer~~department whether the permit should be granted.

History: Effective June 1, 1998; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-07. Decision on permit application - Conditions.

After completion of the ~~conference call or onsite~~ meeting, the ~~state engineer~~director must consider:

1. The written information received;
2. The matters discussed;
3. The board's recommendation; and
4. Whether the emergency permit should be granted.

If the permit is granted, the ~~state engineer~~director may place any condition upon it, including a requirement for a bond and that receipt of an emergency drain permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.

History: Effective June 1, 1998; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-08. Requirement for permanent permit application.

If the drain is to be permanent, the applicant must submit a drain permit application to the ~~state engineer~~department under chapter 89-02-01. If the application is submitted at least thirty days before the emergency permit expires and the permanent drain has the same alignment as the emergency drain, the ~~state engineer~~director may extend the term of the emergency permit until final action on the drain permit application has been taken. If the watershed of the permanent drain is the same as the emergency drain, but has a different alignment, the emergency drain permit must only be extended under section 89-02-05.1-09.1.

History: Effective June 1, 1998; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-09. Closure of drain.

If a permanent drain permit application is not submitted thirty days before the emergency permit expires, the applicant must immediately prepare to close the drain unless the applicant has applied for an extension under section 89-02-05.1-09.1. Preparations must include obtaining any permission or authorizations. Closure of the drain must be completed by the emergency permit expiration date. The applicant must keep the board and the ~~state engineer~~department informed of the applicant's progress in closing the drain. The applicant must notify the board and the ~~state engineer~~department in writing when the emergency drain has been completely closed.

History: Effective June 1, 1998; amended effective January 1, 2015; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-09.1. Extension of permit.

The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency permit. If it is determined that an emergency still exists, the ~~state engineer~~director may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after the one-time extension, an applicant may reapply under chapter 89-02-05.1 for a new emergency drain permit.

History: Effective January 1, 2015; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-10. License does not absolve liability for damages.

Repealed effective January 1, 2015.

**ARTICLE 89-03
WATER APPROPRIATIONS**

Chapter	
89-03-01	Water Permits
89-03-02	Modification of a Water Permit <u>Modification</u>
89-03-03	Definitions

**CHAPTER 89-03-01
WATER PERMITS**

Section	
89-03-01-01	Submission of Application for Conditional Water Permit <u>application submission</u>
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89-03-01-01.2	Land, Property, or Other Interest Requirement for Conditional Water Permit
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89-03-01-03.2	<u>Application</u> Assignment of an Application to Another Person
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89-03-01-04	Notice of Application
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89-03-01-05.1	Notice of Decision on Water Permit Application <u>[Repealed]</u>
89-03-01-06	Filing Proof of Publication and Mailing <u>[Repealed]</u>
89-03-01-06.1	Consideration of Evidence Not Contained in the State Engineer's Record <u>[Repealed]</u>
89-03-01-06.2	Notice of Continuance - Responsibility <u>[Repealed]</u>
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89-03-01-07	Necessity of Works and Construction of Works for a Conditional Water Permit
89-03-01-08	Point of Diversion
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89-03-01-10	Emergency or Temporary Authorization
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89-03-01-11	Competing Applications
89-03-01-12	Extensions and Cancellations
89-03-01-13	Report of Water Usage <u>Use</u>
89-03-01-13.1	Fines - Water Use Reporting
89-03-01-14	Notice <u>[Repealed]</u>

89-03-01-01. ~~Submission of application for a~~ Conditional water permit application submission.

~~An application for a conditional water permit~~ application must be submitted to the ~~state engineer~~ department on the form provided by the ~~state engineer~~ department. A map containing the information prescribed by the ~~state engineer~~ department must accompany the application. Unless the ~~state engineer~~ department first approves another type of map, the map must be prepared from a survey, aerial photograph, or topographic map, and must be certified by a North Dakota licensed surveyor ~~licensed in the state of North Dakota~~. The ~~state engineer~~ department may require information not requested in the application.

History: Amended effective April 1, 1989; February 1, 1994; July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-03

89-03-01-01.1. Priority date.

The ~~date of receipt by the state engineer department must note the receipt date~~ of a properly completed application ~~must be noted~~ on the application. Except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses where a water permit is not required, this ~~date of filing date~~ establishes the application's original priority date of an application, subject to the application's final acceptance of the application and issuance of a perfected water permit by the state engineer department. For water applied to domestic, livestock, or fish, wildlife, and other recreational uses where a water permit is not required, the priority date is the date the quantity of water was first used.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.3

89-03-01-01.2. Land, property, or other interest requirement for conditional water permit.

An applicant for a conditional water permit applicant must have an legal interest or intent and ability to acquire an interest in the land where the point of diversion and conveyance system will be located. The applicant must demonstrate to the ~~satisfaction of the state engineer department's satisfaction~~ that the applicant has the capability to put the water to beneficial use. If the applicant is seeking a permit for irrigation, the applicant must also have an legal interest or intent and ability to acquire an interest in the land to be irrigated. If the applicant is seeking a permit to impound water, the applicant must have an legal interest or intent and ability to acquire an interest in the land or other property inundated by the impounded water. The state engineer department may require the applicant to submit evidence of such an interest. At any time the state engineer may require additional verification of land or a property interest or other interest demonstrating the capability to put the water to beneficial use.

History: Effective April 1, 1989; amended effective August 1, 1994; April 1, 2004; July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02.2, 61-04-03, 61-04-06

89-03-01-01.3. When a water permit for stored water must be obtained.

A water permit may authorize the water storage of water for flood control or other reasons deemed necessary by the state engineer department. However, authorization to store water for flood control or other reasons does not create a water right. If stored water will be put to beneficial use, a water permit must be obtained prior to beneficial use.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2015; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-01.1, 61-04-01.2, 61-04-02

89-03-01-01.4. Amount of water that may be held in storage under a water permit.

Unless otherwise authorized by the state engineer department, any person authorized to store water, except for flood control, may only fill the reservoir to the amount authorized in the permit once each year. The reservoir will be filled during the first runoff following February first of each year. A consumptive use authorized in the water permit must be taken from the stored water. Unless otherwise authorized by the state engineer department and with the exception of water stored for flood control, any inflows to the reservoir after the reservoir has been filled for the year must be allowed to pass through the reservoir and downstream.

History: Effective November 1, 1989; amended effective July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-01.2, 61-04-02, 61-04-06.2

89-03-01-01.5. Sale of excess water by an incorporated municipality or rural water system.

Any incorporated municipality or rural water system that appropriates water in excess of its current needs under North Dakota Century Code section 61-04-06.2 may sell the excess water provided:

1. The municipality or rural water system is supplying all the demands of its residents or members;
2. The agreement for sale of water is terminable by the incorporated municipality or rural water system upon six months' notice to the purchasing entity; and
3. The agreement for sale is approved by the state engineer department.

The excess water may not be sold for any use other than that stated in the conditional or perfected water permit. This section does not apply to agreements for the sale of water entered into before November 1, 1989.

History: Effective November 1, 1989; amended effective June 1, 1998; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-02-27, 61-04-06.2

~~**89-03-01-02. Correction of unsatisfactory application.**~~

~~—If an unsatisfactory application is refiled within sixty days from the date the request for corrections is mailed and if it meets the required corrections and is accepted, it will take the priority date of its original filing.~~

History: Amended effective April 1, 1989; August 1, 1994; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04

89-03-01-03. Amendment of a Application amendment.

1. An applicant may amend an conditional water permit application. If the state engineer department determines the amendment is likely to adversely affect another applicant whose application was submitted after the application sought to be amended and before the proposed amendment, the state engineer department must change the priority date of the amended application to the date the amendment request for the amendment was received.
2. A request to amend an application may be by letter or by the submission of an amended application form for a conditional water permit.
3. If any notice of the water permit application has been mailed before the request to amend, the department may require the applicant must mail a corrected notice of the application to all persons who were sent the original notice and must submit an affidavit of service of corrected notice to the state engineer department. If the notice of the application has been published, the state engineer department may require must publish a corrected notice to be published. ~~The state engineer may determine that corrected notice need not be mailed or published if the state engineer determines the amendment is insubstantial.~~ The applicant must pay publication costs.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04

~~**89-03-01-03.1. Transfer of an application to another parcel.**~~

~~—A request by the applicant to transfer an application for a water permit to another parcel of land owned or leased by the applicant must be submitted to the state engineer on the form provided by the state engineer.~~

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-04, 61-04-15

89-03-01-03.2. Application Assignment of an application to another person.

A request to assign an conditional water permit application for a ~~water permit~~ to another person must be submitted to the ~~state engineer~~department in writing. When title of land for which there is a pending application is transferred, either the transferee or the applicant may apply for application assignment of the application. The assignment request for assignment must describe the transferee's interest in the application for a ~~water permit~~. The ~~state engineer~~department may request additional documentation of the transferee's interest.

History: Effective April 1, 1989; amended effective April 1, 2000; July 1, 2014;_____.

General Authority: NDCC 28-32-03, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-04, 61-04-15

89-03-01-03.3. Evaporative losses.

When an conditional water permit application involves water stored in a reservoir, a volume of water equal to the mean net evaporative loss over the surface area of the impoundment at the principal spillway elevation must be requested as an annual use that will ~~come out of~~be taken from the stored water.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014;_____.

General Authority: NDCC 28-32-03, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-06.2

89-03-01-04. Notice of application.

1. When a proper conditional water permit application is filed, the ~~state engineer~~department will forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts:
 - a. ~~Places and use of appropriation~~All requested points of diversion;
 - b. ~~Amount of and purpose for which the water is to be used~~Requested annual appropriation and withdrawal rate;
 - c. ~~Applicant's name and address; and~~Requested source and purpose of use;
 - d. Applicant's name; and
 - d.e. ~~Newspaper in which the notice of the water permit application will~~notice must be published.

The notice must also state that the notice published in the newspaper will contain a date by which any person having an interest in the application may file written comments regarding the proposed appropriation with the ~~state engineer~~department and that anyone who files written comments will be mailed a copy of the ~~state engineer's~~department's recommended decision on the application.

