

ARTICLE 89-03

WATER APPROPRIATIONS

Chapter	
89-03-01	Water Permits
89-03-02	Modification of a Water Permit
89-03-03	Definitions

CHAPTER 89-03-01 WATER PERMITS

Section	
89-03-01-01	Submission of Application for Conditional Water Permit
89-03-01-01.1	Priority Date
89-03-01-01.2	Land, Property, or Other Interest Requirement for Conditional Water Permit
89-03-01-01.3	When a Water Permit for Stored Water May <u>Must</u> Be Obtained
89-03-01-01.4	Amount of Water That May Be Held In Storage Pursuant to <u>Under</u> a Water Permit
89-03-01-01.5	Sale of Excess Water by an Incorporated Municipality or Rural Water System
89-03-01-02	Correction of Unsatisfactory Application
89-03-01-03	Amendment of Application
89-03-01-03.1	Transfer of an Application to Another Parcel
89-03-01-03.2	Assignment of an Application to Another Person
89-03-01-03.3	Evaporative Losses
89-03-01-04	Notice of Application
89-03-01-05	Publication of Notice of Water Permit Applications
89-03-01-05.1	Notice of Decision on Water Permit Application [Repealed]
89-03-01-06	Filing Proof of Publication and Mailing [Repealed]
89-03-01-06.1	Consideration of Evidence Not Contained in the State Engineer's Record [Repealed]
89-03-01-06.2	Notice of Continuance - Responsibility
89-03-01-06.3	Record - Official Notice
89-03-01-07	Necessity of Works and Construction of Works for a Conditional Water Permit
89-03-01-08	Point of Diversion
89-03-01-09	Appropriation Not Requiring Water Permit
89-03-01-10	Emergency or Temporary Authorization
89-03-01-10.1	Temporary Water Transfer for Irrigation
89-03-01-10.2	<u>Temporary Permit Fees</u>
89-03-01-11	Competing Applications
89-03-01-12	Extensions and Cancellation
89-03-01-13	Report of Water Usage
89-03-01-13.1	<u>Fines - Water Use Reporting</u>
89-03-01-14	Notice

89-03-01-01. Submission of application for conditional water permit.

~~Application~~ An application for a conditional water permit must be submitted to the state engineer on the form provided by the state engineer. A map containing the information prescribed by the state engineer must accompany the application. ~~The~~ Unless the state engineer 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 ~~licensed~~ surveyor ~~unless another type of map is first approved by the state engineer.~~ ~~Application forms are available at the office of the state engineer in Bismarck. A fee schedule and instructions for completion of the form are enclosed with it.~~ Information licensed in the state of North Dakota. The state engineer may require information not requested in the application ~~may nonetheless be required by the state engineer.~~

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, 61-04-06(4)(f)

89-03-01-01.1. Priority date. The date of receipt by the state engineer of a properly completed application must be ~~endorsed thereon~~ 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 establishes the original priority date of an application, subject to final acceptance of the application and issuance of a perfected water permit by the state engineer. 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 must have an interest or intent and ability to acquire an interest in the land ~~on which~~ where the point of diversion and conveyance system will be located ~~or.~~ The applicant must demonstrate to the satisfaction of the state engineer 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 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 interest or intent and ability to acquire an interest in the land or other property inundated by the impounded water. The state engineer may require the applicant to submit evidence of such an interest. At any time the state engineer may require additional verification of land or 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 61-04-03

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

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

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 61-04-01.1, 61-04-01.2, 61-04-02

89-03-01-01.4. Amount of water that may be held in storage ~~pursuant to under~~ a water permit. Unless otherwise authorized by the state engineer, any person authorized to store water ~~for a nonconsumptive beneficial use, a consumptive beneficial use, or other reasons,~~ 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 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

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 ~~pursuant to 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 ~~inhabitants~~ 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.

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 ~~prior to~~ 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 61-04-06.2, 61-02-27

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 ~~shall~~ 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 application.

1. An applicant may amend an application. If the state engineer 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 ~~shall~~ must change the priority date of the amended application to the date the 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, prior to the request to amend, any notices~~ notice of the water permit application ~~have~~ has been mailed before the request to amend, the applicant ~~shall~~ must mail corrected ~~notices~~ 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. If the notice of ~~the water permit~~ application has been published, the state engineer ~~shall~~ must publish a corrected notice. The state engineer may determine that corrected ~~notices~~ notice need not be mailed or published if the state engineer determines the amendment is insubstantial. ~~Costs of The applicant must pay publication must be paid by the applicant 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. Requests 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. Assignment of an application to another person. ~~Requests for the assignment of~~ A request to assign an application for a water permit to another person must be submitted to the state engineer in writing. When title of land for which there is a pending application is transferred, either the transferee or the applicant may apply for assignment of the application. The ~~application~~ request for assignment must describe the transferee's interest in the application for a water permit. The state engineer 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

89-03-01-03.3. Evaporative losses. When an 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 ~~which~~ that will come out of 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 application is filed, the state engineer ~~shall~~ will forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts:
 - a. ~~the places~~ Places and use of appropriation;₁
 - b. ~~the amount~~ Amount of and purpose for which the water is to be used;₁
 - c. ~~the applicant's~~ Applicant's name and address;₁ and
 - d. ~~the newspaper~~ Newspaper in which the notice of the water permit application will 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 and that anyone who files written comments will be mailed a copy of the state engineer's recommended decision on the application.

2. Upon receipt of the completed notice of application forms, the applicant shall must send a notice of application ~~by certified mail to the following:~~ form as provided in North Dakota Century Code section 61-04-05.
 - a. ~~To the governing body of each city located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.~~
 - b. ~~To the governing body of the township or other governing authority of each rural subdivision located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion. A rural subdivision is a subdivision which has lots of ten acres [4.05 hectares] or less and is geographically located outside of a city.~~
 - c. ~~To the governing body of the township or other governing authority for each rural tract of land which is owned by more than ten individuals and is located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.~~
 - d. ~~Except for record title owners whose land falls within subsection a, b, or c, each record title owner of real estate within a one-mile [1.6 kilometer] radius of the proposed point of diversion. The determination of title owners at the time of the application must be based on title records on file with the register of deeds of the appropriate county recorder. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.~~
 - e. ~~To each person holding a water permit for the appropriation of water from an appropriation site located within a radius of one mile [1.61 kilometers] of the location of the proposed water appropriation site. The state engineer shall provide the applicant a list of all persons who must be notified under this subdivision.~~
 - f. ~~To each municipal or public use water facility within a twelve-mile [19.31-kilometer] radius of the proposed water appropriation site is located. The state engineer shall provide the applicant a list of all municipal or public use water facilities that must be notified under this subdivision.~~
3. After notice of application ~~has~~ forms have been mailed to those required by ~~this~~ North Dakota Century Code section 61-04-05, the applicant shall must properly complete an affidavit of notice and return it to the state engineer ~~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. ~~This affidavit must be mailed to the state engineer within sixty days from the date the state engineer sent the notices of application to the applicant. If a properly completed affidavit of notice is not submitted within sixty days, the priority date of the conditional water permit application will be amended to the date on which the state engineer receives the affidavit of notice.~~

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.

1. ~~Upon receipt of an applicant's properly completed affidavit of notice by certified mail, the state engineer shall publish a notice of the water permit application.~~
2. ~~The state engineer shall provide a notice of the water permit application to the official newspaper of the county in which the proposed point of diversion is located and instruct the newspaper to publish the notice once a week for two consecutive weeks. The notice must specify a date by which any person having an interest in the application may submit written comments to the state engineer and must state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.~~
3. ~~A In addition to the requirements in North Dakota Century Code section 61-04-05, a copy of the notice of the water permit application to be published must be sent to the applicant.~~
4. ~~The applicant shall pay costs of publication.~~

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 28-32-05, 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. ~~If any party to a water permit hearing requests and receives a continuance of a water permit hearing, that party shall serve notice of the continuance upon any person who was served with notice of the original hearing. Service of notice of the continuance must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure. The cost of the notice must be borne by the party requesting the continuance.~~ Repealed effective July 1, 2014.

