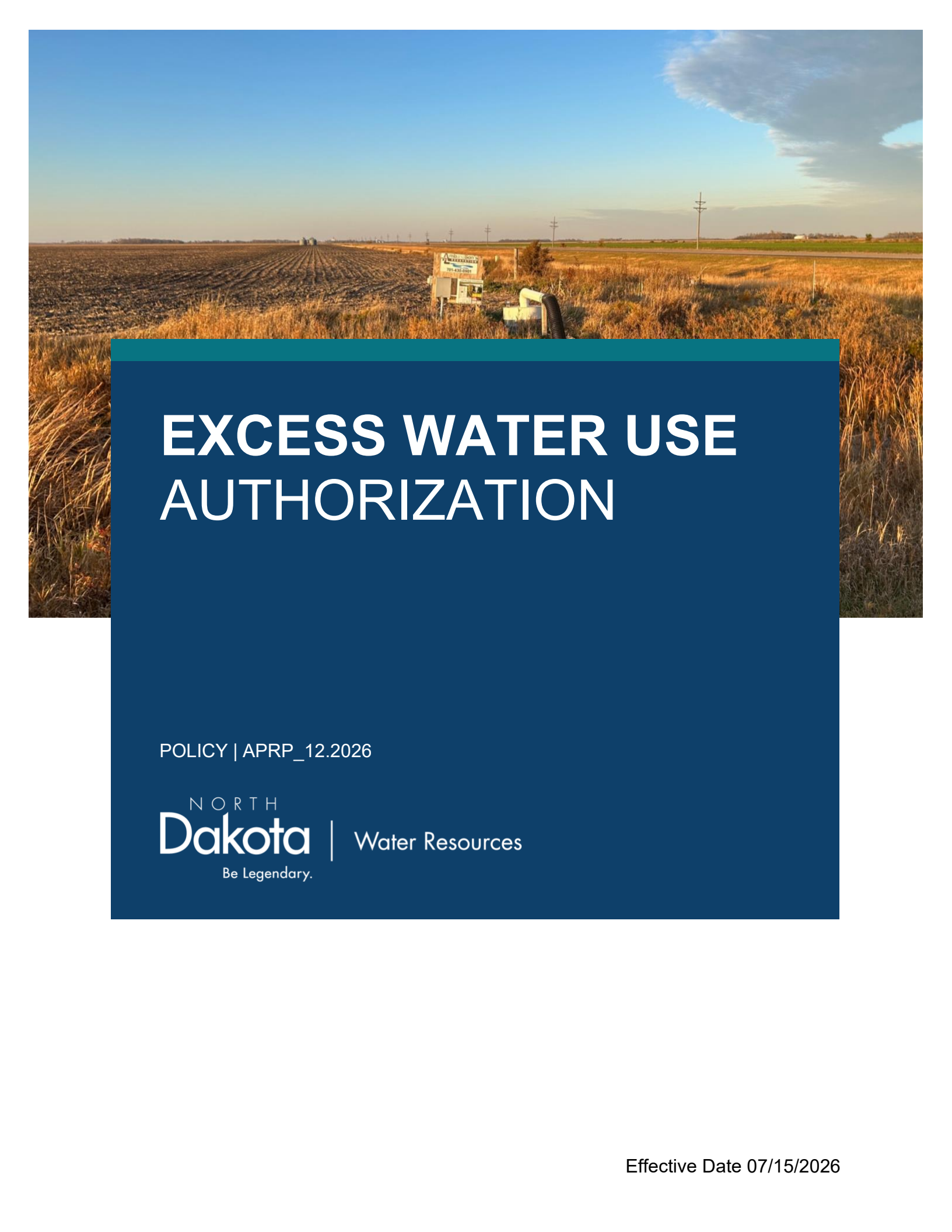




EXCESS WATER USE AUTHORIZATION

POLICY | APRP_12.2026

NORTH
Dakota | Water Resources
Be Legendary.

Effective Date 07/15/2026

POLICY OUTLINE

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1 POLICY STATEMENT

The Department of Water Resources (Department) is responsible for appropriating waters of the state for beneficial use. Water resource districts are responsible for permitting subsurface water management systems.

