

ARTICLE 89-01 GENERAL ADMINISTRATION

Chapter

89-01-01 Organization of Water Commission and Department of Water Resources

CHAPTER 89-01-01

ORGANIZATION OF WATER COMMISSION AND DEPARTMENT OF WATER RESOURCES

Section

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89-01-01-01. History.

The office of the state engineer was established in 1905. As initially created, the state engineer had many responsibilities, including as an ex-officio state coal mine inspector, as well as the chief engineer and secretary for the newly created highway commission. Eventually the state engineer's focus shifted to water-oriented responsibilities.

The water commission was created as a separate state agency in 1937, as an emergency measure during the prolonged drought. The law originally provided the state engineer was the commission's chief technical adviser, but that such responsibilities would be in addition to the engineer's regular duties as state engineer. In 1941, the law was amended to provide the state engineer would be the commission's secretary and chief engineer.

From 1937 through approximately 1977, the legislative assembly often vested either the water commission or state engineer with particular authority regarding water-related issues without any expressed reason or clear consistency. This commingling of regulatory authority created confusion, and likely led to the convention of referring to both the water commission and the office of the state engineer collectively as the commission. Finally in 1981, the legislative assembly passed a bill amending several sections and chapters of law to clarify the intent that:

[w]henver the term "water conservation commission", "water commission", or "commission", or any derivative of those terms, which when used in context, indicates an intention to refer to that commission regarding [regulatory duties, those terms] shall be construed as granting full administrative and enforcement authority to the state engineer.

1981 N.D. Sess. Laws ch. 365 § 6. As such, the office of state engineer, rather than the water commission, was the agency charged with enforcing most water-related regulations.

In August 2021, House Bill No. 1353 of the sixty-seventh legislative assembly replaced the office of the state engineer with the department of water resources, which is led by a director. The department's primary functions are to promote statewide water management policies, enforce water-related regulations, and provide staff and engineering services for commission initiatives.

History: Amended effective August 1, 1983; November 1, 1985; October 1, 1987; November 1, 1989; December 1, 1989; February 1, 1992; February 1, 1993; April 1, 1994; December 1, 1997; February 1, 2003; April 1, 2014; January 1, 2023.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-02-11, 61-03-13

89-01-01-02. Water commission organization and functions.

1. **Commissioners.** North Dakota Century Code section 61-02-04 regulates commission membership. Two commissioners, the governor and the agriculture commissioner, are

statewide officials elected for four-year terms. Eight commissioners representing the eight major drainage basins are appointed by the governor for staggered six-year terms. Under North Dakota Century Code section 61-02-05, the governor is the commission's chairman, and the governor designates a vice chairman.

2. **Commission secretary.** From 1941 through July 2021, the state engineer was the commission's statutory secretary. On August 1, 2021, the director of the department of water resources became the commission's statutory secretary. The secretary assists the commission by coordinating commission operations and relieving individual commissioners of administrative detail.
3. **Commission functions.** The commission's primary functions are to review and consider cost-share requests from project sponsors seeking financial assistance, and to foster and promote water ~~resources~~resource development throughout the state, including southwest pipeline project construction, northwest area water supply project construction and operation, and operation and maintenance of the Devils Lake outlets.

History: Effective January 1, 2023; amended effective _____.

General Authority: NDCC 61-02-11

Law Implemented: NDCC 61-02-14

89-01-01-03. Department of water resources organization and functions.

1. **Director.** The department is ~~now~~-headed by the director, who is a member of the governor's cabinet. The director provides overall leadership and decision-making, has hiring responsibilities, and oversees the department staff. The director also acts as a liaison between the department and the legislative and executive branches of state government, as well as a liaison between the governor and the federal government on water-related issues.
2. **State Engineer.** The state engineer, under North Dakota Century Code section 61-03-01.3, is responsible for associated technical duties related to public safety and property protection, including dam safety, water appropriations, and construction and drainage permits. ~~The state engineer also may act as the director's designee at the director's discretion when implementing any provision of this title.~~
3. **Department functions.** The department consists of several divisions, ~~with the division directors reporting to the department's director.~~ SeveralSome of the divisions are responsible for providing staff support to the commission functions, including management of the cost-share assistance program; maintaining a water project inventory and water development plan; representing the commission on regional, national, and international natural resources planning bodies; assisting water resource boards; preparing engineering and feasibility reports and designs for construction, maintenance, and major repair of water resources projects throughout the state; and general accounting, budgeting, information technology, and support services.

Other divisions are responsible for assisting and advising the director and the state engineer in state law, administrative rule, and policy enforcement. The responsibilities of these regulatory enforcement divisions include reviewing and making recommendations on permit applications for drains, dikes, dams, and sovereign lands; administering the state's dam safety program; assisting communities with floodplain management; conducting navigability determinations and ordinary high water mark delineations; conducting analysis and providing recommended decisions on water permit applications; monitoring and balancing water use and availability throughout the state; enforcing the water permitting system; licensing water well contractors, water well pump and pitless unit installers, monitoring well contractors, and geothermal system drillers; ~~and~~-developing and maintaining permit records; :-

~~The commission also supervises the atmospheric resources board, which is a quasi-judicial, quasi-legislative advisory and rulemaking board that functions as a division of the department. The atmospheric resources board licenses~~licensing ~~weather modification contractors; and permits~~permitting ~~cloud seeding operations and research activities; conducts~~conducting ~~research into atmospheric research and cloud seeding technology; and monitors, collects, and disseminates~~monitoring, collecting, and disseminating precipitation and climate data.

History: Effective January 1, 2023; amended effective _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-01.3

ARTICLE 89-03 WATER APPROPRIATIONS

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CHAPTER 89-03-01 WATER PERMITS

Section

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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, 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 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. North Dakota board of 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.

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.

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 will be assessed a fine of two hundred fifty dollars for each water permit.

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

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.

CHAPTER 89-03-02 WATER PERMIT MODIFICATION

Section

89-03-02-01	Submission of an Application to add a Point of Diversion or for a Change in Purpose of Use
89-03-02-02	Return of Unsatisfactory Application
89-03-02-03	Application Amendment
89-03-02-04	Fee [Repealed]
89-03-02-05	Notice of Application
89-03-02-06	Publication of Notice of an Application for a Change in the Purpose of Use or to Add a Point of Diversion
89-03-02-07	Filing Proof of Publication and Mailing [Repealed]
89-03-02-08	Assignment of a Water Permit to Another Person
89-03-02-09	Transfer of a Water Permit to Another Parcel [Repealed]
89-03-02-10	Change in Location of Use
89-03-02-11	Increase in Pumping Rate
89-03-02-12	Water Permit for Irrigation - Limitation

89-03-02-01. Submission of an application to add a point of diversion or for a change in purpose of use.

An application to add a point of diversion or for a change in purpose of use must be submitted to the department on the form provided by the department. The department may require additional 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~~61-04-15.4.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.1, 61-04-15.2, 61-04-15.4

89-03-02-02. Return of unsatisfactory application.

If the change in purpose of use or to add a 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; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-15.2, 61-04-15.4

89-03-02-03. Application amendment.

An applicant for a change in purpose of use or to add a point of diversion, before being instructed to give notice as required by 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 to add a point of diversion 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 must submit an affidavit of service of corrected notice to the department. If the notice of 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, 61-04-15.2, 61-04-15.4

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 to add a 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; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-05, 61-04-15.1, 61-04-15.4

89-03-02-06. Publication of notice of an application for a change in the purpose of use or to add a point of diversion.

Notice of an application or an amendment to an application for a change in the purpose of use or to add a point of diversion must be published in accordance with ~~section~~ sections 89-03-01-04 and 89-03-01-05.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-05, 61-04-15.2, 61-04-15.4

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 department in writing. Either the transferee or the permitholder may request assignment of the water permit. The application must describe the transferee's interest in the water permit. The department 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; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-15

89-03-02-09. Transfer of a water permit to another parcel.

Repealed effective January 1, 2023.

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 permitholder's beneficial use of water would be adversely affected.

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

General Authority: NDCC 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 permit holder's pumping rate must be made in writing to the department. The department, 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; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-04-06.2

89-03-02-12. Water permit for irrigation - Limitation.