History: ~~Effective April 1, 1989; amended effective April 1, 2000.~~

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

Law Implemented: ~~NDCC 61-04-04, 61-04-05.1~~

89-03-01-06.3 Record - Official notice. Unless specifically excluded by the state engineer 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 streamflow records.
3. United States geological survey and state water commission water quality data.
4. National oceanic and atmospheric administration climatological data.
5. United States geological survey topographic maps.
6. ~~State water commission~~ engineer water permit files.
7. ~~State water commission~~ engineer annual water use reports.
8. State water commission and United States geological survey ground water level data.
9. North Dakota board of water well contractors well completion reports.

10. State ~~water commission~~ engineer test hole records.
11. State water commission water resource investigations reports and ground water study reports.
12. State water commission and United States geological survey county ground water study reports.
13. Information in state engineer and state water commission files ~~and~~, records, and other published reports.

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

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

89-03-01-07. Necessity of works and construction of works for a conditional water permit. A permit application may only be considered if works are associated with the proposed appropriation. For any water appropriation that involves the construction of ~~the kind of works that require a construction permit from the state engineer,~~ the water permit may be issued ~~prior to~~ before receipt of the construction permit. However, ~~if this is done,~~ the water permit is not valid ~~and has no effect~~ 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. ~~Application may not be made for and the~~ The state engineer 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 may issue a water permit that allows for points of diversion from different locations ~~on~~ from the same water source, provided the state engineer finds good cause for doing so.

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

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

Law Implemented: NDCC 61-04-06.2

89-03-01-09. Appropriation not requiring water permit. ~~Applications~~ An application for ~~appropriations~~ appropriation of water ~~for which a~~ that does not require a water permit ~~is not required~~ may be obtained from the state engineer to clearly establish a priority date. ~~A fee schedule and instructions for completion are attached to the form.~~

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. Application for a temporary appropriation must be made on the form provided by the state engineer. In that request, the applicant must indicate the reason for the permit purpose for which water will be used, quantity of water needed, proposed point of diversion, type of use, place of use, rate of withdrawal, source of water, dates of proposed use, and applicant's address. The state engineer will evaluate the request, and, if it is granted, the state engineer will list on the temporary authorization conditions that govern the appropriation.

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

The applicant for temporary or emergency appropriations is responsible for all damages that may be caused to other appropriators ~~and~~ or any other individual ~~as a result~~ because of an the emergency or temporary 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 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 may waive the fees for certain emergency uses of a temporary water permit, including fire fighting.

<u>Volume of water requested:</u>	
<u>Less than one acre-foot</u>	<u>\$ 75</u>
<u>One to ten acre-feet</u>	<u>\$125</u>
<u>More than ten acre-feet</u>	<u>\$200</u>

Filing fees are not required for requests made under 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 from the same source for different uses will be considered competing applications if received by the state engineer 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 ~~all or~~ any portion of the water of a conditional water permit to the beneficial use named in the permit, the state engineer will notify the permittee ~~of this fact~~. The state engineer will provide the permittee with a form ~~upon which the permittee may~~ 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 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 pursuant to under North Dakota Century Code section 61-04-27 must include the permit number, ~~name of water source,~~ amount of water usage, pumping rate, if applicable, and ~~such any other information as~~ the state engineer ~~shall~~ may require. One form must be filed for each water permit held ~~within the timeframe set by North Dakota Century Code section 61-04-27.~~

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 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 permit holder submits both the complete and the accurate water use report and payment of the fine before June 1, 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, ~~in circumstances requiring it,~~ the order may be served by regular mail ~~provided~~ with an affidavit of service ~~by mail is filed~~ indicating upon whom the order was served.

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

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

Law Implemented: NDCC 28-32-13

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

Section	
89-03-02-01	Submission of <u>an</u> Application for a Change in Point of Diversion and or Change in Purpose of Use
89-03-02-02	Return of Unsatisfactory Application
89-03-02-03	Amendment of Application
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 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
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 in point of diversion and or change in purpose of use. ~~Application~~ An application for a change in a point of diversion ~~and for~~ or a change in purpose of use must be submitted to the state engineer on the form provided by the state engineer. ~~Application forms are available at the office of the state engineer in Bismarck. A fee schedule and instructions for completion of the forms are provided with the form. Information~~ The state engineer may require information not provided for requested in the applications ~~may be required by the state engineer~~ 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, 61-04-15.1

89-03-02-02. Return of unsatisfactory application. If the change in purpose of use or change in point of diversion application is not submitted on the proper form or if the form is improperly completed, it ~~shall~~ 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, 61-04-15.1

89-03-02-03. Amendment of application. An applicant for a change in purpose of use or a change in point of diversion, ~~prior to~~ before being instructed to give notice as provided in 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, prior to the request to amend, any notices~~ notice of an application for a change in the purpose of use or a change in the point of diversion ~~have~~ has been mailed before the request to amend, the applicant ~~shall~~ must mail corrected ~~notices~~ notice of the application to all persons who were sent the original notice and ~~shall~~ must submit an affidavit of service of corrected notice to the state engineer. If the notice of application has been published, the state engineer ~~shall~~ must publish a corrected notice. The state engineer may determine that corrected notices need not be mailed or published if the state engineer determines the amendment is insubstantial. ~~Costs of~~ The applicant must pay publication must be paid by the applicant 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, 61-04-15.1

89-03-02-04. Fee. Repealed effective April 1, 1989.

89-03-02-05. Notice of application. Notification of an application for change in purpose of use or change in point of diversion ~~shall~~ must be handled in ~~the manner outlined in subsections 1 through 3 of~~ accordance with 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, 61-04-15.1

89-03-02-06. Publication of notice of an application for a change in the purpose of use or 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 point of diversion must be published in ~~the same manner as provided for in chapter 89-03-01 for water permit applications or amendments to water permit applications~~ accordance with 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, 61-04-15.1

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. ~~Applications for the assignment of~~ A request to assign a water permit to another person must be submitted to the state engineer in writing. ~~When title of land on which there is a water permit for irrigation is transferred, either~~ Either the transferee or the holder of the permit

may apply for assignment of the water right permit. The application must describe the transferee's interest in the water permit. The state engineer 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. ~~Applications for the~~ A request to transfer of 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 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. ~~Requests~~ A request to increase a permittee's pumping rate must be made in writing to the state engineer. The state engineer, prior to 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.

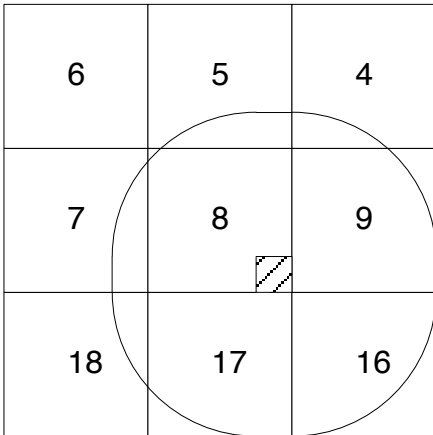
General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-06.2

89-03-02-12. Water permit for irrigation - Limitation. The state engineer may, ~~to allow for more efficient operation of an irrigation system,~~ increase the number of acres that may be irrigated on the tracts of land specified in ~~the~~ 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 subsections 1 through 3 of North Dakota Century Code section 61-04-06. Any increase in acreage cannot exceed ten percent of the originally approved acreage.

