

**ARTICLE 89-15  
WATERCOURSES**

Chapter  
89-15-01            Watercourse Determinations

**CHAPTER 89-15-01  
WATERCOURSE DETERMINATIONS**

Section  
89-15-01-01        Definitions  
89-15-01-02        Identifying a Watercourse  
89-15-01-03        Information to Use in Making a Watercourse Determination  
89-15-01-04        Making a Watercourse Determination

**89-15-01-01. Definitions.**

Unless the context otherwise requires, the following definitions apply:

1. "Artificial watercourse" means a watercourse that was formed by artificial construction but maintained by natural causes, such as a natural watercourse that is straightened but still receives the same contributing runoff prior to its straightening.
2. "District" means water resource district.
3. "Natural watercourse", except as used in North Dakota Century Code section 61-32-03.1, means a watercourse that was formed and maintained by natural causes.
4. "Watercourse" is defined in North Dakota Century Code section 61-01-06. Other terms that are synonymous with watercourse are river, stream, creek, or channel. Watercourses may be natural or artificial.

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**General Authority:** NDCC 61-03-13

**Law Implemented:** NDCC 61-01-06

**89-15-01-02. Identifying a watercourse.**

For a watercourse to be constituted, the following criteria must be considered. No one criteria alone will constitute a watercourse, but rather a comprehensive review of the criteria provides the information necessary for a watercourse determination.

1. Sufficient natural and accustomed flow must be present or possible. This means the flow must be from a natural source, such as precipitation, snowmelt, or a natural spring, and must regularly or frequently occur during normal hydrology years.
2. A distinct and defined channel must be maintained by natural and accustomed flows. It is not necessary that the channel be natural or created by natural causes, but the flow in the channel must be sufficient enough to maintain the channel without routine artificial maintenance, including removal of silt, sediment, and vegetation.
3. A distinct and defined channel must have a definite bed and banks. It is not necessary that the banks be well defined or sharply cut, but they must be easily discernable in times of little vegetative cover and have some capacity to carry flowing water.
4. A plainly defined channel must be present and easily discernable.

5. A channel of permanent character must be present and evident upon site inspection and review of aerial photography. The channel must have existed in that location for several years or have the high likelihood of existing there for several years in the case of a recently constructed artificial watercourse.
6. The land use of the site in question may play a role, including whether the land is routinely used for agricultural purposes and if agricultural crops would be injured by any received waters.

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**89-15-01-03. Information to use in making a watercourse determination.**

1. Data or information to be utilized includes the following:
  - a. Relevant and readily available aerial photography.
  - b. Mapping products including United States geological survey quads, LiDAR data, general land office notes, and existing surveys.
2. Information collected or observed during a site visit, including notes, photos, and simple surveying exercises, if warranted.
3. Any other information that may assist in a determination, including:
  - a. A hydrology analysis of the watershed that provides the watershed area contributing to the site and flow quantity and flow frequency to expect at the site.
  - b. Any court case history involving watercourse determinations.
  - c. Any further scientific justification necessary, including analyzing channel forming velocities, soil types, sediment transport, and geomorphology.

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**89-15-01-04. Making a watercourse determination.**

Other than the department, only water resource districts may determine if a watercourse is constituted by definition if the district needs to identify a watercourse as part of its powers, authority, or responsibilities under North Dakota Century Code title 61. If a district requests a watercourse determination from the department according to section 61-01-06, the department's decision is final and subject to appeal under North Dakota Century Code section 61-03-22. Watercourse determinations need not be formally made if they are made in conjunction with a permitting or complaint or appeal decision under North Dakota Century Code title 61, unless requested by a district under section 61-01-06. Only the department must provide a formal determination if requested by a district under section 61-01-06.

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