

HOUSE BILL NO. 1353
with Senate Amendments
HOUSE BILL NO. 1353

Introduced by

Representatives Schmidt, Delzer, Monson, J. Nelson, Pollert

Senators Kreun, Schaible, Sorvaag, Bell, Wardner

1 A BILL for an Act to create and enact sections 61-03-01.1, 61-03-01.2, and 61-03-01.3 of the
2 North Dakota Century Code, relating to the establishment of the department of water resources
3 and powers and duties of the director of the department of water resources; to amend and
4 reenact subsection 1 of section 4.1-01-18, sections 4.1-35-01 and 4.1-35-04, subsection 3 of
5 section 4.1-35-05, section 11-33.2-12.1, subsection 1 of section 23.1-01-02, sections
6 23.1-08-13, 23.1-11-06, 23.1-11-10, 23.1-11-11, 24-03-06, 24-03-08, and 24-06-26.1,
7 subsection 2 of section 37-17.1-11, subsection 12 of section 38-14.1-03, subdivision n of
8 subsection 1 of section 38-14.1-14, subsection 2 of section 38-14.1-21, subsection 7 of section
9 38-14.1-24, subsection 1 of section 38-14.1-25, subsection 1 of section 38-23-08, and
10 subsection 11 of section 40-50.1-01, section 43-35-03, subsection 1 of section 54-57-03,
11 sections 57-02-08.6 and 57-28-09, subsection 4 of section 61-01-01, sections 61-01-03,
12 61-01-05, 61-01-06, 61-01-25, 61-02-05, 61-02-14.2, 61-02-23.3, 61-02-26, 61-02-27, 61-02-30,
13 61-02-32, 61-02-33, 61-02-41, 61-02-68.10, 61-02.1-01, 61-03-03, 61-03-04, 61-03-06,
14 61-03-08, 61-03-10, 61-03-12, 61-03-13, 61-03-14, 61-03-15, 61-03-16, 61-03-17, 61-03-18,
15 61-03-19, 61-03-20, 61-03-21, 61-03-21.1, 61-03-21.2, 61-03-21.3, 61-03-21.4, 61-03-22,
16 61-03-23, 61-03-24, 61-03-25, and 61-04-01, subsection 1 of section 61-04-01.1 and
17 subsection 15 of section 61-04-01.1, sections 61-04-02, 61-04-02.1, 61-04-02.2, 61-04-03,
18 61-04-03.1, 61-04-04, 61-04-04.1, 61-04-04.2, 61-04-04.3, 61-04-05, 61-04-05.1, 61-04-06,
19 61-04-06.1, 61-04-06.2, 61-04-06.3, 61-04-07.2, 61-04-07.3, 61-04-09, 61-04-11, 61-04-12,
20 61-04-14, 61-04-15, 61-04-15.2, 61-04-15.3, 61-04-15.4, and 61-04-23, subsection 1 of section
21 61-04-24, sections 61-04-25, 61-04-26, 61-04-27, 61-04-28, 61-04-29, 61-04-30, 61-04-31, and
22 61-04.1-04, subsection 3 of section 61-05-01, sections 61-05-07, 61-05-08, 61-05-09, 61-05-10,
23 61-05-11, 61-05-12, 61-05-13, 61-05-14, 61-05-15, 61-05-16, 61-05-17, 61-05-18, 61-05-19,
24 61-05-20, 61-06-01, 61-06-03, 61-06-04, 61-06-05, 61-06-19, 61-07-08, 61-07-19, 61-07-27,
25 61-09-02, 61-10-27, 61-10-30, 61-10-35, 61-10-37, 61-11-04, 61-11-08, 61-11-09, 61-11-15,

Sixty-seventh
Legislative Assembly

1 61-12-46, 61-14-01, 61-14-03, 61-14-06, 61-14-07, 61-14-13, 61-15-03, 61-15-09, and
2 61-16-06.1, subsection 1 of section 61-16.1-09.1, sections 61-16.1-23, 61-16.1-37, 61-16.1-38,
3 61-16.1-39, 61-16.1-53.1, 61-16.2-01, 61-16.2-02, 61-16.2-03, 61-16.2-04, and 61-16.2-05,
4 subsection 1 of section 61-16.2-09, sections 61-16.2-11, 61-16.2-13, 61-16.2-14, 61-20-02,
5 61-20-03, 61-20-06, 61-20-07, 61-21-02.1, 61-21-22, 61-21-34, 61-24-07, 61-24.3-01,
6 61-24.5-01, 61-24.5-18, 61-24.6-01, 61-24.6-02, 61-24.6-03, 61-24.6-05, 61-24.8-01,
7 61-24.8-18, and 61-29-04, subsection 6 of section 61-31-02, and sections 61-32-03,
8 61-32-03.1, 61-32-08, 61-33-01, 61-33-01.1, 61-33-02, 61-33-03, 61-33-05, 61-33-05.1,
9 61-33-07, 61-33-08, 61-33-09, 61-33-10, 61-33.1-07, 61-34-01, 61-34-04, 61-35-01, 61-35-02,
10 61-35-02.1, 61-35-04, 61-35-05, 61-35-07, 61-35-08, 61-35-16, 61-35-18, 61-35-20, 61-35-21,
11 61-35-22, 61-35-23, 61-35-25, 61-35-63, 61-38-01, 61-38-02, 61-38-03, 61-38-04, 61-38-05,
12 61-38-06, 61-38-07, 61-38-08, 61-38-09, 61-38-10, 61-38-11, 61-39-01, and 61-40-07 of the
13 North Dakota Century Code, relating to the powers and duties of the department of water
14 resources and the state engineer and updates to statutory language; and to repeal sections
15 61-03-01, 61-03-02, and 61-03-05.1 of the North Dakota Century Code, relating to the powers
16 and duties of the state engineer and the water use fund.

17 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

18 **SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-01-18 of the North Dakota Century
19 Code is amended and reenacted as follows:

- 20 1. The federal environmental law impact review committee consists of:
- 21 a. The commissioner, who shall serve as the chairman;
 - 22 b. The governor or the governor's designee;
 - 23 c. The majority leader of the house of representatives, or the leader's designee;
 - 24 d. The majority leader of the senate, or the leader's designee;
 - 25 e. One member of the legislative assembly from the minority party, selected by the
26 chairman of the legislative management;
 - 27 f. One individual appointed by the North Dakota corn growers association;
 - 28 g. One individual appointed by the North Dakota grain growers association;
 - 29 h. One individual appointed by the North Dakota soybean growers association;
 - 30 i. One individual appointed by the North Dakota stockmen's association;

- 1 j. One individual appointed by the North Dakota farm bureau;
- 2 k. One individual appointed by the North Dakota farmers union;
- 3 l. The chairman of the public service commission or the chairman's designee;
- 4 m. The ~~state-engineer~~director of the department of water resources or the ~~state-~~
5 ~~engineer's~~director's designee;
- 6 n. The director of the game and fish department, or the director's designee;
- 7 o. The director of the department of transportation, or the director's designee;
- 8 p. The director of the department of environmental quality, or the director's
9 designee;
- 10 q. One representative of an investor-owned utility company;
- 11 r. One representative from the North Dakota association of rural electric
12 cooperatives; and
- 13 s. Two individuals from the energy community appointed by the commissioner.

14 **SECTION 2. AMENDMENT.** Section 4.1-35-01 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **4.1-35-01. Definitions.**

17 As used in this chapter:

- 18 1. "Chemigation" means any process by which chemicals, including pesticides and
19 fertilizers, are applied to land or crops through an irrigation system.
- 20 2. "Commissioner" means the agriculture commissioner and includes any employee or
21 agent designated by the commissioner.
- 22 3. "Fertilizer" means any fertilizer as defined by section 4.1-40-01.
- 23 4. "Pesticide" means that term defined in section 4.1-33-01.
- 24 5. "~~State-engineer~~" means ~~the state-engineer appointed by the state water commission~~
25 ~~under section 61-03-01.~~

26 **SECTION 3. AMENDMENT.** Section 4.1-35-04 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **4.1-35-04. Inspections - Assistance of ~~state-engineer~~department of water resources.**

29 The ~~state-engineer~~department of water resources shall cooperate with the commissioner in
30 the inspection of any irrigation system using chemigation. The ~~state-engineer~~department shall

1 inform the commissioner of any violation of this chapter which is discovered in the course of the
2 ~~state engineer's department's~~ regular inspections of irrigation systems using chemigation.

3 **SECTION 4. AMENDMENT.** Subsection 3 of section 4.1-35-05 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 3. For the purpose of carrying out the provisions of this chapter, the commissioner and
6 the ~~state engineer department of water resources~~ may enter upon any public or private
7 premises at reasonable times in order to:

- 8 a. Have access for the purpose of inspecting any equipment subject to this chapter
9 and the premises on which the equipment is stored or used.
- 10 b. Inspect or sample lands actually, or reported to be, exposed to pesticides or
11 fertilizers through chemigation.
- 12 c. Inspect storage or disposal areas.
- 13 d. Inspect or investigate complaints of injury to humans or animals.
- 14 e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or
15 to be applied.
- 16 f. Observe the use and application of a pesticide or fertilizer through chemigation.
- 17 g. Have access for the purpose of inspecting a premise or other place where
18 equipment or devices used for chemigation are held for distribution, sale, or use.

19 **SECTION 5. AMENDMENT.** Section 11-33.2-12.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **11-33.2-12.1. Contents of plat - Location and elevation of lakes, rivers, or streams -**
22 **Notification of floodplain.**

23 Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or
24 stream is subdivided, the subdivider must show on the plat or other document containing the
25 subdivision a contour line denoting the present shoreline, water elevation, and the date of the
26 survey. If any part of a plat or other document lies within the one hundred year floodplain of a
27 lake, river, or stream as designated by the ~~state engineer department of water resources~~ or a
28 federal agency, the mean sea level elevation of that one hundred year flood must be denoted
29 on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval
30 referenced to mean sea level must be shown for the portion of the plat lying within the
31 floodplain. All elevations must be referenced to a durable benchmark described on the plat with

1 its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be
2 given in mean sea level datum.

3 **SECTION 6. AMENDMENT.** Subsection 1 of section 23.1-01-02 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 1. The environmental review advisory council is established to advise the department of
6 environmental quality in carrying out its duties. The council consists of the ~~state-~~
7 ~~engineer~~director of the department of water resources, state geologist, and director of
8 the game and fish department, who serve as ex officio members, and ten members
9 appointed by the governor. The director of the department of environmental quality or
10 the director's designee shall serve as the executive secretary for the council. The
11 appointed members must be:

- 12 a. A representative of county or municipal government;
13 b. A representative of manufacturing or agricultural processing;
14 c. A representative of the solid fuels industry;
15 d. A representative of the liquid and gas fuels industry;
16 e. A representative of crop agriculture;
17 f. A representative of the waste management industry;
18 g. A representative with an agronomy or soil sciences degree;
19 h. A representative of the thermal electric generators industry;
20 i. A representative of the environmental sciences; and
21 j. A representative of the livestock industry.

22 **SECTION 7. AMENDMENT.** Section 23.1-08-13 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23.1-08-13. Preconstruction site review.**

25 The department, in cooperation with the ~~state-engineer~~department of water resources and
26 the state geologist, shall develop criteria for siting a solid waste disposal facility based upon
27 potential impact on environmental resources. Any application for a landfill permit received after
28 the department develops siting criteria as required by this section must be reviewed for site
29 suitability by the department after consultation with the ~~state-engineer~~department of water
30 resources and state geologist before any site development. Site development does not include

1 the assessment or monitoring associated with the review as required by the department in
2 consultation with the ~~state engineer~~department of water resources and state geologist.

3 **SECTION 8. AMENDMENT.** Section 23.1-11-06 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23.1-11-06. Ground water quality monitoring.**

6 The department shall conduct ground water quality monitoring activities in cooperation with
7 the ~~state engineer~~department of water resources and other state agencies. Based on
8 monitoring results, the department of environmental quality shall implement or require
9 appropriate mitigation activities or remedial action to prevent future contamination of ground
10 water. The commissioner may implement or require appropriate mitigation activities pursuant to
11 chapter 4.1-33 to prevent future contamination of ground water as it relates to the use of
12 pesticides.

13 **SECTION 9. AMENDMENT.** Section 23.1-11-10 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **23.1-11-10. Wellhead protection program.**

16 The department, in cooperation with the ~~state engineer~~department of water resources and
17 state geologist, shall assist in implementing a public water supply wellhead protection program
18 for protection of ground water resources utilizing existing state and local statutory authority.

19 **SECTION 10. AMENDMENT.** Section 23.1-11-11 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **23.1-11-11. Rules.**

22 The department, with the approval of the commissioner and the ~~state engineer~~director of
23 the department of water resources, shall adopt rules necessary for implementation of this
24 chapter.

