

ARTICLE 89-03 WATER APPROPRIATIONS

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

CHAPTER 89-03-01 WATER PERMITS

Section	
89-03-01-01	Conditional Water Permit Application Submission
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 Must Be Obtained
89-03-01-01.4	Amount of Water That May Be Held in Storage Under 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89-03-01-02	Correction of Unsatisfactory Application [Repealed]
89-03-01-03	Application Amendment
89-03-01-03.1	Transfer of an Application to Another Parcel [Repealed]
89-03-01-03.2	Application Assignment
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89-03-01-05.1	Notice of Decision on Water Permit Application [Repealed]
89-03-01-06	Filing Proof of Publication and Mailing [Repealed]
89-03-01-06.1	Consideration of Evidence Not Contained in the State Engineer's Record [Repealed]
89-03-01-06.2	Notice of Continuance - Responsibility [Repealed]
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89-03-01-09	Appropriation Not Requiring Water Permit [Repealed]
89-03-01-10	Emergency or Temporary Authorization
89-03-01-10.1	Temporary Water Transfer for Irrigation
89-03-01-10.2	Temporary Permit Fees
89-03-01-11	Competing Applications
89-03-01-12	Extensions and Cancellations
89-03-01-13	Report of Water Use
89-03-01-13.1	Fines - Water Use Reporting
89-03-01-14	Notice [Repealed]

89-03-01-01. Conditional water permit application submission.

A conditional water permit application must be submitted to the department on the form provided by the department. A map containing the information prescribed by the department must accompany the application. Unless the department 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 North Dakota-licensed surveyor. The department may require information not requested in the application.

History: Amended effective April 1, 1989; February 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-03

89-03-01-01.1. Priority date.

The department must note the receipt date of a properly completed application 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 filing date establishes the application's original priority date, subject to the application's final acceptance and issuance of a perfected water permit by the department. 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; January 1, 2023.

General Authority: NDCC 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.

A conditional water permit applicant must have a legal interest where the point of diversion and conveyance system will be located. The applicant must demonstrate to the department's satisfaction 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 a legal interest in the land to be irrigated. If the applicant is seeking a permit to impound water, the applicant must have a legal interest in the property inundated by the impounded water. The department may require additional verification of a property 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; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-02.2, 61-04-03, 61-04-06

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

A water permit may authorize water storage for flood control or other reasons deemed necessary by the department. However, authorization to store water for flood control or other reasons does not create a water right. If stored water will be put to beneficial use, a water permit must be obtained before beneficial use.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2015; January 1, 2023.

General Authority: NDCC 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 under a water permit.

Unless otherwise authorized by the department, any person authorized to store water, 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 department 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.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-01.2, 61-04-02, 61-04-06.2

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 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 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 department.

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 before November 1, 1989.

History: Effective November 1, 1989; amended effective June 1, 1998; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-02-27, 61-04-06.2

89-03-01-02. Correction of unsatisfactory application.

Repealed effective January 1, 2023.

89-03-01-03. Application amendment.

1. An applicant may amend a conditional water permit application. If the department 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 department must change the priority date of the amended application to the date the amendment request 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 any notice of the application has been mailed before the request to amend, the department may require the applicant to mail a corrected notice of the application to all persons who were sent the original notice and submit an affidavit of service of corrected notice to the department. If the notice of the application has been published, the department may require a corrected notice to be published. The applicant must pay publication costs.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-04

89-03-01-03.1. Transfer of an application to another parcel.

Repealed effective January 1, 2023.

89-03-01-03.2. Application assignment.

A request to assign a conditional water permit application to another person must be submitted to the department in writing. When title of land for which there is a pending application is transferred, either the transferee or the applicant may apply for application assignment. The assignment request must describe the transferee's interest in the application permit. The department may request additional documentation of the transferee's interest.

History: Effective April 1, 1989; amended effective April 1, 2000; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-04, 61-04-15

89-03-01-03.3. Evaporative losses.

When a conditional water permit 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 that will be taken from the stored water.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-06.2

89-03-01-04. Notice of application.