This policy establishes the requirements and limitations for obtaining a conditional or temporary water permit to beneficially use water derived from a subsurface water management system.

1.1 POLICY AUTHORITY OR IMPLEMENTATION

This policy garners authority from North Dakota Century Code (N.D.C.C.) chs. 61-04 and 61-32, and North Dakota Administrative Code (N.D.A.C) art. 89-03.

1.2 ACCEPTANCE OR ENFORCEMENT

The Department reserves the right to change this policy as necessary to ensure Department fulfills its statutory duties.

The Department reserves the right to return any application submitted under this policy to the applicant for correction if, in Department's determination, it does not comply with the policy's intent or is insufficient for Department to make an informed decision.

The Department reserves the right to enforce this policy as outlined in N.D.C.C. ch. 61-04 and N.D.A.C. art. 89-03.

1.3 APPEALS

Decisions may be appealed as outlined in N.D.C.C. §§ 61-03-22 and 61-04-05.1.

1.4 POLICY DEVIATIONS

The Department reserves the right to deviate from policy as deemed appropriate and within requirements outlined in N.D.C.C. or N.D.A.C.

Policy deviation requests from applicants may be considered by the Department if the applicant can justify why requirements of this policy are not necessary or applicable. Such a deviation will not be granted without significant justification. Additionally, a deviation request does not guarantee that a deviation will be granted, and any work performed to pursue such a deviation request will be solely at the applicant's expense.

1.5 DEPARTMENT CONTACT

Please contact the Department's Water Appropriation Division at (701) 328-2754 or appropinfo@nd.gov for questions regarding this policy.

2 EXCESS WATER USE AUTHORIZATION

The Department may issue an excess water use authorization for the purpose of putting water derived from a subsurface water management system source to beneficial use subject to Section 2.1.

Applicants may apply for a temporary (Section 2.2) or conditional (Section 2.3) water permit.

2.1 GENERAL POLICY CONSIDERATIONS

- a. Subsurface water management systems are permitted by water resource districts under N.D.C.C. ch. 61-32. However, appropriating excess water derived from subsurface water management systems are subject to N.D.C.C. ch. 61-04.
- b. Subsurface water management systems are not constructed to put water to beneficial use, and therefore are not “works” under N.D.C.C. § 61-04-02.
- c. Horizontal wells are “works” under N.D.C.C. § 61-04-02.
- d. No water right will be established for water permits issued for the beneficial use of water from a subsurface water management system source.

2.2 TEMPORARY WATER PERMIT APPLICATION

Under N.D.C.C. § 61-04-02.1, the Department may issue temporary authorizations (temporary water permits) for up to one year.

No water right is established under a temporary water permit.

2.2.1 PROCESS

- a. Applicant submits SFN 60158 Temporary Water Permit Application and fee to the Department through [the online portal](#).
- b. The Department reviews the application, and if applicable, verifies the subsurface water management system has an approved permit and downstream flow map on file with the Department in compliance with N.D.C.C. § 61-32-03.1.
- c. If the application meets review standards and is compliant with N.D.C.C. chs. 61-04 and 61-32, the Department will issue a temporary water permit for the excess water associated with the subsurface water management system.

2.3 CONDITIONAL WATER PERMIT APPLICATION

When subsurface water management systems yield multi-annual supply for beneficial use, the Department may issue a conditional water permit.

No water right will be established for conditional water permits issued for the beneficial use of water from a subsurface water management system source.

2.3.1 PROCESS

- a. Applicant submits SFN 60157 Application for Conditional Water Permit and fee to the Department and completes the application process in N.D.C.C. ch. 61-04 and N.D.A.C. art. 89-03.
- b. As a part of the conditional water permit application review, the Department verifies the subsurface water management system has an approved permit and downstream flow map on file with the Department in compliance with N.D.C.C. § 61-32-03.1.
- c. If the application meets review standards and is compliant with N.D.C.C. chs. 61-04 and 61-32, the Department will issue a conditional water permit, subject to conditions attached to the permit, for the excess water associated with the subsurface water management system with the source listed as “Subsurface Water Management System.”

3 POLICY HISTORY

Policy Adopted: 07/15/2026

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Previous Revision(s):

No Revisions Available