25 **SECTION 11. AMENDMENT.** Section 24-03-06 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **24-03-06. Method of construction of highway ditches.**

28 All highways constructed or reconstructed by the department, board of county
29 commissioners, board of township supervisors, their contractors, subcontractors, or agents, or
30 by any individual firm, corporation, or limited liability company must be so designed as to permit
31 the waters running into the ditches to drain into coulees, rivers, and lakes according to the

1 surface and terrain where the highway or highways are constructed in accordance with the
2 stream crossing standards prepared by the department and the ~~state engineer~~department of
3 water resources so as to avoid the waters flowing into and accumulating in the ditches to
4 overflow adjacent and adjoining lands. In the construction of highways the natural flow and
5 drainage of surface waters to the extent required to meet the stream crossing standards
6 prepared by the department and the ~~state engineer~~department of water resources may not be
7 obstructed, but the water must be permitted to follow the natural course according to the
8 surface and terrain of the particular terrain. The department, county, township, their contractors,
9 subcontractors, or agents, or any individual firm, corporation, or limited liability company is not
10 liable for any damage caused to any structure or property by water detained by the highway at
11 the crossing if the highway crossing has been constructed in accordance with the stream
12 crossing standards prepared by the department and the ~~state engineer~~department of water
13 resources.

14 **SECTION 12. AMENDMENT.** Section 24-03-08 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **24-03-08. Determinations of surface water flow and appropriate highway**
17 **construction.**

18 Whenever and wherever a highway under the supervision, control, and jurisdiction of the
19 department or under the supervision, control, and jurisdiction of the board of county
20 commissioners of any county or the board of township supervisors has been or will be
21 constructed over a watercourse or draw into which flow surface waters from farmlands, the
22 ~~state engineer~~department of water resources, upon petition of the majority of landowners of the
23 area affected or at the request of the board of county commissioners, township supervisors, or a
24 water resource board, shall determine as nearly as practicable the design discharge that the
25 crossing is required to carry to meet the stream crossing standards prepared by the department
26 and the ~~state engineer~~department of water resources. When the determination has been made
27 by the ~~state engineer~~department of water resources, the department of transportation, the
28 board of county commissioners, or the board of township supervisors, as the case may be,
29 upon notification of the determination, shall install a culvert or bridge of sufficient capacity to
30 permit the water to flow freely and unimpeded through the culvert or under the bridge. The
31 department, county, and township are not liable for any damage to any structure or property

1 caused by water detained by the highway at the crossing if the highway crossing has been
2 constructed in accordance with the stream crossing standards prepared by the department and
3 the ~~state engineer~~department of water resources.

4 **SECTION 13. AMENDMENT.** Section 24-06-26.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **24-06-26.1. Township road and drainage construction standards.**

7 ~~Whenever~~When the construction or reconstruction of a township road or bridge, the
8 insertion of a culvert in a township road, or the construction or reconstruction of a ditch or drain
9 in connection with a township road affects the flow of surface waters and increases the surface
10 waterflow through ditches, drains, bridges, and culverts in other townships, the board of
11 township supervisors or the township overseer of highways of the township undertaking the
12 construction or reconstruction shall give notice to the boards of township supervisors or
13 township overseers of highways in all townships affected by the construction or reconstruction
14 projects.

15 The boards of township supervisors of townships affected by any road or bridge
16 construction that changes or increases the flow of surface waters shall cooperate in the
17 construction projects expending on any portion of the projects the portions of the road and
18 bridge tax as deemed conducive to the interests of the township. The board of township
19 supervisors shall construct the ditches, drains, bridges, and culverts in accordance with stream
20 crossing standards prepared by the department and the ~~state engineer~~department of water
21 resources. A township, board of township supervisors, and township overseer of highways are
22 not liable for any damage caused to any structure or property by water detained by the highway
23 at the crossing if the highway crossing has been constructed in accordance with the stream
24 crossing standards prepared by the department and the ~~state engineer~~department of water
25 resources.

26 **SECTION 14. AMENDMENT.** Subsection 2 of section 37-17.1-11 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 2. The ~~North Dakota state engineer and the water commission and department of water~~
29 resources, in conjunction with the division of homeland security, shall keep land uses
30 and construction of structures and other facilities under continuing study and identify
31 areas ~~which~~that are particularly susceptible to severe land shifting, subsidence, flood,

1 or other catastrophic occurrence. The studies under this subsection must concentrate
2 on means of reducing or avoiding the dangers caused by ~~this occurrence~~severe land
3 shifting, subsidence, flood, or other catastrophic occurrence, or the consequences
4 thereof ~~severe land shifting, subsidence, flood, or other catastrophic occurrence~~.

5 **SECTION 15. AMENDMENT.** Subsection 12 of section 38-14.1-03 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 12. To adopt rules consistent with state law, in consultation with the state geologist,
8 department of environmental quality, and ~~the state engineer~~department of water
9 resources for the protection of the quality and quantity of waters affected by surface
10 coal mining operations.

11 **SECTION 16. AMENDMENT.** Subdivision n of subsection 1 of section 38-14.1-14 of the
12 North Dakota Century Code is amended and reenacted as follows:

13 n. The name of the watershed and location of the surface stream or tributary into
14 which surface and pit drainage will be discharged, including the drainage permit
15 application to the ~~state engineer~~department of water resources, if required,
16 ~~pursuant to other applicable state law~~.

17 **SECTION 17. AMENDMENT.** Subsection 2 of section 38-14.1-21 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 2. The commission's approval or modification of the permit or permit revision application
20 must include consideration of the advice and technical assistance of the state
21 historical society, the department of environmental quality, the soil conservation
22 committee, the game and fish department, the state forester, the state geologist, and
23 the ~~state engineer~~department of water resources, and may also include those state
24 agencies versed in soils, agronomy, ecology, geology, and hydrology, and other
25 agencies and individuals experienced in reclaiming surface mined lands.

26 **SECTION 18. AMENDMENT.** Subsection 7 of section 38-14.1-24 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 7. Create, if authorized in the approved mining and reclamation plan and permit, as part
29 of reclamation activities, permanent water impoundments in accordance with the
30 requirements of the ~~state engineer pursuant to other applicable state law~~department of
31 water resources and all of the following standards:

- 1 a. The size of the impoundment will be adequate for its intended purposes.
- 2 b. The impoundment dam construction will be designed to achieve necessary
- 3 stability with an adequate margin of safety compatible with the requirements of
- 4 applicable state law.
- 5 c. The quality of impounded water will be suitable on a permanent basis for its
- 6 intended use, and discharges from the impoundment will not exceed the quality
- 7 limitations imposed by the North Dakota pollutant discharge elimination system or
- 8 degrade the water quality below water quality standards established pursuant to
- 9 this chapter, whichever is more stringent.
- 10 d. The level of water will be reasonably stable.
- 11 e. Final grading will provide adequate safety and access for maintenance and
- 12 proposed water users.
- 13 f. ~~Such~~The water impoundments will not result in the diminution of the quality or
- 14 quantity of water utilized by adjacent or surrounding landowners for agricultural,
- 15 industrial, recreational, or domestic uses.

16 **SECTION 19. AMENDMENT.** Subsection 1 of section 38-14.1-25 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 1. A permittee may not use any coal or commercial leonardite mine waste piles
- 19 consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid
- 20 wastes either temporarily or permanently as dams or embankments unless approved
- 21 by the commission; after consultation with the ~~state engineer~~department of water
- 22 resources.

23 **SECTION 20. AMENDMENT.** Subsection 1 of section 38-23-08 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 1. The high-level radioactive waste advisory council is established to advise the
- 26 commission in carrying out its duties. The council consists of the ~~state-~~
- 27 engineerdirector of the department of water resources, state health officer, director of
- 28 the department of transportation, director of the game and fish department, the
- 29 commerce commissioner, and director of the department of environmental quality, who
- 30 serve as ex officio members. The state geologist shall serve as the executive
- 31 secretary for the council. Additional members on the council are:

- 1 a. A representative of county government, appointed by the governor;
- 2 b. A representative of city government, appointed by the governor;
- 3 c. A representative of the agricultural community, appointed by the governor;
- 4 d. Two senators, appointed by the majority leader of the senate of the legislative
5 assembly; and
- 6 e. Two representatives, appointed by the majority leader of the house of
7 representatives of the legislative assembly.

8 **SECTION 21. AMENDMENT.** Subsection 11 of section 40-50.1-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 11. Any plat which includes lands abutting upon any lake, river, or stream must show a
11 contour line denoting the present shoreline, water elevation, and the date of survey. If
12 any part of a plat lies within the one hundred year floodplain of a lake, river, or stream
13 as designated by the ~~state engineer~~department of water resources or a federal
14 agency, the mean sea level elevation of that one hundred year flood must be denoted
15 on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour
16 interval referenced to mean sea level must be shown for the portion of the plat lying
17 within the floodplain. All elevations must be referenced to a durable benchmark
18 described on the plat with its location and elevation to the nearest hundredth of a foot
19 [0.3048 centimeter], which must be given in mean sea level datum.

20 **SECTION 22. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-35-03. State board of water well contractors - Members' appointment -**
23 **Qualification.**

24 The state board of water well contractors consists of the ~~state engineer~~director of the
25 department of water resources and the director of the department of environmental quality, or
26 their duly authorized designees, two water well contractors appointed by the governor, one
27 geothermal system driller or one monitoring well contractor appointed by the governor, one
28 water well pump and pitless unit installer appointed by the governor, and one member
29 appointed at large by the governor.

30 **SECTION 23. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other
2 persons to preside in an administrative proceeding, all adjudicative proceedings of
3 administrative agencies under chapter 28-32, except those of the public service
4 commission, the industrial commission, the insurance commissioner, the ~~state-~~
5 ~~engineer~~department of water resources, the department of transportation, job service
6 North Dakota, and the labor commissioner, must be conducted by the office of
7 administrative hearings in accordance with the adjudicative proceedings provisions of
8 chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals
9 hearings pursuant to section 61-03-22 and drainage appeals from water resource
10 boards to the ~~state-engineer~~department of water resources pursuant to chapter 61-32
11 must be conducted by the office of administrative hearings. Additionally, hearings of
12 the department of corrections and rehabilitation for the parole board in accordance
13 with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to
14 the board of higher education; Individuals With Disabilities Education Act and
15 section 504 due process hearings of the superintendent of public instruction; and
16 chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by
17 the office of administrative hearings in accordance with applicable laws.

18 **SECTION 24. AMENDMENT.** Section 57-02-08.6 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-02-08.6. Authorization for receipt of funds.**

21 The state treasurer ~~is authorized to~~may receive funds for the wetlands property tax
22 exemption program by legislative appropriation and by gift, grant, devise, or bequest of any
23 money or property from any private or public source. Funds appropriated from any source for
24 this purpose are not subject to section 54-44.1-11, and all income and moneys derived from the
25 investment of the funds must be credited to the fund for the wetlands property tax exemption
26 program. The director of the game and fish department, the agriculture commissioner, and the
27 ~~state-engineer~~director of the department of water resources shall work with the governor, the
28 United States fish and wildlife service, nonprofit conservation organizations, and any other
29 public official or private organization or citizen to develop a source of funding to implement
30 sections 57-02-08.4 and 57-02-08.5.

1 **SECTION 25. AMENDMENT.** Section 57-28-09 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-28-09. Tax deed to be issued.**

4 After the date of foreclosure for property with an unsatisfied tax lien, the county auditor shall
5 issue a tax deed to the county or, in cases in which the ~~state engineer~~department of water
6 resources has made an assessment against the property under section 61-03-21.3, the county
7 auditor shall issue a tax deed to the state or, if the property was sold by another political
8 subdivision of this state within the ten years preceding the foreclosure, the county auditor shall
9 issue a tax deed to that political subdivision. The tax deed passes the property in fee to the
10 county, the state, or political subdivision, free from all encumbrances except installments of
11 special assessments certified to the county auditor or which may become due after the service
12 of the notice of foreclosure of tax lien, a homestead credit for special assessments lien provided
13 for in section 57-02-08.3, and an easement or right of way recorded with an effective date that
14 precedes the date of official notice to the record titleholder which states that property taxes are
15 delinquent and constitute a property lien. While the county, the state, or political subdivision
16 holds title under a tax deed, it is not liable for the payment of any installments of special
17 assessments which become due unless the board of county commissioners, the state, or
18 political subdivision has leased or contracted to sell the property. A deed issued under this
19 section is prima facie evidence of the truth and regularity of all facts and proceedings before the
20 execution of the deed.

21 **SECTION 26. AMENDMENT.** Subsection 4 of section 61-01-01 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 4. All waters, excluding privately owned waters, in areas determined by the ~~state-~~
24 ~~engineer~~department of water resources to be noncontributing drainage areas. A
25 noncontributing drainage area is any area that does not contribute natural flowing
26 surface water to a natural stream or watercourse at an average frequency more often
27 than once in three years over the latest thirty-year period.

28 **SECTION 27. AMENDMENT.** Section 61-01-03 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-01-03. Claims to the use of water initiated prior to and after March 1, 1905.**

2 In all cases of claims to the use of water initiated prior to March 1, 1905, the right shall
3 ~~relate~~relates back to the initiation of the claim, upon the diligent prosecution to completion of the
4 necessary surveys and construction for the application of the water to a beneficial use. All
5 ~~claims~~Any claim to the use of water initiated after March 1, 1905, shall ~~relate~~relates back to the
6 date of receipt of an application ~~therefor~~for the claim in the ~~office of the state-~~
7 ~~engineer~~department of water resources or the department's predecessor, subject to compliance
8 with the applicable ~~provisions of law~~statutes, and the rules, and regulations established
9 ~~thereunder~~.