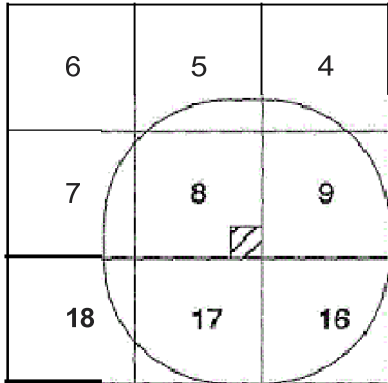
The department may increase the number of acres that may be irrigated on the tracts of land specified in a water permit to allow for more efficient operation of an irrigation system. A request for an increase in the number of acres must be evaluated in accordance with subdivisions a through c of subsection 1 of North Dakota Century Code section 61-04-06. Any increase in acreage cannot exceed ten acres or ten percent of the originally approved acreage, whichever is greater.

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

General Authority: NDCC 61-03-13

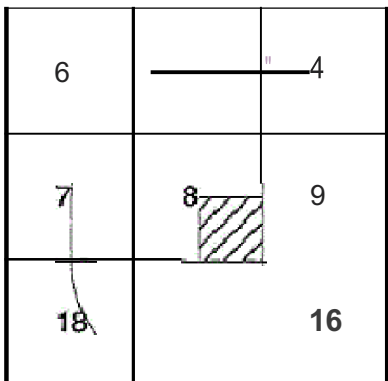
Law Implemented: NDCC 61-04-06.2

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 NE1/4 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 89-07-02 WEATHER MODIFICATION OPERATIONS

Section

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89-07-02-20	Automatic Suspension of Permit
89-07-02-21	Restoration of Permit
89-07-02-22	Proof of Financial Responsibility
89-07-02-23	Records
89-07-02-24	Reports
89-07-02-25	Bid Procedure <u>[Repealed]</u>
89-07-02-26	Award of Contracts

89-07-02-01. General provisions.

This chapter applies to any weather modification operations conducted in North Dakota. This chapter must be applied in conjunction with North Dakota Century Code chapter 61-04.1.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08~~(3)~~

Law Implemented: NDCC 61-04.1-02, 61-04.1-08~~(3)~~

89-07-02-02. Definitions.

The following definitions apply to this chapter and North Dakota Century Code chapter 61-04.1:

1. "Applicant" means any person who applies for a professional weather modification license or permit.
2. ~~"Director" means the executive director of the atmospheric resource board.~~ "Department" is defined in North Dakota Century Code section 61-03-01.2
3. "License" means a weather modification license.
4. "Licensee" means a person to whom a weather modification license has been issued.
5. "Operations area" means a geographic area where weather modification operations are conducted.

6. "Permit" means a weather modification permit.
7. "Permittee" means a person to whom a weather modification permit has been issued.
8. "Target area" means an area where the effects of weather modification are desired.
9. "Weather modification apparatus" means any device used to dispense any chemical material used to modify any weather condition.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-03

89-07-02-03. Administration.

Repealed effective _____ ~~Except as otherwise provided, the powers and duties of the board must be exercised by the director or the director's designee.~~

~~**History:** Effective November 1, 1988; amended effective July 1, 2014.~~

~~**General Authority:** NDCC ~~28-32-02~~, 61-04.1-08(3)~~

~~**Law Implemented:** NDCC 61-04.1-08(3)~~

89-07-02-04. Exempt activities.

Any person intending to conduct any exempt activities under North Dakota Century Code section 61-04.1-12 must furnish notice of such intention to the ~~board~~department at least thirty days before the time such activities are to begin. Notice must consist of the following information and such other information as the ~~board~~department deems necessary:

1. The name and address of the person giving notice.
2. The name and address of the person who will conduct the activity.
3. A description of the procedures to be used in the operation or the research and development.
4. A description of the object of the activity.
5. The legal description and a map showing the operations area and target area, if any.
6. The approximate starting date of the activity and its anticipated duration.
7. A description of the equipment to be used in conducting the activity.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3), 61-04.1-12

Law Implemented: NDCC 61-04.1-12

89-07-02-05. Approval of exempt activities.

No weather modification activity intended to be conducted under North Dakota Century Code section 61-04.1-12 may begin without approval of the ~~board~~department if such activity is to be conducted outside with weather modification apparatus. The ~~board~~department may only approve those activities that provide for the protection of the health, safety, and welfare of those people who may be affected by such activities and that otherwise comply with North Dakota Century Code section 61-04.1-12.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-12, ~~61-04.1-16~~

89-07-02-06. Field presence required.

Every person intending to conduct operations in this state must designate to the ~~board~~department, on forms furnished by the ~~board~~department, at least one natural person who must at all times be physically present during all operations for which a permit is required and who will be the contractor's immediate point of contact in the field. The designated individual will be fully apprised of the status of the contractor's project equipment and personnel at all times and will coordinate the contractor's field activities.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014; _____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3), ~~61-04.1-14~~

Law Implemented: NDCC ~~61-04.1-11~~, 61-04.1-14

89-07-02-07. Criteria for issuance of license.

The competence of any applicant to engage in weather modification operations must be demonstrated to the ~~board~~department under North Dakota Century Code section 61-04.1-14. Applicants must show that any natural person designated by the applicant who will be in the full-time employment ~~solely~~ of the applicant during the project period and who will oversee the applicant's actions during the project has:

1. A minimum of one year of field experience in the management and control of weather modification operations or research; and
2. One of the following requirements:
 - a. Four additional years' experience in weather modification operations or research;
 - b. A degree in mathematics, engineering, or the physical sciences, plus two years' additional experience in weather modification operations or research;
 - c. A degree in meteorology; or
 - d. A degree in mathematics, engineering, or the physical sciences that includes at least twenty-five semester hours of coursework in meteorology.

In determining competency, the ~~board~~department may also consider any other items set forth in a license application under section 89-07-02-08.

At least one such natural person designated by the applicant and licensed by the ~~board~~department must be available for immediate consultation by the ~~board~~department, at a location made known to the ~~board~~department by the ~~contractor~~applicant, at all times while the project is ongoing.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014; _____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3), ~~61-04.1-14~~

Law Implemented: NDCC 61-04.1-14

89-07-02-08. Application procedure.

An applicant for a license must apply to the ~~board~~department on forms furnished by the ~~board~~department. The forms may require relevant information about the knowledge and experience of the applicant and the natural person designated under section 89-07-02-06 and must include:

1. Educational background, at the college and graduate level, of both the natural person designated by the applicant and the other employees of the applicant. This includes the dates of attendance and graduation; the major and minor subjects studied, including the number of semester hours of meteorological coursework; the degrees received; and the titles of any thesis or dissertation.
2. Experience in weather modification or related activities of both the natural person designated by the applicant and the other employees of the applicant. Attention should be given to experience with reference to meteorological conditions typical of North Dakota. The applicant

should list the dates of each position held by the natural person designated under section 89-07-02-06, the title of position (indicate whether it was of subprofessional or professional level), the name and address of the employer, a description of the work done (indicate both the magnitude and complexity of the work and the duties and degree of responsibility for the work), and the name and address of the supervisor.

3. Scientific or engineering society affiliations of the natural person designated by the applicant and the grade of membership in and certification by each society.
4. Publications, patents, and reports of the natural person designated by the applicant.
5. Three references who will attest to the natural person's character, knowledge, and experience.
6. A list of all jurisdictions where the applicant has previously filed an application for a professional weather modification license. The result of the applications should be indicated.
7. Indication whether a professional weather modification license issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew such a license by any jurisdiction. Such circumstances must be explained in detail.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3), ~~61-04.1-14~~

Law Implemented: NDCC 61-04.1-14

89-07-02-09. Procedure for issuance.

The ~~board~~department must evaluate the applications, including responses from any references given by the applicant. On the basis of all such information the ~~board~~department, within thirty days of receipt of an application, must determine whether the natural person designated by the license applicant under section 89-07-02-06 meets the education and experience criteria established by section 89-07-02-07 and whether the natural person and the applicant possess the knowledge and experience necessary to engage in weather modification operations. The ~~board~~department must issue a license to the applicant who satisfies the requirements of this chapter and North Dakota Century Code section 61-04.1-14. If an applicant for a license or the natural person designated by the applicant does not satisfy the requirements, the ~~board~~department must deny the license.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3), ~~61-04.1-14~~

Law Implemented: NDCC 61-04.1-14

89-07-02-10. Renewal of license.

Forty-five days before expiration of licenses, the ~~board~~department must provide license application forms to all licensees and request each licensee to complete the form and file the original with the ~~board~~department. The ~~board~~department must evaluate the available data about the licensee and the natural person, designated by the license applicant under section 89-07-02-06, and must issue a renewal license within thirty days of receipt of the application to each applicant who pays the license fee established by subsection 1 of North Dakota Century Code section 61-04.1-14 and who has the qualifications necessary for issuance of an original license. The ~~board~~department must deny a renewal license within thirty days of receipt of the application of each applicant who does not pay the renewal fee, who does not possess the qualifications necessary for issuance of an original license, or who does not designate a natural person, under section 89-07-02-06, who satisfies the requirements of section 89-07-02-07.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3), ~~61-04.1-14~~

Law Implemented: NDCC 61-04.1-14

89-07-02-11. Responsibility of controller.