1. When a proper conditional water permit application is filed, the department will forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts:
 - a. All requested points of diversion;
 - b. Requested annual appropriation and withdrawal rate;
 - c. Requested source and purpose of use; and
 - d. Applicant's name; and
 - e. Newspaper in which the water permit application notice must 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 department and that anyone who files written comments will be mailed a copy of the department's recommended decision on the application.

2. Upon receipt of the completed notice of application forms, the applicant must send a notice of application form as provided in North Dakota Century Code section 61-04-05. The determination of title owners at the time of the application must be based on title records on file with the appropriate county recorder. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.
3. After notice of application forms have been mailed to those required by North Dakota Century Code section 61-04-05, the applicant must properly complete an affidavit of notice and return it to the department. 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.

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; April 1, 2000; April 1, 2004; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-05. Publication of notice of water permit applications.

In addition to the requirements in North Dakota Century Code section 61-04-05, a copy of the notice of the conditional water permit application to be published must be sent to the applicant.

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; August 1, 1994; April 1, 2000; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 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.

Repealed effective July 1, 2014.

89-03-01-06.3. Record - Official notice.

Unless specifically excluded by the department or the hearing officer, the record in each water permit application proceeding includes, if 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 department streamflow records.
3. United States geological survey and department water quality data.
4. National oceanic and atmospheric administration climatological data.
5. United States geological survey topographic maps.
6. Department water permit files.
7. Department annual water use reports.
8. Department and United States geological survey ground water level data.
9. Water well contractors well completion reports.
10. Department test hole records.
11. Department water resource investigations reports and ground water study reports.
12. Department and United States geological survey county ground water study reports.
13. Information in department and state water commission files, records, and other published reports.

History: Effective February 1, 1994; amended effective April 1, 2000; July 1, 2014; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-05.1

89-03-01-07. Necessity of works and construction of works for a conditional water permit.

A conditional water permit application may only be considered if works are associated with the proposed appropriation. For any water appropriation that involves the construction of works that require a construction permit from the department, the water permit may be issued before receipt of the construction permit. However, the water permit is not valid until the construction permit is issued.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-02

89-03-01-08. Point of diversion.

The department 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 department may issue a water permit that allows for points of diversion from different locations from the same water source, provided the department finds good cause for doing so.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-06.2

89-03-01-09. Appropriation not requiring water permit.

Repealed effective January 1, 2023.

89-03-01-10. Emergency or temporary authorization.

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

An applicant for emergency water use, if the situation warrants, may call the department requesting immediate water use. Following an oral request and oral approval by the department for authorization, a temporary application form must be submitted.

The applicant for a temporary water permit is responsible for all damages that may be caused to other appropriators or any other individual because of the emergency or temporary water use.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 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 department 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; amended effective January 1, 2023.

General Authority: NDCC 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 department may waive the fees for certain emergency uses of a temporary water permit, including firefighting.

Volume of Water Requested:

Less than one acre-foot	\$75
One to ten acre-feet	\$125
More than ten acre-feet	\$200

Filing fees are not required for requests made under section 89-03-01-10.1.

History: Effective July 1, 2014; amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-02.1, 61-04-06.2

89-03-01-11. Competing applications.

Conditional water permit applications from the same source for different uses will be considered competing applications if received by the department within ninety days of each other.

History: Effective April 1, 1989; amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-06.1

89-03-01-12. Extensions and cancellation.

Where the time has expired to put any portion of the water appropriated under a conditional water permit to the beneficial use named in the permit, the department will notify the permitholder. The department will provide the permitholder with a form 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 supply source.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-14

89-03-01-13. Report of water use.

The form for reporting annual water use under North Dakota Century Code section 61-04-27 must include the permit number, water usage amount, pumping rate, if applicable, and any other information the department may require. One form must be filed for each water permit held.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-27

89-03-01-13.1. Fines - Water use reporting.

A permitholder who fails to timely submit a complete and accurate annual water use report under North Dakota Century Code section 61-04-27 must be assessed a fine of two hundred fifty dollars for each water permit.

History: Effective July 1, 2014; amended effective January 1, 2023; April 1, 2026.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-23, 61-04-27

89-03-01-14. Notice.

Repealed effective January 1, 2023.