2. Upon receipt of the completed notice of application forms, the applicant must send a notice of application form as provided in North Dakota Century Code section 61-04-05. The determination of title owners at the time of the application must be based on title records on file with the appropriate county recorder. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.
3. After notice of application forms have been mailed to those required by North Dakota Century Code section 61-04-05, the applicant must properly complete an affidavit of notice and return it

to the ~~state engineer department~~. The affidavit of notice must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices.

4. ~~If a properly completed affidavit of notice is not submitted within one hundred twenty days, the application must be considered to have been withdrawn by the applicant.~~

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; April 1, 2000; April 1, 2004; July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-05. Publication of notice of water permit applications.

In addition to the requirements in North Dakota Century Code section 61-04-05, a copy of the notice of the conditional water permit application to be published must be sent to the applicant.

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; August 1, 1994; April 1, 2000; July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-05.1. Notice of decision on water permit application.

Repealed effective April 1, 2000.

89-03-01-06. Filing proof of publication and mailing.

Repealed effective April 1, 1989.

89-03-01-06.1. Consideration of evidence not contained in the state engineer's record.

Repealed effective April 1, 2000.

89-03-01-06.2. Notice of continuance - Responsibility.

Repealed effective July 1, 2014.

89-03-01-06.3. Record - Official notice.

Unless specifically excluded by the ~~state engineer department~~ or the hearing officer, the record in each water permit application proceeding includes, when available, the following reports or records, or portions thereof, relevant to the proposed appropriation:

1. United States department of agriculture natural resources conservation service reports, including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and ~~state water commission department~~ streamflow records.
3. United States geological survey and ~~state water commission department~~ water quality data.
4. National oceanic and atmospheric administration climatological data.
5. United States geological survey topographic maps.
6. ~~State engineer Department~~ water permit files.
7. ~~State engineer Department~~ annual water use reports.

8. ~~State water commission~~Department and United States geological survey ground water level data.
9. North Dakota board of water well contractors well completion reports.
10. ~~State engineer~~Department test hole records.
11. ~~State water commission~~Department water resource investigations reports and ground water study reports.
12. ~~State water commission~~Department and United States geological survey county ground water study reports.
13. Information in ~~state engineer~~department and state water commission files, records, and other published reports.

History: Effective February 1, 1994; amended effective April 1, 2000; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05.1

89-03-01-07. Necessity of works and construction of works for a conditional water permit.

A conditional water permit application may only be considered if works are associated with the proposed appropriation. For any water appropriation that involves the construction of works that require a construction permit from the ~~state engineer~~department, the water permit may be issued before receipt of the construction permit. However, the water permit is not valid until the construction permit is issued.

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02

89-03-01-08. Point of diversion.

The ~~state engineer~~department may not issue a water permit that allows for the appropriation of water from more than one water source. An appropriation from the main channel of a river and from a tributary of the river is an example of an appropriation from more than one water source. The ~~state engineer~~department may issue a water permit that allows for points of diversion from different locations from the same water source, provided the ~~state engineer~~department finds good cause for doing so.

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-06.2

~~89-03-01-09. Appropriation not requiring water permit.~~

~~—An application for appropriation of water that does not require a water permit may be obtained from the state engineer to establish a priority date.~~

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02

89-03-01-10. Emergency or temporary authorization.

An application for a temporary appropriation water permit must be made on the form provided by the ~~state engineer~~department. In that request, the applicant must indicate the purpose for which water will be used, water quantity of water needed, proposed point of diversion, type of use, place of use, withdrawal rate of withdrawal, water source of water, dates of proposed use dates, and applicant's

address. The ~~state engineer department~~ will evaluate the request and, if it is granted, the ~~state engineer department~~ will list on the temporary ~~authorization~~ water permit the conditions that govern the appropriation.

An applicant for emergency ~~water use of water~~, if the situation warrants, may call the ~~office of the state engineer department~~ requesting immediate ~~water use of water~~. Following an oral request and oral approval by the ~~state engineer department~~ for authorization, a temporary application form must be submitted.

The applicant for a ~~temporary or emergency appropriations~~ water permit is responsible for all damages that may be caused to other appropriators or any other individual because of the emergency or temporary ~~water use of water~~.

History: Effective April 1, 1989; amended effective July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02.1

89-03-01-10.1. Temporary water transfer for irrigation.

To accommodate annual crop rotation requirements, the holder of a water permit for irrigation may make a request to the ~~state engineer department~~ for the temporary transfer of the volume of water appropriated from an approved point of diversion to another tract of land. The transfer must be made for an entire irrigation season and conform to the terms and conditions of the water permit, except that no water right will accrue to the land under temporary irrigation. Irrigation may not take place on the tract of land from which the transfer is made during that irrigation season. The request for a transfer must be made by May fifteenth of the year the transfer is to be in effect.

History: Effective August 1, 1994; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02.1

89-03-01-10.2. Temporary permit fees.

The following filing fee schedule will be used for temporary water permit applications. The fee must be included with the application. The ~~state engineer department~~ may waive the fees for certain emergency uses of a temporary water permit, including firefighting.

Volume of Water Requested:

Less than one acre-foot	\$75
One to ten acre-feet	\$125
More than ten acre-feet	\$200

Filing fees are not required for requests made under North Dakota Administrative Code section 89-03-01-10.1.

History: Effective July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02.1, 61-04-06.2

89-03-01-11. Competing applications.

~~Applications for conditional water permits~~ Conditional water permit applications from the same source for different uses will be considered competing applications if received by the ~~state engineer department~~ within ninety days of each other.

History: Effective April 1, 1989; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-06.1

89-03-01-12. Extensions and cancellation.

Where the time has expired to put any portion of the water ~~of~~appropriated under a conditional water permit to the beneficial use named in the permit, the ~~state engineer~~department will notify the ~~permittee~~permitholder. The ~~state engineer~~department will provide the ~~permittee~~permitholder with a form to request an extension for applying the water to the beneficial use and to explain why an extension should be granted. Except in overriding circumstances, no extension will be granted when other conditional water permit applications are pending from a limited supply source ~~of supply~~.

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-14

89-03-01-13. Report of water usage.

The form for reporting water usage under North Dakota Century Code section 61-04-27 must include the permit number, ~~amount of water usage~~ amount, pumping rate, if applicable, and any other information the ~~state engineer~~department may require. One form must be filed for each water permit held.

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-27

89-03-01-13.1. Fines - Water use reporting.

1. ~~A holder of a municipal, rural water, irrigation, or industrial water permit~~permitholder who fails to timely submit a complete and accurate water use report under North Dakota Century Code section 61-04-27 will be assessed a fine of two hundred fifty dollars for each water permit.
2. ~~If the permitholder submits both the complete and the accurate water use report and payment of the fine before June first, the fine per water permit will be reduced to fifty dollars.~~

History: Effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-23, 61-04-27

~~89-03-01-14. Notice.~~

~~When a statute or rule requires the state engineer or water commission to serve an order personally or by certified mail, the order may be served by regular mail with an affidavit of service indicating upon whom the order was served.~~

History: Effective February 1, 1997; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-13

CHAPTER 89-03-02
MODIFICATION OF A WATER PERMIT MODIFICATION

Section	
89-03-02-01	Submission of an Application for a Change into <u>add a</u> Point of Diversion or <u>for a</u> Change in Purpose of Use
89-03-02-02	Return of Unsatisfactory Application
89-03-02-03	Amendment of Application <u>Amendment</u>
89-03-02-04	Fee [Repealed]
89-03-02-05	Notice of Application
89-03-02-06	Publication of Notice of an Application for a Change in the Purpose of Use or <u>to add a</u> Point of Diversion
89-03-02-07	Filing Proof of Publication and Mailing [Repealed]
89-03-02-08	Assignment of a Water Permit to Another Person
89-03-02-09	Transfer of a Water Permit to Another Parcel <u>[Repealed]</u>
89-03-02-10	Change in Location of Use
89-03-02-11	Increase in Pumping Rate
89-03-02-12	Water Permit for Irrigation - Limitation

89-03-02-01. Submission of an application ~~for a change into~~ add a point of diversion or for a change in purpose of use.

An application ~~for a change into~~ add a point of diversion or for a change in purpose of use must be submitted to the ~~state engineer department~~ on the form provided by the ~~state engineer department~~. The ~~state engineer department~~ may require information not requested in the application. A change in purpose of use may only be granted for a use that has a higher priority than the use from which a change is sought, as specified in North Dakota Century Code section 61-04-06.1.

History: Amended effective April 1, 1989; July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.1, 61-04-15.4~~2~~, 61-04-15.4

89-03-02-02. Return of unsatisfactory application.

If the change in purpose of use or ~~change into~~ add a point of diversion application is not submitted on the proper form or if the form is improperly completed, it will be returned within thirty days, along with a statement of the required corrections.

History: Amended effective April 1, 1989; July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-15.4~~2~~, 61-04-15.4

89-03-02-03. ~~Amendment of a~~ Application amendment.

An applicant for a change in purpose of use or ~~a change into~~ add a point of diversion, before being instructed to give notice as ~~provided~~ inrequired by North Dakota Administrative Code section 89-03-01-04, may amend an application. An amendment request may be made by letter or by submission of an amended application.

If any notice of an application for a change in the purpose of use or ~~a change in the~~ to add a point of diversion has been mailed before the request to amend, the department may require the applicant must to mail a corrected notice of the application to all persons who were sent the original notice and must submit an affidavit of service of corrected notice to the ~~state engineer department~~. If the notice of application has been published, the ~~state engineer department may require~~ must ~~publish~~ a corrected notice to be published. ~~The state engineer may determine that corrected notices need not be mailed or published if the state engineer determines the amendment is insubstantial.~~ The applicant must pay publication costs.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-15.42, 61-04-15.4

89-03-02-04. Fee.

Repealed effective April 1, 1989.

89-03-02-05. Notice of application.

Notification of an application for a change in purpose of use or change into add a point of diversion must be handled in accordance with North Dakota Administrative Code section 89-03-01-04.