The natural person designated by the license applicant under section 89-07-02-06 is deemed by the ~~board~~department to be in control of and primarily responsible for operations conducted under the terms of any permit. However, nothing in this section may be construed to prevent appropriate enforcement of any regulation, limitation, permit condition, or order against either the permittee or licensee, whether or not such licensee is a natural person.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(~~3~~)

Law Implemented: NDCC 61-04.1-18, 61-04.1-37

89-07-02-12. Suspension, revocation, refusal to renew a license.

In addition to the reasons cited in North Dakota Century Code section 61-04.1-15, the ~~board~~department may suspend, revoke, or refuse to renew a license for violation of any permit.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(~~3~~)

Law Implemented: NDCC 61-04.1-14, 61-04.1-15

89-07-02-13. Restoration of license.

At any time after the suspension or revocation of a license or after refusal to renew a license, the ~~board~~department may restore the license to the licensee or renew it upon a finding that the licensee has met the requirements for issuance of an original license.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(~~3~~)

Law Implemented: NDCC 61-04.1-14

89-07-02-14. Application for permit.

Application for a weather modification permit must be made on forms furnished by the ~~board~~department. Every applicant must submit a properly executed application to the ~~board~~department. The application may contain such information as the ~~board~~department deems necessary, and must include the following information:

1. Name and address of the applicant.
2. Whether a weather modification operational permit issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew a permit by any jurisdiction. Such circumstances must be explained in detail.
3. If the applicant is a corporation, whether it is licensed to do business in North Dakota.
4. Whether a license has been issued under North Dakota Century Code section 61-04.1-14, and if so, the names, addresses, and professional license numbers of the controllers.
5. Whether professional weather modification licenses issued to the license applicant in any jurisdiction have ever been suspended or revoked or whether there has been refusal to renew a license by any jurisdiction. Such circumstances must be explained in detail.
6. Whether proof of financial responsibility has been furnished under section 89-07-02-22 and North Dakota Century Code section 61-04.1-19.
7. If the operation will be conducted under a contract, the value of the contract.
8. If the operation will not be conducted under a contract, an estimate of the costs of the operation and information as to how the estimate was made.

9. Whether the applicant has paid the application fee.
10. Whether the applicant has North Dakota workforce safety and insurance coverage.
11. A copy of any promotional and advertising material used in connection with negotiations for the contract, if any.
12. Whether the applicant has furnished a performance bond, as required by subsection 3 of section 89-07-02-26.
13. Whether the applicant has furnished the bid bond.
14. Whether the applicant has registered with the North Dakota aeronautics commission all aircraft to be used in the operation for which the permit is sought.
15. A complete and detailed operational plan for the operation that includes:
 - a. The nature and object of the operation.
 - b. The legal description and a map showing the operations area and the target area.
 - c. The approximate starting date of the operation and its anticipated duration.
 - d. The kind of seeding agents intended for use and the anticipated rate of their use.
 - e. A list of equipment that will be used and the methods of seeding for which they will be used.
 - f. An emergency shutdown procedure that states conditions under which operations will be suspended because of possible danger to the public health, safety, and welfare or to the environment.
 - g. The means by which the operation plans will be implemented and carried out such as:
 - (1) The location of the main operational office and any other offices used in connection with the operation;
 - (2) The location of such ground equipment as seeding generators, radar, and evaluation instrumentation;
 - (3) The number and kinds of aircraft that will be used;
 - (4) The extent to which weather data will be made available to the licensees; and
 - (5) Other personnel carrying out the project.
 - h. How conduct of the operation will interact with or affect other weather modification operations.
16. Such additional information that will assist the ~~board~~department in deciding whether to issue the permit.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; July 1, 2024; ____.

General Authority: NDCC 61-03-13, 61-04.1-08~~(3)~~

Law Implemented: NDCC 61-04.1-16

89-07-02-15. Procedure for issuance.

1. **Notice.** The ~~board~~department must give notice of its consideration of an application under North Dakota Century Code section 61-04.1-17. Notice must be given once a week for two consecutive weeks. The notice must:

- a. Describe the primary target area.
 - b. Describe the operations area.
 - c. Specify the period of operation, including starting and ending dates.
 - d. Describe the general method of operation.
 - e. Describe the intended effect of the operation.
 - f. State the name of the proposed permittee.
2. **Hearings.** The ~~board~~department must allow twenty days for public comment, under North Dakota Century Code section 61-04.1-17, from the date of the last publication of the notice. Any hearing held upon objection received by the ~~board or any hearing held upon the board's own motion~~department must be held upon at least ten days' notice in the county newspaper where notice of consideration of the application was published. At the hearing, the ~~board~~department must make a brief record of testimony received, and must consider all such testimony in its decision on the permit application.
- ~~3. **Director's recommendation.** At the close of the public comment period provided for in North Dakota Century Code section 61-04.1-17, the director of the board must review all applications for permits that have been received and must recommend approval or disapproval of such applications and the reasons therefor.~~
- ~~4.3. **Final action by board.** The ~~board~~department must take final action on all applications for permits for which notice of consideration was published, under North Dakota Century Code section 61-04.1-17, within forty-five days of the close of the public comment period. Approval of applications considered must be by majority vote. In acting on any such applications, the ~~board~~The department must consider any recommendations made by the director of the board and all testimony received at any hearing under North Dakota Century Code section 61-04.1-17. The ~~board~~department may issue a permit only if it determines that the requirements of subsection 2 of North Dakota Century Code section 61-04.1-16 have been met.~~

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-17

89-07-02-16. Permit form.

Each permit must set forth the permit number, effective period of the permit, name of the permittee, name of the licensee and the license number, location of the operation, and such other information, terms, or conditions as the ~~board~~department deems appropriate.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-17. Permit conditions.

The ~~board~~department may attach conditions to any permit as it deems appropriate, including any conditions concerning method and time of operation, target and operation areas, safety precautions, and recordkeeping. Permittee must submit an operations plan that includes the types of seeding agents to be used, the methods and equipment to be employed in seeding operations, and the emergency shutdown procedures, including the conditions under which operations will be suspended. Violation of any permit may result in permit revocation, suspension, or other appropriate enforcement action by the ~~board~~department.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08~~(3)~~

Law Implemented: NDCC 61-04.1-16~~(2)~~

89-07-02-18. Permit expiration.

All permits that have expired under North Dakota Century Code section 61-04.1-16 are nonrenewable.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08~~(3)~~

Law Implemented: NDCC 61-04.1-11, 61-04.1-16

89-07-02-19. Suspension - Revocation - Modification.

In addition to the reasons cited in North Dakota Century Code section 61-04.1-18, the ~~board~~department may suspend, revoke, or modify any permit or any provision or condition of a permit if it appears to the ~~board~~department that the permittee has violated the North Dakota Century Code or the terms or conditions of any permit held by the permittee.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08~~(3)~~

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-20. Automatic suspension of permit.

Any permit issued under this chapter is automatically suspended if the person's weather modification license expires or is suspended, revoked, or not renewed by the ~~board~~department. In the case of a permit issued to a corporation, partnership, or other business association, if the natural person designated as being in control of the operation in such business association's application for a weather modification license becomes incapacitated, leaves the business association's employment, or is in any way unable to continue in control of the operation, automatic suspension of the permit will result. A permit of a business association suspended under such circumstances may be reinstated by the nomination of replacement personnel under section 89-07-02-08.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08~~(3)~~

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-21. Restoration of permit.

At any time after the suspension, revocation, or modification of a permit, the ~~board~~department may restore it to the permittee or delete any modification thereof upon a finding that the requirements for issuance of an original permit have been met by the permittee or that the conditions requiring modification no longer exist.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08~~(3)~~

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-22. Proof of financial responsibility.

Proof of financial responsibility is made by showing to the satisfaction of the ~~board~~department that the permittee has the ability to respond to liability that might reasonably result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by any of the following:

1. Presentation to the ~~board~~department or proof of purchase of a prepaid noncancelable insurance policy or a corporate surety bond, issued by a company against whom service of legal process may be made in North Dakota, against liabilities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an

operation not conducted under contract.

2. Depositing with the ~~board~~department cash or negotiable securities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
3. Any other manner approved by the ~~board~~department.

