



# Water Appropriation Statutes & Rules

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## NORTH DAKOTA CENTURY CODE

### CHAPTER 61-04 APPROPRIATION OF WATER

**61-04-01. Petitions, reports, surveys, and other documents filed in office of commission.** Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter shall be filed in the office of the commission in the city of Bismarck, where they shall be kept on file under the control of the state engineer.

**History:** Enacted 1941; amended 1977

**61-04-01.1. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Adjudicative proceeding" as defined under chapter 28-32 provides for an appeal of a recommended decision by the state engineer for a water permit application.
2. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
3. "Commission" means the state water commission.
4. "Domestic use" means the use of water by at least one family unit or household 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.
5. "Fish, wildlife, and recreation" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
6. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including but not limited to manufacturing, mining, or processing.
7. "Informational hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.

8. "Irrigation use" means the use of water for application to more than five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.
9. "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals, kept for commercial purposes.
10. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
11. "Person" includes political subdivisions, corporations, limited liability companies, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.
12. "Rural water system" means a water supply system designed to serve regional needs.
13. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

**History:** Enacted 1977; amended 1981, 1989, 1993, 1997, 2003, 2009, 2011, 2015.

**61-04-01.2. Right to use water - Basis.** A right to appropriate water can be acquired for beneficial use only as provided in this chapter. Beneficial use shall be the basis, the measure, and the limit of the right to the use of water.

**History:** Enacted 1977.

**61-04-02. Permit for beneficial use of water required.** Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses the water user shall notify the state engineer of the location and acre-feet [1233.48 cubic meters] capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior

to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet [15418.52 cubic meters] of water per year will be appropriated. In those cases where a permit is not required of a landowner or the landowner's lessee to appropriate less than twelve and one-half acre-feet [15418.52 cubic meters] of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date; the state engineer may waive any fee or hearing for such applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

**History:** Enacted 1905; amended 1953, 1957, 1961, 1963, 1965, 1977, 1981, 1983.

**61-04-02.1. Emergency or temporary authorization.** The state engineer may authorize emergency or temporary use of water for periods not to exceed twelve months if the state engineer determines such use will not be to the detriment of existing rights. The state engineer shall establish by rule a separate procedure for the processing of applications for emergency or temporary use. No prescriptive or other rights to the use of water shall be acquired by use of water as authorized herein.

**History:** Enacted 1977; amended 1979.

**61-04-03. Application for water permit - Contents - Information to accompany.** The application for a permit to make beneficial use of any waters of the state shall be in the form required by the rules established by the state engineer. Such rules shall prescribe the form and contents of, and the procedure for filing, the application. The application, along with all other information filed with it, shall be retained in the office of the commission after approval or disapproval of the application. The state engineer may require additional information not provided for in the general rules if the state engineer deems it to be necessary.

**History:** Enacted 1905; amended 1977.

**61-04-03.1. Limitation on amount of water.** An individual may not apply for a permit or permits for irrigation which, if approved, would enable the individual, at any one time, to hold a conditional permit or permits for more than seven hundred twenty acre-feet [888106.75 cubic meters] of water which has not been applied to beneficial use. Applications submitted in violation of this section shall not be assigned a priority date and shall be returned to the applicant by the state engineer. This section shall not apply to applications for water permits from the Missouri River or to applications submitted by irrigation districts organized pursuant to this title. For the purposes of this section, an individual means any person, including the person's spouse, and dependents thereof within the meaning of the Internal Revenue Code [26 U.S.C. 152].

**History:** Enacted 1981.

**61-04-04. Filing and correction of application.** The date of the receipt of the application provided for in section 61-04-03 in the commission office shall be noted thereon. If the application is defective as to form, incomplete, or otherwise unsatisfactory, it shall be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If the application is corrected as required and is refiled within such time, it, upon being accepted, shall take priority as of the date of its original filing. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling. The application may be amended by the applicant at any time prior to the commencement of administrative action by the state engineer as provided in sections 61-04-05 through 61-04-07.