10 **SECTION 28. AMENDMENT.** Section 61-01-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-01-05. Reclaiming waters turned into natural or artificial watercourse.**

13 Water turned into any natural or artificial watercourse by any party entitled to the use of
14 ~~such~~the water may be reclaimed below and diverted ~~therefrom~~from the watercourse by ~~such~~the
15 party, subject to existing rights, due allowance for losses being made, as determined by the
16 ~~state engineer~~department of water resources.

17 **SECTION 29. AMENDMENT.** Section 61-01-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-01-06. Watercourse - Definition.**

20 A watercourse entitled to the protection of the law is constituted if there is a sufficient
21 natural and accustomed flow of water to form and maintain a distinct and a defined channel. ~~It is-~~
22 ~~not essential that the~~The supply of water should~~is not required to be continuous or from a~~
23 ~~perennial living source. It is enough~~The criteria for constituting a watercourse are satisfied if the
24 flow arises periodically from natural causes and reaches a plainly defined channel of a
25 permanent character. If requested by a water resource board, the ~~state engineer~~department of
26 water resources shall determine ~~if~~whether a watercourse is constituted.

27 **SECTION 30. AMENDMENT.** Section 61-01-25 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **61-01-25. Penalty.**

2 Any person violating any of the provisions of this chapter or any rule or regulation of the
3 ~~state engineer~~department of water resources for which another penalty is not specifically
4 provided is guilty of a class B misdemeanor.

5 **SECTION 31. AMENDMENT.** Section 61-02-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-02-05. Chairman of commission.**

8 The governor ~~shall be~~is the chairman of the commission. The governor shall designate a
9 vice chairman ~~who shall be a member~~from the members of the commission. The ~~state engineer~~
10 ~~shall be~~director of the department of water resources is the secretary of the commission.

11 **SECTION 32. AMENDMENT.** Section 61-02-14.2 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-02-14.2. Commission contracts may be executed by ~~state engineer~~director.**

14 The ~~state engineer~~director of the department of water resources, or the ~~state~~
15 ~~engineer's~~director's authorized designee, may execute contracts approved by the commission.

16 **SECTION 33. AMENDMENT.** Section 61-02-23.3 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-02-23.3. Construction and operation of the Devils Lake outlet - Authorization -**
19 **Agreement.**

20 The state water commission may do all things reasonably necessary to construct an outlet
21 from Devils Lake, including executing an agreement with the federal government ~~wherein~~in
22 which the state water commission agrees to hold the United States harmless and free from
23 damages, except for damages due to the fault or negligence of the United States or its
24 contractors. The ~~state engineer~~director of the department of water resources may employ
25 full-time personnel and ~~may employ such~~ other personnel as are necessary for the operation
26 and maintenance of the Devils Lake outlet within the limits of legislative appropriations for that
27 purpose. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund and
28 appropriated for the purposes of this section may be used for salaries, equipment, operations,
29 and maintenance costs relating to the Devils Lake outlet.

30 **SECTION 34. AMENDMENT.** Section 61-02-26 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **61-02-26. Duties of state agencies concerned with intrastate use or disposition of**
2 **waters.**

3 Every state officer, department, board, and commission heretofore or hereafter authorized
4 by any law of this state to take any action, perform any duties, or make any contract which
5 ~~concerns~~concerning the use or disposition of waters, or water rights, within the state first shall
6 submit to the ~~state engineer~~department of water resources any plans, purposes, and
7 contemplated action with respect to the use or disposition of ~~such~~the waters, and except as
8 provided in this chapter, ~~shall~~must receive the consent and approval of the ~~state~~
9 ~~engineer~~department of water resources before making any agreement, contract, purchase,
10 sale, or lease to carry into execution any works or projects authorized under the provisions of
11 this chapter.

12 **SECTION 35. AMENDMENT.** Section 61-02-27 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-02-27. Proposals with respect to use or disposition of waters to be presented to**
15 **~~state engineer~~department of water resources.**

16 All persons, ~~including corporations, limited liability companies, voluntary organizations, and~~
17 ~~associations~~, when concerned with any agreement, contract, sale, or purchase, or the
18 construction of any works or project which involves the use and disposition of any water or
19 water rights, shall present to the ~~state engineer~~department of water resources all proposals with
20 respect to the use or disposition of any ~~such~~ waters before making any agreement, contract,
21 purchase, sale, or lease ~~in respect thereof~~regarding the waters.

22 **SECTION 36. AMENDMENT.** Section 61-02-30 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-02-30. Commission acquiring water rights and administering provisions of chapter**
25 **- Declaration of intention.**

26 In acquiring the rights and administering the terms of this chapter, the commission may
27 initiate a right to waters of this state by executing a declaration in writing of the intention to
28 store, divert, or control the unappropriated waters of a particular body, stream, basin, or source,
29 designating and describing in general terms the waters claimed, means of appropriation, and
30 location of proposed use, and shall cause ~~said notice~~the declaration to be filed in the ~~office of~~
31 ~~the state engineer~~department of water resources. The ~~state engineer~~ department shall issue a

1 conditional water permit to the commission consistent with the terms of the declaration of
2 intention, which ~~shall vest~~vests in ~~such~~the commission on the date of the filing of ~~such~~the
3 declaration. The commission also shall file in the ~~office of the state engineer~~department copies
4 of ~~its~~the commission's plans and specifications involved in completing any project for the
5 appropriation of water which ~~it~~the commission intends to construct. Except as provided by this
6 section, water rights ~~shall~~must be acquired by any person, association, firm, corporation, limited
7 liability company, municipality, or state or federal agency, department, or political subdivision in
8 the manner provided by chapter 61-04.

9 **SECTION 37. AMENDMENT.** Section 61-02-32 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-02-32. Modification of plans by commission regarding project to appropriate**
12 **waters - Filing declaration of intention.**

13 ~~The~~If ~~the~~ the commission, ~~if it shall modify~~ modifies its plans in connection with any proposed
14 project ~~concerning~~for which the commission ~~shall have~~ filed a declaration of intention to
15 appropriate waters, the commission shall file in the ~~office of the state engineer~~department of
16 water resources a declaration releasing all or part of the waters affected by ~~such~~the declaration.

17 **SECTION 38. AMENDMENT.** Section 61-02-33 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-02-33. Commission to file declaration of completion of appropriation with state-**
20 **engineer department of water resources.**

21 Upon completing the construction of works and application to beneficial use of the waters
22 described in the declaration provided in section 61-02-30, the commission shall file in the ~~office-~~
23 ~~of the state engineer~~ department of water resources a declaration of completion of the
24 appropriation, reciting the matters contained in the original declaration of intention to
25 appropriate and the conditional water permit for ~~such~~the works obtained from the ~~state-~~
26 ~~engineer~~department.

27 **SECTION 39. AMENDMENT.** Section 61-02-41 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **61-02-41. Surveys for the diversion of waters.**

2 For the purpose of regulating the diversion of the natural flow of waters, employees of the
3 ~~state engineer~~department of water resources may enter upon the means and place of use of all
4 appropriators for the purpose of making surveys of respective rights and seasonal needs.

5 **SECTION 40. AMENDMENT.** Section 61-02-68.10 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-02-68.10. Execution and attestation of interim financing notes - Sale.**

8 The interim financing notes ~~shall~~must be executed by the chairman or the vice chairman of
9 the commission and ~~shall~~ be attested by the signature of the ~~state engineer~~director of the
10 department of water resources. The signature of the chairman or vice chairman, and the ~~state-~~
11 ~~engineer~~director, and any other signatures on appurtenant coupons, may be facsimiles. The
12 notes ~~shall~~must be sold at private or public sale in ~~such~~the manner; and at ~~such~~the rate of
13 interest; and at ~~such~~ price as the commission ~~shall~~determines by resolution determine.

14 **SECTION 41. AMENDMENT.** Section 61-02.1-01 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-02.1-01. Legislative findings and intent - Authority to issue bonds.**

- 17 1. The legislative assembly finds that some cities suffered serious economic and social
18 injuries due to the major flood disaster in 1997 and other recent floods and are at
19 significant risk for future flooding; that construction of flood control or reduction
20 projects is necessary for the protection of health, property, and enterprises and for the
21 promotion of prosperity and the general welfare of the people of the state; and that
22 construction of any such projects involves and requires the exercise of the sovereign
23 powers of the state and concerns a public purpose. ~~Therefore, it is declared~~It is
24 necessary and in the public interest ~~that~~ the state by and through the state water
25 commission assist in financing the costs of constructing flood control or reduction
26 projects through the issuance of bonds.
- 27 2. The legislative assembly finds ~~that~~ continued construction of the southwest pipeline
28 project is necessary for the protection of health, property, and enterprises and for the
29 promotion of prosperity and the general welfare of the people of the state ~~and that~~
30 ~~continued construction of the southwest pipeline project,~~ involves and requires the
31 exercise of the sovereign powers of the state, and concerns a public purpose. The

1 legislative assembly also finds ~~that~~ current funding for the southwest pipeline project
2 has become uncertain, and ~~therefore~~, it is declared necessary and in the public
3 interest ~~that~~ the state by and through the state water commission assist in financing
4 the costs of continued construction of the southwest pipeline project through the
5 issuance of bonds.

6 3. The legislative assembly finds ~~that~~ the Devils Lake basin is suffering and facing a
7 worsening flood disaster; ~~that~~ construction of an outlet from Devils Lake is necessary
8 for the protection of health, property, and enterprises and for the promotion of
9 prosperity and the general welfare of the people of the state; and ~~that~~ construction of
10 the outlet involves and requires the exercise of the sovereign powers of the state and
11 concerns a public purpose. ~~Therefore, it is declared~~ It is necessary and in the public
12 interest ~~that~~ an outlet from Devils Lake be constructed with financing from the state
13 water commission to provide flood relief to the Devils Lake basin.

14 4. The legislative assembly finds ~~that~~ there is a critical need to develop a comprehensive
15 statewide water development program to serve the long-term water resource needs of
16 the state and its people and to protect the state's current usage of, and the state's
17 claim to, its proper share of Missouri River water.

18 5. In furtherance of the public purpose set forth in subsection 1, the state water
19 commission may issue bonds under chapter 61-02, and the proceeds are appropriated
20 for flood control projects authorized and funded in part by the federal government and
21 designed to provide permanent flood control or reduction to cities that suffered severe
22 damages as a result of the 1997 flood or other recent floods and to repay the line of
23 credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The
24 commission may issue bonds for a flood control or reduction project only:

25 a. When:

- 26 (1) A flood control or reduction project involves a city that suffered catastrophic
27 flood damage requiring evacuation of the major share of its populace;
- 28 (2) A flood control or reduction project includes interstate features and requires
29 acquisition of private property to build permanent flood protection systems
30 to comply with federal flood protection standards;

- 1 (3) The governing body of a city provides a written certification to the state
2 water commission that the city has committed itself to contribute one-half or
3 more of the North Dakota project sponsor's share of the nonfederal share of
4 the cost to construct the project;
- 5 (4) The United States army corps of engineers issues its approval of the flood
6 control or reduction project;
- 7 (5) A project cooperation agreement, which contains provisions acceptable to
8 the ~~state engineer~~department of water resources and is approved by the
9 governor, is entered by the state of Minnesota or one of its political
10 subdivisions in which the flood control or reduction project is to be
11 constructed;
- 12 (6) A project cooperation agreement, which contains provisions acceptable to
13 the ~~state engineer~~department of water resources and is approved by the
14 governor, is entered by the state or one of its political subdivisions in which
15 the flood control or reduction project is to be constructed;
- 16 (7) The governing body of the city has approved a financing plan for all
17 amounts of the nonfederal share of a flood control or reduction project in
18 excess of the amounts to be paid by the state; and
- 19 (8) ~~That the~~The flood control or reduction project is designed to be
20 cost-effective, and ~~that~~ any impact on residential neighborhoods is
21 minimized in an amount reasonably practicable as determined by the ~~state-~~
22 ~~engineer~~department of water resources and approved by the governor;
- 23 b. When a flood control or reduction project in a city with a population as of the
24 1990 federal decennial census of at least eight thousand and not more than ten
25 thousand has received significant federal funding through federal grants and
26 funds from the United States army corps of engineers and the federal emergency
27 management agency; or
- 28 c. When a flood control or reduction project in a city with a population as of the
29 1990 federal decennial census of at least four thousand five hundred and not
30 more than six thousand has at least seventy percent of the land within the
31 boundaries of the city located within the one hundred year floodplain as

1 designated on a flood insurance rate map and the United States army corps of
2 engineers issues its approval of the flood control or reduction project.

3 6. In furtherance of the public purpose set forth in subsection 2, the state water
4 commission may issue bonds under chapter 61-02, and the proceeds are appropriated
5 for construction of the southwest pipeline project and to repay the line of credit
6 extended to the state water commission under S.L. 1999, ch. 535, § 4. The
7 commission may ~~only~~ issue bonds under this chapter for continued construction of the
8 southwest pipeline project only when it is determined that the Perkins County water
9 system will not make payment to the state water commission in the amount of four
10 million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier.
11 If the Perkins County water system makes payment to the state water commission
12 after January 1, 2000, the payment must be used to pay principal and interest on
13 bonds issued for continued construction of the southwest pipeline project as provided
14 in subsection 2 of section 61-02.1-04. If the Perkins County water system does not
15 make payment to the state water commission, no benefits may accrue to the Perkins
16 County water system.