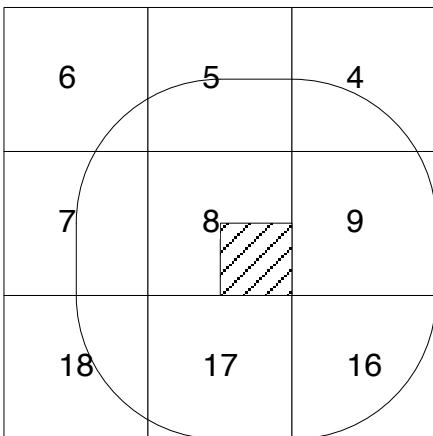
History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-06.2

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:

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.
2. "Measuring device" is a flowmeter or water meter measuring the quantity and rate of water flowing through a pipe and complying with the flowmeter specifications issued by the state engineer.
43. "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.
24. "Point of diversion" is the geographical location from which water is appropriated for beneficial use. A point of diversion may be described as a tract of land, that is, a forty, one hundred sixty, or six hundred forty acre tract of land, or it may be as described as a specific point using a metes and bounds description 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 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. "Stored water" means water temporarily or permanently retained by or in a dam, dike, excavation, or other constructed works.
37. "Works" include canals, ditches, pipelines and other conveyance systems, irrigation facilities, wells, pumps, dams, dikes, reservoirs, and other devices used for the appropriation or, storage, and beneficial use of water and land improved for irrigation.

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.** For the purpose of North Dakota Century Code section 61-04-01.1, "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. Repealed effective July 1, 2014.~~

~~**History:** Effective November 1, 1989; amended effective January 1, 2010.~~

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

~~**Law Implemented:** NDCC 61-04-01.1~~

~~**89-03-03-03. Definition of aquaculture.** "Aquaculture" means the cultivation of the natural produce of water. Aquaculture must be considered an industrial use. Repealed effective July 1, 2014.~~

~~**History:** Effective November 1, 1989.~~

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

~~**Law Implemented:** NDCC 61-04-01.1~~

~~**89-03-03-04. Definition of reasonably necessary for the future water requirements of a municipality or rural water system.** "Reasonably necessary for the future water requirements of a municipality or rural water system" means the amount of water estimated to be required thirty years in the future. The total 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. Repealed effective July 1, 2014.~~

~~**History:** Effective November 1, 1989; amended effective August 1, 1994; June 1, 1998.~~

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

~~**Law Implemented:** NDCC 61-04-06.2, 61-04-23, 61-04-24, 61-04-25~~

89-03-03-05. Definition of stored water. ~~"Stored water" means water temporarily or permanently retained by or in a dam, dike, excavation, or other constructed works. Repealed effective July 1, 2014.~~

History: ~~Effective November 1, 1989.~~

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

Law Implemented: ~~NDCC 61-04-01.2, 61-04-02, 61-04-17~~

NORTH DAKOTA ADMINISTRATIVE CODE

ARTICLE 89-06

FUNDING FROM THE RESOURCES TRUST FUND

Chapter
89-06-01 ~~Rules Governing the State Water Commission's Analysis of a Proposed Water Project or Study Seeking Financial Assistance Funding from the Resources Trust Fund~~

CHAPTER 89-06-01
~~RULES GOVERNING THE STATE WATER COMMISSION'S ANALYSIS OF A PROPOSED WATER PROJECT OR STUDY SEEKING FINANCIAL ASSISTANCE 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.
- 2. ~~"Resources trust fund" means that fund established by North Dakota Century Code section 57-51-07.1.~~
- 3. "Proposal" means an application for a water-related project or a water-related project submitted to the commission for financial assistance from the resources trust fund either for a water-related study or a water-related project.
- 4. ~~"Applicant" means the party submitting a proposal.~~

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 proposal project or study is eligible for funding from the resources trust fund ~~and to decide whether it merits a study.~~

1. **Information required for the initial review of the project or study.** An applicant must submit the following information, as applicable:
 - a. ~~Information explaining the need~~ A description of the purpose and goals for the proposal, including its objectives and benefits.
 - b. ~~Either the~~ The area in which ~~where~~ the proposed water-related project is to be physically located or, if the proposal concerns a water-related study, the area in which the study is? to be undertaken.
 - c. ~~The area to be served by the proposal.~~
 - d. Maps, diagrams, and any engineering plans or specifications already completed ~~and other illustrated documentation should be submitted if these will make the proposal more understandable.~~
 - e. ~~The approximate cost of carrying out the proposal.~~
 - f. An estimate of any revenue the project is expected to generate.
 - fg. ~~The amount of funding sought from the resources trust fund and the amount the applicant intends to contribute to~~ carrying carry out the proposal.
 - gh. ~~Efforts made, and the~~ The results, of all efforts made ~~to secure funds from sources other than the resources trust fund.~~
 - hj. ~~An explanation why assistance from the resources trust fund is necessary.~~
 - i. ~~An explanation how the proposal relates to the commission's comprehensive state water plan.~~
 - j. ~~An explanation how the project or study relates to the any master plans of water resource districts affected by the proposal, if such districts have master plans.~~
 - k. ~~A preliminary report on the engineering feasibility of the proposal if it is for a water-related project.~~
 - l. ~~A general discussion of any objections to the proposal made by any person.~~

- m. ~~Any other~~ Other information the applicant believes pertinent or ~~that the commission may request~~ requests.
 - n. A general explanation of all alternatives considered and whether an alternative project or study can satisfy the objectives.
2. ~~**Alternatives.** The applicant must consider whether an alternative project or study can satisfy the objectives of the proposal. In its application to the commission for review the applicant must set forth a general explanation of all alternatives considered.~~
 3. ~~**Time.** To ensure review of an application at a regularly scheduled meeting of the commission, an applicant must submit the information required by these rules thirty days prior to such meeting.~~
 4. **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 order the applicant to provide more information, request additional information from the applicant or may obtain more information itself.
 - b. ~~The proposal is not eligible for support from the resources trust fund, and upon such a decision the commission shall prepare a report setting forth its reasons.~~
 - 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. ~~A study of a proposal is to provide the commission with the information necessary for it to make an informed decision whether to recommend that the legislative assembly support the proposal with money from the resources trust fund.~~

1. ~~**Study contents.** A study of a proposal must include all the following information:~~

- a. ~~All the information required by subdivisions a, f, g, h, i, and j of subsection 1 of section 89-06-01-02 and subsection 2 of section 89-06-01-02. This information, however, must be updated and submitted in more detail and clarity. The reason for these latter requirements is that the study provides the basis of the commission's final decision, rather than its initial review, and it must, therefore, be comprehensive.~~
 - b. ~~If the proposal is for a water related project, an explicit explanation of the area where the project is to be physically located and the area and interests to be served by it.~~
 - c. ~~If the proposal is for a water related study, an explicit explanation of the area in which the study is to be conducted.~~
 - d. ~~Compliance with subdivisions b and c requires submission of maps.~~
 - e. ~~An itemization of the proposal's cost.~~
 - f. ~~A complete examination of the engineering feasibility of the proposal if it is for a water-related project.~~
 - g. ~~A general statement of all objections to the proposal or to funding it from the resources trust fund. The identity of persons and entities making the objections. This subsection only applies to written objections made to the applicant and to oral objections made at any meeting of the applicant.~~
 - h. ~~Any other information the applicant believes pertinent or that the commission may request.~~
2. ~~**Study undertaken by the commission.** If the commission decides to conduct the study of a proposal itself, it may require the applicant to assist in the study.~~
 3. ~~**Time.** To ensure that a study of a proposal is reviewed at a regularly scheduled meeting, an applicant, if he has been ordered to carry out the study, must submit the results of the study thirty days prior to such meeting.~~
 4. ~~**The commission's decision upon the study.** After its consideration of a study of the proposal the commission may decide:~~
 - a. ~~The information provided is inadequate to make a final decision on the proposal and may order the applicant to provide more information, or may obtain more information itself; a means by~~

~~which the commission may obtain more information is by exercising its discretion to hold a public hearing.~~

- ~~b. The proposal is not eligible for support from the resources trust fund, and upon such a decision shall prepare a report setting forth its reasons.~~
- ~~c. The proposal is eligible for support from the resources trust fund and whether it merits such support, and upon such a decision shall prepare a report setting forth its reasons and recommendation to the legislative assembly. Repealed effective July 1, 2014.~~

