



State of North Dakota

Office of the State Engineer

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MEMORANDUM

TO: Legislative Council Administrative Rules Committee

FROM: *Dale L. Frink* Dale L. Frink, State Engineer

RE: Rules to be Published in the January 2010 Supplement to the North Dakota Administrative Code

DATE: December 10, 2009

Title 89 - Water Commission.

A brief description of the amendments that have been made by the State Engineer and an explanation regarding the matters of concern to the committee are as follows:

1. *Whether the rules resulted from statutory changes made by the Legislative Assembly.*

N.D. Admin. Code § 89-03-03-02, definition of domestic rural use, was amended to be consistent with statutory changes to N.D.C.C. § 61-04-01.1. The changes to N.D. Admin. Code ch. 89-10-01 did not result from statutory changes.

2. *Whether the rules are related to any federal statute or regulation.*

No.

3. *A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.*

An abbreviated notice of hearing was published once in each official county newspaper in North Dakota and a full notice of hearing was filed with the Legislative Council. A public hearing was held on August 20, 2009, in Bismarck. The comment period was open until September 1, 2009. The rules were submitted to the Attorney General on September 18, 2009, for a legal opinion; and the Attorney General approved the rules on September 28, 2009.

The proposed rules were provided to anyone who requested them; they were also mailed to a number of citizens and public agencies. The abbreviated notice stated that the rules were available on the State Engineer's web page.

4. *Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.*

Public hearing and written comments received concerned the permit requirement for a boat dock exceeding 25 feet in length. The State Engineer's response was the 25-foot boat dock permit requirement has been in place since 1989. No amendments to this rule were proposed during this hearing process; therefore, no changes were made.

5. *The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.*

The cost for publication of the public hearing notices was \$1,573.00.

6. *An explanation of the subject matter of the rules and the reasons for adopting those rules.*

N.D. Admin. Code Article 89-03 regulates water appropriations. The following section was amended:

Section 89-03-03-02, Definition of domestic rural use was amended to be consistent with changes made by the legislature in N.D.C.C. 61-04-01.1.

N.D. Admin. Code Article 89-10 regulates sovereign lands. The following sections were either amended or created:

Section 89-10-01-03, Definitions was amended to define domestic water use.

Section 89-10-01-10, Projects not requiring a permit amended which sovereign lands projects do not require a permit.

Section 89-10-01-10.1, Boat docks, boat ramps, and water intakes was amended to remove boat ramps from this section.

Section 89-10-01-10.2, Boat dock registration was created to require boat docks not requiring a permit from the state engineer on the Missouri River between the Oliver/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 before placing the dock and establishes that the state engineer shall provide the registration forms for the boat docks. This section also provides that any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

Section 89-10-01-11, Structures was amended to clarify this section.

Section 89-10-01-34, Dredging or filling was created to provide that, except as otherwise provided, dredging or filling on sovereign lands is prohibited and establishes the process by which the state engineer may restore sovereign lands where prohibited dredging and filling has occurred.

7. *Whether a regulatory analysis was required by North Dakota Century Code (N.D.C.C.) § 28-32-08 and whether a regulatory analysis was issued.*

A regulatory analysis was not required.

8. *Whether a regulatory analysis or economic impact statement of impact on small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued.*

Regulatory analysis and economic impact statements on small entities were issued and are attached.

9. *Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09.*

A constitutional takings assessment was not required.

10. *If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.*

These rules were not adopted as emergency rules.

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Attachments

**N.D. ADMIN. CODE ARTICLE 89-03
WATER APPROPRIATIONS**

SMALL ENTITY REGULATORY ANALYSIS

1. Establishing less stringent compliance or reporting requirements.

Allows irrigation up to five acres without acquiring a water permit, which is less stringent than the old requirement for irrigating more than one acre.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements.

No impact.

3. Consolidation or simplification of compliance or reporting requirements.

N/A.

4. Establishing performance standards that replace design or operational standards required in the proposed rule.

N/A.

5. Exempting small entities from all or any part of the requirements.

Exempts irrigation up to five acres from requiring a water permit.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Small entities that may be subject to the proposed rule.

Small irrigation projects from one to five acres will not be required to apply for a water permit.

2. The administrative or other costs required for small entities to comply with the proposed rule.

No cost to comply with the proposed rules.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule.

Irrigation between one and five acres will no longer require a water permit and as a result a filing fee of \$200 will not be spent.

4. The probable effect of the proposed rule on state revenues.

A very minimal amount of revenue will be lost to the State by reduction in irrigation water permit filing fees for those parties irrigating between one and five acres.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose.

No.

**N.D. ADMIN. CODE ARTICLE 89-10
SOVEREIGN LANDS**

SMALL ENTITY REGULATORY ANALYSIS

1. Establishing less stringent compliance or reporting requirements.

Boat dock owners on the Missouri River between the Oliver/Morton County line and the Lake Oahe take line will be required to register their boat docks with the State Engineer.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements.

No impact.

3. Consolidation or simplification of compliance or reporting requirements.

N/A.

4. Establishing performance standards that replace design or operational standards required in the proposed rule.

N/A.

5. Exempting small entities from all or any part of the requirements.

No impact.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Small entities that may be subject to the proposed rule.

Private persons or groups/organizations are subject to the proposed rules.

2. The administrative or other costs required for small entities to comply with the proposed rule.

No cost to comply with the proposed rules.

3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule.

The cost is simply the cost of doing business for the Office of State Engineer, but the benefits will be preserving sovereign lands for the people of North Dakota.

4. The probable effect of the proposed rule on state revenues.

There would be no effect on state revenues.

5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose.

No.