**History:** Enacted 1905; amended 1961, 1977.

**61-04-04.1. Application fees.** The following fees must accompany an application and must be paid by the state engineer into the water use fund of the state treasury:

- |    |  |       |
|----|--|-------|
| 1. | For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census   | \$500 |
| 2. | For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census | \$250 |
| 3. | For irrigation   | \$200 |
| 4. | For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893039.52 cubic meters] or less                    | \$250 |
| 5. | For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893039.52 cubic meters]             | \$750 |
| 6. | For recreation, livestock, or fish and wildlife  | \$100 |
| 7. | For commercial recreation  | \$200 |
| 8. | Water permit amendment   | \$ 50 |

**History:** Enacted 1977; amended 1981, 1989, 1991.

**61-04-04.2. Refund of water permit application fees.** The state engineer may refund a water permit application fee, upon the request of the applicant, if the application is withdrawn by the applicant, and:

1. The state engineer has not published notice of the application; or

2. The state engineer determines other good and sufficient cause exists to refund the application fee.

**History:** Enacted 1995.

**61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof.** When an application is filed which complies with this chapter and the rules adopted under this chapter, the state engineer shall instruct the applicant to:

1. Give notice of the application by certified mail in the form prescribed by rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except:
  - a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.
  - b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.
  - c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.
2. Give notice of the application by certified mail in the form prescribed by rule to all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site. The state engineer shall provide a list of all persons who must be notified under this subsection to the applicant.
3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use water facilities within a twelve-mile radius of the proposed water appropriation site. The state engineer shall provide a list of all municipal or public use water facilities that must be notified under this subsection to the applicant.

4. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice of the application, in a form prescribed by rule, in the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.
5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer. The notice must also 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.
6. The applicant shall pay all costs of the publication of notice.

**History:** Enacted 1905; amended 1961, 1969, 1977, 1989, 1993, 1999, 2003, 2011.

**61-04-05.1. Comments - Hearing.**

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.
2. A person filing written comments may also request an informational hearing on the application by the date specified by the state engineer under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the informational hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

3. If two or more municipal or public use water facilities request the informational hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The state engineer shall consider all written comments received and testimony presented at an informational hearing, if held, and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended decision must be mailed to the applicant and any person who filed written comments.
5. Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments by the date specified under subsection 5 of section 61-04-05 may file additional written comments with the state engineer or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made, and if the state engineer determines an adjudicative proceeding is necessary, the state engineer shall designate a time and place for the adjudicative proceeding and serve a copy of the notice of adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

**History:** Enacted 1999; amended 2003, 2011.

**61-04-06. Criteria for issuance of permit.** The state engineer shall issue a permit if the state engineer finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
  - a. The benefit to the applicant resulting from the proposed appropriation.

- b. The effect of the economic activity resulting from the proposed appropriation.
- c. The effect on fish and game resources and public recreational opportunities.
- d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
- e. Harm to other persons resulting from the proposed appropriation.
- f. The intent and ability of the applicant to complete the appropriation.

Subsection 1 of section 28-32-38 does not apply to water permit application proceedings unless a request for a hearing is made. If an application is approved, the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6167409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to nine copies of the transcript must be paid by the applicant.

**History:** Enacted 1905; amended 1961, 1965, 1977, 1983, 1993, 1999, 2001.

**61-04-06.1. Preference in granting permits.** When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the state engineer shall adhere to the following order of priority:

- 1. Domestic use.
- 2. Municipal use.
- 3. Livestock use.
- 4. Irrigation use.
- 5. Industrial use.
- 6. Fish, wildlife, and other outdoor recreational uses.

**History:** Enacted 1977.

**61-04-06.2. Terms of permit.** The state engineer may issue a conditional permit for less than the amount of water requested. Except for water permits for incorporated

municipalities or rural water systems, the state engineer may not issue a permit for more water than can be beneficially used for the purposes stated in the application. Water permits for incorporated municipalities or rural water systems may contain water in excess of present needs based upon what may reasonably be necessary for the future water requirements of the municipality or the rural water system. The state engineer may require modification of the plans and specifications for the appropriation. The state engineer may issue a permit subject to fees for water use and conditions the state engineer considers necessary to protect the rights of others and the public interest. Conditions must be related to matters within the state engineer's jurisdiction. All conditions attached to any permit issued before July 1, 1975, are binding upon the permittee.

**History:** Enacted 1977; amended 1985, 1997, 2015.

**61-04-06.3. Priority.** Priority in time shall give the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the state engineer, except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses in which case the priority date shall relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law. Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire the prior appropriator's water under the changed conditions.