History: Amended effective April 1, 1989; August 1, 1994; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05, 61-04-15.42, 61-04-15.4

89-03-02-06. Publication of notice of an application for a change in the purpose of use or to add a point of diversion.

Notice of an application or an amendment to an application for a change in the purpose of use or a ~~change in the~~ to add a point of diversion must be published in accordance with North Dakota Administrative Code section 89-03-01-05.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05, 61-04-15.42, 61-04-15.4

89-03-02-07. Filing proof of publication and mailing.

Repealed effective April 1, 1989.

89-03-02-08. Assignment of a water permit to another person.

A request to assign a water permit to another person must be submitted to the ~~state engineer department~~ in writing. Either the transferee or the ~~holder of the permit~~ permitholder may ~~apply for request~~ assignment of the water permit. The application must describe the transferee's interest in the water permit. The ~~state engineer department~~ may request additional documentation of the transferee's interest.

History: Effective April 1, 1989; amended effective February 1, 1997; April 1, 2000; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-15

89-03-02-09. Transfer of a water permit to another parcel.

~~A request to transfer a water permit to another parcel of land owned or leased by the permittee must be submitted to the state engineer on the form provided by the state engineer.~~

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-15

89-03-02-10. Change in location of use.

No change in location of use of a conditional or perfected water permit will be granted if other appropriators that rely upon the return flows from the ~~permittee's~~ permitholder's beneficial use of water

would be adversely affected. "~~Return flow~~" is residual water that is returned to its source or some other source after beneficial use by a permittee.

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-01-01(3), 61-04-15

89-03-02-11. Increase in pumping rate.

A request to increase a ~~permittee's~~permitholder's pumping rate must be made in writing to the ~~state engineer~~department. The ~~state engineer~~department, before making a decision on the request, will consider what effect the increase has on other appropriators from the water source.

History: Effective April 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-06.2

89-03-02-12. Water permit for irrigation - Limitation.

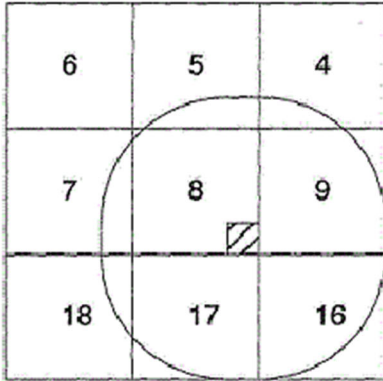
The ~~state engineer~~department may increase the number of acres that may be irrigated on the tracts of land specified in a water permit to allow for more efficient operation of an irrigation system. A request for an increase in the number of acres must be evaluated in accordance with ~~subsection subdivisions 4a~~ through ~~3c~~ of subsection 1 of North Dakota Century Code section 61-04-06. Any increase in acreage cannot exceed ten acres or ten percent of the originally approved acreage, whichever is greater.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

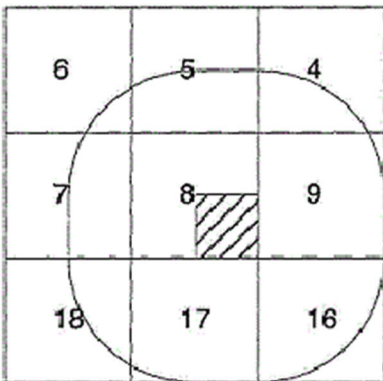
Law Implemented: NDCC 61-04-06.2

APPENDIX A
ARTICLE 89-03



Proposed point of diversion

SE1/4 SE1/4 of Section 8, Township 150 North, Range 83 West. All landowners within a one-mile (1.6 kilometer) radius of the exterior boundaries of the 40-acre (16-hectare) tract must be notified.



Proposed point of diversion

SE1/4 of Section 8, Township 150 North, Range 83 West. All landowners within a one-mile (1.6 kilometer) radius of the exterior boundaries of the 160-acre (65-hectare) tract must be notified.

CHAPTER 89-03-03 DEFINITIONS

Section

89-03-03-01	Definitions
89-03-03-02	Definition of Domestic Rural Use [Repealed]
89-03-03-03	Definition of Aquaculture [Repealed]
89-03-03-04	Definition of Reasonably Necessary for the Future Water Requirements of a Municipality or Rural Water System [Repealed]
89-03-03-05	Definition of Stored Water [Repealed]

89-03-03-01. Definitions.

The following definitions apply to this ~~title~~article:

1. ~~"Domestic rural use" means two or more family units or households obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use.~~ "Department" is defined in North Dakota Century Code section 61-03-01.2.
2. "Measuring device" ~~is~~means a flow meter or water meter measuring the quantity and rate of water flowing through a pipe and complying with the flow meter specifications issued by the ~~state engineer~~department.
3. "One-mile radius" means the distance of one mile [1.61 kilometers] from a specific point of diversion as listed in a water permit application. Where the point of diversion is listed as a parcel, the one mile [1.61 kilometers] is measured from the exterior boundary of the area contained in the legal description.
4. "Point of diversion" ~~is the geographical location from which water is appropriated for beneficial use~~ is defined in North Dakota Century Code section 61-04-01.1(17). A point of diversion may be described as a tract of land as described in the public land survey system (PLSS).
5. "Reasonably be necessary for the future water requirements of the municipality or the rural water system" means the amount of water estimated to be required thirty years in the future. The total water quantity ~~of water~~ a municipality or rural water system may hold under all permits for municipal use may not exceed the quantity the municipality or rural water system can reasonably expect to use thirty years in the future.
6. "Return flow" is residual water that is returned to its source or some other source after beneficial use by a permit holder.
- ~~6.7.~~ "Stored water" means water temporarily or permanently retained by or in a dam, dike, excavation, or other constructed works.
- ~~7.8.~~ "Works" include canals, ditches, pipelines, and other conveyance systems, irrigation facilities, wells, pumps, dams, dikes, reservoirs, and other devices used for the appropriation, storage, and beneficial use of water.

History: Effective April 1, 1989; amended effective July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-04-05

89-03-03-02. Definition of domestic rural use.

Repealed effective July 1, 2014.

89-03-03-03. Definition of aquaculture.

Repealed effective July 1, 2014.

89-03-03-04. Definition of reasonably necessary for the future water requirements of a municipality or rural water system

. Repealed effective July 1, 2014.

89-03-03-05. Definition of stored water.

Repealed effective July 1, 2014.

Floodplain Area" and the floodplain of the Bois de Sioux River is defined by the United States geological survey one percent change of recurrence area flood quadrangles. These criteria apply to dikes constructed on tributaries within the floodplains of the Red River or the Bois de Sioux River.

History: Effective August 1, 1980.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-03. Definitions.

Unless the context otherwise requires, the following definitions apply:

1. "Board of commissioners" means the board of commissioners of a water management district.
2. "Boundary rivers" means the Red River of the North and the Bois de Sioux River as they form a natural boundary between the states of Minnesota and North Dakota.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
- ~~3.4.~~ "Dike" means an embankment constructed of earth or other suitable materials to protect agricultural lands from floods which result from overflow of watercourses or from diffused surface waters.
5. "Director" is defined in North Dakota Century Code 61-03-01.2.
- ~~4.6.~~ "District" means water management district.
- ~~5.7.~~ "Farmstead" means a farm dwelling or associated farm buildings.
- 6.8. "Flood frequency" means the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equaled or exceeded. This frequency is usually expressed as having a probability of occurring, on the average, once within a specified number of years.
- ~~7.9.~~ "Floodwaters" means those waters which temporarily inundate normally dry areas adjoining a watercourse. This inundation results from an overflow of the watercourse caused by excessive amounts of rainfall or snowmelt which exceed its capacity.
- ~~8.10.~~ "Person" means a human being, firm, partnership, association, corporation, or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.
- ~~9.11.~~ "Ring dike" means an embankment constructed of earth or other suitable materials for the purpose of enclosing a farmstead.
- ~~10.~~ "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code section 61-03-01, or the state engineer's designee.
- ~~11.12.~~ "Watershed" means the area draining into, or contributing water to, the Red River of the North or the Bois de Sioux River.
- ~~12.~~ "Waterway" means a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-04. Severability.

The provisions of this chapter shall be severable, and the invalidity of any section or subsection shall not make void any other section or subsection, or any other part.

History: Effective August 1, 1980.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-05. Design criteria.

1. Dikes shall be constructed so as not to cause an increase in the elevation of floodwaters which will result in an unreasonable increase in flood damages due to the displacement of floodwaters. However, in no event shall dikes, based on total encroachment, increase the elevation of floodwater of the one hundred year frequency flood of more than one-half foot [15.24 centimeters].
2. Calculation of the effects of proposed dikes shall be based on the dikes being located on both sides of the Red and Bois de Sioux Rivers so as not to cause more than one-half of the maximum allowable stage increase. If mutual agreement has been reached between persons on both sides of the river, dikes on one side of the river may utilize the entire increase in flood stage elevation allowable.
3. Dike dimensions. Dike top widths shall not be less than six feet [1.83 meters]. Side slopes shall not be steeper than 3:1, except whose slope stability analysis and slope erosion control can justify steeper slopes. No organic soil or material shall be allowed in the foundation of the fill of dikes.
4. Vegetative cover and riprap. A protective cover of grasses shall be established on all exposed surfaces of the dike. Riprap shall be used where required for control of erosion.
5. Interior drainage. Dikes shall have provisions for interior drainage. The design shall include plans to handle the discharge from the drainage area based on drainage design requirements for the local area.

History: Effective August 1, 1980.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-06. Dike design data.

The ~~North Dakota state water commission~~department shall provide the discharges and corresponding elevations of various frequency floods (and other available flood data), in relation to known historic floods, for use in dike design.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-07. Dikes across natural waterways and legal drains.

Dikes shall not be constructed across tributaries to the Red River and the Bois de Sioux River without proper authorization from the appropriate agency. Dike setbacks along tributary waterways to the Red River and the Bois de Sioux River, within the area defined in section 89-05-01-02, shall meet the criteria as stated in section 89-05-01-04. Dikes constructed across special assessment drains or public ditch systems constructed pursuant to North Dakota Century Code title 61 shall require the approval of the appropriate ~~drain board, water management~~resource district,~~or other local authority.~~

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-08. Farmstead diking.