History: Effective November 1, 1988; amended effective July 1, 2014;_____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(~~3~~)

Law Implemented: NDCC 61-04.1-16, 61-04.1-19

89-07-02-23. Records.

1. **Daily log.** Each permittee must retain a daily log of weather modification activities for each unit of weather modification apparatus used during an operation that includes:
 - a. Date of the weather modification activity.
 - b. Each aircraft flight track and location of each radar unit during each modification mission. Maps may be used.
 - c. Local time when modification activity began and ended. For intermittent operations, the beginning and ending time of the total sequence are acceptable.
 - d. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
 - e. Description of type of modification agents used.
 - f. Rate of dispersal of agent during the period of actual operation of weather modification apparatus, by hour or other appropriate time period.
 - g. Total amount of modification agent used. If more than one agent was used, report total for each type separately.
 - h. Local time when any radar monitoring operations were turned on and turned off.
 - i. Type of clouds modified, that is, whether they were stratiform, isolated cumuliform, organized cumuliform, or other types of clouds.
 - j. Remarks indicating operational problems, including equipment failure, weather conditions not conducive to successful performance of the operation, or personnel problems.
2. **Monthly totals.** Monthly totals must be kept on the basis of the daily logs, listing the total:
 - a. Days during month in which operation conducted.
 - b. Time of operation.
 - c. Amount of each kind of agent used.
 - d. Average rate of dispersal of each kind of agent used.
 - e. Days of each type of operation.
 - f. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
3. **Addresses of participants.** Each permittee must keep a roster of the names and North Dakota addresses of all employees participating in the state on an operation.

4. **Inspection.** Duly authorized agents of the ~~board~~department have the authority to enter and inspect any equipment and to inspect or copy any records required by this section.
5. **Exempted weather modification activities.** All people conducting weather modification activities exempted by the ~~board~~department under North Dakota Century Code section 61-04.1-12 must record and maintain all of the records required of any permittee by this section.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; _____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(~~3~~)

Law Implemented: NDCC 61-04.1-08(~~3~~), 61-04.1-16

89-07-02-24. Reports.

1. **Final.** Within sixty days after final completion of any operation, each permittee must file with the ~~board~~department a final report on the operation that must include:
 - a. Copies of the daily logs prepared under subsection 1 of section 89-07-02-23, copies of the monthly totals for the entire operational period from the monthly summary records prepared under subsection 2 of section 89-07-02-23, and a narrative summary of permittee activities during the operational period.
 - b. A copy of the federal final activity report form filed with the national oceanic and atmospheric administration under the rules adopted under Public Law 92-205 [85 Stat. 735].
 - c. A narrative account of the manner in which the operation did not conform to the operational plan filed under subsections 1 through 16 of section 89-07-02-14.
2. **Exempted weather modification activities.** The ~~board~~department may require people operating weather modification activities exempted under sections 89-07-02-04 and 89-07-02-05, but who have been required to keep records under subsection 5 of section 89-07-02-23, to file any part of such records with the board.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; _____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(~~3~~)

Law Implemented: NDCC 61-04.1-08(~~3~~), 61-04.1-12, 61-04.1-16

89-07-02-25. Bid procedure.

Repealed effective July 1, 2014.

89-07-02-26. Award of contracts.

1. **Deviation from technical requirements.** Any or all bids may be rejected by the ~~board~~department on the basis of technical inadequacy or other failure to comply with the specifications included in the request for bids.
2. **Contractor's bond.** Before the ~~board~~department awards any contract, it must require the contractor to furnish a surety bond for the faithful performance of the contract in an amount up to twenty-five percent of the contract price, conditioned that the contractor and the contractor's agents will in all respects faithfully perform all weather modification contracts undertaken with the ~~board~~department and will comply with North Dakota Century Code chapter 61-04.1, this chapter, and the contract between the ~~board~~department and the contractor. If the contract involves the erection, repair, or alteration of any public improvement, the surety bond must be in the full amount of the contract price.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; _____.

General Authority: NDCC ~~28-32-02~~61-03-13, 61-04.1-08(~~3~~)

Law Implemented: NDCC 44-08-01, 61-04.1-33, 61-04.1-34, ~~61-04.1-35~~

ARTICLE 89-10
STATE SOVEREIGN LANDS

Chapter
89-10-01 State Sovereign Lands

CHAPTER 89-10-01
STATE SOVEREIGN LANDS

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89-10-01-01. Authority.

These rules are adopted and promulgated by the department under North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of sovereign lands. These rules do not apply to the state of North Dakota's interests in oil, gas, and related hydrocarbons on

sovereign lands.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-02. Prohibition on permanent relinquishment.

Sovereign lands may not be permanently relinquished, but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

History: Effective November 1, 1989; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-03. Definitions.

The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the department after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Boardwalk" means a walk constructed of planking.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
4. "Director" is defined in North Dakota Century Code section 61-03-01.2.
5. "Domestic use" means the use of water as defined by subsection 4 of North Dakota Century Code section 61-04-01.1.
6. "Grantee" means the person, including that person's assigns, successors, and agents who has authorization.
7. "Livestock" means bison, cattle, horses, mules, goats, sheep, and swine.
8. "Navigable waters" is defined in North Dakota Century Code section 61-33-01.
9. "Ordinary high water mark" is defined in North Dakota Century Code section 61-33-01.
10. "Project" means any activity that occurs either partially or wholly on sovereign lands.
11. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
12. "Snagging and clearing" means the removal and disposal of fallen trees and associated debris encountered within and along the channel.
13. "Structure" means something that is formed from parts, including equipment, boat docks, boat ramps, and water intakes.
14. "Watercraft" means any device capable of being used as a means of transportation on waters.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-04. Authorization.

Each project requires an authorization from the department before construction or operation, except as otherwise provided by these rules. Any department authorization may be modified at the department's discretion.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023; July 1, 2024.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-05. Application for permit, easement, lease, or management agreement.

Applications for authorization must be on forms prescribed by the department.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-06. Application review.

Upon receipt of a completed application, the department must initiate a review as follows:

1. Comments must be requested from the following entities:
 - a. The state game and fish department;
 - b. The department of environmental quality;
 - c. The state historical society;
 - d. The state department of trust lands;
 - e. The state parks and recreation department;
 - f. The United States fish and wildlife service;
 - g. The park district and planning commission of any city or county where the proposed project will be located;
 - h. Any water resource district where the proposed project will be located; and
 - i. Other agencies, private entities, or landowner associations as appropriate or required by law.
2. Each entity must submit all comments in writing to the department. The department is not bound by any comment submitted. The department must receive comments within thirty days of the date requests for comments were mailed.
3. Upon completion of the review and any public meeting held under section 89-10-01-07, the department may grant, deny, or condition the application.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-06.1. Record - Official notice.

Unless specifically excluded by the director or the hearing officer, the record in each sovereign land permit application proceeding or adjudicative proceeding under North Dakota Century Code chapter 28-

32 includes the following:

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. National oceanic and atmospheric administration climatological data.
4. Topographic maps.
5. Department sovereign land permit files.
6. Information in department and state water commission files, records, and other published reports.
7. North Dakota sovereign land management plan.
8. Ordinary high water mark delineation guidelines.
9. Aerial photos.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-07. Public meeting.

An information-gathering public meeting may be held by the department before final action on a project. The procedure for notice and meeting must be as follows:

1. The department must publish a notice of meeting in the official newspaper for each county where the project is located. The notice must be published once each week for two consecutive weeks.
2. The meeting date must be at least twenty days after the date of last publication.
3. The meeting must be conducted by the department and the meeting may be held in Bismarck.
4. The meeting is not an adjudicative proceeding hearing under North Dakota Century Code chapter 28-32.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-08. General permit standards.

The department may grant, deny, or condition any permit application. In deciding what action to take on a permit application, the department must consider the potential effects of the proposed project on the following:

1. Riparian owner's correlative rights of use;
2. Recreation;
3. Navigation;
4. Aesthetics;

5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality;
10. Cultural and historical resources; and
11. Alternative uses.

History: Effective November 1, 1989; amended effective April 1, 2008; July 1, 2014; January 1, 2023; July 1, 2024;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-08.1. Temporary sovereign lands permits - removal.

1. The department may issue temporary sovereign lands permits for proposed projects less than twelve months in duration that do not include permanent ground disturbing activities.
2. A completed application for temporary sovereign lands permit must be submitted to the department on a form prescribed by the department along with any additional information required by the department.
3. Upon temporary sovereign lands permit expiration, all permitted works under this section must be removed in their entirety and the disturbed area restored to pre-project conditions within 30 days. The applicant must notify the department in writing when the temporary use has been completely removed.

