

NORTH DAKOTA'S

# WATER USE PERMITTING PROCESS



## BACKGROUND

North Dakota uses the prior appropriation doctrine as the foundation for establishing water rights. Under this doctrine, typically referred to as “first in time, first in right,” the first user of water acquires a priority for the use of that water. The location of a landowner’s property with respect to the water source is not a factor in determining water rights in North Dakota.

## DO I NEED A WATER PERMIT?

A permit is required from the Department of Water Resources (DWR) for all uses of water, except in cases when both the amount of water to be impounded, diverted, or withdrawn is less than 12.5 acre-feet (4,073,137 gallons), and the contemplated use is for domestic purposes or livestock, fish, wildlife, or other recreational uses. If the water use does not require a permit, the DWR must be notified of the location and the acre-feet capacity of such constructed works, dams, or dugouts. If a permit is required, and the need for water would exceed twelve months or the works of the project are permanent, a conditional water permit should be applied for. If the need for water is temporary and does not exceed twelve months, then a temporary water permit should be applied for. For information regarding temporary water permits, please contact the DWR at (701) 328-2754.

Temporary &  
Conditional  
Water Permit  
Information



## N.D.C.C. § 61-01-01

North Dakota Century Code (N.D.C.C.) § 61-01-01 states, “All waters within the limits of the state from the following sources of water supply belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use must be acquired pursuant to chapter 61-04:”

### 1 SURFACE WATER

Waters on the surface of the earth, excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes;

### 2 GROUNDWATER

Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water;

### 3 RESIDUAL WATERS

All residual waters resulting from beneficial use, and all waters artificially drained; and

### 4 ALL WATERS







All waters, excluding privately owned waters, in areas determined by the DWR to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.

# CONDITIONAL WATER PERMIT APPLICATION PROCESS

## APPLICATION PROCESS

The first step is to complete the application form and submit it to DWR with the required map and application fee. The fee varies from \$100 for recreational, livestock, and fish and wildlife use, to \$1,000 for an industrial use permit for volumes in excess of 1 acre-foot annually. The priority date is established when the application is received by the DWR.

If the DWR receives applications for the same water source within 90 days of each other, and that source is insufficient to supply all applicants, the applications are considered competing applications. As a result the DWR shall adhere to the following order of priority:

- 1  Domestic
- 2  Municipal or Public
- 3  Livestock
- 4  Irrigation
- 5  Industrial
- 6  Fish, Wildlife, and Other Recreational Uses

Conditional  
Water Permit  
Application  
Instructions



## NOTIFICATION & PUBLIC COMMENT PROCESS

1. When the DWR receives a completed application, the applicant is instructed to send a **“Notice of Application”** by certified mail to all record title owners of real estate and water permitholders within a **one-mile radius** of the point of diversion, as well as all municipal or public water use facilities within a **12-mile radius** of the proposed point of diversion. Exceptions for the need to notify all real estate owners are as follows:

If the **one-mile radius** extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.

If the **one-mile radius** includes land within the geographical boundary of a rural subdivision where the lots are ten acres or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.

If the **one-mile radius** includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.

2. The notice includes **essential facts** about the application, including the newspaper in which the notice of the water permit application will be published with the date by which any person having an interest in the application may file written comments with the DWR regarding the application.
3. After notice of application has been mailed to those required, the applicant completes an affidavit of notice and returns it to the DWR by certified mail. 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 by certified mail.
4. Upon receipt of the completed affidavit, the DWR **publishes the Notice of Application** in the official newspaper of the county in which each proposed point of diversion is located. The notice is published once a week for two consecutive weeks. The notice will specify the date by which any person having an interest in the application may submit written comments to the DWR. A copy of the notice will be sent to the applicant. The applicant pays the cost of publication.

# CONDITIONAL WATER PERMIT APPLICATION PROCESS

## REVIEW OF APPLICATION

After the application and notification steps have been completed, the DWR will review the water permit application. For a water permit to be issued, it must meet the following criteria:

- a. The rights of a prior appropriator will not be unduly affected.
- b. The proposed means of diversion or construction are adequate.
- c. The proposed use of water is beneficial.
- d. The proposed appropriation is in the public interest. In determining the public interest, the DWR considers the following:
  1. The benefit to the applicant resulting from the proposed appropriation.
  2. The effect of the economic activity resulting from the proposed appropriation.
  3. The effect on fish and game resources and public recreational opportunities.
  4. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
  5. Harm to other persons resulting from the proposed appropriation.
  6. The intent and ability of the applicant to complete the appropriation.

The DWR will then make a recommended decision on the application, and provide a copy of the recommended decision to the applicant and any person who filed written comments. Within 30 days of service of the recommended decision, the applicant and any person who filed written comments may file additional written comments with the DWR, request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in the prescribed manner. If a request for an adjudicative proceeding is granted, the DWR will designate a time and place for the adjudicative proceeding and serve a copy of the notice of the adjudicative proceeding to the applicant and any person who filed written comments.



## DEVELOPMENT OF WATER PROJECT

When a conditional water permit is granted, the permit holder is given a period of time to put the water to beneficial use according to the conditions of the permit. The period of time given for development is typically three years, per policy.

After the water is put to beneficial use and the facilities are inspected in order to determine their capacity, safety, and efficiency, a perfected water permit is issued. A water right is acquired when water is put to beneficial use in accordance with the terms of the permit. The perfected permit should be recorded with the county recorder's office, as a water right is a property right.

A permit holder may lose the right to use water if there is a failure to:

1. Comply with the terms of the permit,
2. Put water to beneficial use, or
3. Carry out directives of the DWR.

In summary, a right to appropriate water can be acquired for beneficial use only as provided under N.D.C.C. chapter 61-04, which in part states that beneficial use shall be the basis, the measure, and the limit of the right to the use of water. It should also be noted that if water is not put to beneficial use for a period of three successive years without good and sufficient cause, the permit is subject to cancellation.

# WHICH WATER PERMIT DO I NEED?

Is the volume of water impounded, diverted, or withdrawn less than 12.5 acre-feet (4,073,137 gallons)?

Is water being used to irrigate less than 5 acres?

Is the contemplated use of water for domestic purposes or livestock, fish, wildlife, or other recreational uses.

NO

YES

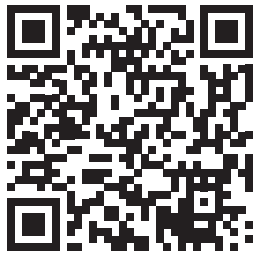
Is the use of water temporary and the period of use will not exceed twelve months?

No permit required, but the Department of Water Resources must be notified of the location and the acre-foot capacity of constructed works, dams, or dugouts.

YES

NO

**APPLY FOR A TEMPORARY WATER PERMIT**



**APPLY FOR A CONDITIONAL WATER PERMIT**



## ADDITIONAL DWR PERMITS MAY BE REQUIRED



### **DWR SOVEREIGN LAND PERMIT | 701.328.4935**

Sovereign Land Permit - may be required for access and withdrawals from navigable waters of the State.



### **DWR CONSTRUCTION PERMIT | 701.328.2752**

Construction Permit - may be required for off-stream storage ponds capable of storing more than 25 acre-feet of water.



NORTH  
**Dakota** | Water Resources  
Be Legendary.

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