Within an existing dike system, ring dikes around individual farmsteads shall not require permits if they do not include tiebacks to existing roadways or dikes. Ring dikes with tiebacks shall be considered part of the overall dike system and will be required to secure diking permits. This waiver of a permit requirement for ring dikes from the ~~state engineer~~ director does not relieve the necessity of appropriate authorization for ring dikes from the local water management district in accordance with the North Dakota Century Code.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-09. Application for permit.

All applications submitted by the owner to construct, to relocate, rebuild, or alter dikes shall be made on forms provided by the ~~North Dakota state engineer~~ department and shall be accompanied by two complete sets of plans or specifications. Such plans and specifications shall include the following:

1. A general location map with a minimum scale of one inch to eight hundred feet [2.54 centimeters to 243.84 meters] showing the following:
 - a. Location of the dike with respect to the watercourse.
 - b. Location of field inlets to provide for internal drainage.
 - c. Location of legal drains and natural channels tributary to the main river channel.
2. Detailed cross sections of the dike showing elevations, in relation to mean sea level, and side slopes.
3. The ~~state engineer~~ department may require any other additional information that the ~~state engineer~~ department deems necessary.

After review of the information required above and other available data, the ~~state engineer~~ department shall determine the location and number of required cross sections of the river channel and overland areas. These locations shall be provided to the applicant who shall then provide the required cross-section data. The applicant shall undertake and agree to pay the expenses incurred in securing these cross sections.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-10. Joint permit applications.

Joint permit applications involving two or more landowners or a permit application on behalf of two or more landowners will be accepted by the ~~state engineer~~ department. These permit applications, taken together, must meet the requirements of this chapter.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-11. Referral to water management district.

Within forty-five days after the receipt of a permit application, the ~~state engineer~~department shall make recommendations and suggestions concerning the propriety and efficiency of the proposal to the water management district within which the contemplated project is located. The water management district shall, in accordance with this chapter, review the application and impose any conditions for the orderly management of water resources it deems necessary. The permit application shall then be returned to the ~~state engineer~~director for final approval. Unless an exception is granted pursuant to section 89-05-01-15, the ~~state engineer~~director and the water management district shall not allow the construction of a dike not in conformance with this chapter nor which is unsafe, improper, or dangerous, and may order such changes as necessary for safety or the protection of property.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-12. Issuance of permits.

Dike permits will be issued only upon concurrent approval of the ~~state engineer~~director and the appropriate water ~~management~~resource district. Approval of the permit will in no way relieve the owner from damages which may be caused or created by construction of the dikes.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-13. Joint administration.

A copy of each application and accompanying information for a permit shall be forwarded by the ~~state engineer~~department to the department of natural resources of Minnesota for comment and recommendation before final approval is granted. If comments are not received within thirty days, the ~~state engineer~~department shall process the permit without such comments.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-02-24, 61-16.1-38

89-05-01-14. Permit revocation.

The applicant shall provide certification by a registered land surveyor, engineer, or other qualified person or agency that the finished dike elevations are not higher than those approved by the ~~state engineer~~director. The permit will be revoked for failure to provide this certification. The permit may be revoked for failure to construct the dike in accordance with the plans and specifications submitted. Structural alteration of the dike without permission of the ~~state engineer~~director and the appropriate water management district will also result in revocation of the permit.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-15. Dike reconstruction or rebuilding.

Reconstruction or rebuilding of any authorized dikes shall require notification ~~of~~to the ~~state engineer~~department and recertification upon completion in accordance with section 89-05-01-14.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-16. Exception to the criteria.

Under special circumstances, exceptions to the dike criteria may be authorized on an individual basis but they must have the concurrent approval of the ~~North Dakota state engineer~~director, local water management resource board in North Dakota, Minnesota department of natural resources, and local watershed district in Minnesota. Factors that will be considered, among other things, shall be increase in flood stage, increase of stage at existing city dikes, increase in stream velocity, and environmental effects. In addition, the ~~state engineer~~director will authorize the utilization of farmsteads, property lines, and existing roads for dike construction, consistent with this chapter.

History: Effective August 1, 1980;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-17. Application to existing dikes.

This chapter applies to all unauthorized dikes constructed in the past for the protection of those agricultural lands located within the floodplains of the Red River of the North and the Bois de Sioux, as defined in section 89-05-01-02. Exceptions are farmstead dikes which meet the provisions of section 89-05-01-08.

History: Effective August 1, 1980.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

**ARTICLE 89-06
FUNDING FROM THE RESOURCES TRUST FUND**

Chapter
89-06-01 Funding From the Resources Trust Fund

**CHAPTER 89-06-01
FUNDING FROM THE RESOURCES TRUST FUND**

Section
89-06-01-01 Definitions
89-06-01-02 Initial Review
89-06-01-03 Study of the Proposal [Repealed]

89-06-01-01. Definitions.

The following definitions apply to this article:

1. "Applicant" means the party submitting a proposal.
2. "Commission" ~~means the North Dakota state water commission~~ is defined in North Dakota Century Code section 61-02-02.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
- ~~3.4.~~ "Proposal" means an application for a water-related project or a water-related project submitted to the ~~commission~~ department for financial assistance from the resources trust fund.

History: Effective June 1, 1987; amended effective July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 57-51.1-07.1

89-06-01-02. Initial review.

The commission will make an initial review of a proposal to decide whether the project or study is eligible for funding from the resources trust fund.

1. **Information required for the review of the project or study.** An applicant must submit, as applicable:
 - a. A description of the purpose and goals.
 - b. The area where the proposed project is to be physically located or the study is to be undertaken.
 - c. The area to be served.
 - d. Maps, diagrams, and any engineering plans or specifications already completed.
 - e. The approximate cost of carrying out the proposal.
 - f. An estimate of any revenue the project is expected to generate.
 - g. The amount of funding sought from the resources trust fund and the amount the applicant intends to contribute to carry out the proposal.
 - h. The results of all efforts made to secure funds from sources other than the resources trust fund.

- i. An explanation why assistance from the resources trust fund is necessary.
 - j. An explanation how the project or study relates to any master plans of water resource districts affected.
 - k. A preliminary report on the engineering feasibility of the project.
 - l. A general discussion of any objections to the proposal.
 - m. Other information the applicant believes pertinent or the commission requests.
 - n. A general explanation of all alternatives considered and whether an alternative project or study can satisfy the objectives.
2. **The commission's decision upon initial review.** After initial review, the commission may decide:
- a. To provide cost-share assistance in consideration of the commission's cost-share policy.
 - b. The information provided is inadequate to review the proposal and may request additional information from the applicant or obtain more information itself.
 - c. A study of the proposal should be undertaken and may order the applicant to conduct the study or may conduct the study itself.

History: Effective June 1, 1987; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 57-51.1-07.1

89-06-01-03. Study of the proposal.

Repealed effective July 1, 2014.

**ARTICLE 89-08
DAMS, DIKES, AND OTHER DEVICES**

Chapter	
89-08-01	Definitions
89-08-02	Construction Permits
89-08-03	Inspections
89-08-04	Operation and Maintenance

**CHAPTER 89-08-01
DEFINITIONS**

Section	
89-08-01-01	Definitions
89-08-01-02	Definition of Unsafe Dam, Dike, or Other Device [Repealed]

89-08-01-01. Definitions.

The following definitions apply in this article:

1. "Appurtenant works" means all works incident or attached to a dam, dike, or other device, including:
 - a. A spillway, either in the dam or separate from it;
 - b. The reservoir and its rim;
 - c. A low-level outlet; and
 - d. A water conduit, such as a tunnel, pipeline, or penstock, either through the dam, dike, or other device or their abutments.
2. "Construction" or "construct" means any activity for which a permit is required by North Dakota Century Code section 61-16.1-38, including construction, alteration, enlargement, or modification of a dam, dike, or other device.
3. "Dam" means any barrier, including any appurtenant works, constructed across a watercourse or an area that drains naturally to impound or attenuate the flow of water. All structures necessary to impound a single body of water are considered a single dam.
4. "Department" is defined in North Dakota Century Code 61-03-01.2.
- ~~4-5.~~ "Dike" means any artificial barrier, including any appurtenant works, constructed along a ~~watercourse~~waterway or an area that drains naturally to divert the flow of water to protect real or personal property.
6. "Director" is defined in North Dakota Century Code section 61-03-01.2.
- ~~5-7.~~ "Diversion" means any open channel, culvert, or ditch constructed to reroute a watercourse as defined by North Dakota Century Code section 61-01-06.
- ~~6-8.~~ "Embankment" means a structure created by an artificial deposit of material upon the natural surface of the land that is designed to act as a water control device, support roads or railways, or for other similar purposes.
- ~~7-9.~~ "Engineer" means a person who has been duly registered and licensed as an engineer by the North Dakota state board of registration for professional engineers and land surveyors.