**History:** Enacted 1977.

**61-04-07. Rejection of applications - Appeal to district court.** If the state engineer determines that an application does not meet the criteria prescribed in section 61-04-06, the state engineer shall reject the application. The state engineer shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules thereunder. Any applicant, within sixty days from the date of refusal to approve an application, may appeal to the district court of the county in which the proposed place of diversion or storage is situated, from any decision of the state engineer which denies a substantial right. In the absence of such appeal, the decision of the state engineer shall be final.

**History:** Enacted 1905; amended 1975, 1977.

**61-04-07.1. Approval of applications with conditions.** Repealed by S.L. 1977, ch. 569, § 27.

**Note.** For present provisions, see § 61-04-06.2.

**61-04-08. Prosecution of work - State engineer may approve another application upon failure of original applicant to complete - Exception.** Repealed by S.L. 1965, ch. 447, § 24.

**61-04-09. Application to beneficial use - Inspection - Perfected water permit.**

After the permit's beneficial use date, or upon notice from the permit holder that water has been applied to a beneficial use, the state engineer shall notify the conditional water permit holder and inspect the works. The inspection must determine the safety, efficiency, and actual capacity of the works. If the works are not properly and safely constructed, the state engineer may require the necessary changes to be made within a reasonable time. Failure to make the changes within the time prescribed by the state engineer shall cause postponement of the permit's priority date to the date the changes are made to the satisfaction of the state engineer. Any intervening application submitted before the date the changes are made will have the benefit of the postponement of priority. When the works are properly and safely constructed and inspected, the state engineer shall issue the perfected water permit, setting forth the actual capacity of the works and the limitations or conditions upon the water permit as stated in the conditional water permit authorized by section 61-04-06.2. All conditions attached to any permit issued before July 1, 1975, are binding upon the permittee.

**History:** Enacted 1905; amended 1961, 1965, 1975, 1977, 1983, 2015.

**61-04-10. Certificate of construction issued when works found in satisfactory condition - Contents.** Repealed by S.L. 1965, ch. 447, § 24.

**61-04-11. Inspection of works.** If the state engineer, in the course of the state engineer's duties, shall find that any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, the state engineer at once shall notify the owner or the owner's agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works. If such fees are not paid by the owner of such works within thirty days after the decision of the state engineer, they shall be a lien against any property of such owner, and shall be recovered by a suit instituted by the state's attorney of the county at the request of the state engineer. The state engineer, when in the state engineer's opinion it is necessary, may inspect any works under construction for the storage, diversion, or carriage of water and may require any changes necessary to secure their safety. The fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any agency thereof shall be required to pay such fees.

**History:** Enacted 1905; amended 1961.

**61-04-12. Use of unsafe works - Penalty.** Any person using works for the storage, diversion, or carriage of water, at any time after an inspection thereof by the state engineer and receipt of notice from the state engineer that the same are unsafe for

the purpose for which they are used, and until the receipt of notice from the state engineer that in the state engineer's opinion they have been made safe, shall be guilty of a class A misdemeanor.

**History:** Enacted 1905; amended 1975.

**61-04-13. Application of water to beneficial use - Inspection.** Repealed by S.L. 1965, ch. 447, § 24.

**61-04-14. Extending time for application to beneficial use.** The state engineer may extend the time for the application of water to the beneficial use cited in the conditional water permit for good cause shown. Where such time has expired, the state engineer may renew and extend the same upon application; provided, however, a conditional water permit, or any portion thereof, shall be considered forfeited, abandoned, and void if no request for renewal is received by the state engineer within sixty days after the date the permittee is informed by certified mail that the period for applying water to the beneficial use cited in the conditional permit has expired. If a request to extend the time for application to beneficial use for any conditional permit, or portion thereof, is denied, such conditional permit, or portion thereof, shall be considered forfeited, abandoned, and void. Sections 61-04-23 through 61-04-25 shall not apply to this section.

**History:** Enacted 1905; amended 1961, 1965, 1977, 1979.

**61-04-15. Assignment or transfer of conditional or perfected water permit.** Any conditional or perfected water permit may be assigned only upon approval by the state engineer. Any conditional or perfected water permit may also be transferred, with the approval of the state engineer, to any parcel of land owned or leased by the holder of such water permit. Upon reasonable proof that such assignment or transfer can be made without detriment to existing rights, the state engineer shall cause the water permit involved to be assigned or simultaneously severed and transferred from such land without losing priority of any right previously established. The decision of the state engineer shall be final unless some party interested in the same source of water supply shall, within sixty days, bring appropriate action in the district court of the county in which the land is located appealing such decision. Applications for assignment and transfer shall be in the form required by regulation. The transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water for irrigation of such land, except that any conditional or perfected water permit for irrigation purposes must be assigned in accordance with this section.