History: Effective _____

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-09. Specific project requirements.

Repealed effective July 1, 2014.

89-10-01-10. Projects not requiring a permit.

The following projects do not require a permit:

1. Boat docks, if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner for personal use;
 - b. The dock is used only for embarkation, debarkation, moorage of watercraft, water intakes, or recreation;
 - c. Only clean, nonpolluting materials are used;
 - d. The total length of the dock over the surface of the water does not exceed twenty-five feet [7.6 meters] on a river or fifty feet [15.24 meters] on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;

- e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length and is removed from below the ordinary high watermark each fall; and
 - f. Upon abandonment, the ~~grantee restores~~ dock owner must restore the bank as closely as practicable to its original condition.
2. Water intakes if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner for domestic use; and
 - b. The intake is removed from below the ordinary high watermark each fall.
 3. Watercraft that are temporarily moored.
 4. Snagging and clearing, when performed by a federal or state entity or political subdivision.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; April 1, 2010; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-10.1. Boat docks and water intakes.

Boat docks and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the department. Any person who violates this section must pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per day. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2009; amended effective April 1, 2010; July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-33-02, 61-33-05, 61-33-10

89-10-01-10.2. Boat dock registration.

Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver and Morton County line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) must be registered with the department before placement of any such dock. The department must provide registration forms. Any person who violates this section must pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2010; amended effective July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-11. Structures.

1. Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is prohibited, the department:
 - a. Shall issue an order to the structure owner identifying the action required to modify or remove the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
 - b. If the ordered action is not taken by the date specified in the order, the department may modify or remove the structure at the structure owner's expense.
 - c. May commence a civil proceeding to enforce its order, or, if the department modifies or

removes the structure, the department may assess the costs of such action against any property of the structure's owner or may commence a civil proceeding to recover the costs incurred in such action. If the department chooses to recover costs by assessing the costs against property of the structure's owner and the property is insufficient to pay for the costs incurred, the department may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

2. A person who receives an order from the department under this section may send a written request to the department for a hearing. The department must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the director determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the department must set a hearing date without undue delay.
3. Any person aggrieved by the action of the director may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 2 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33-02, 61-33-05, 61-33-10

89-10-01-12. Public recreational use.

The public may use sovereign lands for recreational purposes except as otherwise provided by these rules or by signage posted by the department.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-13. Vehicular access.

The use of motorized vehicles on sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the department;
2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;
3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that has been submitted to the department, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;
4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;
5. To launch or load watercraft in the most direct manner possible;
6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign lands is in the most direct manner possible;
7. To access private land that has no other reasonable access point, provided that access across

sovereign lands is in the most direct manner possible;

8. By disabled people who possess a mobility-impaired parking permit under North Dakota Century Code section 39-01-15 or shoot from a stationary motor vehicle permit under subsection 10 of North Dakota Century Code section 20.1-02-05;
9. When operation is necessary as part of a permitted activity or project;
10. By the riparian owner on sovereign lands that are adjacent to the riparian owner's property when moving or tending to livestock; installing or maintaining a livestock fence; installing, maintaining, or moving an authorized agricultural irrigation structure; or when engaged in other ordinary agricultural practices, provided the listed activities do not negatively affect public use or values; or

11. When being used by government personnel in the performance of their duties. Any person who violates this section must pay a ~~one hundred dollar~~ fee not to exceed two hundred fifty dollars per occurrence.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-14. Cancellation by the director.

The director may cancel any authorization granted under these rules. Cancellation does not release the grantee from any liability. If an applicant is named in an active enforcement action ordered by the department, the department may hold any application submitted by the applicant in abeyance until the order has been satisfied.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-15. Termination by applicant.

The grantee may terminate any authorization by notifying the department in writing, paying all fees or other money owed to the state, and reclaiming the site under section 89-10-01-18.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-16. Assignments.

Any authorization granted under these regulations may only be assigned with the written consent of the department.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-17. Inspections.

The department may inspect all projects on sovereign lands and enter upon a grantee's land during normal working hours to carry out the inspection.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-18. Reclamation.

After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location within one hundred twenty days. If the permit is for mining, reclamation must be within sixty days after the lease expires or the mining is complete. Upon written request, the department may extend the time period if good cause is shown. If grantee fails to reclaim the site to the specifications in the authorization within the required time frame, the department may enter and restore the project location. The grantee is liable for all reclamation costs.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-19. Maintenance and repair.

Maintenance or repair of authorized projects does not require additional authorization provided the work is in conformance with the original authorization, standards, and specifications provided in this article and the work does not alter the use or size of the project.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-20. Areas of special interest.

The department may enter agreements for management of areas of high public value. Examples include parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

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

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-21. Organized group activities.

Organized group activities that are publicly advertised or are attended by more than twenty-five people are prohibited on sovereign lands without a permit. Any person who violates this section is guilty of a noncriminal offense and must pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-22. Pets.

Pets are not allowed to run unattended on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a ~~fifty dollar~~ fee not to exceed seventy five dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-23. Camping.

Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on sovereign lands. Any person who

violates this section is guilty of a noncriminal offense and must pay a ~~one hundred dollar~~ fee not to exceed one hundred dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-24. Hunting, fishing, and trapping.

All sovereign lands are open for public hunting, fishing, and trapping, except as provided in other rules, regulations, or laws or as posted at public entry points. Posting sovereign lands with signage by anyone other than the department is prohibited without a sovereign lands permit. Any person who violates this section must pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-25. Unattended watercraft.

Watercraft may not be left unattended on or moored to sovereign lands for more than twenty-four hours except:

1. When moored to authorized docks; or
2. When moored to private property above the ordinary high watermark with a restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark.

Any person who violates this section is guilty of a noncriminal offense and must pay a ~~fifty dollar~~ fee not to exceed seventy five dollars per day.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-26. Removal or destruction of public property.

Public property, including archaeological artifacts or cultural resources, trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, firewood, posts, ~~or~~ poles, or other property may not be mowed, clipped, cut, or removed from sovereign lands without a permit. Firewood may be removed under certain stated conditions from designated firewood cutting plots. Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. A riparian owner may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the department. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. Any person who violates this section must pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-27. Cultural or historical resources.

Artifacts or any other cultural or historical resources found on sovereign lands may not be disturbed or destroyed without formal written approval from the state historical society and a permit from the department.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-28. Disposal of waste.

The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. Holding tanks of campers or watercraft may not be dumped on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a ~~two hundred fifty dollar~~ fee not to exceed three hundred fifty dollars per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-29. Glass containers.

Glass containers are prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-30. Abandoned property.

Abandonment of vehicles or other personal property is prohibited on sovereign lands. When applicable, the department will facilitate removal of any such property and may assess fines or removal costs to the property owner.

History: Effective April 1, 2009; amended effective_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-31. Firearms.

Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner or as otherwise posted by the state at public entry points. Tracer rounds or exploding targets are prohibited. Any person who violates this section is guilty of a noncriminal offense and must pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-32. Tree stands.

Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands, portable steps, screw-in steps, ~~and~~ natural tree stands, and portable ground blinds may be used. Any portable tree stands, blinds, game cameras, or traps are required to have the owner's name, city, and phone number on such items and be visible at all times while present on state sovereign lands. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth and must be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are subject to removal and confiscation by the department. Any person who violates this section is guilty of a noncriminal offense and must pay a ~~one hundred dollar~~ fee

not to exceed one hundred fifty dollars per tree stand.

History: Effective April 1, 2009; amended effective July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-33. Baiting.

Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting or management activities conducted by the department. Bait may be used to lure and take furbearers when engaged in lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and must pay a ~~one hundred dollar~~ fee not to exceed one hundred fifty dollars per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-34. Dredging or filling.

1. Unless permitted by the department, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the department:
 - a. Shall issue an order to the violator identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
 - b. If the ordered action is not taken by the date specified in the order, the department may take any action to restore the sovereign lands at the violator's expense.
 - c. May commence a civil proceeding to enforce its order if the department takes action to restore sovereign lands, the department may assess the costs of such action against the riparian owner's property where the dredging or filling occurred or may commence a civil proceeding to recover the costs incurred in such action. If the department chooses to recover costs by assessing the costs against the riparian owner's property where the dredging or filling occurred and the property is insufficient to pay for the costs incurred, or if the riparian owner was not the party responsible for the dredging or filling, the department may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
2. A person who receives an order from the department under this section may send a written request to the department for a hearing. The department must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the director determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the department must set a hearing date without undue delay.
3. Any person aggrieved by the action of the director may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 2 is a prerequisite to any appeal to the district court.