- ~~8-10.~~ "Height" means the maximum vertical distance from the stream channel bottom or lowest elevation of a naturally draining area to the top of dam.
- ~~9-11.~~ "High-hazard dam" means a dam ~~located upstream of developed or urban areas where failure may cause serious damage to homes, industrial and commercial buildings, and major public utilities. There is potential for the loss of more than a few lives if the dam fails~~with high hazard potential where failure or mis-operation will probably cause loss of human life.
- ~~10-12.~~ "Holding pond, lagoon, or dugout" means any artificial, hydraulically disconnected structure, including any appurtenant works, constructed to store water.
- ~~11-13.~~ "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam, dike, or other device.
- ~~12-14.~~ "Low-hazard dam" means a dam ~~located in a rural or agricultural area where there is little possibility of future development. Failure of low hazard dams may result in damage to agricultural land, township and county roads, and farm buildings other than residences. No loss of life is expected if the dam fails~~with low hazard potential where failure or mis-operation results in no probable loss of human life and low economic losses.
- ~~13-15.~~ "Medium-hazard dam" means a dam ~~located in a predominately rural or agricultural area where failure may damage isolated homes, main highways, or railroads, or cause interruption of minor public utilities. There is potential for the loss of a few lives if the dam fails~~with medium hazard potential where failure or mis-operation results in no probable loss of human life but can cause economic loss, disruption of lifeline facilities, or can impact other concerns.
- ~~14-16.~~ "Other device" means a water control structure, other than a dam or dike, including diversions and holding ponds, lagoons, or dugouts.
- ~~15-17.~~ "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam, dike, or other device. For the purpose of a construction permit application, "owner" means the person who owns the property or interest in property where the dam, dike, or other device will be built.
18. "Significant-hazard dam" means the same as "medium-hazard dam" and may be used interchangeably.
- ~~16-19.~~ "Top of dam" means the top of the settled embankment or the elevation of the uppermost surface of a nonembankment dam, excluding accessory features, such as railings.
- ~~17-20.~~ "Unsafe dam, dike, or other device" means any such structure that threatens harm to life or property or is improperly maintained.

History: Effective November 1, 1989; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-01-02. Definition of unsafe dam, dike, or other device.

Repealed effective January 1, 2015.

CHAPTER 89-08-02 CONSTRUCTION PERMITS

Section

89-08-02-01	Determining the Capacity of Dams, Dikes, or Other Devices
89-08-02-02	Contents of Application
89-08-02-03	Permit Does Not Absolve Liability for Damages
89-08-02-03.1	Time to Complete Construction of Structure
89-08-02-03.2	Extending Time to Complete Construction of Structure
89-08-02-04	Emergency Construction Permits
89-08-02-05	Extension of Emergency Construction Permits
89-08-02-06	Removal of Emergency Structures
89-08-02-07	As Built Plans

89-08-02-01. Determining the capacity of dams, dikes, or other devices.

The impounding capacity of a dam is calculated based upon the elevation at the top of dam. Storage below the existing adjacent ground surface is generally excluded from the capacity of a holding pond, lagoon, or dugout. The diverting capacity of a dike is calculated based upon the area protected as measured from the effective top of dike. If the absence of the dike could result in more than fifty acre-feet of water inundating the protected area, a permit is required. The diverting capacity of a diversion is calculated based upon the runoff from the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year, twenty-four hour, precipitation event. No construction can begin until a construction permit is obtained.

History: Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02. Contents of application.

A completed construction permit application must include: plans and specifications as stipulated by the department; evidence establishing a property right for the property that will be affected by the construction of the dam, dike, or other device; and any additional information required by the ~~state engineer~~department.

History: Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03. Permit does not absolve liability for damages.

The receipt of a permit, including a permit for emergency construction, does not relieve an applicant from liability resulting from any activity conducted under the permit.

History: Effective June 1, 1998; amended effective January 1, 2015.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.1. Time to complete construction of structure.

No construction can begin until a construction permit is obtained. Construction must be completed and the ~~state engineer~~department must be notified of completion in writing within ~~two years from the date of final approval or the permit is void~~the period specified by the department on the permit, beginning from the date of final permit approval. The ~~two-year completion~~ period does not begin until any appeal is complete.

History: Effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.2. Extending time to complete construction of structure.

If the ~~two-year~~completion period expires before construction is complete, the permit recipient may make a written request to the ~~state engineer~~department for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the permit expiration date and must specifically state why construction has not been completed.

History: Effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-04. Emergency construction permits.

A completed application for an emergency construction permit must be submitted to the ~~state engineer~~department along with any additional information required by the ~~state engineer~~department. If the ~~state engineer~~director determines an emergency exists, the ~~state engineer~~director may issue an emergency construction permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than fifty acre-feet of water. An emergency construction permit will expire in six months unless extended by the ~~state engineer~~director under section 89-08-02-05.

History: Effective April 1, 2004; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-05. Extension of emergency construction permits.

The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency construction permit. If it is determined that an emergency still exists, the ~~state engineer~~director may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after the one-time extension, an applicant may reapply under section 89-08-02-04 for a new emergency construction permit.

History: Effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-06. Removal of emergency structures.

Once the emergency has ended or upon permit expiration, whichever occurs first, all structures constructed under section 89-08-02-04 must be removed in their entirety and the disturbed area restored to pre-project conditions. The applicant must notify the ~~state engineer~~department in writing when the emergency structure has been completely removed.

History: Effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-07. As built plans.

As a condition on all construction permits, the owner of the dam, dike, or other device will provide the ~~state engineer~~department with "as built" plans within six months after the dam, dike, or other device has been constructed to provide details of the modifications that occurred during construction.

History: Effective January 1, 2015; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

CHAPTER 89-08-03 INSPECTIONS

Section

89-08-03-01	Inspections and Reports During Construction of Dams Over Ten Feet [3.05 meters] in Height
89-08-03-02	Monitoring During Construction by the State Engineer <u>Department</u>
89-08-03-03	Changes in Construction
89-08-03-04	Requested Inspections
89-08-03-05	Periodic Inspections After Construction
89-08-03-06	As Built Plans [Repealed]
89-08-03-07	Access to Dams for Inspection

89-08-03-01. Inspections and reports during construction of dams over ten feet [3.05 meters] in height.

To protect property and assure safety, the following are conditions to all construction permits for dams over ten feet [3.05 meters] in height:

1. An engineer must be in charge of and responsible for inspections during construction.
2. Inspections during construction must be performed at intervals necessary to ensure conformity with the construction permit and the plans and specifications.
3. The information obtained during each inspection must be documented in a written report. The report will specify any changes necessary under section 89-08-03-03. The inspection reports must be provided to the ~~state engineer~~department upon request.

History: Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-03-02. Monitoring during construction by the ~~state engineer~~department.

The ~~state engineer~~department may monitor any dam, dike, or other device during construction to ensure conformity with the construction permit and the plans and specifications.

History: Effective November 1, 1989;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11

89-08-03-03. Changes in construction.

If the ~~state engineer or engineer in charge~~director determines changes in construction are necessary to ensure safety, the ~~state engineer~~director may order the appropriate changes and may order construction be stopped until the changes are made.

History: Effective November 1, 1989; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11

89-08-03-04. Requested inspections.

1. Upon receipt of a written complaint that a dam, dike, or other device is unsafe because of its construction, maintenance, or operation, the ~~state engineer~~department will examine the available information and determine if the complaint is justified.

2. If the ~~state engineer~~department determines the complaint is unjustified, the ~~state engineer~~department must notify the complainant in writing of that fact.
3. If the ~~state engineer~~department determines the complaint is justified, the ~~state engineer~~department will complete the necessary inspection and make a determination regarding the structure's safety. If construction is ongoing, all construction activities must cease until the ~~state engineer~~department completes the inspection.

History: Effective November 1, 1989; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11, 61-03-21.1, 61-03-21.2

89-08-03-05. Periodic inspections after construction.

The ~~state engineer~~department may require inspection of a dam, dike, or other device as often as necessary after construction to protect property and assure safety.

History: Effective November 1, 1989; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11, 61-16.1-38

89-08-03-06. As built plans.

Repealed effective January 1, 2015.

89-08-03-07. Access to dams for inspection.

The ~~state engineer~~department has authority to enter upon land to inspect a dam during construction, conduct periodic dam inspections after construction, or conduct a dam inspection in response to a complaint that the dam is unsafe. Except in emergency situations as determined by the ~~state engineer~~director, the ~~state engineer~~department will request permission from the landowner to enter the property. If the landowner refuses to give permission or fails to respond within five days of the request, the ~~state engineer~~department may request a district court order for authorization to enter the property to inspect the dam.

History: Effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21.1

**CHAPTER 89-08-04
OPERATION AND MAINTENANCE**

Section	
89-08-04-01	Operating Plan
89-08-04-02	Maintenance Plan
89-08-04-03	Emergency Action Plan

89-08-04-01. Operating plan.

By the fifteenth of February of each year, the operator of a reservoir with a capacity of more than one thousand acre-feet must submit an operating plan for that year to the ~~state engineer department~~. The ~~state engineer department~~ will review the operating plan, and if deficiencies or discrepancies exist, the ~~state engineer department~~ must notify the owner of the dam of the deficiencies or discrepancies. The owner of the dam must correct the deficiencies or discrepancies and return the corrected operating plan to the ~~state engineer department~~ within fourteen days of receiving notice of the deficiencies or discrepancies. The operating plan must be approved by the ~~state engineer director~~ before the operation of the dam. If the operator receives no response from the ~~state engineer department~~ within thirty days, the operating plan is approved.

History: Effective November 1, 1989; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21

89-08-04-02. Maintenance plan.

Dam owners must maintain their structures in an adequate manner. The ~~state engineer director~~ may require the owner of a dam with a capacity of more than one thousand acre-feet to submit a maintenance plan for the dam and appurtenant works.

History: Effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21

89-08-04-03. Emergency action plan.

The owner of a high-hazard or medium-hazard dam ~~with a storage capacity of more than one thousand acre-feet~~ must submit an emergency action plan for the dam to the ~~state engineer department~~. The plan must be approved by the ~~state engineer director~~. The plan must be maintained and updated on a regular basis, and copies of all updates must be submitted to the ~~state engineer department~~.

History: Effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21

**ARTICLE 89-10
SOVEREIGN LANDS**

Chapter
89-10-01 Sovereign Lands

**CHAPTER 89-10-01
SOVEREIGN LANDS**

Section	
89-10-01-01	Authority
89-10-01-02	Prohibition on Permanent Relinquishment
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89-10-01-06	Application Review
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89-10-01-08	General Permit Standards
89-10-01-09	Specific Project Requirements [Repealed]
89-10-01-10	Projects Not Requiring a Permit
89-10-01-10.1	Boat Docks and Water Intakes
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89-10-01-11	Structures
89-10-01-12	Public Recreational Use
89-10-01-13	Vehicular Access
89-10-01-14	Cancellation by the State Engineer <u>Director</u>
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89-10-01-31	Firearms
89-10-01-32	Tree Stands
89-10-01-33	Baiting
89-10-01-34	Dredging or Filling

89-10-01-01. Authority.

