

**ARTICLE 89-02
DRAINAGE OF WATER**

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

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89-02-01-01. Intent.

Repealed effective January 1, 2015.

89-02-01-02. Definitions.

Unless the context otherwise requires, the following definitions apply:

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

13. "Pond, slough, lake, sheetwater, or any series thereof" means ponds, sloughs, lakes, or sheetwater that are hydrologically linked.
14. "Sheetwater" is defined in North Dakota Century Code section 61-32-03.
15. "Slough" includes two types:
 - a. Seasonal slough: a depression that holds water in normal years from spring runoff until approximately mid-July. In years of normal runoff and precipitation, a seasonal slough is usually not tilled, but can be used for hayland or pasture. In low runoff, dry years, these areas generally are tilled for crop production, but commonly relood with frequent or heavy summer or fall rains.
 - b. Temporary slough: a shallow depression that holds water from spring runoff until approximately early June. In years of normal runoff and precipitation, a temporary slough is usually tilled for crop production. In years of high runoff or heavy spring rain, a temporary slough may not dry out until mid-July and generally would not be tilled, but may be used for hayland or pasture. A temporary slough frequently reloods during heavy summer or fall rains.
16. "Watercourse" is defined in North Dakota Century Code section 61-01-06.
17. "Watershed area" means the area that drains into a pond, slough, lake, sheetwater, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-03. Permit required.

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

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

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

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

Repealed effective February 1, 1997.

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

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.
2. The provisions of section 89-02-01-03 do not apply to any drain constructed under the direct and comprehensive supervision of the following federal or state agencies:

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

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

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; April 1, 2004; January 1, 2015; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

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

As a part of a drainage permit application, applicants shall report to the department the watershed area proposed to be drained by the project and how it was determined. This information must be verified by the department through best publicly available information from relevant local, state, or federal agencies. This information may be supplemented by any information obtained from an onsite investigation if the department determines it is necessary.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07. Filing application - Application completeness.

1. Any person desiring a drainage permit shall file a complete application form with the department on a form provided by the department.
2. The department shall notify the applicant within fifteen days of application receipt, in writing, whether the application is deemed complete or incomplete.
3. If the application is deemed complete, the department shall begin its review of the application for statewide or interdistrict significance under section 89-02-01-07.4.
4. If the application is deemed incomplete, the department shall detail what information is missing in its notification to the applicant. Applicants are not restricted from submitting a new application for department consideration under this section.
5. Applications are subject to department requirements at the time the application is submitted to the department.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07.1. Application amendments.

1. If an applicant wishes to make a change to the applicant's application after the application contents have been submitted to the department and without an identified deficiency by the department, the applicant shall withdraw the application and submit a new application.
2. The applicant may amend the application to address deficiencies identified by the department as a part of the department review under section 89-02-01-09.2. The department shall notify the applicant of the deficiency in writing, and the department shall cease its review of the application upon notification to the applicant that a deficiency has been identified. The applicant has up to ninety days from the notification to make any necessary amendments to the application to address the deficiency. This timeline may be extended in consultation with the department. If the department does not receive an application amendment or extension request within ninety days, the application must be denied. The department has up to ninety days to review and approve or deny the application from the receipt of the most recent amendment. All amended applications are subject to department review under section 89-02-01-09.2.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07.2. Department and applicant coordination.

1. If the department needs further information or support materials from the applicant during the department review, the department review shall cease and the applicant must be notified, in writing, of the department's need for information or additional support materials.
2. The applicant has up to ninety days from the notification by the department to provide the requested information or materials. This timeline may be extended in consultation with the department.
3. If the department does not receive the requested information, materials, or extension request within ninety days, the application must be denied.
4. The department has up to ninety days to review and approve or deny the application from the receipt of the most recently requested information or materials from the applicant.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07.3. Extension of department review.

In unique or complex situations, the department and applicant may agree to suspend the ninety-day timeline requirements detailed in this chapter.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07.4. Review for statewide or interdistrict significance - Determination.

1. The department may not begin its review of the application for statewide or interdistrict significance until the application is deemed complete under section 89-02-01-07. The

department shall consider the criteria in section 89-02-01-09 in making its determination on whether the drain is of statewide or interdistrict significance.

