

**North Dakota  
Water Resource  
Districts Association**

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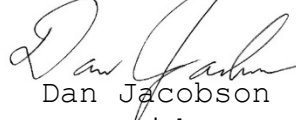
Dear North Dakota Water Managers:

North Dakota's water managers have extensive authorities, duties, and responsibilities for the management of North Dakota's water resources.

This Handbook provides information to assist water managers for the management of North Dakota's water resources.

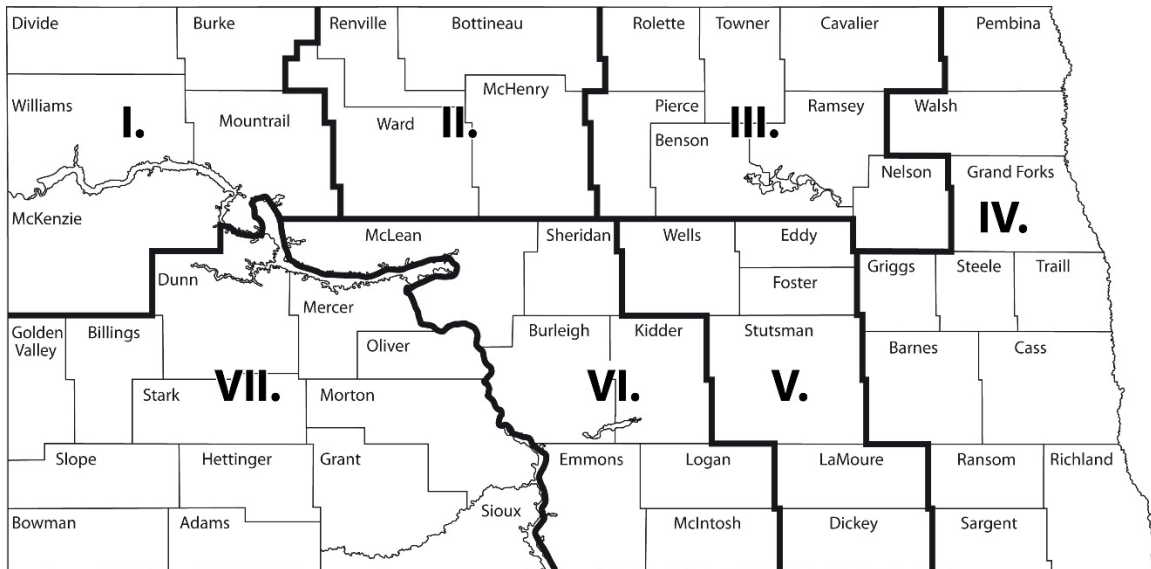
The mission of the North Dakota Water Resource Districts Association is to support and help water managers achieve wise and effective water resource management in North Dakota. This Handbook is a part of that mission.

Sincerely,

  
Dan Jacobson  
President

# HANDBOOK FOR WATER MANAGERS

The Handbook was first published by the North Dakota Water Resource Districts Association in 1989, and updated in 1995, 2002, 2003, 2004, 2010, 2017, and 2020. This is the updated version for 2021.



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# IMPORTANT NOTICE

The material and information contained in this Handbook is to assist water managers in carrying out the duties, authorities, and responsibilities for the management of North Dakota's water resource.

**This Handbook is not to be used as a substitute for your own attorney when legal questions arise. Nor are these materials to be construed as a legal interpretation of the law for specific problems that water managers may encounter. Each specific situation has different factual circumstances which must be considered. Therefore, please contact your Attorney for any legal issues you may encounter.**

We hope that you will find the materials contained in this Handbook helpful.

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- ND Surface Water Sources
- ND River Basin Boundaries
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- ND Annual Rainfall

## HISTORY OF WATER RESOURCE DISTRICTS

### 1. Creation of Water Resource Districts

The function of government in the area of water management is critically important. Local groups and local governments often rely on the state and federal government to provide assistance beyond the scope of their ability or jurisdiction. State and federal governmental agencies in turn rely on effective local governments for sponsorship or implementation of federal programs and projects.

In the area of water management, the need for a local unit of government to be responsible for water management and water development was recognized when enabling legislation for water conservation districts was first enacted in 1935 (S.L. 1935, Chapter 228). Initially, a water conservation district could be established only by order of the State Water Conservation Commission, upon receipt of a petition signed by any county, city, village, or township, or by 50 percent of the freeholders within the proposed district.

The initial water management laws were codified as N.D.C.C. § 61-16. This chapter remained virtually unchanged until 1957, when the Legislature enacted a comprehensive reform of water management statutes. The name for local water resource districts was changed from "water conservation district" to "Water Conservation and Flood Control District",

but the procedures for creation were similar. The State Water Conservation Commission continued to have the authority to create a district and establish the boundaries upon receipt of a proper petition.