History: Effective April 1, 2010; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

ARTICLE 89-11
DROUGHT DISASTER LIVESTOCK WATER ASSISTANCE PROGRAM

Chapter

89-11-01 Drought Disaster Livestock Water Assistance Program

CHAPTER 89-11-01
DROUGHT DISASTER LIVESTOCK WATER ASSISTANCE PROGRAM

Section

89-11-01-01	Definitions
89-11-01-02	Drought Declaration Required
89-11-01-03	Applicant Eligibility
89-11-01-04	Funding - Priority - Eligible Items
89-11-01-05	Noneligible Items
89-11-01-06	Application Procedure

89-11-01-01. Definitions.

1. "Commission" is defined in North Dakota Century Code section 61-02-02.
2. "Department" is defined in North Dakota Century Code section 61-03-01.2.
3. "Livestock producer" means an individual who breeds or raises livestock or operates a dairy farm, who normally devotes the major portion of the individual's time to farming or ranching activities, and who normally receives at least fifty percent of the individual's annual gross income from farming or ranching.
4. "Water supply project" includes the components and installation necessary to transfer and provide water from a water source to drought-affected livestock.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014; April 1, 2018; January 1, 2023.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-34-01, 61-34-02, 61-34-03

89-11-01-02. Drought declaration required.

Funds will only be disbursed for water supply projects in counties that the governor has declared to be a drought disaster area for purposes of this program.

The commission will determine the program's beginning and end dates.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014; April 1, 2018.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-34-01, 61-34-02, 61-34-03

89-11-01-03. Applicant eligibility.

1. The applicant must be a livestock producer with livestock water supply problems caused by drought.
- ~~2. The applicant must first apply for and have been denied cost share assistance from the United States department of agriculture farm service agency.~~
- 3.2. The applicant must receive department approval for a water supply project. A water supply project completed before the program activation date is not eligible.

History: Effective July 1, 1992; amended effective August 27, 2002; April 1, 2008; April 1, 2018; January 1, 2023;_____.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-34-02, 61-34-03, 61-34-04

89-11-01-04. Funding - Priority - Eligible items.

1. The commission shall provide funds for the program to the extent funding is available. Priority will be based on earliest completed application date.
2. Cost-share assistance may only be used for water supply projects that will provide a solution to a drought-related water supply shortage.
3. All wells drilled with funds provided under this program must be drilled by a North Dakota certified water well contractor as defined by North Dakota Century Code section ~~43-35-02~~61-03-01.3 and North Dakota Administrative Code Chapter 90-02-02.
4. Eligible items include new water wells, rural water system connections, pipeline extensions, pasture taps, and associated works, labor, materials, and equipment rentals for work completed by the producer to develop new water supply projects.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; April 1, 2008; July 1, 2014; April 1, 2018; January 1, 2023;_____.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-34-02, 61-34-03, 61-34-04

89-11-01-05. Noneligible items.

The following projects are not eligible for program funding:

1. Existing well rehabilitation.
2. A water supply project on federal land, state land, or land outside North Dakota.
3. A dry hole drilled in an attempt to construct a water well or locate a water source.
4. Stock dam or dugout construction dependent upon runoff, or projects dependent on surface water sources that may be unreliable during drought conditions.
5. Projects that require repair due to damage or failure to provide maintenance to an existing water source.
6. Hours billed for work completed by the applicant, the applicant's family, or their employees.

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; July 21, 2006; April 1, 2008; July 1, 2014; April 1, 2018.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-34-02, 61-34-03

89-11-01-06. Application procedure.

1. Requests for assistance must be on a commission form and include:
 - ~~a. Written proof the applicant applied for and was denied cost-share assistance from the United States department of agriculture farm service agency, including the reason for the denial.~~
 - ~~b.~~a. An area map indicating the proposed water supply project location.
 - ~~c.~~b. A proposed water supply project cost estimate.

~~d.c.~~ Verification the applicant is a livestock producer.

2. The department must review applications and acknowledge their receipt. The department must, within available funding limits, provide assistance to those livestock producers whose applications are approved. The applicant must agree to:
 - a. Complete the project within one hundred eighty days of receiving funding approval notification. The department may grant a time extension if a written request providing just cause is submitted.
 - b. Provide actual expenditure receipts.
 - c. Grant the department or its agent the right to enter the land to inspect the completed water supply project after giving reasonable notice to the applicant.
 - d. Indemnify and hold harmless the state of North Dakota, the commission, the department, and their agents from all claims resulting from or arising out of the activities of the applicant or applicant's agents.
3. Application forms may be obtained by contacting the department.

History: Effective July 1, 1992; amended effective August 27, 2002; July 21, 2006; April 1, 2008; July 1, 2014; April 1, 2018; January 1, 2023;_____.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-34-02, 61-34-03, 61-34-04

ARTICLE 89-15 WATERCOURSES

Chapter

89-15-01 Watercourse ~~Determinations~~Determination Review

CHAPTER 89-15-01 WATERCOURSE ~~DETERMINATIONS~~DETERMINATION REVIEW

Section

89-15-01-01 Definitions
89-15-01-02 Identifying a Watercourse
89-15-01-03 Information to Use ~~in Making~~When Reviewing a Watercourse Determination
89-15-01-04 ~~Making a~~ Watercourse Determination Review Request

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.~~
- ~~3.2.~~ "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.
- ~~4.3.~~ "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.

History: Effective July 1, 2024.

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 department will use the following criteria ~~must be considered~~when reviewing a watercourse determination. 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.

History: Effective July 1, 2024.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-01-06

89-15-01-03. Information to use ~~in making~~ when reviewing 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.

History: Effective July 1, 2024.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-01-06

89-15-01-04. ~~Making a watercourse~~ Watercourse determination review request.

~~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 review from the department according to section 61-01-06, the~~ Requests for the department to review a watercourse determination must be made within thirty days after the aggrieved party knew or should have known about the determination. 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.

History: Effective July 1, 2024; amended effective .

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-01-06

ARTICLE 90-01 GENERAL ADMINISTRATION

Chapter

90-01-01	Board Organization	<u>[Repealed]</u>
90-01-02	Definitions	
90-01-03	Continuing Education	

CHAPTER 90-01-01 BOARD ORGANIZATION

Section

90-01-01-01	State Board of Water Well Contractors Organization
90-01-01-02	Certification Purpose

~~90-01-01-01. State board of water well contractors organization.~~

- ~~1. **History.** The 1971 legislative assembly passed the act providing for water well contractors licensing and creating the state board of water well contractors, codified as North Dakota Century Code chapter 43-35. The 1985 legislative assembly added pump and pitless unit installers, the 1987 legislative assembly added monitoring well contractors, and the 2007 legislative assembly added geothermal system drillers to the coverage.~~
- ~~2. **Board membership.** Membership of the state board of water well contractors is detailed in North Dakota Century Code section 43-35-03.~~
- ~~3. **Executive secretary-treasurer.** The board shall appoint the executive secretary-treasurer, who is responsible for board administration and the examining process in North Dakota Century Code chapter 43-35.~~
- ~~4. **Inquiries.** Inquiries regarding the board or examinations should be addressed to the executive secretary-treasurer:~~

~~Secretary-Treasurer
State Board of Water Well Contractors
1200 Memorial Highway
Bismarck, North Dakota 58504-5262~~

~~**History:** Amended effective November 1, 1981; December 1, 1985; January 1, 1988; May 1, 2002; October 1, 2024.~~

~~**General Authority:** NDCC 43-35-10~~

~~**Law Implemented:** NDCC 28-32-02, 43-35-02, 43-35-03, 43-35-04~~

~~90-01-01-02. Certification purpose.~~

~~The board's philosophy in enforcing North Dakota Century Code chapter 43-35 must, at all times, be for the quantity and quality protection of ground water resources.~~

~~**History:** Effective October 1, 2024.~~

~~**General Authority:** NDCC 43-35-10~~

~~**Law Implemented:** NDCC 43-35-01~~

[Repealed effective _____]

CHAPTER 90-01-02 DEFINITIONS

Section
90-01-02-01 Definitions

90-01-02-01. Definitions.

Unless the context otherwise requires, the following definitions apply to this article:

1. "~~Certificate~~License holder" means a ~~certified~~licensed water well contractor, pump and pitless unit installer, geothermal system installer, or monitoring well contractor.
2. "Continuing education" means accredited educational experience derived from participation in approved lectures, seminars, or correspondence courses.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
- ~~3.4.~~ "Hour" means a minimum of fifty continuing education instruction minutes.
- ~~4.5.~~ "In charge" means a ~~certificate~~license holder has actual supervisory power over the work and makes onsite work and progress inspections.
- ~~5.6.~~ "One-year apprenticeship or experience" means twelve months of full-time employment in constructing water wells or monitoring wells or installing pump and pitless units or geothermal systems under the direct supervision of a ~~certificate~~license holder in the same area of expertise as they are acquiring experience.
- ~~6.7.~~ "Wells" is defined in ~~subsection 5 of~~ North Dakota ~~Century~~Administrative Code section ~~43-35-02~~33.1-18-01-02.