17 7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water
18 commission may issue bonds under chapter 61-02 to finance the cost of one or more
19 of the projects identified in this section.

20 8. This chapter does not affect the state water commission's authority to otherwise issue
21 bonds pursuant to chapter 61-02 or section 61-24.3-01.

22 9. Notwithstanding this section, the state water commission may not issue bonds
23 authorized under subsection 5 for a project unless federal funds have been
24 appropriated for that project.

25 **SECTION 42.** Section 61-03-01.1 of the North Dakota Century Code is created and enacted
26 as follows:

27 **61-03-01.1. Department of water resources established - Appointment and salary of**
28 **director.**

29 The department of water resources is established and is the primary state water agency.
30 The governor shall appoint a director of the department subject to approval by a majority of the
31 members of the state water commission. The director may not engage in any other occupation

1 or business that may conflict with the statutory duties of the director. The position of director of
2 the department is not a classified position, and the state water commission shall set the salary
3 of the director within the limits of legislative appropriations.

4 **SECTION 43.** Section 61-03-01.2 of the North Dakota Century Code is created and enacted
5 as follows:

6 **61-03-01.2. Definitions.**

7 For purposes of this chapter, unless the context otherwise requires:

- 8 1. "Department" means the department of water resources.
- 9 2. "Director" means the director of the department.

10 **SECTION 44.** Section 61-03-01.3 of the North Dakota Century Code is created and enacted
11 as follows:

12 **61-03-01.3. Director - State engineer- Powers and duties.**

- 13 1. The director shall:
 - 14 a. Enforce all rules adopted by the department;
 - 15 b. Hire a state engineer who is a qualified professional engineer, has appropriate
16 hydrology experience, and will report to the director;
 - 17 c. Hire other employees as necessary to carry out the duties of the department and
18 director;
 - 19 d. Organize the department in an efficient manner; and
 - 20 e. Take any other action necessary and appropriate for administration of the
21 department.
- 22 2. The state engineer is responsible for and shall manage the department's oversight of
23 dam safety, water appropriations, and construction and drainage permits, and
24 associated technical duties related to public safety and property protection.

25 **SECTION 45. AMENDMENT.** Section 61-03-03 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-03-03. AuditingApproval of claims.**

28 All claims for services rendered, expenses incurred, or materials or supplies furnished
29 under the direction of the ~~state engineer~~ director and which are payable from the funds
30 appropriated for the ~~prosecution of the work under the state engineer's~~ director's direction and
31 supervision ~~shall~~ must be approved by the ~~state engineer~~ director before payment.

1 **SECTION 46. AMENDMENT.** Section 61-03-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-03-04. Biennial report.**

4 The ~~state engineer~~director may submit a biennial report to the governor and the secretary of
5 state in accordance with section 54-06-04.

6 **SECTION 47. AMENDMENT.** Section 61-03-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-03-06. Records of state engineer -- Open to public -- Contents -- Certified copies as**
9 **evidencethe department.**

10 The records of the ~~office of the state engineer~~department are public records, ~~shall remain~~
11 ~~on file in the state engineer's office, and shall be open to the inspection of the public at all times~~
12 ~~during business hours. Such~~The records shall must show in full all permits, certificates of
13 completion of construction, and licenses issued, ~~together with all action thereon~~actions taken on
14 permits and licenses, and ~~all action~~actions or decisions of the ~~state engineer~~department
15 affecting any rights or claims to appropriate water. ~~Certified copies of any records or papers on~~
16 ~~file in the office of the state engineer shall be evidence equally with the originals thereof, and~~
17 ~~when introduced as evidence shall be held as of the same validity as the originals.~~

18 **SECTION 48. AMENDMENT.** Section 61-03-08 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-03-08. Duty of state engineer to cooperate with boards of county commissioners**
21 **when requested.**

22 ~~Whenever requested so to do~~When asked by thea board of county commissioners of any
23 county of this state, the ~~state engineer~~department shall cooperate with ~~such~~the board in the
24 engineering work required to lay out, establish, and construct any drain to be used by any
25 county ~~or counties~~ or portions of the same for the purpose of ~~diverting~~a county to divert
26 floodwaters, lakes, or watercourses, and ~~in general shall aid and assist the counties of this state~~
27 in making preliminary surveys and establishing systems of drainage.

28 **SECTION 49. AMENDMENT.** Section 61-03-10 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-03-10. Custodian of government plats.**

2 ~~The state engineer shall be~~department is the custodian of all plats, field notes, and similar
3 ~~records that have been or hereafter may be turned over~~provided to the state by ~~the~~a federal
4 ~~government~~ entity. Suitable rooms ~~shall be provided~~ in the capitol building containing vaults for
5 fireproof protection and the safekeeping of ~~such~~the records, ~~and free access to any such field~~
6 ~~notes, maps, records, and other papers for the purpose of taking extracts therefrom or making~~
7 ~~copies thereof without charge of any kind, shall be allowed to all officers or employees of the~~
8 ~~United States during office hours~~ must be provided to the department.

9 **SECTION 50. AMENDMENT.** Section 61-03-12 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~**61-03-12. Attorney general and state's attorney advisers of state engineer to provide**~~
12 ~~**legal counsel.**~~

13 The attorney general, and the state's attorney of the county in which legal questions arise,
14 shall ~~be the legal advisers of the state engineer, and shall perform any and all legal duties~~
15 ~~necessary in connection with the state engineer's work,~~provide legal counsel for the department
16 without compensation other than their salaries as fixed by law, except when otherwise provided.

17 **SECTION 51. AMENDMENT.** Section 61-03-13 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 ~~**61-03-13. Rules and regulations made by state engineer – Modification**~~**Rulemaking**
20 ~~**authority.**~~

21 ~~The state engineer shall make all general~~department may adopt rules necessary to carry
22 ~~into effect~~out the duties devolving upon the state engineer's office, ~~and may change the same~~
23 ~~from time to time~~of the department. All such The department shall amend rules relating to
24 applications for permits to appropriate water, for the inspection of works, for the issuance of
25 licenses, and for the determination of rights to the use of water ~~shall be modified by the state~~
26 ~~engineer, if required to do so~~ by a vote of the state water commission.

27 **SECTION 52. AMENDMENT.** Section 61-03-14 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **61-03-14. Modification ~~State water commission votes on modifications of rules and~~**
2 **~~regulations of engineer voted upon only upon appeal from engineer.~~**

3 ~~The modification of the rules and regulations of the state engineer provided for in section~~
4 ~~61-03-13 shall be voted upon by the~~The state water commission may vote on a modification of
5 a department rule which is required under section 61-03-13 only on an appeal from a decision
6 of the ~~state engineer~~director.

7 **SECTION 53. AMENDMENT.** Section 61-03-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-03-15. Hydrographic surveys and investigations made by ~~state engineer~~the**
10 **department - Cooperating with federal agencies.**

11 ~~The state engineer~~department shall make hydrographic surveys and investigations of each
12 stream system and source of water supply in the state, beginning with those most used for
13 irrigation, and shall obtain and record all available data for the determination, development, and
14 ~~adjudication~~appropriation of the water supply of the state. The ~~state engineer~~department may
15 cooperate with the agencies of the federal government engaged in similar surveys and,
16 investigations ~~and in, or~~ the construction of works for the development and use of the water
17 supply of the state, ~~expending for such purposes any money available for the work of the state~~
18 ~~engineer's office. The state engineer may accept and use, in connection with the operation of~~
19 ~~the state engineer's department, the results of the work of the agencies of the government and~~
20 may expend funds appropriated to the department for that purpose.

21 **SECTION 54. AMENDMENT.** Section 61-03-16 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-03-16. Suit for adjudication of water rights.**

24 Upon the completion of a hydrographic survey of any stream system, the ~~state~~
25 ~~engineer~~department shall deliver a copy thereof, ~~together with copies of~~ the survey and all data
26 necessary for the determination of all rights to the use of the waters of ~~such~~the system; to the
27 attorney general ~~of the state, who, within sixty days thereafter, shall enter suit on behalf of the~~
28 state for the determination of all rights to the use of ~~such~~the water; and ~~shall prosecute the~~
29 ~~same to proceed with the litigation until~~ a final adjudication of the rights. If private parties initiated
30 the suit for the adjudication of such rights ~~shall have been begun by private parties, the attorney~~
31 general ~~shall not be required to bring suit, except that the attorney general shall intervene in~~

1 ~~any~~the suit for the adjudication of rights to the use of water, on behalf of the state, if notified by
2 the state engineer that, in the state engineer's opinion, the public interest requires such action if
3 the department notifies the attorney general intervening is necessary to protect the interests of
4 the state.

5 **SECTION 55. AMENDMENT.** Section 61-03-17 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-03-17. Parties to and costs of suit for adjudication of water rights.**

8 In any suit for the determination of a right to the use of the waters of any stream system, all
9 ~~whopersons that~~ claim the right to use ~~such~~the waters shall ~~must~~ be made parties. ~~When any~~
10 ~~suit has been filed, the court, by its order duly entered, shall direct the state engineer to make or~~
11 ~~furnish, and the department shall provide the court~~ a complete hydrographic survey of ~~such~~the
12 stream system as is provided in this chapter, in order to obtain all data necessary to the
13 ~~determination of the rights involved. The cost of such~~the suit, including the litigation and survey
14 ~~costs on behalf of incurred by the state, and of such surveys, shall must be charged against to~~
15 each of the private parties ~~thereto~~ to the suit in proportion to the amount of the water right
16 allotted.

17 **SECTION 56. AMENDMENT.** Section 61-03-18 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-03-18. Hydrographic survey fund - Use - Payments.**

20 The hydrographic survey fund, a permanent fund, ~~shall~~may be used only for the payment of
21 the expenses of the surveys ~~ordered by the court as provided in~~required under section
22 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished
23 under the direction of the ~~state engineer in the prosecution of such~~department for the surveys
24 shall ~~must~~ be approved by the ~~state engineer~~department. The amounts paid by ~~the private~~
25 parties ~~to such suits, on account of such~~under section 61-03-17 for the surveys, shall ~~must~~ be
26 paid to the state treasurer, who shall credit the ~~same to such~~payments to the hydrographic
27 survey fund, which shall continue to be available for advancing the expenses of such surveys,
28 ~~as ordered by the court from time to time.~~

29 **SECTION 57. AMENDMENT.** Section 61-03-19 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-03-19. Decree adjudicating water rights - Filing - Contents.**

2 Upon the adjudication of the rights to the use of the waters of a stream system, a certified
3 copy of the decree ~~shall~~must be prepared by the clerk of the court, at the cost of the parties,
4 and ~~shall~~must be filed in the office of the state engineer~~department~~. Such decree, in every case,
5 ~~shall~~The decree must declare as to the water right adjudged to each party, the priority, amount,
6 purpose, and place of use, and, as to water used for irrigation, the specific tracts of land to
7 which it ~~shall be~~the right is appurtenant, together with ~~such~~any other conditions as may be
8 necessary to define the right and ~~its~~the priority of the right.

9 **SECTION 58. AMENDMENT.** Section 61-03-20 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-03-20. State engineer to cooperate**Cooperation **with United States geological**
12 **survey in making topographic maps.**

13 The ~~state engineer~~department may confer with the director of the United States geological
14 survey and may accept the cooperation of the United States ~~with this state in the execution of~~to
15 execute topographic surveys and maps of this state. The ~~state engineer~~department may
16 arrange with the director or other authorized representative of the United States geological
17 survey concerning the details of ~~such work~~the surveys or maps, the method of its execution,
18 and the order in which ~~these~~the surveys and maps of different parts of the state ~~shall be~~are
19 undertaken. In any such work, the director of the United States geological survey shall agree to
20 ~~expend on the part of the United States upon said work a sum equal to that appropriated by the~~
21 ~~state from time to time for this purpose. In arranging these details the state engineer, in addition~~
22 ~~to such other provisions as the state engineer may deem wise, shall require that the maps~~
23 ~~resulting from this survey show the outlines of all counties, towns, and extensive wooded areas,~~
24 ~~as existing on the ground at the time of the execution of the survey, the location of all railways,~~
25 ~~roads, streams, canals, lakes, and rivers, and contain contour lines showing the elevation and~~
26 ~~depression for at least every twenty feet [6.10 meters] in vertical interval of the surface of the~~
27 ~~country. The resulting map must recognize wholly the cooperation of the state of North Dakota~~
28 ~~and, as each manuscript sheet of the map is completed, the United States geological survey~~
29 ~~should furnish the state engineer with photographic copies of the same. As the engraving on~~
30 ~~each sheet is completed, the director shall furnish the state engineer with transfers from the~~
31 ~~copperplates of the same.~~

1 **SECTION 59. AMENDMENT.** Section 61-03-21 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-03-21. State engineer may require planPlans of operation for reservoirs - Adequate**
4 **structure.**

5 Every operator of a water storage reservoir in North Dakota having a capacity of more than
6 one thousand acre-feet [1233481.84 cubic meters] ~~annually~~ shall ~~annually~~ file with the
7 ~~department~~, between the first and fifteenth day of February, ~~file with the state engineer~~ an
8 operating plan for ~~such~~the reservoir for the calendar year in which the ~~same~~plan is filed. The
9 operator of ~~any such~~the reservoir shall ~~be required to cooperate with the state engineer to the~~
10 ~~end that~~department to ~~make~~ all water releases shall be compatible with the best interest of the
11 greatest number of downstream water users and affected landowners. ~~In the event that the~~
12 ~~state engineer~~If the ~~department~~ declares an emergency ~~to exist~~ in connection with the operation
13 of ~~any such~~the reservoir, the operator thereof shall promptly ~~shall~~ submit to the state-
14 engineer~~department~~ a separate interim operating plan therefor ~~in addition to the annual~~
15 ~~reservoir operating plan herein required~~for the reservoir. ~~Such~~The interim operating plan shall
16 ~~then~~must be coordinated and integrated with the suggestions and plans of the state-
17 engineer~~department~~ to best serve the affected ~~interests~~persons during ~~such~~the emergency. The
18 ~~state engineer~~department may also require ~~such~~reservoir operators to maintain adequate
19 structures and ~~to operate them in a manner that will~~to prevent waste, promote the beneficial use
20 of water, and not endanger the general health and welfare of persons affected ~~thereby~~by the
21 ~~reservoirs~~. ~~In the event such~~If an operator fails to maintain and operate adequate structures ~~in~~
22 ~~the manner provided in this section~~, the ~~state engineer~~department shall set a place and time for
23 hearing and shall serve notice upon ~~such~~the operator to show cause at ~~such time and place~~
24 why the operator's water permit should not be ~~declared terminated and canceled~~. A copy of any
25 order ~~terminating or canceling such~~the water right shall~~must~~ be filed in the office of the recorder
26 in the county or counties where the land to which the right is appurtenant is located. An appeal
27 may be taken from the decision of the ~~state engineer~~department in accordance with ~~the~~
28 ~~provisions of chapter 28-32~~.