**History:** Enacted 1905; amended 1963, 1965, 1969, 1977, 1983.

**61-04-15.1. Change in point of diversion or use.**

1. A permitholder may change the point of diversion or purpose of use without affecting the priority date if approved by the state engineer.

2. The state engineer may approve the proposed change if the state engineer determines that the proposed change will not adversely affect the rights of other appropriators. Applications for a change in the point of diversion or any purpose of use shall be processed and evaluated in the same manner as an application for a water permit.
3. A change in the purpose of use may be authorized only for a superior use as determined by the order of priorities contained in section 61-04-06.1.

**History:** Enacted 1977; amended 1983.

**61-04-16. Referee or referees appointed in water suits - Duties.** Repealed by S.L. 1977, ch. 569, § 27.

**61-04-17. Surplus water to be delivered to persons entitled to beneficial use - Charges - Compelling delivery.** The owner or owners of any works for the storage, diversion, or carriage of water, which contain water in excess of their needs for beneficial use, shall be required to deliver such surplus, at reasonable rates for storage, or carriage, or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal of such owner or owners to deliver any such surplus water at reasonable rates as required by the state engineer, they may be compelled to do so by the district court of the county in which the surplus water is to be used.

**History:** Enacted 1905; amended 1977.

**61-04-18. Appropriation of water from minor stream for agricultural use.** Repealed by S.L. 1963, ch. 419, § 7.

**61-04-19. Filing of location certificate - Contents.** Repealed by S.L. 1963, ch. 419, § 7.

**61-04-20. Approval of state engineer - Rights of claimant - Procedure.** Repealed by S.L. 1963, ch. 419, § 7.

**61-04-21. Amount of water allowed.** Repealed by S.L. 1963, ch. 419, § 7.

**61-04-22. Prescriptive water right.** A person who used or attempted to appropriate water from any source for beneficial use over a period of twenty years prior to July 1, 1963, is deemed to have acquired a right to the use of the water without having filed or prosecuted an application to acquire a right to the beneficial use of the waters if the user shall have, by December 31, 2001, filed with the state engineer an application for a water permit. If the state engineer finds that the application substantiates the claim and it is approved, it is a perfected water permit with a priority date relating back to the date when the first step was taken to appropriate the water in

the quantity stated in the application. The first step may have consisted of survey work, drilling, ditching, damming, diking, or other actual preparation for the appropriation of water provided that the first step was followed by due diligence resulting in the appropriation of water. If the prescriptive user fails to file an application for a water permit with the state engineer by December 31, 2001, the prescriptive water right must be declared abandoned and forfeited. A prescriptive water permit acquired under this section is subject to forfeiture for nonuse as prescribed by sections 61-04-23 through 61-04-25. The state engineer shall publish in each official county newspaper published in this state notice of the deadline for filing for an appropriation permit under this section.

**History:** Enacted 1957; amended 1963, 1965, 1977, 2001.

**61-04-23. Forfeiture of water rights - Inspection of works.** Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless the failure or cessation of use has been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare the water permit or right forfeited. For purposes of this chapter, an incorporated municipality or rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right and all ditches and other works constructed or partially constructed thereunder.

**History:** Enacted 1963; amended 1965, 1969, 1977, 1985, 1993, 1997.

**61-04-24. Forfeiture of water rights - Notice - Contents.** If it appears that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for that purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. Any holder of a water permit using water from a common source of supply, any applicant therefor, or any interested party may request the state engineer to conduct a hearing, the purpose of which is the cancellation of any unused water rights to the common source of supply. Any decision of the state engineer in denying a request for a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings, the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice must be

given to the governing body of the city, to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, the notice must contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.
3. The date of priority.
4. The point of diversion.
5. A description of the lands benefited by the appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by the appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why the appropriation, or a portion thereof, should not be canceled.

The notice must be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by the appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the recorder. In addition, the notice must be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

**History:** Enacted 1963; amended 1977, 1985, 1997, 2001.

**61-04-25. Forfeiture of water rights - Hearing - Appeal.** At the hearing the verified report of the state engineer or engineers of the state water commission is prima facie evidence for the forfeiture and cancellation of the water permit or portion thereof. If no one appears at the hearing, the water permit or portion thereof must be declared forfeited and canceled. If interested parties appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that the water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, must be declared forfeited and canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the

municipality or the rural water system. An appeal may be taken from the decision of the state engineer in accordance with chapter 28-32.