History: Effective March 1, 1984; amended effective October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-02, 43-35-13, 45-35-19, 45-35-23~~61-03-01.3

CHAPTER 90-01-03 CONTINUING EDUCATION

Section

90-01-03-01	Continuing Education - Defined [Repealed]
90-01-03-02	Coursework
90-01-03-03	Preapproval by Board <u>Department</u>
90-01-03-04	Request Preapproval
90-01-03-05	Request Approval After Course
90-01-03-06	Hours
90-01-03-07	Hour Defined [Repealed]
90-01-03-08	Noncompliance

90-01-03-01. Continuing education - Defined.

Repealed effective October 1, 2024.

90-01-03-02. Coursework.

Coursework may be provided by:

1. The national ground water association;
2. The North Dakota well drillers association;
3. The department of environmental quality;
4. The department of water resources; or
5. Any ~~board~~department-approved course provider.

History: Effective May 1, 2002; amended effective October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-03. Preapproval by ~~board~~department.

A continuing education course must be preapproved by the ~~board~~department unless otherwise provided by law.

History: Effective May 1, 2002; amended effective October 1, 2024.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-04. Request preapproval.

The continuing education course provider or ~~certificate~~license holder shall request continuing education coursework preapproval by submitting to the ~~board~~department a course outline, the instructor's name, the training duration, and an explanation of how the training relates to water well, pump and pitless unit, geothermal system, or monitoring well construction or service.

History: Effective May 1, 2002; amended effective October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-05. Request approval after course.

A ~~certificate~~license holder may request continuing education approval that was not preapproved by submitting to the ~~board~~department attendance verification, a course outline, the instructor's name, the training duration, an explanation of how the training relates to water well, pump and pitless unit, geothermal system, or monitoring well construction or service, and an explanation of why preapproval was not obtained. The ~~board~~department shall determine on a case-by-case basis whether to approve continuing education that was not preapproved.

History: Effective May 1, 2002; amended effective October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-23~~61-03-01.3

90-01-03-06. Hours.

Each ~~certificate~~license holder shall earn ~~board~~department-approved continuing education hours every two-year reporting cycle to qualify for ~~certificate~~license renewal. A water well contractor, geothermal system installer, or monitoring well contractor shall earn at least six hours and a pump and pitless unit installer shall earn at least two hours of ~~board~~department-approved continuing education every reporting cycle. A new ~~certificate~~license holder is required to earn the ~~board~~department-approved continuing education credits during the two years following the initial ~~certification~~-year of licensure. An hour may not be used for more than one reporting period.

History: Effective May 1, 2002; amended effective October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-17, 43-35-23~~61-03-01.3

90-01-03-07. Hour defined.

Repealed effective October 1, 2024.

90-01-03-08. Noncompliance.

A ~~certificate~~license holder who fails to complete the required ~~board~~department-approved continuing education hours during the reporting period is not eligible for ~~certificate~~license renewal. Such individual may complete the required hours by March thirty-first of the following year and be eligible for ~~certificate~~license renewal. After March thirty-first, the ~~certificate~~license holder shall reapply and pass the examination required to initially obtain a ~~certificate~~license.

History: Effective May 1, 2002; amended effective October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-17~~61-03-01.3

ARTICLE 90-02 OPERATIONS

Chapter	
90-02-01	Examination
90-02-02	Certification <u>Licensure</u>
90-02-03	Reporting and Operations
90-02-04	Action Before Board [Repealed]

CHAPTER 90-02-01 EXAMINATION

Section	
90-02-01-01	Examination Preparation
90-02-01-02	Supervision and Correction
90-02-01-02.1	Examination - When Held - Notice
90-02-01-03	Examination Dates
90-02-01-04	Examination Location
90-02-01-05	Examination Procedure
90-02-01-06	Waiting Period

90-02-01-01. Examination preparation.

The ~~board~~ department shall arrange for an examination to be prepared ~~for board approval~~. If a ~~majority of the board~~ department finds that the proposed examination fairly tests the skills and knowledge needed to be a ~~certificate~~ license holder, it shall approve such examination and order its use. The examination may be modified from time to time at the ~~board's~~ department's discretion.

History: Amended effective May 1, 2002; October 1, 2024; _____.

General Authority: NDCC ~~43-35-10~~ 61-03-13

Law Implemented: NDCC ~~43-35-12~~ 61-03-01.3

90-02-01-02. Supervision and correction.

The examination shall be given, supervised, and corrected by a ~~board~~ department-appointed representative, ~~who shall report the results to the board~~.

History: Amended effective May 1, 2002; October 1, 2024; _____.

General Authority: NDCC ~~43-35-10~~ 61-03-13

Law Implemented: NDCC ~~43-35-12~~ 61-03-01.3

90-02-01-02.1. Examination - When held - Notice.

The ~~board shall hold meetings at such times and such places as the board designates to administer an examination~~ department must administer an examination to persons desiring to become ~~certified~~ licensed as ~~certificate~~ license holders or geothermal system drillers. The ~~board~~ department shall give no less than ten days' written notice to each applicant of the time and place of such examination. The ~~board~~ department shall develop separate examinations for the ~~certification~~ licensure of water well contractors, water well pump and pitless unit installers, monitoring well contractors, and geothermal system drillers.

History: Effective October 1, 2024; _____.

General Authority: NDCC ~~43-35-10~~ 61-03-13

Law Implemented: NDCC ~~43-35-12~~ 61-03-01.3

90-02-01-03. Examination dates.

The examination to become a ~~certificate~~license holder must be given four times each year, during February, May, August, and November. The exact date must be announced ~~by the appointed examination representative~~ at least thirty days before the examination.

History: Amended effective May 1, 2002; October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-04. Examination location.

The examination must be given in the office of the department ~~of water resources~~ or in Bismarck, North Dakota.

History: Amended effective May 1, 2002; October 1, 2024;_____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-05. Examination procedure.

Each applicant may spend up to four hours writing the examination. No books, charts, tables, notes, or other guidance may be used. A minimum score of seventy percent is required to pass the examination.

History: Amended effective October 1, 2024.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-12~~61-03-01.3

90-02-01-06. Waiting period.

Any person failing to pass the examination may not take the examination for a period of one year immediately following the failure.

History: Amended effective October 1, 2024.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-12~~61-03-01.3

CHAPTER 90-02-02

CERTIFICATION LICENSURE

Section

90-02-02-01	Certification <u>Licensure</u> - How Obtained
90-02-02-01.1	Purpose of Certification [Repealed]
90-02-02-01.2	Certificate <u>License</u> - How Obtained - Fee - Bond
90-02-02-01.3	Bond Required
90-02-02-02	Qualified Applicants – How Determined – Initial Certification <u>Licensure</u>
90-02-02-02.1	One-year Apprenticeship or Experience Requirements
90-02-02-02.2	Certification <u>Licensure</u> by Examination - Time Limit
90-02-02-02.3	Conviction Not Bar to Certification <u>Licensure</u> - Exceptions
90-02-02-02.4	Renewal of Certificate <u>License</u> - Continuing Education
90-02-02-03	Qualified Applicants - How Determined - Renewal
90-02-02-04	Renewal Application - Time Limit
90-02-02-05	Willful Violation - Penalty [Repealed]
90-02-02-06	Expiration of Grandfather Clause [Repealed]
90-02-02-07	Certification by Reciprocity - How Obtained [Repealed]

90-02-02-01. ~~Certification~~Licensure - How obtained.

The ~~board-secretary-treasurer~~department shall furnish ~~certificates~~licenses and decals to qualified applicants who have passed the examination upon receipt of a ~~board~~department-approved application and submission of the proper fee and bond.

History: Amended effective October 1, 2024; _____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-13, 43-35-16, 43-35-17~~61-03-01.

90-02-02-01.1. Purpose of certification.

Repealed effective October 1, 2024.

90-02-02-01.2. ~~Certificate~~License - How obtained - Fee - Bond.