History: ~~Effective June 1, 1987.~~

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

Law Implemented: ~~NDCC 57-51.1-07.~~

**CHAPTER 89-07-02
WEATHER MODIFICATION OPERATIONS**

Section	
89-07-02-01	General Provisions
89-07-02-02	Definitions
89-07-02-03	Administration
89-07-02-04	Exempt Activities
89-07-02-05	Approval of Exempt Activities
89-07-02-06	Field Presence Required
89-07-02-07	Criteria for Issuance of License
89-07-02-08	Application Procedure
89-07-02-09	Procedure for Issuance
89-07-02-10	Renewal of License
89-07-02-11	Responsibility of Controller
89-07-02-12	Suspension, Revocation, Refusal to Renew a License
89-07-02-13	Restoration of License
89-07-02-14	Application for Permit
89-07-02-15	Procedure for Issuance
89-07-02-16	Permit Form
89-07-02-17	Permit Conditions
89-07-02-18	Permit Expiration
89-07-02-19	Suspension - Revocation - Modification
89-07-02-20	Automatic Suspension of Permit
89-07-02-21	Restoration of Permit
89-07-02-22	Proof of Financial Responsibility
89-07-02-23	Records
89-07-02-24	Reports
89-07-02-25	Bid Procedure <u>[Repealed]</u>
89-07-02-26	Award of Contracts

89-07-02-01. General provisions. This chapter applies to any weather modification operation operations conducted wholly or partially within in North Dakota. This chapter must be applied in conjunction with North Dakota Century Code chapter 61-04.1.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-02, 61-04.1-08(3)

89-07-02-02. Definitions. ~~As used in this chapter, the~~ The following words have the meaning given to them below unless otherwise made inappropriate by use or context. Words not defined in this section have the meaning given to them in definitions apply to this chapter and North Dakota Century Code section 61-04.1-03. chapter 61-04.1:

1. "Applicant" means any person who applies for a professional weather modification license or permit.
2. ~~"Board" means the atmospheric resource board.~~
3. "Director" means the executive director of the atmospheric resource board.
43. "License" means a weather modification license.
54. "Licensee" means a person to whom a license has been issued.
65. "Operations area" means a geographic area where weather modification operations are conducted.
6. "Permit" means a weather modification permit.
7. "Permittee" means a person to whom a permit has been issued.
8. ~~"Operations area" means an area in which weather modification operations are conducted.~~
9. "Target area" means an area ~~in which~~ where the effects of weather modification are desired.
109. "Weather modification apparatus" means any device used to dispense any chemical material used to modify any weather condition.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-03

89-07-02-03. Administration. Except as otherwise provided ~~in subsection 4 of section 89-07-02-15 and subsection 3 of section 89-07-02-26,~~ the powers and duties of the board must be exercised by the director ~~and such other persons as~~ or the director may direct director's designee.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-04. Exempt activities. Any person intending to conduct any exempt activities under ~~the provisions of~~ North Dakota Century Code section 61-04.1-12 ~~shall~~ must furnish notice of such intention to the board at least thirty days ~~prior to~~ before the time such activities are to begin. Notice must consist of the following information and such other information as the board deems necessary:

1. The name and address of the person giving notice.
2. The name and address of the person who will conduct the activity.
3. A description of the procedures to be used in the operation or the research and development.
4. A description of the object of the activity.
5. The legal description of, and a map showing ~~the area of,~~ the operations area and target area, if any.
6. The approximate starting date upon which ~~of~~ the activity ~~is to commence~~ and its ~~approximate~~ anticipated duration.
7. A description of the equipment to be used in conducting the activity.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-12

Law Implemented: NDCC 61-04.1-12

89-07-02-05. Approval of exempt activities. No weather modification activity intended to be conducted ~~pursuant to the provisions of~~ under North Dakota Century Code section 61-04.1-12 ~~must be commenced~~ may begin without ~~prior~~ approval of the board if such activity is to be conducted ~~in the out-of-doors~~ outside with weather modification apparatus. The board may only approve ~~only~~ those activities ~~which that~~ provide for the protection of the health, safety, and welfare of those ~~persons~~ people who may be affected by such activities, and ~~which that~~ otherwise comply with ~~the provisions of~~ North Dakota Century Code section 61-04.1-12.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-12, 61-04.1-16

89-07-02-06. Field presence required. Every person intending to conduct operations in this state ~~shall~~ must designate to the board, on forms furnished by the board, at least one natural person who ~~shall~~ must at all times be physically present during all operations for which a permit is required and who will be the contractor's immediate point of contact in the field. The designated individual ~~so designated~~ will be fully ~~appraised~~ apprised of the status of the contractor's project equipment and personnel at all times, and will coordinate the contractor's field activities.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-11, 61-04.1-14

89-07-02-07. Criteria for issuance of license. The competence of any applicant to engage in weather modification operations must be demonstrated to the board ~~pursuant to~~ under North Dakota Century Code section 61-04.1-14 ~~upon the showing.~~ Applicants must show that any natural person ~~or persons~~ designated by the applicant, who will be in the full-time employment solely of the applicant during the project period, and who will oversee the applicant's actions during the project has ~~or~~ have:

1. A minimum of one year of field experience in the management and control of weather modification operations or research; and
2. One of the following requirements:
 - a. Four additional years' experience in weather modification operations or research;
 - b. A degree in mathematics, engineering, or the physical sciences, plus two years' additional experience in weather modification operations or research; ~~or~~
 - c. A degree in meteorology; or a
 - d. A degree in mathematics, engineering, ~~mathematics,~~ or the physical sciences ~~which that~~ includes at least twenty-five semester hours of coursework in meteorology.

In determining competency, the board may also consider any other items set forth in a license application under section 89-07-02-08.

At least one such natural person designated by the applicant and licensed by the board ~~at all times and days during which the project is ongoing shall~~ must be available for immediate consultation by the board, at a location made known to the board by the contractor, at all times while the project is ongoing.

~~In determining competency, the board may also consider any other items to be set forth in a license application pursuant to section 89-07-02-08.~~

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-08. Application procedure. An applicant for a license shall ~~must~~ must apply to the board on forms ~~supplied~~ furnished by the board. The forms may require relevant information about the knowledge and experience of the applicant and the natural person designated under section 89-07-02-06, and must include ~~the following~~:

1. Educational background, at the college and graduate level, of both the natural person designated by the applicant and the other employees of the applicant. This includes the dates of attendance and of graduation; the major and minor subjects studied, including the number of semester hours of meteorological coursework; the degrees received; and the titles of any thesis or dissertation.
2. Experience in weather modification or related activities of both the natural person designated by the applicant and the other employees of the applicant. Attention should be given to experience with reference to meteorological conditions typical of North Dakota. The applicant should list the dates of each position held by the natural person designated pursuant to under section 89-07-02-06, the title of position (indicate whether it was of subprofessional or professional level), the name and address of the employer, a description of the work done (indicate both the magnitude and complexity of the work and the duties and degree of responsibility for the work), and the name and address of the supervisor.
3. Scientific or engineering society affiliations of the natural person designated by the applicant and the grade of membership in and certification by each society.
4. Publications, patents, and reports of the natural person designated by the applicant.
5. Three references who will attest to ~~such~~ the natural person's character, knowledge, and experience.
6. A list of all jurisdictions ~~in which~~ where the applicant has previously filed an application for a professional weather modification license. The result of the applications should be indicated.
7. Indication whether a professional weather modification license issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew ~~such~~ a license by any jurisdiction. ~~If the answer is yes, the~~ Such circumstances must be explained in detail.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-09. Procedure for issuance. The board ~~shall~~ must evaluate the applications, including responses from any references given by the applicant. On the basis of all such information the board, within thirty days of receipt of an application, ~~shall~~ must determine whether the natural person designated by the license applicant under section 89-07-02-06 meets the education and experience criteria established by ~~subsections 1 and 2 of~~ section 89-07-02-07 and whether ~~such~~ the natural person and the applicant possess the knowledge and experience necessary to engage in weather modification operations. The board ~~shall~~ must issue a license to the applicant who satisfies the requirements of this chapter and North Dakota Century Code section 61-04.1-14. If an applicant for a license or the natural person designated by the applicant ~~do~~ does not satisfy ~~any of such~~ the requirements, the board ~~shall~~ must deny the license.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-10. Renewal of license. Forty-five days before expiration of licenses, the board ~~shall~~ must provide license application forms to all licensees and request each licensee to complete the form and file the original with the board. The board ~~shall~~ must evaluate the available data about the licensee and the natural person, designated by the license applicant under section 89-07-02-06, and ~~shall~~ must issue a renewal license within thirty days of receipt of the application to each applicant who pays the license fee established by subsection 1 of North Dakota Century Code section 61-04.1-14 and who has the qualifications necessary for issuance of an original license. The board ~~shall~~ must deny a renewal license within thirty days of receipt of the application of each applicant who does not pay the renewal fee ~~or~~, who does not possess the qualifications necessary for issuance of an original license, or who does not designate a natural person, ~~pursuant to~~ under section 89-07-02-06, who satisfies the requirements of section 89-07-02-07.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-11. Responsibility of controller. The natural person designated by the license applicant under section 89-07-02-06 is deemed by the board to be in control of and primarily responsible for operations conducted under the terms of any permit. However, nothing in this section may be construed to prevent appropriate enforcement of any regulation, limitation, permit condition, or order against either the permittee, or licensee, whether or not such licensee is a natural person.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-18, 61-04.1-37

89-07-02-12. Suspension, revocation, refusal to renew a license. In addition to the reasons cited in North Dakota Century Code section 61-04.1-15, the board may suspend, revoke, or refuse to renew a license for violation of any permit ~~or permit condition~~.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14, 61-04.1-15

89-07-02-13. Restoration of license. At any time after the suspension or revocation of a license or after refusal to renew a license, the board may restore ~~it~~ the license to the licensee or renew it upon a finding that the licensee has met the requirements for issuance of an original license ~~have been met by the licensee~~.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14

89-07-02-14. Application for permit. Application for a weather modification permit must be made on forms furnished by the board. ~~A~~ Every applicant must submit a properly executed application ~~must be submitted to the board by every applicant~~. The application may contain such information as the board deems necessary, and must include the following information:

1. Name and address of the applicant.
2. Whether a weather modification operational permit issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew ~~such~~ a permit by any jurisdiction. ~~If the answer is yes, the~~ Such circumstances must be explained in detail.
3. If the applicant is a corporation, whether it is licensed to do business in North Dakota.
4. Whether a license has been issued under North Dakota Century Code section 61-04.1-14, and if so, the names, addresses, and professional license numbers of the ~~controller or controllers~~.
5. Whether professional weather modification licenses issued to ~~such licensee or licensees~~ the license applicant in any jurisdiction have ever been suspended or revoked or whether there has been refusal to renew ~~such a license or licenses~~ by any jurisdiction. ~~If the answer is yes, the~~ Such circumstances must be explained in detail.

6. Whether proof of financial responsibility has been furnished ~~in accordance with~~ under section 89-07-02-22 and North Dakota Century Code section 61-04.1-19.
7. If the operation will be conducted under a contract, the value of the contract.
8. If the operation will not be conducted under a contract, an estimate of the costs of the operation and information as to how the estimate was made.
9. Whether the applicant has paid the application fee.
10. Whether the applicant has North Dakota workforce safety and insurance coverage.
11. A copy of any promotional and advertising material used in connection with negotiations for the contract, if any.
12. Whether the applicant has furnished a performance bond, as required by subsection 4 3 of section 89-07-02-26.
13. Whether the applicant has furnished the bid bond, as required by North Dakota Century Code section 61-04.1-35.
14. Whether the applicant has registered with the North Dakota aeronautics commission ~~all pilots and aircraft to be used in the operation for which the permit is sought with the North Dakota aeronautics commission.~~
15. A complete and detailed operational plan for the operation ~~which~~ that includes:
 - a. The nature and object of the operation.
 - b. The legal ~~descriptions of,~~ description and a map showing the operations area, and the target area.
 - c. The approximate starting date of the operation and its anticipated duration.
 - d. The kind of seeding ~~agent or~~ agents intended for use and the anticipated rate of their use.
 - e. A list of equipment ~~which~~ that will be used and the ~~method or~~ methods of seeding for which they will be used.

- f. An emergency shutdown procedure ~~which~~ that states conditions under which operations will be suspended because of possible danger to the public health, safety, and welfare or to the environment.
 - g. The means by which the operation plans will be implemented and carried out; such as ~~the~~:
 - (1) The location of the main operational office and any other offices used in connection with the operation, ~~the~~;
 - (2) The location of such ground equipment as seeding generators, radar, and evaluation instrumentation, ~~the~~;
 - (3) The number and kinds of aircraft ~~which~~ that will be used ~~and~~ ~~the~~;
 - (4) The extent to which weather data will be made available to the licensees; and ~~other~~
 - (5) Other personnel carrying out the project.
 - h. How conduct of the operation will interact with or affect other weather modification operations.
16. Such additional information ~~as~~ that will assist the board in deciding whether ~~or not~~ to issue the permit.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-15. Procedure for issuance.

- 1. **Notice.** The board ~~shall~~ must give notice of its consideration of an application ~~in accordance with~~ under North Dakota Century Code section 61-04.1-17. Notice must be given once a week for two consecutive weeks. The notice must:
 - a. Describe the primary target area.
 - b. Describe the operations area.
 - c. Specify the period of operation, including starting and ending dates.
 - d. Describe the general method of operation.

- e. Describe the intended effect of the operation.
 - f. State the name of the proposed permittee.
2. **Hearings.** The board ~~shall~~ must allow twenty days for public comment, ~~in accordance with~~ under North Dakota Century Code section 61-04.1-17, from the date of the last publication of the notice. Any hearing held upon objection received by the board or any hearing held upon the board's own motion must be held upon at least ten days' notice in the county newspaper ~~in which~~ where notice of consideration of the application was published. At ~~any such~~ the hearing, the board ~~shall~~ must make a brief record of testimony received, and ~~shall~~ must consider all such testimony in its decision on the permit application.
 3. **Director's recommendation.** At the close of the public comment period provided for in North Dakota Century Code section 61-04.1-17, the director of the ~~atmospheric resource~~ board ~~shall~~ must review all applications for permits ~~which~~ that have been received and ~~shall~~ must recommend approval or disapproval of such applications and the reasons therefor.
 4. **Final action by board.** The board ~~shall~~ must take final action on all applications for permits for which notice of consideration was published, ~~pursuant to~~ under North Dakota Century Code section 61-04.1-17, within forty-five days of the close of the public comment period. Approval of applications considered must be by majority vote. In acting on any such applications, the board ~~shall~~ must consider any recommendations made by the director of the board and all testimony received at any hearing ~~pursuant to~~ under North Dakota Century Code section 61-04.1-17. The board may issue a permit only if it determines that the requirements of subsection 2 of North Dakota Century Code section 61-04.1-16 have been met.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-17

89-07-02-16. Permit form. Each permit ~~shall~~ must set forth the permit number, effective period of the permit, name of the permittee, ~~the~~ name of the licensee and the license number, ~~the~~ location of the operation, and such other information, terms, or conditions as the board ~~shall deem~~ deems appropriate.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-17. Permit conditions. The board may attach to ~~any permit such conditions to any permit~~ as it ~~may deem~~ deems appropriate, including any conditions concerning method and time of operation, target and operation areas, safety precautions, and recordkeeping. ~~The Operations Manual for Hail Decrease and Precipitation Increase is hereby made a condition of all permits issued and all permits are subject thereto~~ Permittee must submit an operations plan that includes: the types of seeding agents to be used, the methods and equipment to be employed in seeding operations, and the emergency shutdown procedures, including the conditions under which operations will be suspended. Violation of any permit ~~or any permit condition~~ may result in permit revocation ~~or~~, suspension, or other appropriate enforcement action by the board.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16(2)