These rules are adopted and promulgated by the ~~state engineer~~department under North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of sovereign lands. These rules do not apply to the state of North Dakota's interests in oil, gas, and related hydrocarbons on sovereign lands.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; July 1, 2014;

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-02. Prohibition on permanent relinquishment.

Sovereign lands may not be permanently relinquished, but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

History: Effective November 1, 1989; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-03. Definitions.

The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer department after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Boardwalk" means a walk constructed of planking.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
4. "Director" is defined in North Dakota Century Code section 61-03-01.2.
- ~~3-5.~~ "Domestic use" means the use of water as defined by subsection 4 of North Dakota Century Code section 61-04-01.1.
- ~~4-6.~~ "Grantee" means the person, including that person's assigns, successors, and agents who has authorization.
- ~~5-7.~~ "Livestock" means bison, cattle, horses, mules, goats, sheep, and swine.
- ~~6-8.~~ "Navigable waters" means any waters that were in fact navigable at the time of statehood, that is, 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 is defined in North Dakota Century Code section 61-33-01(3).
- ~~7-9.~~ "Ordinary high watermark" means that 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. Islands in navigable waters are considered to be below the ordinary high watermark in their entirety is defined in North Dakota Century Code section 61-33-01(4).
- ~~8-10.~~ "Project" means any activity that occurs either partially or wholly on sovereign lands.
- ~~9-11.~~ "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
- ~~10-12.~~ "Snagging and clearing" means the removal and disposal of fallen trees and associated debris encountered within and along the channel.
- ~~11-13.~~ "Structure" means something that is formed from parts, including equipment, boat docks, boat ramps, and water intakes.

~~42-14.~~ "Watercraft" means any device capable of being used as a means of transportation on waters.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-04. Authorization.

Each project requires an authorization from the ~~state engineer~~department before construction or operation, except as otherwise provided by these rules.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-05. Application for permit, easement, lease, or management agreement.

Applications for authorization must be on forms prescribed by the ~~state engineer~~ and contain the information required by the ~~state engineer~~. Applications must be submitted to the ~~North Dakota State Engineer, State Office Building, 900 East Boulevard, Bismarck, North Dakota 58505-0850~~department.

History: Effective November 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-06. Application review.

Upon receipt of a completed application, the ~~state engineer~~department must initiate a review as follows:

1. Comments must be requested from the following entities:
 - a. The state game and fish department;
 - b. The department of environmental quality;
 - c. The state historical society;
 - d. The state department of trust lands;
 - e. The state parks and recreation department;
 - f. The United States fish and wildlife service;
 - g. The park district and planning commission of any city or county where the proposed project will be located;
 - h. Any water resource district where the proposed project will be located; and
 - i. Other agencies, private entities, or landowner associations as appropriate or required by law.
2. Each entity must submit all comments in writing to the ~~state engineer~~department. The ~~state engineer~~department is not bound by any comment submitted. The ~~state engineer~~department must receive comments within thirty days of the date requests for comments were mailed.

3. Upon completion of the review and any public meeting held under section 89-10-01-07, the ~~state engineer~~department may grant, deny, or condition the application.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-06.1. Record - Official notice.

Unless specifically excluded by the ~~state engineer~~director or the hearing officer, the record in each sovereign land permit application proceeding or adjudicative proceeding under North Dakota Century Code chapter 28-32 includes the following:

1. United States department of agriculture natural resources conservation service reports, including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and ~~state water commission~~department streamflow records.
3. National oceanic and atmospheric administration climatological data.
4. Topographic maps.
5. ~~State engineer~~Department sovereign land permit files.
6. Information in ~~state engineer~~department and state water commission files, records, and other published reports.
7. North Dakota sovereign land management plan.
8. Ordinary high watermark delineation guidelines.
9. Aerial photos.

History: Effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-07. Public meeting.

An information-gathering public meeting may be held by the ~~state engineer~~department before final action on a project. The procedure for notice and meeting must be as follows:

1. The ~~state engineer~~department must publish a notice of meeting in the official newspaper for each county where the project is located. The notice must be published once each week for two consecutive weeks.
2. The meeting date must be at least twenty days after the date of last publication.
3. The meeting must be conducted by the ~~state engineer~~department and the meeting may be held in Bismarck.
4. The meeting is not an adjudicative proceeding hearing under North Dakota Century Code chapter 28-32.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-08. General permit standards.

The ~~state engineer~~department may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the ~~state engineer~~department must consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;
2. Recreation;
3. Navigation;
4. Aesthetics;
5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality;
10. Cultural and historical resources; and
11. Alternative uses.

History: Effective November 1, 1989; amended effective April 1, 2008; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-09. Specific project requirements.

Repealed effective July 1, 2014.

89-10-01-10. Projects not requiring a permit.

The following projects do not require a permit:

1. Boat docks, if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner for personal use;
 - b. The dock is used only for embarkation, debarkation, moorage of watercraft, water intakes, or recreation;
 - c. Only clean, nonpolluting materials are used;
 - d. The total length of the dock over the surface of the water does not exceed twenty-five feet [7.6 meters] on a river or fifty feet [15.24 meters] on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;
 - e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length and is removed from below the ordinary high watermark each fall; and
 - f. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

2. Water intakes if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner for domestic use; and
 - b. The intake is removed from below the ordinary high watermark each fall.
3. Watercraft that are temporarily moored.
4. Snagging and clearing, when performed by a federal or state entity or political subdivision.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; April 1, 2010; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-10.1. Boat docks and water intakes.

Boat docks and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the ~~state engineer~~department. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per day. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2009; amended effective April 1, 2010; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-10.2. Boat dock registration.

Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver and Morton County line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) must be registered with the ~~state engineer~~department before placement of any such dock. The ~~state engineer~~department must provide registration forms. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2010; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-11. Structures.

Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is prohibited, the ~~state engineer~~department must:

1. Issue an order to the structure owner identifying the action required to modify or remove the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
2. If the ordered action is not taken by the date specified in the order, the ~~state engineer~~department may modify or remove the structure at the structure owner's expense.
3. The ~~state engineer~~department may commence a civil proceeding to enforce ~~an~~its order ~~of the state engineer~~, or, if the ~~state engineer~~department modifies or removes the structure, the ~~state engineer~~department may assess the costs of such action against any property of the structure's owner or may commence a civil proceeding to recover the costs incurred in such action. If the ~~state engineer~~department chooses to recover costs by assessing the costs against property of

the structure's owner and the property is insufficient to pay for the costs incurred, the ~~state engineer~~department may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

4. A person who receives an order from the ~~state engineer~~department under this section may send a written request to the ~~state engineer~~department for a hearing. The ~~state engineer~~department must receive the request within ten days of the date the order issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state engineer~~director determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the ~~state engineer~~department must set a hearing date without undue delay.
5. Any person aggrieved by the action of the ~~state engineer~~director may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33

89-10-01-12. Public recreational use.

The public may use sovereign lands for recreational purposes except as otherwise provided by these rules or by signage posted by the ~~state engineer~~department.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-13. Vehicular access.

The use of motorized vehicles on sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the ~~state engineer~~department;
2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;
3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that has been submitted to the ~~state engineer~~department, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;
4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;
5. To launch or load watercraft in the most direct manner possible;
6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign lands is in the most direct manner possible;

7. To access private land that has no other reasonable access point, provided that access across sovereign lands is in the most direct manner possible;
8. By disabled people who possess a mobility-impaired parking permit under North Dakota Century Code section 39-01-15 or shoot from a stationary motor vehicle permit under subsection 10 of North Dakota Century Code section 20.1-02-05;
9. When operation is necessary as part of a permitted activity or project;
10. By the riparian owner on sovereign lands that are adjacent to the riparian owner's property when moving or tending to livestock; installing or maintaining a livestock fence; installing, maintaining, or moving an authorized agricultural irrigation structure; or when engaged in other ordinary agricultural practices, provided the listed activities do not negatively affect public use or values; or
11. When being used by government personnel in the performance of their duties.

Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-14. Cancellation by the ~~state engineer~~director.

The ~~state engineer~~director may cancel any authorization granted under these rules. Cancellation does not release the grantee from any liability. If an applicant is named in an active enforcement action ordered by the ~~state engineer~~department, the ~~state engineer~~department may hold any application submitted by the applicant in abeyance until the order has been satisfied.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-15. Termination by applicant.

The grantee may terminate any authorization by notifying the ~~state engineer~~department in writing, paying all fees or other money owed to the state, and reclaiming the site under section 89-10-01-18.

History: Effective November 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-16. Assignments.

Any authorization granted under these regulations may only be assigned with the written consent of the ~~state engineer~~department.

History: Effective November 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-17. Inspections.

The ~~state engineer~~department may inspect all projects on sovereign lands and enter upon a grantee's land during normal working hours to carry out the inspection.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-18. Reclamation.

After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location within one hundred twenty days. If the permit is for mining, reclamation must be within sixty days after the lease expires or the mining is complete. Upon written request, the ~~state engineer~~department may extend the time period if good cause is shown. If grantee fails to reclaim the site to the specifications in the authorization within the required time frame, the ~~state engineer~~department may enter and restore the project location. The grantee is liable for all reclamation costs.

History: Effective November 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-19. Maintenance and repair.

Maintenance or repair of authorized projects does not require additional authorization provided the work is in conformance with the original authorization, standards, and specifications provided in this article and the work does not alter the use or size of the project.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-20. Areas of special interest.

The ~~state engineer~~department may enter agreements for management of areas of high public value. Examples include parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

History: Effective November 1, 1989; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-21. Organized group activities.

Organized group activities that are publicly advertised or are attended by more than twenty-five people are prohibited on sovereign lands without a permit. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-22. Pets.

Pets are not allowed to run unattended on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-23. Camping.

Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-24. Hunting, fishing, and trapping.

