CHAPTER 61-24.3
SOUTHWEST PIPELINE PROJECT

61-24.3-01. Legislative findings and intent.

The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves and requires the exercise of the sovereign powers of the state and concern a public purpose. It is necessary the southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed twenty-five million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter may not be construed to abrogate or limit the rights, powers, duties, or functions of the state water commission or the department of water resources, but are supplementary to the rights, powers, duties, or functions. Nor may this chapter be construed as limiting or affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

61-24.3-02. Definitions.

In this chapter:

1. "Commission" means the state water commission.
2. "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, limited liability companies, and other entities which have entered into and executed water service contracts with the commission for the purchase of water from the commission through the southwest pipeline project.

61-24.3-03. Authorization of southwest pipeline project.

The preliminary designs for a water supply facility for supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River for multiple uses, as set forth in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, are hereby confirmed and approved, under the designation of the southwest pipeline project, and the construction of the southwest pipeline project shall be initiated and completed by the state water commission substantially in accordance with plan B of the engineering preliminary design final report, state water commission project no. 1736, dated September 1982, except as otherwise specifically provided in this chapter. The commission shall have the authority to eliminate the construction of any primary or secondary transmission mains which are part of plan B of the engineering preliminary design final report if the water user entities to be served by the primary or secondary transmission mains do not execute water service contracts for the purchase of a sufficient quantity of water, as determined by the commission, to justify the construction of the primary or secondary transmission mains. Chapters 49-22 and 49-22.1 shall not apply to this chapter. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state.

61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services.

Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be

awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section does not apply to contracts that involve federal moneys when a preference would be contrary to federal laws or regulations, contracts covered under chapter 48-01.2, or to architect, engineer, professional right of way, and land surveying services.

61-24.3-04. Water treatment.

The extent and type of water treatment and the location of a water treatment plant or plants for the southwest pipeline project shall be determined by the commission, in accordance with law and as in the judgment of the commission the interests of the state and the water user entities of the southwest pipeline project are best served. In determining the location of the water treatment plant or plants, the commission may only consider alternatives that will provide treated water to all potential using entities at a cost not to exceed the cost of water from the single treatment facility originally provided for in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982. Any existing water treatment facility that is to be used in the final pipeline design must be made available to the state in operable condition free of deferred maintenance costs and at a cost that does not exceed the actual depreciation, maintenance, and operation costs of that facility. A water treatment facility is in operable condition if, at the time it becomes part of the southwest pipeline project, it is meeting the needs of its current users. Capital improvements necessary for upgrading any existing water treatment facility to be used in the southwest pipeline project must be borne by the state water commission.

61-24.3-05. Intake structure.

The intake structure to be utilized for the withdrawal of water from the water source for the southwest pipeline project shall be determined by the commission, as in the judgment of the commission the interests of the state and water user entities of the southwest pipeline project are best served. In making its determination on the selection of the intake structure, the commission shall consider, among other things, cost, project stability, capacity and ability to withdraw water, and flexibility in delivering water to water user entities.

61-24.3-06. Secondary transmission mains.

Secondary transmission mains shall be constructed as part of the southwest pipeline project, as provided in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, except as provided in section 61-24.3-03.

61-24.3-06.1. Water distribution lines.

Notwithstanding the plans and specifications of state water commission project no. 1736, as authorized in this chapter, the state water commission is hereby authorized to investigate the integration of rural water delivery into the southwest pipeline project, state water commission project no. 1736. If the commission determines that construction cost savings, operation and maintenance cost savings, operation efficiencies, and other advantages can be realized by incorporating water supply, distribution, and delivery into one entire system, and that such benefits and advantages outweigh any additional costs or disadvantages, the commission shall plan, design, integrate, incorporate, construct, operate, and maintain the southwest pipeline

project and rural water delivery as one system. The exercise of this authority must be in the manner and time as the commission may deem appropriate.

61-24.3-07. Capacity for industrial use.

Upon receipt of a commitment from any large industrial user through the execution of a water service contract for the purchase of water from the southwest pipeline project, or other appropriate contract, as required by the commission, the commission shall have the authority to include in the southwest pipeline project sufficient capacity to provide water to such large industrial user, and to determine the rates and charges for delivery of water to the industrial user.

61-24.3-08. Capacity for South Dakota users.

Upon receipt of a commitment from water user entities in South Dakota, through the execution of a water service contract for the purchase of water from the southwest pipeline project, whereby no less than the total additional capital costs of increasing the capacity of the southwest pipeline project to provide water through the southwest pipeline project for the water user entities in South Dakota will be paid by the water user entities in South Dakota, the commission shall have the authority to include in the southwest pipeline project the additional capacity for water user entities in South Dakota as provided in plans SD of the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, and to determine the rates and charges for the operation and maintenance costs of delivery of water to such water user entities.

61-24.3-09. Pipeline construction standards.

The commission, as in its judgment the interests of the state and the water user entities of the southwest pipeline project are best served, shall determine the pipeline construction standards to be utilized for the southwest pipeline project. In making its determination, the commission shall consider cost, maintenance, life of pipelines, and other factors it deems appropriate.

61-24.3-10. Commission to construct, operate, and maintain southwest pipeline project - Rules made by commission.