89-07-02-18. Permit expiration. All permits ~~which that~~ have expired pursuant to under North Dakota Century Code section 61-04.1-16 are nonrenewable.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-19. Suspension - Revocation - Modification. In addition to the reasons cited in North Dakota Century Code section 61-04.1-18, the board may suspend, revoke, or modify any permit or any provision or condition of a permit if it appears to the board that the permittee has violated ~~any of the provisions of the~~ North Dakota Century Code or the terms or conditions of any permit held by the permittee.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-20. Automatic suspension of permit. Any permit issued ~~to any person~~ under this chapter is ~~suspended~~ automatically suspended if ~~such~~ the person's weather modification license expires or is suspended, revoked, or not renewed by the board. ~~Automatic suspension shall result in~~ In the case of a permit issued to a corporation, partnership, or other business association, if the natural person designated as being in control of the operation in such business association's application for a weather modification license becomes incapacitated, leaves the person's business association's employment, or is in any way unable to continue in control of the operation, automatic suspension of the permit will result. A permit of a business association suspended under such circumstances may be reinstated by the nomination of replacement personnel ~~in accordance with~~ under section ~~89-07-02-06~~ 89-07-02-08.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-21. Restoration of permit. At any time after the suspension, revocation, or modification of a permit, the board may restore it to the permittee, or delete any modification thereof, upon a finding that the requirements for issuance of an original permit have been met by the permittee, or that the conditions requiring modification no longer exist.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-22. Proof of financial responsibility. Proof of financial responsibility is made by showing to the satisfaction of the board that the permittee has the ability to respond in ~~damage~~ to liability ~~which~~ that might reasonably result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by any of the following:

1. Presentation to the board ~~of,~~ or proof of purchase of, a prepaid noncancelable insurance policy or a corporate surety bond, issued by a company against whom service of legal process may be made in North Dakota, against ~~such~~ liabilities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
2. Depositing with the board cash or negotiable securities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
3. Any other manner approved by the board.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-19

89-07-02-23. Records.

1. **Daily log.** Each permittee ~~shall fill in and~~ must retain a daily log of weather modification activities for each unit of weather modification apparatus used during an operation. ~~Such log must include a record of the following information for each day of weather modification operations that includes:~~
 - a. Date of the weather modification activity.

- b. Each aircraft flight track and location of each radar unit during each modification mission. Maps may be used.
 - c. Local time when modification activity began and ended. For intermittent operations, the beginning and ending time of the total sequence are acceptable.
 - d. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
 - e. Description of type of modification ~~agent or~~ agents used.
 - f. Rate of dispersal of agent during the period of actual operation of weather modification apparatus, by hour or other appropriate time period.
 - g. Total amount of modification agent used. If more than one agent was used, report total for each type separately.
 - h. Local time when any radar monitoring operations were turned on and turned off.
 - i. Type of clouds modified, that is, whether they were stratiform, isolated cumuliform, organized cumuliform, or other types of clouds.
 - j. Remarks indicating ~~such~~ operational problems as, including equipment failure, weather conditions not conducive to successful performance of the operation, or personnel problems, ~~and the like~~.
2. **Monthly totals.** Monthly totals must be kept on the basis of the daily logs, listing the total:
- a. Days during month in which operation conducted.
 - b. Time of operation.
 - c. Amount of each kind of agent used.
 - d. Average rate of dispersal of each kind of agent used.
 - e. Days of each type of ~~cloud treated~~ operation.
 - f. Duration of operation of each unit of weather modification apparatus, in hours and minutes.

3. **Addresses of participants.** Each permittee ~~shall~~ must keep a roster of the names and North Dakota addresses of all employees participating in the state on an operation ~~for which a permit has been issued.~~
4. **Inspection.** Duly authorized agents of the board have the authority to enter and inspect any equipment and to inspect or copy any records required by this section ~~and to make copies thereof.~~
5. **Exempted weather modification activities.** All ~~persons~~ people conducting weather modification activities exempted by the board under ~~the provisions of~~ North Dakota Century Code section 61-04.1-12 ~~shall~~ must record and maintain all of the records required of any permittee by this section.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-24. Reports.

1. **Monthly.** ~~Within ten days after the conclusion of each calendar month, each permittee shall submit a written report to the board which must include:~~
 - a. ~~A copy of the summary record prepared under subsection 2 of section 89-07-02-23.~~
 - b. ~~A copy of the roster of the names and North Dakota addresses of all employees participating in state operations which were prepared under subsection 2 of section 89-07-02-23.~~
 - c. ~~A narrative account of the manner in which operations during the month did not conform to the operational plan filed in accordance with subsection 15 of section 89-07-02-14.~~
2. **Final.** Within ~~thirty~~ sixty days after final completion of any operation, each permittee ~~shall~~ must file with the board a final report on the operation ~~which that~~ that must include:
 - a. Copies of the daily logs prepared ~~in accordance with~~ under subsection 1 of section 89-07-02-23, copies of the monthly totals for the entire operational period from the monthly summary records prepared under subsection 2 of section 89-07-02-23, and a narrative summary of permittee activities during the operational period.

- b. A copy of the federal final activity report form filed with the national oceanic and atmospheric administration ~~in accordance with~~ under the rules adopted under ~~the authority of~~ Public Law 92-205 [85 Stat.735].
- c. A narrative account of the manner in which the operation did not conform to the operational plan filed ~~in accordance with~~ under subsections 1 through ~~15~~ 16 of section 89-07-02-14.

32. Exempted weather modification activities. The board may, ~~in its discretion,~~ require ~~persons~~ people operating weather modification activities exempted under sections 89-07-02-04 and 89-07-02-05, but who have been required to keep records pursuant to ~~this~~ under subsection 5 of section 89-07-02-23, to file ~~all or~~ any part of such records with the board.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-25. Bid procedure.

1. ~~Advertisement and request for bid.~~

~~a. In all cases where the board shall undertake to contract for services, supplies, or materials, the estimated cost of which shall exceed ten thousand dollars for any one contract, the board shall advertise for bids for such services, supplies, or materials. Such advertisement must be placed for three consecutive weeks in the official newspaper of the county in which the board's offices are located and in at least one official newspaper in general circulation in the state. In the case of contracts for weather modification operations, such advertisement must also be placed in some trade publication of general circulation among those groups most likely to bid on the contract. The advertisement must state:~~

~~(1) That any prospective bidders may secure such contract specifications and requirements as may be available by applying in writing to the offices of the board.~~

~~(2) The place where and the day and hour when the bids will be opened.~~

~~(3) That the right of the board to reject any and all bids is reserved.~~

~~(4) Each bid must be accompanied by a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business within this state, conditioned that if the bid be accepted and the contract awarded to the bidder, the bidder, within ten days' notice of award, will execute and effect a contract in accordance with the terms of the bidder's bid and a contractor's bond in the manner specified by subsection 4 of section 89-07-02-26.~~

~~(5) No bid will be read or considered which does not fully comply with the above provisions concerning bonding and no contract will be awarded to any person who has not complied with any applicable licensing requirements of the board.~~

~~b. In the case of contracts for weather modification operations, the board may, in addition to the requirements of subdivision a, prepare a request for bid in which it shall describe the minimum requirements for aircraft, radar, communications, and other equipment, operational and such other requirements as it may deem necessary. Such request for bid must include those items of information specified in paragraphs 2 through 5 of subdivision a. The request may be sent by the board to those persons having a recognized interest in operations contracts.~~

~~2. **Opening of bids.** At the time and place designated in the request for bids, the board shall conduct a public hearing at which it shall open all bids received. After opening each bid, the board shall determine whether such bid meets the minimum requirements set forth in North Dakota Century Code chapter 61-04.1, this chapter, and the request for bid, and then read aloud each bid meeting such minimum requirements. Bids which do not meet such minimum requirements may not be read or considered. Repealed effective July 1, 2014.~~

History: Effective November 1, 1988.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-33, 61-04.1-35

89-07-02-26. Award of contracts.