In 1973, the Legislature again changed the name, this time to "water management district", and decided that all land in North Dakota should be in a "water management district".

In 1981, the Legislature again changed the name, this time to "water resource districts", and enacted another comprehensive reform of water management laws. In so doing, it expanded the powers and authorities, and made other changes designed to improve the effectiveness of water resource districts.

In addition to the initial enabling legislation for water resource districts in 1935, and the major revisions and expansion in 1957 and 1981, the Legislature has made a few changes to the statutes pertaining to water resource districts each legislative session.

## 2. Drain Boards

Enabling legislation for drain boards was first enacted in 1895 (R.C. 1895, s 1444), and was a part of North Dakota statutes from 1895 until 1981. Initially, drain boards were created by the county commission by appointing three freeholders to serve as a Board of Drain Commissioners. In

1981, the Legislature eliminated "legal" drain boards, as they were known, and transferred the powers and authorities of drain boards to water resource districts. The Legislature also changed the name of "legal" drains to "assessment drains".

### 3. Boundaries of Water Resource Districts

When water resource districts were first created in 1935, the Legislature gave the State Water Commission the authority to set boundaries. The Legislature specifically directed the State Water Commission not to consider county and township boundaries when creating districts. The 1935 version of N.D.C.C. § 61-16-05 provided:

**61-16-05. Area to be Included Within District - How Determined.**

In determining the area to be included within the district, the commission shall disregard township and county boundaries and shall consider only the drainage areas to be affected by the water development proposed and the probable future development thereof. Whenever practicable, such boundaries shall follow section lines.

At that time, the Legislature preferred watershed boundaries over political boundaries for water resource districts and gave the State Water Commission sole discretion to determine and establish the boundaries of water resource districts.

In 1957, N.D.C.C. § 61-16-05 was amended to provide as follows:

**61-16-05. Area to be Included Within District - How Determined.**

The area or areas to be included in a water conservation and flood control district shall embrace the territory described in the petition for the creation thereof. The commission shall, however, consider and may include within boundaries of the district, the watershed and drainage areas which will be benefited by the construction and maintenance of works therein for water conservation, flood control of drainage as the case may be.

So, beginning in 1957, boundaries for water resource districts were established as requested in the petition, yet the State Water Commission had the authority to include additional watershed and drainage areas benefited by the creation of the district.

In 1973, when the Legislature decided that all land in North Dakota must be within a water resource district, most water resource districts were created along county boundaries. In 1981, the North Dakota Legislature considered but did not adopt a proposal to reorganize water resource districts along watershed boundaries.

During the consideration of the watershed proposal in 1981, the North Dakota State Engineer offered the following reasons for supporting the watershed idea in the State Water Commission "Oxbow" publication. State Engineer Vern Fahy stated as follows:

As most of you know, I support the concept of water management on a watershed basis, as provided for in HB-1077. My support is based on three reasons:



1. First, within practical considerations, watershed management means that individual stream systems would be managed from their source to their mouth. By being accountable to all people in a stream system, all interests must be carefully balanced. This is the best way to ensure that proper water management decisions are made. For example, flood water retention by upstream residents and wise floodplain development by downstream residents must be balanced to achieve acceptable and workable decisions. The result of this watershed approach is the most effective and coordinated water management that is possible.

2. Second, the days when the federal government provided the initiative and funds for our water development and water management projects are over, at least for the present time. Although some scattered funds may still be available, if water management solutions are going to be implemented in North Dakota, the state and local governments must provide the leadership and initiative. This requires innovative and effective ideas and approaches to water management solutions.

3. The Nebraska example of water management on a watershed basis has proved to be extremely workable and effective. Prior to adoption of the watershed concept in 1972, Nebraska had many local water management, water use, and other water-related districts established along county lines. These were consolidated into 24 Natural Resource Districts, which were established primarily along watershed boundaries. After the initial organizational period, Nebraska's Natural Resource Districts have provided the initiative and leadership to resolve many localized water management problems throughout Nebraska. What was previously thought to be local control in Nebraska has truly become local control.

Notwithstanding the support of the State Engineer, the proposal was rejected by the legislature.

The evolution of water resource districts has resulted in a water resource district in every county in North Dakota. In a few counties, more than one water resource district exists.

Water resource districts have extensive duties, authorities, and responsibilities, and are facing increasing challenges.

Water resource districts are North Dakota's political subdivisions assigned to work towards coordinated and comprehensive management of the state's water resources at the local level.