All sovereign lands are open for public hunting, fishing, and trapping, except as provided in other rules, regulations, or laws or as posted at public entry points. Posting sovereign lands with signage by anyone other than the ~~state engineer~~department is prohibited without a sovereign lands permit. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-25. Unattended watercraft.

Watercraft may not be left unattended on or moored to sovereign lands for more than twenty-four hours except:

1. When moored to authorized docks; or
2. When moored to private property above the ordinary high watermark with a restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark.

Any person who violates this section is guilty of a noncriminal offense and must pay a fifty dollar fee per day.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-26. Removal of public property.

Public property, including trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, firewood, posts, or poles, may not be removed from sovereign lands without a permit. Firewood may be removed under certain stated conditions from designated firewood cutting plots. Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. A riparian owner may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the ~~state engineer~~department. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-27. Cultural or historical resources.

Artifacts or any other cultural or historical resources found on sovereign lands may not be disturbed or destroyed without formal written approval from the state historical society and a permit from the ~~state engineer~~department.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-28. Disposal of waste.

The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. Holding tanks of campers or watercraft may not be dumped on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-29. Glass containers.

Glass containers are prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-30. Abandoned property.

Abandonment of vehicles or other personal property is prohibited on sovereign lands.

History: Effective April 1, 2009.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-31. Firearms.

Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner or as otherwise posted at public entry points. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-32. Tree stands.

Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands, portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others

in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth and must be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are subject to removal and confiscation by the ~~state engineer~~department. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per tree stand.

History: Effective April 1, 2009; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-33. Baiting.

Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting or management activities conducted by the ~~state engineer~~department. Bait may be used to lure and take furbearers when engaged in lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014;_____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-34. Dredging or filling.

Unless permitted by the ~~state engineer~~department, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the ~~state engineer~~department must:

1. Issue an order to the violator identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
2. If the ordered action is not taken by the date specified in the order, the ~~state engineer~~department may take any action to restore the sovereign lands at the violator's expense.
3. The ~~state engineer~~department may commence a civil proceeding to enforce ~~anits~~ order of the ~~state engineer~~, or, if the ~~state engineer~~department takes action to restore sovereign lands, the ~~state engineer~~department may assess the costs of such action against the riparian owner's property where the dredging or filling occurred or may commence a civil proceeding to recover the costs incurred in such action. If the ~~state engineer~~department chooses to recover costs by assessing the costs against the riparian owner's property where the dredging or filling occurred and the property is insufficient to pay for the costs incurred, or if the riparian owner was not the party responsible for the dredging or filling, the ~~state engineer~~department may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
4. A person who receives an order from the ~~state engineer~~department under this section may send a written request to the ~~state engineer~~department for a hearing. The ~~state engineer~~department must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state engineer~~director determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the ~~state engineer~~department must set a hearing date without undue delay.

5. Any person aggrieved by the action of the ~~state engineer~~ director may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective April 1, 2010; amended effective July 1, 2014; _____.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33

ARTICLE 89-11
DROUGHT DISASTER LIVESTOCK WATER ASSISTANCE PROGRAM

Chapter
89-11-01 Drought Disaster Livestock Water Assistance Program

CHAPTER 89-11-01
DROUGHT DISASTER LIVESTOCK WATER ASSISTANCE PROGRAM

Section	
89-11-01-01	Definitions
89-11-01-02	Drought Declaration Required
89-11-01-03	Applicant Eligibility
89-11-01-04	Funding - Priority - Eligible Items
89-11-01-05	Noneligible Items
89-11-01-06	Application Procedure

89-11-01-01. Definitions.

1. "Commission" is defined in North Dakota Century Code section 61-02-02.
2. "Department" is defined in North Dakota Century Code section 61-03-01.2.
- ~~3.~~ "Livestock producer" means an individual who breeds or raises livestock or operates a dairy farm, who normally devotes the major portion of the individual's time to farming or ranching activities, and who normally receives at least fifty percent of the individual's annual gross income from farming or ranching.
- ~~4.~~ "Water supply project" includes the components and installation necessary to transfer and provide water from a water source to drought-affected livestock.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014; April 1, 2018; _____.
General Authority: NDCC 28-32-02, 61-03-13, 61-34-03
Law Implemented: NDCC 61-34-02

89-11-01-02. Drought declaration required.

Funds will only be disbursed for water supply projects in counties that the governor has declared to be a drought disaster area for purposes of this program.

The commission will determine the program's beginning and end dates.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014; April 1, 2018.
General Authority: NDCC 28-32-02, 61-03-13, 61-34-03
Law Implemented: NDCC 61-34-02

89-11-01-03. Applicant eligibility.

1. The applicant must be a livestock producer with livestock water supply problems caused by drought.
2. The applicant must first apply for and have been denied cost-share assistance from the United States department of agriculture farm service agency.
3. The applicant must receive department approval for a water supply project. A water supply project completed prior to the program activation date is not eligible.

History: Effective July 1, 1992; amended effective August 27, 2002; April 1, 2008; April 1, 2018;

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02, 61-34-04

89-11-01-04. Funding - Priority - Eligible items.

1. The commission shall provide funds for the program to the extent funding is available. Priority will be based on earliest completed application date.
2. Cost-share assistance may only be used for water supply projects that will provide a solution to a drought-related water supply shortage.
3. All wells drilled with funds provided under this program must be drilled by a North Dakota certified water well contractor as defined by North Dakota Century Code section 43-35-02.
4. Eligible items include new water wells, rural water system connections, pipeline extensions, pasture taps, and associated works, labor, materials, and equipment rentals for work completed by the producer to develop new water supply projects.
- ~~5. The applicant may receive up to fifty percent of the eligible costs, not to exceed four thousand five hundred dollars per project, with a limit of three projects per applicant.~~

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; April 1, 2008; July 1, 2014; April 1, 2018;

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-05. Noneligible items.

The following projects are not eligible for program funding:

1. Existing well rehabilitation.
2. A water supply project on federal land, state land, or land outside North Dakota.
3. A dry hole drilled in an attempt to construct a water well or locate a water source.
4. Stock dam or dugout construction dependent upon runoff, or projects dependent on surface water sources that may be unreliable during drought conditions.
5. Projects that require repair due to damage or failure to provide maintenance to an existing water source.
6. Hours billed for work completed by the applicant, the applicant's family, or their employees.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; July 21, 2006; April 1, 2008; July 1, 2014; April 1, 2018.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02

89-11-01-06. Application procedure.

1. Requests for assistance must be on a commission form and include:
 - a. Written proof the applicant applied for and was denied cost-share assistance from the United States department of agriculture farm service agency, including the reason for the denial.

- b. An area map indicating the proposed water supply project location.
 - c. A proposed water supply project cost estimate.
 - d. Verification the applicant is a livestock producer.
2. The ~~chief engineer~~department must review applications and acknowledge their receipt. The ~~chief engineer~~department must, within available funding limits, provide assistance to those livestock producers whose applications are approved. The applicant must agree to:
- a. Complete the project within one hundred eighty days of receiving funding approval notification. The ~~chief engineer~~department may grant a time extension if a written request providing just cause is submitted.
 - b. Provide actual expenditure receipts.
 - c. Grant the ~~commission~~department or its agent the right to enter the land to inspect the completed water supply project after giving reasonable notice to the applicant.
 - d. Indemnify and hold harmless the state of North Dakota, the commission, the department, and their agents from all claims resulting from or arising out of the activities of the applicant or applicant's agents.
3. Application forms may be obtained by contacting:

~~North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505
(701) 328-2750
www.swc.nd.gov the department.~~

History: Effective July 1, 1992; amended effective August 27, 2002; July 21, 2006; April 1, 2008; July 1, 2014; April 1, 2018;_____.

General Authority: NDCC 28-32-02, 61-03-13, 61-34-03

Law Implemented: NDCC 61-34-02, 61-34-04

ARTICLE 89-12
MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM

Chapter
89-12-01 Municipal, Rural, and Industrial Water Supply Program

CHAPTER 89-12-01
MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM

Section	
89-12-01-01	Definitions
89-12-01-02	Eligible Projects
89-12-01-03	Application for Feasibility Study Funding
89-12-01-04	Application to Determine Eligibility - Initial Review by the State Engineer [Repealed]
89-12-01-05	Preliminary Engineering Reports - Initial Review by State Engineer - Bureau Requirements [Repealed]
89-12-01-06	Application for Design and Construction Funding
89-12-01-07	Design and Construction Requirements [Repealed]
89-12-01-08	Funding - Priority
89-12-01-09	Reports to Commission and C-District [Repealed]
89-12-01-10	Contract Awards [Repealed]

89-12-01-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commission" ~~means the North Dakota state water commission~~ is defined in North Dakota Century Code section 61-02-02.
2. "Department" is defined in North Dakota Century Code section 61-03-01.2.
- ~~2-3.~~ "Design and construction" means preparation of the final design plans and the construction of a project.
- ~~3-4.~~ "Feasibility study" means a report of sufficient detail to provide a sound estimate of capital costs, water costs to users, and operation, maintenance, and replacement costs.
- ~~4-5.~~ "Garrison Diversion" means Garrison Diversion Conservancy District.
- ~~5-6.~~ "Preliminary engineering report" means a reconnaissance level report containing sufficient information to determine whether additional detailed studies are merited.
- ~~6-7.~~ "Program funds" means money available for municipal, rural, and industrial projects through the Garrison Diversion Reformulation Act of 1986, as amended by the Water Resources Development Act of 2000, Pub. L. 106-541, 114 Stat. 2572 (2000), administered by the bureau of reclamation.
- ~~7-8.~~ "Public water system" means a piped potable water system with at least fifteen service connections or regularly serving at least twenty-five individuals.
- ~~8-9.~~ "Regional water system" is a system that provides water to at least four public water systems and may also include rural water users.
- ~~9-10.~~ "Rural water users" means all users, excluding incorporated cities.

History: Effective June 1, 1994; amended effective January 1, 2015;_____.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-02. Eligible projects.