**History:** Enacted 1963, amended 1965, 1985, 1997.

**61-04-26. Recorder to record water permit or order affecting water right.** A water permit may be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. A copy of any order declaring any water right, or portion thereof, forfeited, canceled, or abandoned shall be filed by the state engineer in the office of the recorder in the county or counties where the affected land is located, and it shall be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. Any document filed under this section shall be listed in the index of the property affected as provided in section 11-18-07.

**History:** Enacted 1963, amended 1977, 2001.

**61-04-27. Information filed with state engineer - Installation of measuring devices.** On or before the thirty-first day of March of each year all persons holding a water permit shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such persons to install measuring devices, which must conform to the state engineer's specifications, at all points specified by the state engineer.

**History:** Enacted 1963; amended 1989, 2013 (effective April 24, 2013).

**61-04-28. Correction of application or water right by state engineer.** Upon proof satisfactory to the state engineer that an application for a water permit or any water permit contains an error relative to the point of diversion, the legal description of the land to which the water is to be applied, or the quantity of water, the state engineer may, by written notice to the holder of the affected water permit, correct the error without publication of notice.

**History:** Enacted 1965; amended 1991.

**61-04-29. Enforcement.** The state engineer has full power and authority to institute, maintain, and prosecute to determination in an administrative proceeding or any of the courts of this state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary to enjoin unauthorized use of water, to enforce an order of the state engineer or the state water commission, or to otherwise administer the provisions of this chapter. Notwithstanding any other provision of law, the state engineer may issue administrative orders requiring the immediate cessation of water use when the state engineer has a reasonable belief that such use is unauthorized or continued use will damage the rights of prior appropriators.

**History:** Enacted 1977, amended 1989.

**61-04-30. Penalty.** A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit specifically authorizing such action, except as otherwise provided in section 61-04-02; who violates an order of the state engineer; who fails or refuses to install meters, gauges, or other measuring devices or to control works; who violates an order establishing corrective controls for an area or for a source of water; who violates the terms of the permit; or who knowingly makes a false or misleading statement in a declaration of existing rights is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued. The state engineer shall inform the tax commissioner of violations of industrial use permits.

**History:** Enacted 1977; amended 1989, 2013 (effective April 24, 2013).

**61-04-31. Reservation of waters - Public hearing - Notice.**

1. Whenever it appears necessary to the state engineer, or when directed by the commission, the state engineer may by regulation reserve and set aside waters for beneficial use in the future.
  - a. Before the adoption of a regulation under this section, the state engineer shall conduct a public hearing in each county where waters relating to the regulation are located. At least seven days before the date set for the public hearing, a notice must be published in the official county newspapers within each of the counties.
  - b. Regulations adopted hereunder are subject to chapter 28-32.
2. When sufficient information or data is lacking to allow for sound decisionmaking on a water permit application, the state engineer may withdraw various waters of the state from additional appropriations until sufficient data or information is available. Water permit applications pending from these sources will be placed in a deferred status.

**History:** Enacted 1977, 2015.

**61-04-32. Damages for illegal diminishment of water supply.** If a court of competent jurisdiction determines that a water supply has been illegally diminished in quantity or quality and that a valid water right to use that supply has been damaged as a result of the diminishment, damages awarded to the owner of the water right shall be an amount to cover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the diminishment.

**History:** Enacted 1987.

## NORTH DAKOTA ADMINISTRATIVE CODE

### ARTICLE 89-03 WATER APPROPRIATIONS

#### CHAPTER 89-03-01 WATER PERMITS

**89-03-01-01. Submission of application for conditional water permit.** 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. 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 surveyor licensed in the state of North Dakota. The state engineer may require information not requested in the application.

**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

**89-03-01-01.1. Priority date.** The date of receipt by the state engineer of a properly completed application must be 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 where the point of diversion and conveyance system will be located. 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 must be obtained.** A water permit may 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. If stored water will be put to beneficial use, a water permit must be obtained.