29 **SECTION 60. AMENDMENT.** Section 61-03-21.1 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-03-21.1. Inspection by ~~state engineer~~department.**

2 ~~Whenever the state engineer~~When the department is authorized or mandated by law to
3 inspect or investigate an alleged violation of a statute under this title, the ~~state engineer shall~~
4 ~~have the authority to~~department may enter upon land for the purposes of conducting such ~~and to~~
5 ~~conduct the~~ inspection or investigation. Except in emergency situations as determined by the
6 ~~state engineer~~department, the ~~state engineer~~department shall request written permission from
7 the landowner to enter the property. If the landowner refuses to give written permission, or fails
8 to respond within five days of the request, the ~~state engineer~~department may request the district
9 court of the district containing the property for an order authorizing the ~~state~~
10 ~~engineer~~department to enter the property to inspect or investigate the alleged violation.

11 **SECTION 61. AMENDMENT.** Section 61-03-21.2 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-03-21.2. Removal or modification of unsafe or unauthorized works.**

14 If the ~~state engineer pursuant to the state engineer's authority under this title~~department
15 determines that works are unsafe or unauthorized, the ~~state engineer~~department shall notify the
16 landowners by registered mail at the landowner's last-known post-office address of record. A
17 copy of the notice ~~must~~ also must be sent to any tenant, if the ~~state engineer~~department has
18 actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent
19 of the noncompliance, and the modifications necessary for compliance, and must state that if
20 the works are not modified or removed within the period stated in the notice, but not less than
21 thirty days, the ~~state engineer~~department shall cause the removal or modification of the works
22 and assess the cost ~~thereof of the removal or modification~~, or ~~such a portion of the cost~~ as the
23 ~~state engineer shall determine~~department determines, against the property of the landowner
24 responsible. The notice also ~~must also~~ state that the affected landowner may, demand in writing
25 a hearing on the matter within fifteen days of the date the notice is mailed, ~~demand, in writing, a~~
26 ~~hearing upon the matter~~. The request for a hearing must state with particularity the issues, facts,
27 and points of law to be presented at the hearing. If the ~~state engineer~~department determines
28 the issues, facts, and law to be presented are well-founded and are not frivolous, and the
29 request for a hearing was not made merely to interpose delay, the ~~state engineer~~department
30 shall set a hearing date without undue delay. In ~~the event of~~ an emergency, the ~~state~~
31 ~~engineer~~department immediately may ~~immediately~~ apply to the appropriate district court for an

1 injunction prohibiting the landowner or tenant from constructing or maintaining the works, or
2 ordering the landowner to remove or modify the works. Any assessments levied under the
3 ~~provisions of this section~~ must be collected in the same manner as other assessments
4 authorized by this title. If, in the opinion of the ~~state engineer~~director, more than one landowner
5 or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to
6 the responsibility of the landowners. Any person aggrieved by ~~action~~a decision of the ~~state~~
7 ~~engineer~~department under the ~~provisions of this section~~ may appeal the decision of the ~~state~~
8 ~~engineer~~ to the district court of the county in which the land is located in accordance with the
9 ~~procedures provided under chapter 28-32~~. A hearing ~~as provided for in~~under this section is a
10 prerequisite to an appeal, unless the hearing was denied by the ~~state engineer~~department.

11 For purposes of this section, the term "works" includes dams, dikes, wells, or other devices
12 for water conservation, flood control, regulation, storage, diversion, or carriage of water.

13 **SECTION 62. AMENDMENT.** Section 61-03-21.3 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or**
16 **adjacent to navigable waters.**

17 1. If the ~~state engineer~~department finds that buildings, structures, boat docks, debris, or
18 other manmade objects, except a fence or corral, situated in, on the bed of, or
19 adjacent to waters that have been determined to be navigable by a court are, or are
20 likely to be, a menace to life or property or public health or safety, the ~~state~~
21 ~~engineer~~department may issue an order to the person responsible for the object. If the
22 ~~state engineer~~department issues an order, the order must specify the nature and
23 extent of the conditions, the action necessary to alleviate, avert, or minimize the
24 danger, and a date by which that action must be taken. If the ~~state~~
25 ~~engineer~~department determines that an object covered by flood insurance is likely to
26 be a menace to life or property or public health or safety, the date specified in the
27 order for action to be taken may not precede the date on which the person is eligible to
28 receive flood insurance proceeds. If a building, structure, boat dock, debris, or other
29 manmade object, except a fence or corral, is partially or completely submerged due to
30 the expansion of navigable waters, the person responsible is the person who owns or

- 1 had control of the property on which the object is located or the person who owned or
2 had control of the property immediately before it became submerged by water.
- 3 2. If the action is not taken by the date specified, but not less than twenty days from the
4 date of service of the notice, the ~~state-engineerdepartment~~ may cause the action to be
5 taken. The ~~state-engineerdepartment~~ may require the action to be taken in less than
6 twenty days if an emergency exists.
- 7 3. a. The ~~state-engineerdepartment~~ may bring an action to enforce an order of the
8 ~~state-engineerdepartment~~, or if the ~~state-engineerdepartment~~ causes the action
9 to be taken, the ~~state-engineerdepartment~~ may:
- 10 a. (1) Assess the costs of taking ~~such~~the action, or ~~such~~a portion of the costs as
11 the ~~state-engineerdepartment~~ determines, against any property of the
12 person responsible; or
- 13 b. (2) Bring a civil action against the person responsible to recover the costs
14 incurred in taking the action.
- 15 b. If the ~~state-engineerdepartment~~ chooses to recover costs by assessing the cost
16 against property of the person responsible and the property is insufficient to cover
17 the costs incurred, the ~~state-engineerdepartment~~ may bring a civil action to
18 recover any costs not recovered through the assessment process. Any
19 assessments levied under this section must be collected in the same manner as
20 other real estate taxes are collected and paid. Any costs recovered must be
21 deposited in the fund from which the expenses were paid.
- 22 4. A person who receives an order, within ten days of the date of service of the order,
23 may demand, in writing, a hearing on the matter. The demand for a hearing must state
24 with particularity the issues, facts, and points of law to be presented at the hearing. If
25 the ~~state-engineerdepartment~~ determines the issues, facts, and law to be presented
26 are well-founded and not frivolous, and the request for a hearing was not made merely
27 to interpose delay, the ~~state-engineerdepartment~~ shall set a hearing date without
28 undue delay.
- 29 5. In the event of an emergency, the ~~state-engineerdepartment~~ immediately may
30 ~~immediately~~ apply to the district court of the county in which the property is located for

1 an injunction ordering the person responsible to modify, remove, abate, or otherwise
2 eliminate the dangerous condition.

3 6. Any person aggrieved by the action of the ~~state engineer~~department may appeal the
4 decision to the district court of the county in which the land is located in accordance
5 with chapter 28-32. A hearing ~~as provided for in~~under this section is a prerequisite to
6 an appeal unless the hearing was denied by the ~~state engineer~~department.

7 7. If the ~~state engineer~~department has issued an order under this section with regard to a
8 building, structure, boat dock, debris, or other manmade object ~~that the state-~~
9 ~~engineer~~department has determined is likely to be a menace to life or property or
10 public health or safety, and it later becomes known ~~that~~ the object would not have
11 become a menace, a person who has taken action required by the ~~state engineer's~~
12 order is entitled to compensation in an amount equal to the value of any property
13 destroyed and reasonable costs incurred as a result of complying with the ~~state-~~
14 ~~engineer's~~ notice from the department.

15 8. Any person claiming compensation for the destruction of property or costs incurred
16 under subsection 7 must file a claim with the ~~state engineer~~department in the form and
17 manner required by the ~~state engineer~~department. Unless the amount of
18 compensation is agreed to between the claimant and the ~~state engineer~~department,
19 the amount of compensation must be calculated in the same manner as compensation
20 due for taking of property pursuant to the condemnation laws of this state. In
21 determining compensation, the proceeds of any flood or other insurance or any other
22 kind of compensatory payments must be subtracted from the amount paid.

23 **SECTION 63. AMENDMENT.** Section 61-03-21.4 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-03-21.4. Economic analysis process required for certain projects.**

26 The ~~state engineer~~department of water resources shall develop an economic analysis
27 process for water conveyance projects and flood-related projects expected to cost more than
28 one million dollars, and a life cycle analysis process for municipal water supply projects. When
29 the state water commission is considering whether to fund a water conveyance project,
30 flood-related project, or water supply project, the ~~state engineer~~department of water resources

1 shall review the economic analysis or life cycle analysis, and inform the state water commission
2 of the findings from the analysis and review.

3 **SECTION 64. AMENDMENT.** Section 61-03-22 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-03-22. Hearing - Appeals from decision of ~~state engineer~~department.**

6 Any person aggrieved by an action or decision of the ~~state engineer~~department under this
7 title has the right to a hearing. The ~~state engineer~~department must receive ~~the~~a request for a
8 hearing within thirty days after the aggrieved person knew or reasonably should have
9 ~~reasonably~~ known of the action or decision. Once a hearing has been held or if the hearing
10 request is denied, the person aggrieved has the right to petition for reconsideration or appeal
11 under chapter 28-32.

12 **SECTION 65. AMENDMENT.** Section 61-03-23 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-03-23. Penalties - Civil.**

15 1. In addition to criminal sanctions that may be imposed pursuant to law, a person who
16 violates any provision of this title or any rules adopted under this title may be assessed
17 a civil penalty not to exceed twenty-five thousand dollars for each day the violation
18 occurred and continues to occur and may be required by the ~~state-~~
19 ~~engineer~~department to forfeit any right to the use of water. The civil penalty for
20 violation of an irrigation appropriation permit may not exceed five thousand dollars for
21 each day the violation occurred and continues to occur. The civil penalty or forfeiture
22 of a right to use water may be adjudicated by the courts or by the ~~state-~~
23 ~~engineer~~department through an administrative hearing under chapter 28-32.

24 2. If a civil penalty levied by the ~~state engineer~~department after an administrative hearing
25 is not paid within thirty days after a final determination ~~that~~ the civil penalty is owed,
26 the civil penalty may be assessed against the property of the landowner responsible
27 for the violation leading to the assessment of the penalty. The assessment must be
28 collected as other assessments made under this title are collected. Notwithstanding
29 ~~the provisions of~~ section 57-20-22, all interest and penalties due on the assessment
30 must be paid to the state. Any civil penalty assessed under this section must be in

1 addition to any costs incurred by the ~~state engineer~~department for enforcement of the
2 order.

3 **SECTION 66. AMENDMENT.** Section 61-03-24 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-03-24. Pending administrative actions and permits.**

6 If an applicant for any permit processed by the ~~state engineer~~department has an unresolved
7 administrative order or complaint under this title, the permit ~~will~~may not be processed until the
8 order is complied with or complaint is resolved. At the ~~state engineer's~~ discretion of the
9 department, the permit may be processed if issuing the permit would resolve the administrative
10 order or complaint. If an applicant is not an individual, this section applies if the applicant is at
11 least twenty-five percent owned by an individual with an unresolved administrative order or
12 complaint under this title.

13 **SECTION 67. AMENDMENT.** Section 61-03-25 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-03-25. Emergency action plan - High-hazard or medium-hazard dam.**

16 The owner of a high-hazard or medium-hazard dam shall develop, periodically test, and
17 update an emergency action plan to be implemented if there is an emergency involving the
18 dam. The emergency action plan and any subsequent updates must be submitted to the ~~state-~~
19 ~~engineer~~department for approval.