1. **Deviation from technical requirements.** Any or all bids may be rejected by the board on the basis of technical inadequacy or other failure to comply with the specifications included in the request for bids.

2. ~~**Point scoring system to be used.** Bidders for weather modification operations contracts must be evaluated on the basis of the amount of the bid submitted and a system of points allotted to each bidder for evaluation criteria established by the board. Sole authority for establishment of point values and scoring shall rest with the director. Point scores assigned are final and nonnegotiable. Previous experience and performance must be a criteria to be considered in scoring each bidder. The bidder scoring the lowest cost per point must be awarded the contract in accordance with subsection 3.~~

3. ~~**Low bid preference for North Dakota bidders.** In awarding any contract, the board shall award it to the lowest and best bidder, and shall, if all other factors are equal, give that preference for North Dakota bidders established by North Dakota Century Code section 44-08-01.~~

4. **Contractor's bond.** Before the board shall award awards any contract, it shall must require the contractor to furnish a surety bond for the faithful performance of the contract in an amount up to twenty-five percent of the contract price, conditioned that the contractor and the contractor's agents will, in all respects, faithfully perform all weather modification contracts undertaken with the board and will comply with ~~all provisions of~~ North Dakota Century Code chapter 61-04.1, this chapter, and the contract entered into by between the board and the contractor. ~~Should~~ If the contract ~~involve~~ involves the erection, repair, or alteration of any public improvement, the surety bond must be in the full amount of the contract price.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 44-08-01, 61-04.1-33, 61-04.1-34, 61-04.1-35

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
89-10-01-03	Definitions
89-10-01-04	Authorizations
89-10-01-05	Application for Permit, Easement, Lease, or Management Agreement
89-10-01-06	Application Review
<u>89-10-01-06.1</u>	<u>Record – Official Notice</u>
89-10-01-07	Public Meeting
89-10-01-08	General Permit Standards
89-10-01-09	Specific Project Requirements [<u>Repealed</u>]
89-10-01-10	Projects Not Requiring a Permit
89-10-01-10.1	Boat Docks and Water Intakes
89-10-01-10.2	Boat Dock Registration
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
89-10-01-15	Termination by Applicant
89-10-01-16	Assignments
89-10-01-17	Inspections
89-10-01-18	Reclamation
89-10-01-19	Maintenance and Repair
89-10-01-20	Areas of Special Interest
89-10-01-21	Organized Group Activities
89-10-01-22	Pets
89-10-01-23	Camping
89-10-01-24	Hunting, Fishing, and Trapping
89-10-01-25	Unattended Watercraft
89-10-01-26	Removal of Public Property
89-10-01-27	Cultural or Historical Resources
89-10-01-28	Disposal of Waste
89-10-01-29	Glass Containers
89-10-01-30	Abandoned property <u>Property</u>
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 pursuant to 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 ~~interests of the state of North Dakota~~ 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 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. "Domestic use" means the use of water ~~for household purposes and irrigation of gardens, lawns, and shrubbery surrounding a house.~~ "Domestic use" does not include the use of water for irrigation of more than five acres [2.0 hectares] and the use of water for carrying on a business as defined by subsection 4 of North Dakota Century Code section 61-04-01.1.
4. "Grantee" means the person, including that person's assigns, successors, and agents, ~~who are authorized pursuant to an~~ has authorization.
5. "Livestock" means bison, cattle, horses, mules, goats, sheep, and swine.
6. "Navigable waters" means any waters ~~which~~ 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, including the Missouri River, the Yellowstone River, the Red River of the North from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota border, the James River, the Upper Des Lacs Lake, Devils Lake, Painted Woods Lake, and Sweetwater Lake.

67. "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.
78. "Project" means any activity ~~which~~ that occurs either partially or wholly on sovereign lands.
89. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
9. ~~"State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.~~
10. "Snagging and clearing" means the removal and disposal of fallen trees and associated debris encountered within and along the channel.
4011. ~~"Structure" means something that is formed from parts, and includes including equipment, boat docks, boat ramps, and water intakes.~~
12. "Watercraft" means any device capable of being used as a means of transportation on water.

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 ~~prior to~~ 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 an 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.

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 shall must initiate a review as follows:

1. Comments shall must be requested from the following entities:
 - a. The state game and fish department;
 - b. The state department of health;
 - c. The state historical society;
 - d. The state land 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, ~~if any part of the project is within the boundaries of the city or county where the proposed project will be located;~~
 - h. Any water resource district ~~in which~~ where the proposed project will be ~~wholly or partially~~ located; and
 - i. Other agencies, private entities, ~~and~~ or landowner associations as appropriate or required by law.
2. Each entity shall must submit all comments in writing to the state engineer ~~within thirty days of the date requests for comments were mailed.~~ The state engineer is not bound by any comment submitted. The state

engineer 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 pursuant to under section 89-10-01-07, the state engineer may grant, deny, or condition the application.
4. ~~The state engineer shall provide written notice of the decision on the application 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.~~

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 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 streamflow records.
3. National oceanic and atmospheric administration climatological data.
4. Topographic maps.
5. State engineer sovereign land permit files.
6. Information in state engineer and state water commission files, records, and other published reports.
7. North Dakota sovereign land management plan.
8. Ordinary high water mark delineation guidelines.
9. Aerial photos.

History: Effective July 1, 2014.

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

89-10-01-07. Public meeting. An information-gathering public meeting may be held by the state engineer ~~prior to~~ before final action on a project. The procedure for notice and meeting must be as follows:

1. The state engineer ~~shall cause~~ must publish a notice of meeting ~~to be published~~ in the official newspaper for each county ~~in which~~ 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 and the meeting may be held in Bismarck.
4. The meeting is not an ~~adversary~~ adjudicative proceeding ~~nor a contested case~~ 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 may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the state engineer ~~shall~~ 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.

- ~~1. In addition to the considerations set forth in section 89-10-01-08, the following conditions apply when a permit application involves the mining of gravel, sand, or other resources other than oil, gas, and related hydrocarbons:
 - ~~a. Mining must be completed in the shortest practicable period of time and during the season which will minimize the effects on the waterway and biotic life in the waterway.~~
 - ~~b. Mining may be prohibited or restricted when it would, in the judgment of the state engineer, adversely affect the maintenance or reproduction of fish or other wildlife populations.~~
 - ~~c. If the state engineer determines mining will have a significant adverse impact on downstream riparian owners, the grantee must obtain the riparian owner's written consent.~~~~
- ~~2. In addition to the considerations set forth in section 89-10-01-08, the following considerations apply when a permit application involves dredging or filling:
 - ~~a. Unless there is no reasonable alternative or the public need exceeds other values, dredging or filling will not be permitted.~~
 - ~~b. Dredged material must be removed to a site above the ordinary high watermark unless otherwise authorized by the state engineer.~~
 - ~~c. Approved fill must be clean, nonpolluting material free of waste metal, organic material, and unsightly debris. Repealed effective July 1, 2014.~~~~

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

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

Law Implemented: ~~NDCC 61-33~~

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 ~~or the riparian owner's lessee for the riparian owner's or lessee's personal use;~~
 - b. The dock is used only for embarkation, debarkation, moorage of ~~boats~~ 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 ~~and~~ 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 ~~or the riparian owner's lessee for riparian owner's or lessee's domestic use;~~ and
 - b. The intake is removed from ~~sovereign lands~~ below the ordinary high watermark each fall.
3. ~~Boats~~ 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 89-10-01-10 require a permit from the state engineer. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ 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) ~~south of Bismarck~~ must be registered with the state engineer prior to before placement of any such dock. The state engineer ~~shall~~ must provide registration forms. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ must pay a two hundred fifty dollar fee and the per occurrence. The dock may 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 ~~shall~~ must:

1. Issue an order to the structure owner identifying the action required to modify, or remove, ~~or otherwise eliminate~~ 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 ~~shall~~ 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 may modify, or remove, ~~or otherwise eliminate~~ the structure at the structure owner's expense.
3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer modifies, or removes, ~~or eliminates~~ the structure, the state engineer may assess the fees and costs of such action against any property of the ~~person responsible for the structure;~~ structure's owner or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the ~~cost~~ costs against property of the ~~person responsible for the structure~~ structure's owner and the property is insufficient to pay for the costs incurred, the state engineer 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. ~~Within ten days of the date the order is issued, a~~ A person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The state engineer 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 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 ~~shall~~ must set a hearing date without undue delay.
5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county ~~in which~~ where the sovereign lands at issue are located ~~in accordance with~~ 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 61-33, 61-03-21.3, 61-03-22

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.