The commission shall have the authority to:

1. Construct the southwest pipeline project as provided in this chapter.
2. Operate and maintain, or provide for the operation and maintenance of the southwest pipeline project.
3. Exercise all express and implied rights, powers, and authorities, including all powers and authorities granted in chapter 61-02, necessary to carry out the provisions and purposes of this chapter.
4. Make and enforce orders, rules, and bylaws for the operation and maintenance of the southwest pipeline project.
5. Sell, transfer, or exchange property acquired for the southwest pipeline project provided the commission determines the property is not necessary for the operation, maintenance, or construction of the southwest pipeline project. For a period of sixty days, the property must first be offered for sale, transfer, or exchange to the current owner of the surrounding property from which the property was obtained. Any parcel of property sold, transferred, or exchanged under this section may not exceed two acres [.81 hectare]. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale, transfer, or exchange of property pursuant to this subsection.

61-24.3-10.1. Deposits of income.

All income derived from the lease and management of lands acquired by the state water commission for the southwest pipeline project must be deposited in the resources trust fund.

61-24.3-11. Commission to fix water rates for the southwest pipeline project.

The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the southwest pipeline project. The payments for water service include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the southwest pipeline project reserve fund for replacement, as established by section 61-24.3-16, for replacement and extraordinary maintenance of southwest pipeline project works. The amount of such reserve fund for replacement shall be determined by the commission.

61-24.3-12. Operation and maintenance - Commission to employ manager and employees.

The commission shall obtain the assistance necessary for the operation and maintenance of the southwest pipeline project. To that end, it may appoint a manager, and may appoint subordinate officers and employees. It may designate the manager its general agent in respect to the operation and maintenance of the southwest pipeline project, but subject, nevertheless, in such agency, to the supervision, limitation, and control of the commission. It may appoint or employ such contractors, engineers, attorneys, and other experts, agents, and servants as in the judgment of the commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation, within legislative appropriation, and the bonds of all such persons so engaged. Subject to the control and regulation of the commission the manager of the southwest pipeline project may appoint and employ such deputies and other subordinates, and such contractors, engineers, attorneys, and other experts, agents, and servants as the manager shall deem required. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the southwest pipeline project, shall remain within the appropriation and earnings lawfully available in each year for such purpose.

61-24.3-13. Removal and discharge of appointees.

The commission may remove and discharge any and all persons appointed in the exercise of powers granted by this chapter, whether by the commission or by the manager of the southwest pipeline project. Any such removal may be made whenever in the judgment of the commission, the public interests and the interests of the southwest pipeline project require it. All appointments and removals contemplated by this chapter shall be made as the commission shall deem most fit to promote the purpose and efficiency of the southwest pipeline project.

61-24.3-14. Operation and maintenance fund

To identify and distinguish the revenues received by the commission from water user entities for operation and maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project operation and maintenance fund. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for operation and maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in said fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

61-24.3-15. Revenues for operation and maintenance - Deposit - Use.

Money derived and received by the commission from water user entities for operation and maintenance of the southwest pipeline project shall be deposited by the commission in the

operation and maintenance fund, and shall be used for no purposes other than to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

61-24.3-16. Reserve fund for replacement.

To identify and distinguish the revenues received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for replacement and extraordinary maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in the fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

61-24.3-17. Revenues for replacement - Deposit - Use.

Money derived and received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project shall be deposited by the commission in the reserve fund for replacement, and shall be used for no purposes other than to pay for replacement or extraordinary maintenance of works which are part of or associated with the southwest pipeline project.

61-24.3-18. Water rates for capital costs - Deposit.

Money derived and received from water user entities for capital costs of the southwest pipeline project may be pledged by the commission for the repayment of bonds issued for the construction of the southwest pipeline project. Any money not pledged must be deposited by the commission in the resources trust fund, established pursuant to section 57-51.1-07, and may be expended only pursuant to legislative appropriation for the purposes specified in subsection 1 of section 57-51.1-07.

61-24.3-19. Validation of water service contracts.

Water service contracts entered by the commission for the distribution and sale of water to water user entities from the southwest pipeline project are confirmed and approved by the legislative assembly. The commission may commence a special proceeding in and by which the proceedings of the commission and the making of water service contracts are judicially examined, approved and confirmed, or disapproved and disaffirmed. The proceeding must comply as nearly as possible with the procedure authorized by sections 61-07-22 through 61-07-28 for irrigation district contracts. The requirements of section 40-33-16 are not applicable to contracts between the state water commission and cities for water service and cities for water service from the southwest pipeline project, provided the contracts were approved by the city governing body and executed before January 1, 1999.

61-24.3-20. Other pipelines - Commission approval required.

Upon construction of the southwest pipeline project, utilities, corporations, limited liability companies, companies, or any other person or entity which proposes to install or construct a pipeline or other underground conveyance system which crosses or intersects the southwest pipeline project may do so only with the approval of the commission, in accordance with the requirements and conditions imposed by the commission for the pipeline or other crossing.

61-24.3-21. Authorization of facilities - Water service areas.

Notwithstanding the plans and specifications of state water commission project no. 1736, as authorized in this chapter, the state water commission may include as part of the southwest

pipeline project the delivery of water from southwest pipeline facilities to areas in Dunn County, Mercer County, and Oliver County and plan, design, integrate, incorporate, construct, operate, and maintain necessary facilities for this purpose as part of the southwest pipeline project, consistent with this chapter. The exercise of this authority must be in the manner and time the commission deems appropriate.