1. A person who takes the examination to become a ~~certified~~licensed water well contractor first shall complete a minimum of one-year apprenticeship or experience in water well drilling and construction under the direct supervision of a ~~certified~~licensed water well contractor or have completed a career and technical education program of at least one year in water well construction and shall make application to the ~~board~~department.
2. A person who takes the examination to become a ~~certified~~licensed water well pump and pitless unit installer first shall complete a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a ~~certified~~licensed water well pump and pitless unit installer or have completed a career and technical education program of at least one year in water well pump and pitless unit installation.
3. A person who takes the examination to become a ~~certified~~licensed monitoring well contractor first shall complete a minimum of one-year apprenticeship or experience in monitoring well construction under the direct supervision of a ~~certified~~licensed water well contractor or a ~~certified~~licensed monitoring well contractor or have completed a career and technical education program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the ~~board~~department.
4. A person who takes the examination to become a ~~certified~~licensed geothermal system driller

first shall complete a minimum of one year of apprenticeship under the direct supervision of a ~~certified~~licensed geothermal system driller or have a minimum of two thousand forty installation hours of experience in geothermal system drilling working under the direct supervision of a ~~certified~~licensed geothermal system driller or, first shall complete career and technical education relating to geothermal system drilling lasting at least one school year.

5. A person applying to take a ~~certification~~licensure examination shall pay to the ~~board treasurer~~department a nonrefundable examination fee in the amount of one hundred dollars. If upon examination the applicant is found to be qualified as a water well contractor, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the ~~board~~department shall issue to that person an appropriate ~~certificate~~license upon the applicant's executing and filing with the ~~board~~department a bond as required in this chapter. The ~~board~~department may offer a combined examination for ~~certification~~licensure of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single ~~certificate~~license for successful completion of the combined examination. ~~Certificates~~Licenses issued under this chapter are not transferable.

History: Effective October 1, 2024; ; amended effective .

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-13~~61-03-01.3

90-02-02-01.3. Bond required.

Before receiving a ~~certificate~~license under North Dakota Century ~~Code~~Code chapter ~~43-35~~61-03, a qualified applicant shall execute and deposit with the ~~board~~department a surety bond conditioned for the faithful performance of all water well, monitoring well, pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with North Dakota Century Code chapter ~~43-35~~61-03. The required amount of a surety bond is fifteen thousand dollars for a water well contractor and is two thousand dollars for a monitoring well, pump and pitless unit, or geothermal system installation contractor.

History: Effective October 1, 2024; amended effective .

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-14~~61-03-01.3

90-02-02-02. Qualified applicants - How determined - Initial ~~certification~~licensure.

The ~~board~~department must approve a party's ~~certification~~licensure application if an applicant has complied with North Dakota ~~Century~~Administrative Code sections ~~43-35-13~~90-02-02-01.2 and ~~43-35-14~~90-02-02-01.3. Upon ~~board~~department approval, the applicant is to be regarded as qualified and must be issued the proper ~~certificate~~license and decals.

History: Amended effective May 1, 2002; October 1, 2024; .

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-13, 43-35-14, 43-35-16~~61-03-01.3

90-02-02-02.1. One-year apprenticeship or experience requirements.

The one-year apprenticeship or experience required by North Dakota ~~Century~~Administrative Code section ~~43-35-13~~90-02-02-01.2 must have occurred during the three years immediately preceding the application date. Suitable vocational training may substitute for the one-year apprenticeship or experience requirement with ~~board~~department approval and at the ~~board's~~department's sole discretion. If the experience was obtained in another state under a ~~noncertificate~~nonlicensed holder water well contractor, pump and pitless unit installer, geothermal system installer, or monitoring well contractor, the ~~board~~department may approve equivalent experience if the ~~board~~department is satisfied in its sole discretion that the experience was equivalent to working under the direct supervision of a ~~certificate~~license holder in North Dakota.

History: Effective March 1, 1984; amended effective May 1, 2002; October 1, 2024; _____.

General Authority: NDCC ~~43-35-10, 43-35-21~~61-03-13

Law Implemented: NDCC ~~43-35-13~~61-03-01.3

90-02-02-02.2. ~~Certification~~Licensure by examination - Time limit.

Any applicant who passes the examination shall complete the other ~~certification~~licensure requirements within six months of examination result notification or the examination score must be nullified and the applicant shall be required to initiate a new application and be reexamined to obtain a ~~certificate~~license.

History: Effective March 1, 1984; amended effective October 1, 2024; _____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-13~~61-03-01.3

90-02-02-02.3. Conviction not bar to ~~certification~~licensure - Exceptions.

Conviction of an offense does not disqualify a person from ~~certification~~licensure under this chapter unless the ~~board~~department determines that the offense has a direct bearing upon a person's ability to serve the public as a ~~certificate~~license holder, or that, following the conviction of any offense, the person is not sufficiently rehabilitated under North Dakota Century ~~Code~~Code section 12.1-33-02.1.

History: Effective October 1, 2024; amended effective _____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-11.1~~61-03-01.3

90-02-02-02.4. Renewal of ~~certificate~~license - Continuing education.

1. A ~~certificate~~license issued under North Dakota Century Code chapter ~~43-35~~61-03 is valid for up to one year and expires on the thirty-first day of December in the year of issuance. To renew a ~~certificate~~license, a ~~certificate~~license holder shall submit to the ~~board~~department a completed renewal application. The completed renewal application must be:
 - a. Submitted to the ~~board~~department before April first in the year following the ~~certificate's~~expiration of the license;
 - b. Accompanied by a fee in an amount set by the ~~board~~department not to exceed two hundred dollars;
 - c. Accompanied by any continuing education reporting information required under this section; and
 - d. Accompanied by a bond as provided in section 90-02-02-01.3.
2. Except as provided under subsection 3, every two years the renewal application must include reporting information verifying the applicant completed six hours of ~~board~~department-approved continuing education during the two-year reporting cycle.
3. A renewal application for ~~certification~~licensure as a water well pump and pitless unit installer must include reporting information verifying the applicant completed two hours of ~~board~~department-approved continuing education during the two-year reporting cycle.

History: Effective October 1, 2024; _____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-17~~61-03-01.3

90-02-02-03. Qualified applicants - How determined - Renewal.

A ~~certificate~~license holder must be issued a renewal upon the receipt of a ~~board~~department-approved

renewal application and submission of the proper fee and bond. ~~The secretary-treasurer may issue the certificates and decals for a renewal without board action.~~

History: Amended effective October 1, 2024; _____.

General Authority: NDCC ~~43-35-10~~ 61-03-13

Law Implemented: NDCC ~~43-35-13, 43-35-17~~ 61-03-01.3

90-02-02-04. Renewal application - Time limit.

If a renewal application has not been received prior to April first following ~~certificate~~ expiration of the license, the previous ~~certificate holder~~ license is no longer ~~be~~ eligible for renewal.

History: Amended effective October 1, 2024.

General Authority: NDCC ~~43-35-10~~ 61-03-13

Law Implemented: NDCC ~~43-35-17~~ 61-03-01.3

90-02-02-05. Willful violation - Penalty.

Repealed effective October 1, 2024.

90-02-02-06. Expiration of grandfather clause.

Repealed effective October 1, 2024.

90-02-02-07. Certification by reciprocity - How obtained.

Repealed effective October 1, 2024.

CHAPTER 90-02-03 REPORTING AND OPERATIONS

Section

90-02-03-01	Completion Reports Required to Be Filed
90-02-03-02	Filing Reports
90-02-03-03	In Charge - Definition [Repealed]
90-02-03-04	Decal Required

90-02-03-01. Completion reports required to be filed.

The ~~secretary-treasurer~~department shall develop and supply well completion reporting forms as required by North Dakota Century Code section ~~43-35-19~~61-03-NEW.

History: Amended effective October 1, 2024; amended effective _____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-19~~61-03-NEW

90-02-03-02. Filing reports.

The ~~secretary-treasurer~~department shall maintain a systematic file of well completion reporting forms.

History: Amended effective October 1, 2024; amended effective _____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-19~~61-03-NEW

90-02-03-03. In charge - Definition.

Repealed effective October 1, 2024.

90-02-03-04. Decal required.

Any water well equipment, pump and pitless unit equipment, geothermal equipment, or monitoring well equipment operating in North Dakota must prominently display a decal on the primary equipment that is under the charge of a ~~certificate~~license holder. Before beginning any water well equipment, pump and pitless unit equipment, geothermal equipment, or monitoring well equipment operation, the ~~certificate~~license holder in charge shall secure a decal from the ~~board~~department and place it on the primary equipment.

History: Amended effective May 1, 2002; October 1, 2024; amended effective _____.

General Authority: NDCC ~~43-35-10~~61-03-13

Law Implemented: NDCC ~~43-35-16~~61-03-01.3