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

**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 under a water permit.** Unless otherwise authorized by the state engineer, 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 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 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 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 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 61-02-27, 61-04-06.2

**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 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 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 any notice of the water permit application has been mailed before the request to amend, the applicant must mail corrected 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 application has been published, the state engineer must publish a corrected notice. The state engineer may determine that corrected notice need not be mailed or published if the state engineer determines the amendment is insubstantial. The applicant must pay publication 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.** 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.** 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 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, 61-04-15

**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 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 will forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts:
  - a. Places and use of appropriation;
  - b. Amount of and purpose for which the water is to be used;
  - c. Applicant's name and address; and
  - d. 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 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 state engineer. 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.
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.** 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.

**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 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 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 engineer water permit files.
7. State 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 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, records, and other published reports.

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

**General Authority:** NDCC 28-32-02, 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 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 state engineer, 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.

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

**Law Implemented:** NDCC 61-04-02

**89-03-01-08. Point of diversion.** 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 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, 61-03-13

**Law Implemented:** NDCC 61-04-06.2

**89-03-01-09. Appropriation not requiring water permit.** An application for appropriation of water that does not require a water permit may be obtained from the state engineer to establish a priority date.

**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 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 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, a temporary application form must be submitted.

The applicant for temporary or emergency appropriations is responsible for all damages that may be caused to other appropriators or any other individual because of 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.

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 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 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. The state engineer will provide the permittee 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 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 under North Dakota Century Code section 61-04-27 must include the permit number, amount of water usage, pumping rate, if applicable, and any other information the state engineer may require. One form must be filed for each water permit held

**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 first, 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, the order may be served by regular mail with an affidavit of service indicating upon whom the order was served.

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

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

**Law Implemented:** NDCC 61-03-13

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

**89-03-02-01. Submission of an application for a change in point of diversion or change in purpose of use.** An application for a change in a point of diversion or a change in purpose of use must be submitted to the state engineer on the form provided by the state engineer. The state engineer may require information not requested in the 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 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, 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 any notice of an application for a change in the purpose of use or a change in the point of diversion has been mailed before the request to amend, the applicant must mail corrected 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 application has been published, the state engineer 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. The applicant must pay publication 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 must be handled in 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 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.** A request to assign a water permit to another person must be submitted to the state engineer in writing. Either the transferee or the holder of the permit may apply for assignment of the water 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.** A request to transfer 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

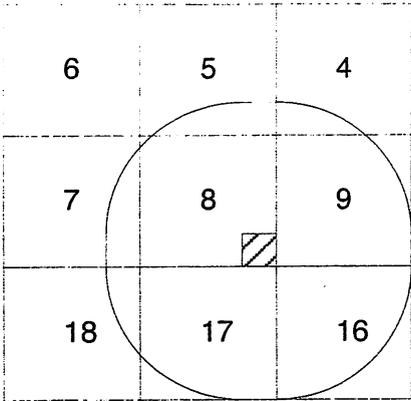
**89-03-02-11. Increase in pumping rate.** A request to increase a permittee's pumping rate must be made in writing to the state engineer. The state engineer, before making a decision on the request, will consider what effect the increase has on other appropriators from the water source.

**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 increase the number of acres that may be irrigated on the tracts of land specified in 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.

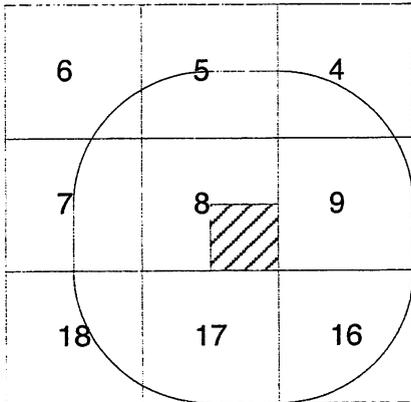
**History:** Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014.  
**General Authority:** NDCC 28-32-02, 61-03-13  
**Law Implemented:** NDCC 61-04-06.2

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

**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 flow meter or water meter measuring the quantity and rate of water flowing through a pipe and complying with the flow meter specifications issued by the state engineer.
3. "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.
4. "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 as described 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.
7. "Works" include canals, ditches, pipelines and other conveyance systems, irrigation facilities, wells, pumps, dams, dikes, reservoirs, and other devices used for the appropriation, storage, and beneficial 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, 61-04-05

**89-03-03-02. Definition of domestic rural use.** Repealed effective July 1, 2014.

**89-03-03-03. Definition of aquaculture.** Repealed effective July 1, 2014.

**89-03-03-04. Definition of reasonably necessary for the future water requirements of a municipality or rural water system.** Repealed effective July 1, 2014.

**89-03-03-05. Definition of stored water.** Repealed effective July 1, 2014.