20 **SECTION 68. AMENDMENT.** Section 61-04-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-04-01. Petitions, reports, surveys, and other documents filed with the commission.**

23 Any petitions, applications, surveys, reports, orders, or other documents provided for in this
24 chapter must be filed with the commission in Bismarck, where they must be kept on file under
25 the control of the ~~state engineer~~director of the department of water resources.

26 **SECTION 69. AMENDMENT.** Subsection 1 of section 61-04-01.1 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 1. "Adjudicative proceeding" means an appeal under chapter 28-32 of a recommended
29 decision prepared by the ~~state engineer~~director of the department of water resources
30 for a water permit application.

1 **SECTION 70. AMENDMENT.** Subsection 15 of section 61-04-01.1 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 15. "Perfected water permit" means a water permit where the water appropriated under a
4 conditional water permit has been applied to a beneficial use and the ~~state-~~
5 ~~engineer~~department of water resources has inspected the works to verify all conditions
6 have been met.

7 **SECTION 71. AMENDMENT.** Section 61-04-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-04-02. Permit for beneficial use of water required.**

10 Any person, before commencing any construction for the purpose of appropriating waters of
11 the state or before taking waters of the state from any constructed works, shall first secure a
12 water permit from the ~~state-engineer~~department of water resources unless ~~such~~the construction
13 or taking from ~~such~~the constructed works is for domestic or livestock purposes or for fish,
14 wildlife, and other recreational uses or unless otherwise provided by law. However, immediately
15 upon completing any constructed works for domestic or livestock purposes or for fish, wildlife,
16 and other recreational uses, the water user shall notify the ~~state-engineer~~department of water
17 resources of the location and acre-feet [1233.48 cubic meters] capacity of ~~such~~the constructed
18 works, dams, or dugouts. Regardless of proposed use, ~~however~~, all water users, except those
19 reusing fossil byproduct water, shall secure a water permit prior to constructing an
20 impoundment capable of retaining more than twelve and one-half acre-feet [15418.52 cubic
21 meters] of water or the construction of a well from which more than twelve and one-half
22 acre-feet [15418.52 cubic meters] of water per year will be appropriated. If a permit is not
23 required of a landowner or the landowner's lessee to appropriate less than twelve and one-half
24 acre-feet [15418.52 cubic meters] of water from any source for domestic or livestock purposes
25 or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits
26 ~~in order to clearly establish a priority date,~~ and the ~~state-engineer~~department of water resources
27 may waive any fee or hearing for ~~such~~the applications. An applicant for a water permit to irrigate
28 need not be the owner of the land to be irrigated.

29 **SECTION 72. AMENDMENT.** Section 61-04-02.1 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-04-02.1. Emergency or temporary authorization.**

2 The ~~state engineer~~department of water resources may authorize emergency or temporary
3 use of water for periods not to exceed twelve months if the ~~state engineer~~department
4 determines ~~such~~the use will not be to the detriment of existing rights. The ~~state-~~
5 ~~engineer~~department shall establish by rule a separate procedure for the processing of
6 applications for emergency or temporary use. ~~No prescriptive or~~Prescriptive and other rights to
7 the use of water ~~shall~~may not be acquired by use of water as authorized ~~herein~~in this section.

8 **SECTION 73. AMENDMENT.** Section 61-04-02.2 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-04-02.2. Property interest required to hold a water permit.**

11 A permit holder ~~shall~~must have a legal interest in each point of diversion identified on the
12 permit. If the permit holder does not have a legal interest in each point of diversion, the ~~state-~~
13 ~~engineer~~department of water resources shall assign the permit, or portion of the permit, as
14 provided in this chapter to the title owner.

15 A permit holder ~~shall~~must have a legal interest in each irrigated tract of land identified on the
16 permit. If the permit holder does not have a legal interest in each irrigated tract of land, the
17 permit holder may transfer the approved acres to other land, as provided in this chapter.

18 **SECTION 74. AMENDMENT.** Section 61-04-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-04-03. Water permit application - Contents - Information to accompany.**

21 A permit application to make beneficial use of any waters of the state must be in the form
22 required by the rules established by the ~~state engineer~~department of water resources. The rules
23 ~~shall~~must prescribe the form and contents of, and the procedure for filing, the application. The
24 application, along with all other information filed with it, must be retained with the commission
25 after approval or disapproval of the application. The ~~state engineer~~department of water
26 resources may require additional information not provided for in the general rules if the ~~state-~~
27 ~~engineer~~department deems ~~it to be~~the information necessary.

28 **SECTION 75. AMENDMENT.** Section 61-04-03.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1	2.	For irrigation use	\$500
2	3.	For industrial use of one acre-foot [1233.48 cubic meters] or less	\$250
3	4.	For industrial use in excess of one acre-foot [1233.48 cubic meters]	\$1,000
4	5.	For recreation, livestock, or fish and wildlife	\$100
5	6.	Water permit amendment	\$100

6 **SECTION 78. AMENDMENT.** Section 61-04-04.2 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-04-04.2. Refund of water permit application fees.**

9 The ~~state engineer~~department of water resources may refund a water permit application
10 fee, upon the request of the applicant, if the application is withdrawn by the applicant, and:

- 11 1. The ~~state engineer~~department has not published notice of the application; or
- 12 2. The ~~state engineer~~department determines other good and sufficient cause exists to
13 refund the application fee.

14 **SECTION 79. AMENDMENT.** Section 61-04-04.3 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-04-04.3. Rejection of applications.**

17 If the ~~state engineer~~department of water resources determines a conditional water permit
18 application does not meet this chapter's requirements or the rules in North Dakota
19 Administrative Code article 89-03, the ~~state engineer~~department shall reject the application and
20 decline to order the publication of notice of application.

21 **SECTION 80. AMENDMENT.** Section 61-04-05 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof.**

24 When an application is filed which complies with this chapter and the rules adopted under
25 this chapter, the ~~state engineer~~department of water resources shall instruct the applicant to:

- 26 1. Give notice of the application by certified mail in the form prescribed by rule, to all
27 record title owners of real estate within a radius of one mile [1.61 kilometers] from the
28 location of the proposed water appropriation site, except:
 - 29 a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary
30 of a city, the notice must be given to the governing body of the city and no further

- 1 notice need be given to the record title owners of real estate within the
2 geographical boundary of the city.
- 3 b. If the one-mile [1.61-kilometer] radius includes land within the geographical
4 boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or
5 less, the notice must be given to the governing body of the township or other
6 governing authority for the rural subdivision and no further notice need be given
7 to the record title owners of real estate within the geographical boundary of the
8 rural subdivision.
- 9 c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is
10 owned by more than ten individuals, the notice must be given to the governing
11 body of the township or other governing authority for that tract of land and no
12 further notice need be given to the record title owners of that tract.
- 13 2. Give notice of the application by certified mail in the form prescribed by rule to all
14 persons holding water permits for the appropriation of water from appropriation sites
15 located within a radius of one mile [1.61 kilometers] from the location of the proposed
16 water appropriation site. The ~~state engineer~~department of water resources shall
17 provide a list of all persons who must be notified under this subsection to the
18 applicant.
- 19 3. Give notice of the application by certified mail in the form prescribed by rule to all
20 municipal or public use permitholders within a twelve-mile [19.32-kilometer] radius of
21 the proposed water appropriation site. The ~~state engineer~~department of water
22 resources shall provide a list of all municipal or public use permitholders that must be
23 notified under this subsection to the applicant.
- 24 4. Provide the ~~state engineer~~department of water resources with an affidavit of notice by
25 certified mail within sixty days from the date of the ~~engineer's~~department's instructions
26 to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail
27 within sixty days and in compliance with the applicable rules, the ~~state-~~
28 ~~engineer~~department shall treat the application as an original application filed on the
29 date of receipt of the affidavit of notice by certified mail in proper form. If a properly
30 completed affidavit of notice is not submitted within one hundred twenty days, the
31 ~~state engineer~~department shall consider the application withdrawn. Upon receipt of a

1 proper affidavit of notice by certified mail, the ~~state engineer~~department shall publish
2 notice of the application, in a form prescribed by rule, in the official newspaper of the
3 county in which the proposed appropriation site is located, once a week for two
4 consecutive weeks.

- 5 5. The notice must give all essential facts as to the proposed appropriation, including the
6 places of appropriation and of use, amount of water, the use, the name and address of
7 the applicant, and the date by which written comments and requests for an
8 informational hearing regarding the proposed appropriation must be filed with the ~~state-~~
9 ~~engineer~~department of water resources. The notice also must ~~also~~ state that anyone
10 who files written comments with the ~~state engineer~~department will be mailed the ~~state-~~
11 ~~engineer's~~department's recommended decision on the application. Persons filing
12 written comments will become a party of record to the application. The comment
13 deadline is five p.m. on the first business day thirty days after the first published notice
14 in the official county newspaper as specified in subsection 4.

- 15 6. The applicant shall pay all costs of the publication of notice.

16 **SECTION 81. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-04-05.1. Comments - Hearing.**

- 19 1. Comments regarding a proposed appropriation must be in writing and filed by the date
20 specified by the ~~state engineer~~department of water resources under subsection 5 of
21 section 61-04-05. The comments must state the name and mailing address of the
22 person filing the comments. Comment letters submitted electronically must state the
23 name and mailing address of the person filing the comments, and must be signed by
24 the submitter to be considered valid and part of the official record.
- 25 2. A person filing written comments also may ~~also~~ request an informational hearing on
26 the application by the date specified by the ~~state engineer~~department of water
27 resources under subsection 5 of section 61-04-05. If a request for an informational
28 hearing is made and if the ~~state engineer~~department determines an informational
29 hearing is necessary to obtain additional information to evaluate the application or to
30 receive public input, the ~~state engineer~~department shall designate a time and place for
31 the informational hearing and serve a notice of hearing upon the applicant and any

- 1 person who filed written comments. Service must be made in the manner allowed for
2 service under the North Dakota Rules of Civil Procedure at least twenty days before
3 the hearing.
- 4 3. If two or more municipal or public use permitholders request the informational hearing
5 to be held locally, the ~~state engineer~~department of water resources shall hold the
6 hearing in the county seat of the county in which the proposed water appropriation site
7 is located.
- 8 4. The ~~state engineer~~department of water resources shall consider all written comments
9 received and testimony presented at an informational hearing, if held, and shall make
10 a recommended decision in writing. The recommended decision must be mailed to the
11 applicant and any party of record and may constitute:
- 12 a. Approval of all or a portion of the application, with the remainder held in
13 abeyance or denied;
- 14 b. Denial of the application; or
- 15 c. Deferral of the application.
- 16 5. Within thirty days of service of the recommended decision, the applicant and any party
17 of record who would be aggrieved by the decision may file additional written
18 comments with the ~~state engineer~~department of water resources or request an
19 adjudicative proceeding on the application, or both. A request for an adjudicative
20 proceeding must be made in writing and must state with particularity how the person
21 would be aggrieved by the decision and the issues and facts to be presented at the
22 proceeding. If a request for an adjudicative proceeding is not made, the ~~state engineer~~
23 department shall consider the additional comments, if any are submitted, and issue a
24 final decision. If a request for an adjudicative proceeding is made, and if the ~~state~~
25 ~~engineer~~department determines an adjudicative proceeding is necessary, the ~~state~~
26 ~~engineer~~department shall designate a time and place for the adjudicative proceeding
27 and serve the notice of adjudicative proceeding upon the applicant and any person
28 who filed written comments. Service must be made in the manner allowed for service
29 under the North Dakota Rules of Civil Procedure at least twenty days before the
30 hearing.

1 **SECTION 82. AMENDMENT.** Section 61-04-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-04-06. Criteria for issuance of permit.**

- 4 1. The ~~state-engineer~~department of water resources shall issue a permit if the ~~state-~~
5 ~~engineer~~department finds all of the following:
- 6 a. The rights of a prior appropriator will not be unduly affected.
 - 7 b. The proposed means of diversion or construction are adequate.
 - 8 c. The proposed use of water is beneficial.
 - 9 d. The proposed appropriation is in the public interest. In determining the public
10 interest, the ~~state-engineer~~department shall consider all of the following:
 - 11 (1) The benefit to the applicant resulting from the proposed appropriation.
 - 12 (2) The effect of the economic activity resulting from the proposed
13 appropriation.
 - 14 (3) The effect on fish and game resources and public recreational opportunities.
 - 15 (4) The effect of loss of alternate uses of water that might be made within a
16 reasonable time if not precluded or hindered by the proposed appropriation.
 - 17 (5) Harm to other persons resulting from the proposed appropriation.
 - 18 (6) The intent and ability of the applicant to complete the appropriation.
- 19 2. Subsection 1 of section 28-32-38 does not apply to water permit application
20 proceedings unless a request for an adjudicative proceeding is made. If an application
21 is approved, the ~~state-engineer~~department of water resources shall issue a conditional
22 water permit allowing the applicant to appropriate water. However, the commission, by
23 resolution, may reserve unto itself final approval authority over any specific water
24 permit in excess of five thousand acre-feet [6167409.19 cubic meters].