#### 4. Joint Water Resource Boards

Even though the Legislature did not adopt the proposal to reorganize water resource districts along watershed boundaries, it did authorize water resource districts to create joint water resource boards to address water management issues within hydrologic boundaries. Water resource districts in West River, Souris River, Devils Lake, Red River, and James River have all created joint water boards.

### **STATE POLICY TOWARDS WATER MANAGEMENT**

The official state policy of North Dakota towards water management is expressed in three separate statutes:

#### **61-01-26. Declaration of state water resources policy.**

In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety, and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state,

depend in large measure upon the optimum protection, management, and wise utilization of all of the water and related land resources of the state.

2. Well-being of all of the people of the state shall be the overriding determinant in considering the best use, or combination of uses, of water and related land resources.
3. Storage of the maximum water supplies shall be provided wherever and whenever deemed feasible and practicable.
4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor. The plans and programs for the conservation and development of these resources may include implementation of a program to cost-share with local sponsors of water quality improvement projects.
5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities, including consideration of cost-sharing for water quality improvement projects.
6. Required assurances of state cooperation and for meeting nonfederal repayment obligations of the state in connection with federal-assisted state projects shall be provided by the appropriate state department or agency.
7. Required assurances of local cooperation and for meeting nonfederal repayment obligations of local interests in connection with federal-assisted local projects may, at the request of political subdivisions or other local interests be provided

by the appropriate state department or agency, provided, if for any reason it is deemed necessary by any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision or other local interests in connection with the construction, operation, or maintenance of any such project, the state shall have and may enforce a claim against the political subdivision or other local interests for such expenditures.

The provisions of this section may not be construed in any manner to limit, impair, or abrogate the rights, powers, duties, or functions of any department or agency of the state having jurisdiction or responsibilities in the field of water and related land resources conservation, development, or utilization.

N.D.C.C. § 61-16.1-01 establishes the legislative intent and purpose section for water resource districts.

**61-16.1-01. Legislative intent and purpose.**

The legislative assembly of North Dakota recognizes and declares that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the management, conservation, protection, development, and control of waters in this state, navigable or non-navigable, surface or subsurface, the control of floods, the prevention of damage to property therefrom, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. To realize these objectives it is hereby declared to be the policy of the state to provide for the management, conservation, protection, development, and control of water resources and for the prevention of flood damage in the watersheds of this state and thereby to protect and promote the health, safety, and general welfare of the people of this state.

The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water and related land resources, and declares that the most efficient and economical method of accelerating these achievements is to establish water

resource districts encompassing all of the geographic area of the state, and emphasizing hydrologic boundaries.

Finally, the Legislature has specifically assigned certain duties and responsibilities to water resource districts. These specific duties and responsibilities are contained in N.D.C.C. § 61-16.1-10.

**61-16.1-10. Responsibilities and duties of water resource board.**

Each water resource board shall:

1. Meet jointly with other water resource boards within a common river basin at least twice each year at times and places as mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
2. Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. Exercise jointly with other water resource districts within a river basin to effectively resolve the significant and common water resource management problem or problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
4. Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and carry out to the maximum extent possible the water management policy that upstream landowners and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.
5. Address and consider fully in the planning of any surface water project the downstream impacts caused by the project. A determination of whether to proceed with the construction of a project shall be

based on the following principles:

- a. Reasonable necessity of the project.
  - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
  - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
6. Require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

The mandatory duties and the extensive authorities vested with water resource districts reflect the importance of strong and effective water management at the local level.

### **Local Authority Over Water Rights**

Whenever a person or entity wishes to appropriate and use any amount of water for municipal or industrial purposes, that person or entity must acquire a water permit. If a person or entity wishes to irrigate more than five acres of land, a water permit is also necessary. Finally, any person or entity desiring to appropriate water for domestic livestock, fish or wildlife, and recreation must receive a permit if the proposed diversion exceeds twelve and one-half acre-feet of water. A conditional water permit is required prior to constructing any works (well, dam, impoundment, etc.) for a project that will require a water permit.

Water resource districts do not have authority or control over the appropriation of water. The Department of Water Resources has the exclusive authority over water permit applications for the appropriation of up to 5,000 acre-feet of water, while the State Water Commission has the final authority for requests in excess of 5,000 acre-feet of water.

The department may also authorize emergency or temporary authorization contained in 61-04-02.1

**61-04-02.1. Emergency or temporary authorization.**

The department of water resources may authorize emergency or temporary use of water for periods not to exceed twelve months if the department determines the use will not be to the detriment of existing rights. The department shall establish by rule a separate procedure for processing applications for emergency or temporary use. Prescriptive and other rights to the use of water may not be acquired by use of water as authorized in this section.