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;
2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located on 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 ~~must be~~ has been submitted to the state engineer, 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 ~~a boat, canoe, or other~~ 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 ~~persons~~ people who possess a ~~totally or permanently disabled person's fishing license~~ 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 ~~or the riparian owner's lessee~~ 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 it does the listed activities do not negatively affect public use or values; and or
11. When being used by government personnel in the performance of their duties.

~~This section does not authorize use of property above the ordinary high watermark. Any person who violates this section is guilty of a noncriminal offense and shall~~ 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. The state engineer may cancel any authorization granted pursuant to 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, the state engineer 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 or surrender any authorization by notifying the state engineer in writing, paying all fees or royalties or other money owed to the state, and reclaiming the site pursuant to 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 pursuant to under these regulations may only be assigned with the written consent of the state engineer.

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 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. ~~The time allowed for reclamation shall be within one hundred twenty days, unless.~~ If the permit is for mining which shall be reclaimed, reclamation must be within sixty days after the lease expires or the mining is complete. The Upon written request, the state engineer 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 timeframe, the state engineer 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 ~~do~~ 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 may enter agreements for management of areas of high public value. Examples include, ~~but are not limited to,~~ 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 ~~persons~~ people are prohibited on sovereign lands without a permit ~~issued by the state engineer~~. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ 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 ~~shall~~ 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 ~~shall~~ 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 ~~and~~, regulations, or laws; or as posted at public entry points. Posting sovereign lands with signage by anyone other than the state engineer is prohibited without a sovereign lands permit. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ 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 ~~privately-owned~~ authorized docks; or
2. When moored to private property above the ordinary high watermark with a rope, chain, ~~or other type of~~ restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark; ~~or~~
3. ~~By riparian owners on land below the ordinary high watermark.~~

Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ 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. ~~Trees~~ Public property, including trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, ~~water~~, firewood, posts, or poles, ~~or other public property~~ may not be removed from sovereign lands without a permit ~~issued by the state engineer, except that firewood~~. Firewood may be removed under certain stated conditions from designated firewood cutting plots, ~~and the riparian owner or the riparian owner's lessee may hay or graze sovereign lands adjacent to the~~

~~riparian owner's property, unless prohibited in writing by the state engineer. Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. Removal of property from sovereign lands by permit shall only be in a manner, limit, and condition specified by the permit~~ A riparian owner may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the state engineer. 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 shall 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, ~~occurring~~ 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.

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 ~~boats~~ watercraft may not be dumped on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and shall 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 shall 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 ~~and~~ or as otherwise posted at public entry points. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ 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 ~~and~~, 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 ~~of the year~~ and ~~shall~~ 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. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ 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. Bait may be used to lure and take furbearers when engaged in ~~trapping in~~ lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and ~~shall~~ 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, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the state engineer ~~shall~~ 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 may take any action to restore the sovereign lands at the violator's expense.
3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer takes action to restore sovereign lands, the state engineer 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 chooses to recover costs by assessing the costs against the riparian owner's property where the dredging and 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 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. ~~Within ten days of the date the order is issued, a~~ A person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The state engineer 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 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 ~~shall~~ must set a hearing date without undue delay.
5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county ~~in which~~ where the sovereign lands at issue are located ~~in accordance with~~ 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 SUPPLY PROJECT ASSISTANCE PROGRAM

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

**CHAPTER 89-11-01
DROUGHT DISASTER LIVESTOCK WATER SUPPLY PROJECT 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. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Livestock producer" means an individual who ~~produces~~ breeds or raises livestock or operates a dairy farm, who normally devotes the major portion of the individual's time to the activities of farming or ranching, and who normally receives ~~not less than~~ at least fifty percent of the individual's annual gross income from farming or ranching.
2. "Water supply project" includes the ~~necessary~~ components, and the installation, ~~necessary~~ to transfer water from ~~the~~ a water source to the drought-affected livestock.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014.

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. ~~No funds may~~ Funds will only be disbursed for any water supply project ~~unless the county in which the water supply project is to be located is a county or is adjacent to a county that has been~~ projects in:

1. Counties that have been declared by the governor to be a drought disaster area for purposes of this program, or a;
2. Counties adjacent to the counties in subsection 1; or

3. A drought disaster area under a drought declaration that has not been rescinded.

The state water commission will determine a beginning and end date of the program.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014.

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 water cost-share assistance from the United States department of agriculture farm service agency and must have been denied such cost-share assistance.

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

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

Law Implemented: NDCC 61-34-02

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

1. The state water commission ~~shall~~ must provide funds for the program to the extent funding is available. Priority will be based on earliest date of application.
2. Cost-share assistance may only be used for water supply projects ~~which~~ that will provide a solution to a drought-related water supply shortage.
3. All wells drilled with funds provided ~~pursuant to~~ under this program must be drilled by a North Dakota certified water well contractor.
4. Eligible items include new water wells, rural water system connections, pipeline extensions, pasture taps, pumps, generators, electrical and solar hookups, ~~and~~ stock water tanks, and labor, materials, and equipment rentals for work completed by the producer.
5. The applicant may receive up to fifty percent of the eligible costs, ~~but no more than~~ not to exceed three thousand five hundred dollars per project, with a limit of three projects ~~per~~ on any land owned by an applicant.

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

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 funding from the drought disaster livestock water supply project assistance program.

1. ~~A rehabilitation~~ Rehabilitation of an existing well.
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 to locate a water source.
4. The construction of stock dams or dugouts dependent upon runoff.
5. Projects that require repair due to damage or failure to provide maintenance to an existing water source.

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

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 form provided by the state water commission and must include:
 - a. Written proof the applicant applied for cost-share assistance from the United States department of agriculture farm service agency and was denied such assistance, including the reason for the denial.
 - b. An area map indicating the location of the proposed water supply project.
 - c. An estimate of the costs of the proposed water supply project.
 - d. Verification by the applicant that the applicant is a livestock producer.
2. The ~~state chief~~ engineer shall ~~must~~ review applications and acknowledge their receipt. The ~~state chief~~ engineer shall must, within the limits of

available funding, provide assistance to those persons whose applications are approved. The applicant must agree to:

- a. Complete the project within one hundred eighty days of receiving notification of approval of funding of the water supply project. The state chief engineer may grant an extension of time if a written request is submitted and just cause for an extension is provided.
- b. Provide receipt of actual expenditures ~~or~~, an affidavit of work completed if work is done by the applicant, or both, if applicable.
- c. Grant to the state water commission or anyone authorized by the state water commission the right to enter upon 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 and the state water commission, its officers, agents, employees, and members, from all claims, suits, or actions ~~of whatsoever nature~~ resulting from or arising out of the activities of the applicant or applicant's agents or employees ~~under this agreement~~.

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

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

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

Law Implemented: NDCC 61-34-02