25 **SECTION 83. AMENDMENT.** Section 61-04-06.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-04-06.1. Preference in granting permits.**

28 When there are competing applications for water from the same source, and the source is
29 insufficient to supply all applicants, the ~~state-engineer~~department of water resources shall
30 adhere to the following order of priority:

- 31 1. Domestic use.

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

6 **SECTION 84. AMENDMENT.** Section 61-04-06.2 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-04-06.2. Terms of permit.**

9 The ~~state engineer~~department of water resources may issue a conditional water permit for
10 less than the amount of water requested. Except for water permits for incorporated
11 municipalities or rural water systems, the ~~state engineer~~department may not issue a permit for
12 more water than can be beneficially used for the purposes stated in the application. Water
13 permits for incorporated municipalities or rural water systems may contain water in excess of
14 present needs based upon what may reasonably be necessary for the future water
15 requirements of the municipality or the rural water system. The ~~state engineer~~department may
16 require modification of the plans and specifications for the appropriation. The ~~state~~
17 ~~engineer~~department may issue a permit subject to fees for water use and conditions the ~~state~~
18 ~~engineer~~department considers necessary to protect the rights of others and the public interest.
19 The fees must be used by the department for planning, research, and administration required to
20 regulate the allocation and appropriation of the waters of the state. Conditions must be related
21 to matters within the ~~state engineer's~~department's jurisdiction. All conditions attached to any
22 permit issued before July 1, 1975, are binding upon the permitholder.

23 **SECTION 85. AMENDMENT.** Section 61-04-06.3 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-04-06.3. Priority.**

26 Priority in time gives the superior water right. Priority of a water right acquired under this
27 chapter dates from the filing of an application with the ~~state engineer~~department of water
28 resources, except for water applied to domestic or livestock purposes, or fish, wildlife, and other
29 recreational uses in which case the priority date must relate back to the date when the quantity
30 of water in question was first appropriated, unless otherwise provided by law.

1 Priority of appropriation does not include the right to prevent changes in the condition of
2 water occurrence, such as the increase or decrease of streamflow, or the lowering of a water
3 table, artesian pressure, or water level, by later appropriators, if the prior appropriator can
4 acquire reasonably the prior appropriator's water under the changed conditions.

5 **SECTION 86. AMENDMENT.** Section 61-04-07.2 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-04-07.2. Conditional water permit application denial.**

8 If the ~~state engineer~~department of water resources determines an application or any portion
9 of an application does not meet the criteria prescribed in section 61-04-06 for any reason other
10 than sufficient information or data is lacking to allow for sound decisionmaking of the impacts of
11 the proposed diversion on the prior appropriators, the resource, or the public interest, the
12 application or portion must be denied.

13 **SECTION 87. AMENDMENT.** Section 61-04-07.3 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-04-07.3. Conditional water permit application deferral.**

16 If the ~~state engineer~~department of water resources determines an application or any portion
17 of an application does not meet the criteria prescribed in section 61-04-06 because sufficient
18 information or data is lacking to allow for sound decisionmaking of the impacts of the proposed
19 diversion on the prior appropriators, the resource, or the public interest, the conditional water
20 permit application must be placed in a deferred status. The applicant must be notified by mail
21 the application has been placed in deferred status.

22 **SECTION 88. AMENDMENT.** Section 61-04-09 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-04-09. Application to beneficial use - Inspection - Perfected water permit.**

25 After the permit's beneficial use date, or upon notice from the permit holder that water has
26 been applied to a beneficial use, the ~~state engineer~~department of water resources shall notify
27 the conditional water permit holder and inspect the works. The inspection must determine the
28 safety, efficiency, and actual capacity of the works. If the works are not constructed properly and
29 safely ~~constructed~~, the ~~state engineer~~department may require the necessary changes to be
30 made within a reasonable time. Failure to make the changes within the time prescribed by the
31 ~~state engineer~~ department will result in postponement of the permit's priority date to

1 the date the changes are made to the satisfaction of the ~~state engineer~~department. Any
2 intervening application submitted before the date the changes are made will have the benefit of
3 the postponement of priority. When the works are constructed properly and safely ~~constructed~~
4 and inspected, the ~~state engineer~~department shall issue the perfected water permit, setting
5 forth the actual capacity of the works and the limitations or conditions upon the water permit as
6 stated in the conditional water permit authorized by section 61-04-06.2. All conditions attached
7 to any permit issued before July 1, 1975, are binding upon the permitholder.

8 **SECTION 89. AMENDMENT.** Section 61-04-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-04-11. Inspection of works.**

11 If the ~~state engineer~~department of water resources, in the course of the ~~state~~
12 ~~engineer's~~department's duties, finds any works used for the storage, diversion, or carriage of
13 water are unsafe and a menace to life or property, the ~~state engineer~~department shall notify the
14 owner or the owner's agent, specifying the changes necessary and allowing a reasonable time
15 for putting the works in safe condition. Upon the request of any party, accompanied by the
16 estimated cost of inspection, the ~~state engineer~~department shall inspect any alleged unsafe
17 works. If ~~they shall be~~the works are found unsafe by the ~~state engineer~~department, the money
18 deposited by the party must be refunded, and the fees for inspection must be paid by the owner
19 of ~~such~~the works. If ~~the fees are not paid by~~ the owner of the works does not pay the fees within
20 thirty days after the decision of the ~~state engineer~~department, ~~they~~the fees must be a lien
21 against any property of the owner, and ~~must be recovered by a suit instituted by~~ the state's
22 attorney of the county shall initiate a suit to recover the fees from the owner at the request of
23 the ~~state engineer~~department. The ~~state engineer~~, when in the ~~state engineer's~~ opinion it is
24 ~~necessary~~,department may inspect any works under construction for the storage, diversion, or
25 carriage of water and may require any changes necessary to secure ~~their~~the safety of the
26 works. The fees for the inspection must be a lien on any property of the owner and must be
27 subject to collection as provided in this chapter but neither the United States nor the state of
28 North Dakota nor any government agency may be required to pay such fees.

29 **SECTION 90. AMENDMENT.** Section 61-04-12 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-04-12. Use of unsafe works - Penalty.**

2 Any person using works for the storage, diversion, or carriage of water, ~~at any time~~ after an
3 inspection ~~thereof of the works~~ by the ~~state engineer~~department of water resources and receipt
4 of notice from the ~~state engineer~~department that the ~~same~~works are unsafe for the purpose for
5 which ~~they~~the works are used; and ~~until~~before the receipt of notice from the ~~state~~
6 ~~engineer~~department that in the ~~state engineer's opinion~~ ~~they~~the department deems the works to
7 have been made safe, ~~shall be~~is guilty of a class A misdemeanor.

8 **SECTION 91. AMENDMENT.** Section 61-04-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-04-14. Extending time for application to beneficial use.**

11 The ~~state engineer~~department of water resources may extend the time for the application of
12 water to the beneficial use cited in the conditional water permit for good cause shown. When
13 the time has expired, the ~~state engineer~~department may renew and extend the ~~same~~time upon
14 application; ~~provided, however.~~ However, a conditional water permit, or any portion of the
15 application must be considered forfeited if no request for renewal is received by the ~~state~~
16 ~~engineer~~department within sixty days after the date the permit holder is informed the period for
17 applying water to the beneficial use cited in the conditional water permit has expired. If a
18 request to extend the time for application to beneficial use for any conditional water permit, or
19 portion of the permit, is denied, the conditional water permit, or portion of the permit, must be
20 considered forfeited. Sections 61-04-23 through 61-04-25 do not apply to this section.

21 **SECTION 92. AMENDMENT.** Section 61-04-15 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-04-15. Assignment of conditional or perfected water permit.**

24 Any conditional or perfected water permit may be assigned only upon approval by the ~~state~~
25 ~~engineer~~department of water resources. Upon reasonable proof the assignment can be made
26 without detriment to existing rights, the ~~state engineer~~department shall assign the water permit
27 without losing priority of any right previously established. The transfer of title to land in any
28 manner ~~whatsoever~~ must carry with it all rights to the use of water for irrigation of the land,
29 except any conditional or perfected water permit for irrigation purposes must be assigned in
30 accordance with this section.

1 **SECTION 93. AMENDMENT.** Section 61-04-15.2 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-04-15.2. Add a point of diversion.**

4 A permitholder may add a point of diversion to a conditional or perfected permit without
5 affecting the priority date, if approved by the ~~state engineer~~department of water resources.
6 Applications to add a point of diversion must be processed and evaluated in the same manner
7 as a conditional water permit application. The ~~state engineer~~department may approve the
8 additional point of diversion if the proposed addition will not adversely affect the rights of other
9 appropriators.

10 **SECTION 94. AMENDMENT.** Section 61-04-15.3 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-04-15.3. Transfer of approved irrigated acreage.**

13 A permitholder may transfer acres approved for irrigation on a conditional or perfected water
14 permit to any tract of land owned or leased by the permitholder without affecting the priority
15 date, if approved by the ~~state engineer~~department of water resources. The ~~state-~~
16 ~~engineer~~department shall cause the water permit involved to be simultaneously severed and
17 transferred from ~~such~~the land.

18 **SECTION 95. AMENDMENT.** Section 61-04-15.4 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-04-15.4. Change in purpose of use.**

21 A permitholder may change the purpose of use of a conditional or perfected water permit
22 without affecting the priority date, if approved by the ~~state engineer~~department of water
23 resources. Applications for a change in the purpose of use must be processed and evaluated in
24 the same manner as a conditional water permit application. A change in the purpose of use may
25 be authorized only for a superior use as determined by the order of priority in section
26 61-04-06.1. The ~~state engineer~~department may approve the proposed change if the proposed
27 change will not adversely affect the rights of other appropriators.

28 **SECTION 96. AMENDMENT.** Section 61-04-23 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-04-23. Cancellation of water rights - Inspection of works.**

2 Any appropriation of water must be for a beneficial use, and when the appropriator fails to
3 apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in
4 the permit for three successive years, unless the failure or cessation of use has been due to the
5 unavailability of water, a justifiable inability to complete the works, or other good and sufficient
6 cause, the ~~state engineer~~department of water resources may cancel the water permit or right.
7 For purposes of this chapter, an incorporated municipality or rural water system has good and
8 sufficient cause excusing the failure to use a water permit, if the water permit reasonably may
9 be necessary for the future water requirements of the municipality or the rural water system.
10 The ~~state engineer~~department of water resources, as often as necessary, shall examine the
11 condition of all works constructed or partially constructed within the state and compile
12 information concerning the condition of every water permit or right and all ditches and other
13 works constructed or partially constructed under the permit or right.

14 **SECTION 97. AMENDMENT.** Subsection 1 of section 61-04-24 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 1. If it appears any water appropriation or portion of an appropriation has not been used
17 for a beneficial use, or having been so used at one time has ceased to be used for
18 that purpose for more than three successive years, unless the failure or cessation of
19 use is due to the unavailability of water, a justifiable inability to complete the works, or
20 other good and sufficient cause, the ~~state engineer~~department of water resources
21 shall set a place and time for a hearing. For purposes of this chapter, an incorporated
22 municipality or a rural water system has good and sufficient cause excusing the failure
23 to use a water permit, if the water permit reasonably may be necessary for the future
24 water requirements of the municipality or the rural water system. Any permitholder
25 using water from a common source of supply, any applicant for a permit to use water
26 from a common source of supply, or any interested party may request the ~~state-~~
27 ~~engineer~~department of water resources to conduct a hearing to cancel any unused
28 water rights to the common source of supply. Any decision of the ~~state-~~
29 ~~engineer~~department in denying a request for a hearing may be appealed in
30 accordance with chapter 28-32. Prior to the hearings, the ~~state engineer~~department
31 shall serve notice upon the permitholder and upon the owners of land benefited by the

1 appropriation or works, except where the lands benefited are within the geographical
2 boundaries of a city, in which case notice must be given to the governing body of the
3 city, to show cause by a time and at a place why the water appropriation or a portion of
4 the appropriation should not be canceled.

5 **SECTION 98. AMENDMENT.** Section 61-04-25 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-04-25. Cancellation of water rights - Hearing - Appeal.**

8 At the hearing the recommended decision of the ~~state engineer~~department of water
9 resources is prima facie evidence for cancellation of the water permit or portion of the permit. If
10 no one appears at the hearing, the water permit or portion must be canceled. If interested
11 parties appear and contest the cancellation, the ~~state engineer~~department shall hear the
12 evidence and, if it appears that the water has not been put to a beneficial use, or, having been
13 ~~so used~~put to a beneficial use at one time, has ceased to be used for the purpose for more than
14 three successive years, unless the failure or cessation of use is due to the unavailability of
15 water, a justifiable inability to complete the works, or other good and sufficient cause, the permit,
16 or a portion of the permit, must be canceled. For purposes of this chapter, an incorporated
17 municipality or a rural water system has good and sufficient cause excusing the failure to use a
18 water permit, if the water permit reasonably may be necessary for the future water requirements
19 of the municipality or the rural water system. An appeal may be taken from the decision of the
20 ~~state engineer~~department in accordance with chapter 28-32.

21 **SECTION 99. AMENDMENT.** Section 61-04-26 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-04-26. Recorder to record water permit or order affecting water right.**

24 A water permit may be recorded as any other instrument affecting the title to real property
25 without acknowledgment or further proof. The order canceling a water right, or portion of a water
26 right must be filed by the ~~state engineer~~department of water resources with the county recorder
27 where the affected land is located, and ~~it shall be~~ recorded as any other instrument affecting the
28 title to real property without acknowledgment or further proof. Any document filed under this
29 section must be listed in the index of the property affected as provided in section 11-18-07.