2. Upon completion of the department's determination, or within ninety days, the department shall refer the application to the district within which is found a majority of the watershed or drainage area of the pond, slough, lake, sheetwater, or any series thereof for consideration, along with any application comments, recommendations, or engineering data.
3. The department shall require applications proposing drainage of statewide or interdistrict significance to be returned to the department if approved by the board. The district is responsible for returning the application to the department for the department's final review and approval.

History: Effective April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

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

Repealed effective April 1, 2026.

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

1. In determining whether the proposed drainage is of statewide or interdistrict significance, the department shall consider the following criteria:
 - a. Drainage affecting property owned by the state or its political subdivisions.
 - b. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
 - c. Drainage having a substantial effect on another district.
 - d. Drainage converting previously noncontributing areas (based on the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year event - four percent chance) into permanently contributing areas.
2. The review may include a solicitation of comments. For good cause, the department may determine or refuse to determine any proposed drainage as having statewide or interdistrict significance.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.1. Department information-gathering meeting.

1. Upon receipt of the board's approval of a drainage application for drains determined to have statewide or interdistrict significance under section 89-02-01-07.4 and any information received or considered by the board as a part of that permit application, the department shall hold an information-gathering public meeting.
2. The procedure for notice and meeting must be as follows:
 - a. The department shall publish a notice of meeting thirty days prior to holding the meeting.

- b. The meeting must be conducted by the department.
- c. The meeting may be held in Bismarck. The meeting may be virtual.
- d. The meeting is not an adjudicative proceeding hearing under North Dakota Century Code chapter 28-32.

History: Effective February 1, 1997; amended effective January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.2. Department review - Factors considered - Drains of statewide or interdistrict significance.

1. The department has up to ninety days to review and approve or deny drainage applications for drains determined to have statewide or interdistrict significance under section 89-02-01-07.4 from the time the most recent application amendment detailed under section 89-02-01-07.1 is received and subject to department and applicant coordination detailed under section 89-02-01-07.2. The ninety-day review period begins the day after the information-gathering meeting in section 89-02-01-09.1.
2. The department shall review the board's approval of the application, any information received or considered by the board as a part of the board's review, and information gathered from the department's information-gathering meeting under section 89-02-01-09.1. The department may request additional information, such as plans and specifications of the drain, an operation and maintenance manual, proof of flowage easements, or additional engineering analysis of the downstream impacts as a part of the review.
3. As a part of the department review of applications proposing drainage of statewide or interdistrict significance, the department shall consider the following factors:
 - a. The water volume proposed to be drained and its impact upon the watercourse into which it will be drained;
 - b. Adverse effects that may occur to downstream landowners. This factor is limited to the project's hydrologic effects, such as erosion, flood duration, sustained flows impacts, and downstream water control device operation impacts;
 - c. The engineering design and other physical aspects of the drain;
 - d. The project's impact on flooding problems in the project watershed;
 - e. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values;
 - f. The project's impact on agricultural lands;
 - g. Whether required easements have been obtained; and
 - h. Other factors unique to the project.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015; April 1, 2026.

General Authority: NDCC 61-03-13

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

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

Repealed effective April 1, 2026.

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

Repealed effective April 1, 2026.

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

1. The department shall provide a copy of the decision to the parties of record.
2. The notice of decision must include:
 - a. The name of the drain;
 - b. The applicant's name;
 - c. Whether the application was granted or denied;
 - d. The date of the decision;
 - e. The availability of the full text of the decision; and
 - f. That an adjudicative hearing may be requested on the project under North Dakota Century Code 61-03-22.

History: Effective February 1, 1997; amended effective January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

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

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

Repealed effective April 1, 2026.

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

Repealed effective April 1, 2026.

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

Repealed effective April 1, 2026.

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

Repealed effective April 1, 2026.

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

Repealed effective April 1, 2026.

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

Unless otherwise specifically stated, the department may attach conditions to permits of statewide or interdistrict significance.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

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

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

History: Effective February 1, 1997; amended effective April 1, 2004; January 1, 2015; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-32-03

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

Repealed effective February 1, 1997.

89-02-01-11. Emergency drainage.

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective December 1, 1979.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective February 1, 1997.

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

Repealed effective December 1, 1979.

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

Repealed effective February 1, 1997.

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

Repealed effective October 1, 1982.

89-02-01-25. Criminal complaint.

Repealed effective October 1, 1982.

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

Repealed effective December 1, 1979.

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

Repealed effective August 1, 1994.

89-02-01-28. Landowner assessment appeal to department.

Repealed effective April 1, 2026.