1. Design and construction activities for the following types of projects are eligible for financial assistance from program funds:
 - a. New ground water wells including mechanical and electrical components.
 - b. Pipelines from water sources to public water systems and principal supply works for rural water systems.
 - c. Booster pumping plants for supply lines.
 - d. Intake works and pumping plants for new surface water sources.
 - e. New or enlarged storage facilities.
 - f. New rural water systems or enlargements or extensions of existing rural water systems.
 - g. New regional water systems or enlargements or extensions of existing regional water systems.
 - h. New water treatment plants.
 - i. Modifications to and upgrades of existing water treatment plants.
2. Program funds may be used for engineering and legal; costs, costs incurred in conducting environmental reviews or cultural resources investigations, right-of-way costs, excluding the purchase of easements, and costs associated with the planning, design, and construction of eligible projects listed in subsection 1.
3. Program funds are not available for costs associated with operation, maintenance, and replacement of water supply or treatment systems or the costs associated with the preparation of the preliminary engineering report.

History: Effective June 1, 1994; amended effective January 1, 2015.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-03. Application for feasibility study funding.

1. To be considered for program funds, the project sponsor must submit an application to the chief engineer department and Garrison Diversion that includes:
 - a. Information explaining the need for the project, including its objectives and benefits.
 - b. The area to be served by the project.
 - c. A preliminary engineering report.
 - d. The approximate cost of the project.
 - e. The amount of funding sought from program funds and the amount the project sponsor intends to contribute to the feasibility study.
 - f. The results of all efforts made to secure funds from sources other than program funds. Provide the current rate schedule for the water supply and treatment systems.

- g. Other information the project sponsor believes pertinent or that the ~~chief engineer~~department requests.
2. During review of the application, the ~~chief engineer~~department, in consultation with Garrison Diversion, may decide which parts of the project are eligible for funding from program funds.
3. After review of the application, the ~~chief engineer~~department may prepare a report setting forth the recommendations regarding the project feasibility study funding. If a report is prepared, it must address whether the project is consistent with statewide plans and programs, and the ~~chief engineer~~department will provide a copy to the commission and Garrison Diversion.
4. The commission and Garrison Diversion will jointly approve program funds within the district.

History: Effective June 1, 1994; amended effective January 1, 2015; _____.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-04. Application to determine eligibility - Initial review by the state engineer.

Repealed effective January 1, 2015.

89-12-01-05. Preliminary engineering reports - Initial review by state engineer - Bureau requirements.

Repealed effective January 1, 2015.

89-12-01-06. Application for design and construction funding.

1. A project sponsor requesting design or construction funding must submit a feasibility study to the ~~chief engineer~~department.
2. For projects that deliver Missouri River water to the Hudson Bay drainage area, a determination must be made that treatment will be provided to meet requirements of the Boundary Waters Treaty Act of 1909.
3. The project sponsor must submit two copies of the feasibility study to Garrison Diversion and one copy to the ~~chief engineer~~department.
4. After review of the feasibility study, the ~~chief engineer~~department, in consultation with Garrison Diversion, may prepare a report setting forth the recommendations regarding the project design or construction funding. If a report is prepared, it must address whether the project is consistent with statewide plans and programs. The ~~chief engineer~~department will provide a copy to the commission and Garrison Diversion.
5. The commission and Garrison Diversion will jointly approve program funds within the district.

History: Effective June 1, 1994; amended effective January 1, 2015; _____.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-07. Design and construction requirements.

Repealed effective January 1, 2015.

89-12-01-08. Funding - Priority.

1. The commission may evaluate each eligible project based on the following criteria:
 - a. Need for improving water supply quantity or quality problems.

- b. Local contribution to project funding.
- c. Location of project.
- d. Ability to pay.
- e. Economic development.
- f. Water conservation plan and drought management plan.
- g. Other criteria determined to be relevant by the commission.

Based upon these evaluations, the commission, after consultation with Garrison Diversion, may rank the eligible projects in priority order.

2. Program funds may be approved for eligible projects to the extent funding is available as determined by the commission, after consultation with Garrison Diversion. Program funds may be in the form of grants or loans for feasibility, design, or construction.

History: Effective June 1, 1994; amended effective January 1, 2015.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-09. Reports to commission and c-district.

Repealed effective January 1, 2015.

89-12-01-10. Contract awards.

Repealed effective January 1, 2015.

**ARTICLE 89-14
PUBLIC HIGHWAY STREAM CROSSINGS**

Chapter
89-14-01 Stream Crossing Design

**CHAPTER 89-14-01
STREAM CROSSING DESIGN**

Section
89-14-01-01 Standards
89-14-01-02 Definitions
89-14-01-03 Design Flood Frequency
89-14-01-04 Floodplain Consideration - Upstream Development
89-14-01-05 Allowable Headwater
89-14-01-06 Deviations

89-14-01-01. Standards.

Except as provided in section 89-14-01-06, all highways constructed or reconstructed by the department of transportation, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual, firm, corporation, or limited liability company must be designed to meet the standards contained in this chapter. The department of transportation, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or any individual, firm, corporation, or limited liability company that fails to comply with these standards is not entitled to the immunity provided in North Dakota Century Code sections 24-03-06, 24-03-08, or 24-06-26.1.

History: Effective May 1, 2001; amended effective July 27, 2001; January 1, 2015.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-02. Definitions.

1. "Constructed" means to construct a new highway on a new location or corridor.
2. "Highway, street, or road" is defined in North Dakota Century Code section 24-01-01.1.
3. "Reconstructed" means to regrade, add a lane adjacent to the existing alignment, or do full depth road surface replacement on an existing highway location. For purposes of this chapter, reconstructed also includes replacing or installing a stream crossing.
4. "Stream crossing" means an opening to permit the flow of water under, adjacent to, or because of a highway.

History: Effective May 1, 2001; January 1, 2015.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-03. Design flood frequency.

The following table provides the minimum design standard recurrence interval of the event for which each type of stream crossing must be designed. Nothing contained in this chapter is intended to restrict an entity from providing greater capacity.

Type of Crossing	State Highway System						County	
	Urban System		Rural System				Rural System	
	Regional	Urban Roads	Principal Arterial		Minor Arterial	Major Collector	Major Collector	Off ⁴ System
Interstate			Other					
Bridges & Reinforced Concrete Boxes	25 year ²	25 year ²	50 year ²	50 year ²	50 year ²	25 year ²	25 year ^{2, 3}	15 year ^{2, 3}
Roadway Culverts	25 year ²	25 year ²	50 year ²	25 year ²	25 year ²	25 year ²	25 year ^{2, 3}	15 year ^{2, 3, 5}
Storm Drains	10 year ¹	5 year ¹	10 year ²	10 year ²	10 year ²	10 year ²		
Underpass Storm Drains	25 year ¹	25 year ¹	50 year ²	25 year ²	25 year ²	25 year ²		

¹Discharges must be computed using the rational method or other recognized hydrologic methods.

²Discharges must be computed using United States geological survey report ~~92-4020~~2015-5096 or other recognized hydrologic methods.

³If an overflow section is provided, the pipes and the overflow section, in combination, must pass the appropriate design event within the headwater limitations provided in this chapter.

⁴Off system roads include all township roads.

⁵For township roads, the recurrence interval is 10 years.

History: Effective May 1, 2001; amended effective July 27, 2001; January 1, 2015;_____.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-04. Floodplain consideration - Upstream development.

All stream crossings must comply with applicable floodplain regulations and regulatory floodway requirements per North Dakota Century Code chapter 61-16.2. If a stream crossing is being replaced and buildings or structures are located upstream from the crossing, the stream crossing must not be reconstructed in a manner that increases the likelihood of impacts to those upstream buildings or structures, even if the capacity of the crossing being replaced was greater than the capacity otherwise required by this chapter. Any stream crossing constructed as part of a newly constructed roadway must be constructed to pass ~~a one-hundred-year event~~ the Federal Emergency Management Agency identified 1-percent annual-chance flood event flow without the resulting increase in headwater impacting any existing buildings or structures. Structures, for the purposes of this section, include grain bins, silos, feedlots, and corrals. Structures do not include pasture fencing.

History: Effective May 1, 2001; amended effective January 1, 2015;_____.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-05. Allowable headwater.

The allowable maximum headwater when passing the design discharge must be measured from the bottom of the channel. For arch pipes, the maximum allowable headwater must be based on the rise of the pipe, and the pipe size category must be the equivalent round pipe size. For multiple pipe installations, the pipe diameter used to calculate the allowable headwater must be the diameter of the largest pipe. Tailwater resulting from downstream conditions, either natural or manmade, must be accounted for in the determination of the crossing's capacity and the resulting headwater. Additional guidance is provided in the North Dakota department of transportation design manual. If a crossing results in less than one-half foot [15.24 centimeters] of headloss when passing the appropriate design discharge, this section does not apply.

Streambed Slope (feet/mile)	Pipe Size	Allowable Headwater
<5	24" - 54"	pipe diameter + 2 feet
	≥ 60"	1.52 pipe diameters
5 to 10	24" - 36"	pipe diameter + 2 feet
	42" - 54"	1.5 pipe diameters
	≥ 60"	2 pipe diameters
>10	≥ 24"	2 pipe diameters

History: Effective May 1, 2001; amended effective January 1, 2015.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-06. Deviations.

The board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or any individual, firm, corporation, or limited liability company may deviate from the standards contained in this chapter if the deviation is approved in writing by the ~~state engineer~~ department of water resources and the department of transportation. A request to deviate from the standards must be made in writing and must set forth the reasons for the proposed deviation. The ~~state engineer~~ department of water resources and department of transportation may grant a deviation for good and sufficient cause after considering public safety, upstream and downstream impacts, and other relevant matters.

The department of transportation may deviate from these standards if the department determines it is appropriate to do so and the crossings are designed under scientific highway construction and engineering standards. The basis for the department's decision must be documented in writing.

Roads constructed as part of a surface coal mining operation for use solely as part of the mining operation are not subject to the requirements of this chapter. Roads constructed because of a surface coal mining operation for use by the public are bound by the requirements of this chapter, but deviations may be requested under this section.

History: Effective May 1, 2001; amended effective January 1, 2015;_____.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 28-32-02, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1