30 **SECTION 100. AMENDMENT.** Section 61-04-27 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **61-04-27. Information filed with ~~state engineer~~department of water resources -**
2 **Installation of measuring devices.**

3 By March thirty-first of each year, permitholders shall file with the ~~state engineer~~department
4 of water resources, on forms supplied by the ~~state engineer~~department, water use and other
5 information as the ~~state engineer~~department requires. The ~~state engineer~~department also may
6 require permitholders to install measuring devices conforming to the ~~state-~~
7 ~~engineer's~~department's specifications, at all points specified by the ~~state engineer~~department.

8 **SECTION 101. AMENDMENT.** Section 61-04-28 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-04-28. Correction of application or water right by ~~state engineer~~department of**
11 **water resources.**

12 Upon proof satisfactory to the ~~state engineer~~department of water resources that a water
13 permit application or water permit contains a nonmaterial error, the ~~state engineer-~~
14 ~~may~~department, by written notice to the holder of the affected water permit or application, may
15 correct the error without publication of notice.

16 **SECTION 102. AMENDMENT.** Section 61-04-29 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-04-29. Enforcement.**

19 The ~~state engineer~~department of water resources has full power and authority to institute,
20 maintain, and prosecute to determination in an administrative proceeding or any of the courts of
21 this state, or in any of the federal courts, any and all actions, suits, and special proceedings that
22 may be necessary to enjoin unauthorized use of water, enforce an order of the ~~state-~~
23 ~~engineer~~department or the commission, or otherwise administer the provisions of this chapter.
24 Notwithstanding any other provision of law, the ~~state engineer~~department of water resources
25 may issue administrative orders requiring the immediate cessation of water use when the ~~state-~~
26 ~~engineer~~department has a reasonable belief the use is unauthorized or continued use will
27 damage the rights of prior appropriators.

28 **SECTION 103. AMENDMENT.** Section 61-04-30 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-04-30. Penalty.**

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

14 **SECTION 104. AMENDMENT.** Section 61-04-31 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-04-31. Reservation of waters - Public hearing - Notice.**

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

1 **SECTION 105. AMENDMENT.** Section 61-04.1-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-04.1-04. North Dakota atmospheric resource board created - Membership.**

4 ~~There is created a~~

5 1. ~~The~~ North Dakota atmospheric resource board ~~which shall be~~ a division of the state
6 water commission. The board is composed of the director of the state aeronautics
7 commission, a representative of the department of environmental quality, the ~~state-~~
8 ~~engineer~~director of the department of water resources, and one additional board
9 member from each of seven districts established by section 61-04.1-05. The governor
10 shall ~~initially~~ appoint one board member for each of the seven districts from a list of
11 three candidates given to the governor by weather modification authorities in each
12 district and:

13 1. ~~a.~~ a. When the term of office of any board member from any district is about to expire.

14 2. ~~b.~~ b. When a vacancy has occurred, or is about to occur, in the term of office of a
15 board member from any district for any reason other than expiration of term of
16 office.

17 2. Beginning on July 1, 1983, the term of office for the board ~~shall~~must be arranged so
18 ~~that not less~~no fewer than three nor more than four terms ~~shall~~ expire on the first day
19 of July of each odd-numbered year. ~~Therefore, board members appointed on July 1,~~
20 ~~1983, from districts II, IV, and VI shall serve for two-year terms, and board members~~
21 ~~appointed on July 1, 1983, from districts I, III, V, and VII shall serve for four-year~~
22 ~~terms. Thereafter, board~~Board members from each district shall serve for a four-year
23 term of office except in the event the governor ~~shall appoint~~appoints a member for an
24 unexpired term, in which case the member shall serve only for the unexpired portion of
25 the term. ~~In the event~~if any district fails to furnish a list to the governor, or if there are
26 no weather modification authorities under this chapter within a district, the governor
27 shall appoint a board member of the governor's choice residing within ~~such~~the district.

28 **SECTION 106. AMENDMENT.** Subsection 3 of section 61-05-01 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 3. "Irrigable acres" or "irrigable lands" means those lands which can or will be served by
31 the district's works, as determined by the ~~state engineer~~department of water resources

1 before the district is organized, or as determined from time to time by the district's
2 board of directors. Whenever land or acreage is described as being susceptible of
3 irrigation or subject to assessment, it means the same as irrigable acres.

4 **SECTION 107. AMENDMENT.** Section 61-05-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-05-07. Petition for a proposed irrigation district - Where filed - Signed by whom -**
7 **Contents.**

8 A petition for a proposed irrigation district ~~shall~~must be filed with the ~~state-~~
9 ~~engineer~~department of water resources and ~~shall~~ be signed by landowners of the proposed
10 district who together ~~shall~~ own a majority of the whole number of acres [hectares] subject to
11 assessment for construction or other costs within the district requesting the territory described in
12 ~~such~~the petition be organized under the provisions of this chapter. ~~Such~~The territory ~~shall~~must
13 be described and ~~shall~~ be included in ~~such~~the district, if established, by legal governmental
14 subdivisions of forty acres [16.19 hectares] or more unless held in fractional lots or plotted units
15 of lesser size, or unless portions ~~thereof~~of the territory are more readily susceptible to irrigation
16 from works other than those of the proposed district. The proposed district may include lands
17 ~~which~~that are not contiguous to any other lands in the proposed district. ~~Such~~The petition ~~shall~~
18 ~~set forth~~must include the name and address of each petitioner and a description of the
19 petitioner's land, and ~~the petition shall have attached thereto~~ a map or maps showing the
20 boundaries of the proposed district must be attached to the petition.

21 **SECTION 108. AMENDMENT.** Section 61-05-08 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-05-08. Petition accompanied by map - Contents - Scale.**

24 The petition provided for in section 61-05-07 ~~shall~~must be accompanied by a map or maps
25 of the proposed district. The map ~~shall~~must show the location of the proposed conveyance
26 systems and other works ~~by means of which it is intended to be used to~~ irrigate the lands of the
27 proposed district. If the water supply is from a natural stream, the flow of ~~such~~the stream
28 ~~shall~~must be stated in cubic feet [meters] per second. If the water supply for the district is to be
29 gathered by a storage reservoir ~~or reservoirs~~, the map ~~shall~~must show the location ~~thereof~~of the
30 storage reservoir and ~~shall~~ state ~~their~~the reservoir's capacity in acre-feet. If the water supply is
31 from a ground water source, the map ~~must~~ show the general location of wells and proposed

1 pumping rates. Unless otherwise permitted by the ~~state engineer~~department of water resources,
2 ~~such~~the map shall must be drawn to a scale of not less than two inches [5.08 centimeters] to the
3 mile [1.61 kilometers]. Preliminary designs of all proposed conveyance systems and other
4 works shall must be prepared in sufficient detail to show the contemplated method of
5 construction, along with a feasibility report on the proposed plan of irrigation. The feasibility
6 report must include an analysis of the soil and water compatibility of the irrigable lands of the
7 proposed district. A registered professional engineer shall prepare the map, preliminary designs,
8 and feasibility report required by this section.

9 **SECTION 109. AMENDMENT.** Section 61-05-09 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-05-09. Petition accompanied by bond - Approval of bond - Certified copy of**
12 **petition filed.**

13 Unless otherwise permitted by the ~~state engineer~~department of water resources, the
14 petition shall must be accompanied by a good and sufficient bond to be approved by the ~~state-~~
15 ~~engineer, which shall~~department of water resources. The bond must be in double the amount of
16 the probable cost of organizing ~~such~~the district, including the cost of the first election for the
17 organization of the district ~~and shall~~. The bond also must be conditioned that the sureties will
18 pay all costs in case ~~said~~the organization shall ~~not be~~ is not approved by the electors. Within ten
19 days after the filing of ~~such~~the petition, and the approval of ~~such~~the bond, the ~~state-~~
20 ~~engineer~~department of water resources shall file a copy of ~~such~~the petition with the county
21 auditor of each county ~~wherein~~ in which the proposed irrigation district is situated.

22 **SECTION 110. AMENDMENT.** Section 61-05-10 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-05-10. Hearing on petition - Notice - Report prepared by state engineer on**
25 **feasibility - Copy of report filed - Submitted to electors.**

26 The ~~state engineer~~department of water resources shall examine the petition, maps, papers,
27 and data pertaining to the proposed irrigation district and shall fix a time and place for hearing
28 ~~such~~the petition. A notice stating ~~that such~~the petition will be heard, and stating the time and
29 place of hearing, shall must be filed with the county auditor of each county ~~wherein~~ such in which
30 the proposed district is located. The notice shall must be published once each week for two
31 consecutive weeks in the ~~newspaper or newspapers~~ of general circulation where the district is

1 located and in the official newspaper of each county in which the district is located. The date set
2 for the hearing on the petition may not be less than twenty days after the first publication of the
3 notice. ~~Prior to such~~Before the hearing the ~~state engineer~~department shall review the maps,
4 preliminary designs, and feasibility study and shall prepare, or shall cause to be prepared, a
5 summary report showing the probable cost of the proposed irrigation works and the
6 practicability and feasibility of the plan of irrigation suggested or proposed by petitioners for the
7 irrigation of the lands within ~~such~~the district. A copy of ~~such~~the report ~~shall~~must be filed with the
8 county auditor of each county ~~wherein~~in which the proposed irrigation district is situated, and
9 ~~such~~the report ~~shall~~must be open to public inspection. The ~~state engineer~~department of water
10 resources also shall submit ~~such~~the report to the electors of the proposed district at the meeting
11 set for hearing the petition for the organization ~~thereof~~of the proposed district.

12 **SECTION 111. AMENDMENT.** Section 61-05-11 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-05-11. Amendment of plan of irrigation - Adjournment of hearing by state-**
15 **engineer department of water resources.**

16 At the hearing provided in section 61-05-10, the ~~state engineer~~department of water
17 resources may amend the plan of irrigation proposed in the petition provided in section
18 61-05-07. The ~~state engineer~~department may adjourn ~~such~~the hearing from time to time and
19 may make ~~such~~ changes in the proposed boundaries of the district as the ~~state engineer~~ shall-
20 deemdepartment deems advantageous and advisable, but the boundaries of the district
21 proposed in the petition for its organization ~~shall~~may not be enlarged or extended until the
22 electors who own a majority of the acres [hectares] of land subject to assessments for
23 construction or other costs to be included in the extension ~~having in writing consented thereto~~
24 the enlargement or extension in writing.

25 **SECTION 112. AMENDMENT.** Section 61-05-12 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-05-12. State engineer Department of water resources may make order denying**
28 **petition - Filing.**

29 If the ~~state engineer~~ department of water resources determines the plan
30 of irrigation proposed is not practicable or ~~that such plan is not economically sound~~, the ~~state-~~
31 engineerdepartment shall make an order denying the petition for the organization of an irrigation

1 district and shall state the reasons for the action. A copy of ~~such~~the order ~~shall~~must be filed with
2 the county auditor of each county in which the proposed irrigation district is situated.

3 **SECTION 113. AMENDMENT.** Section 61-05-13 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-05-13. ~~State engineer to make order~~Order establishing irrigation district - Calling**
6 **election - Dividing district - Contents of order.**

- 7 1. If the ~~state engineer finds and~~department of water resources determines that the
8 establishment of the proposed irrigation district is advisable, and ~~that~~ the plan
9 proposed for irrigating the lands ~~therein~~in the proposed district is practicable and
10 economically sound, the ~~state engineer~~department shall make an order establishing
11 the irrigation district, subject to the approval of the electors of the district at an election
12 called by the ~~state engineer~~department for that purpose.
- 13 2. If the district embraces more than twenty thousand irrigable acres [8093.72 irrigable
14 hectares] of land, the ~~state engineer~~department by the order shall divide the district
15 into five or seven divisions or precincts as the ~~state engineer~~department determines
16 necessary for the convenience of the electors of the district. The divisions or precincts
17 must be numbered and as nearly equal in size as ~~may be deemed~~ practicable, ~~the~~
18 ~~divisions must be numbered, and one.~~ One director must be elected from, and by the
19 electors of, each division. If an elector owns land in more than one division, the elector
20 ~~must~~shall cast all the elector's votes for director and ~~be~~is eligible for election as a
21 director in the division in which the majority of the elector's land subject to assessment
22 lies.
- 23 3. The department's order must set forth:
- 24 1. a. The time and place of holding the election.
- 25 2. b. The boundaries of the district.
- 26 3. c. That a petition sufficient in form and substance was filed with the ~~state~~
27 ~~engineer~~department of water resources.
- 28 4. d. That due and reasonable notice of time and place of hearing on petition was
29 given to the qualified electors of the proposed irrigation district.

1 irrigation district is approved. Notice is given that the lands of the district are fully described
2 fully in the order of the ~~state engineer~~department of water resources establishing the district
3 and filed in the ~~state engineer's~~department's office in Bismarck, North Dakota, and in the
4 office of the county auditor of _____ County, North Dakota. The ballot must be in the
5 following form:

6 FOR IRRIGATION DISTRICT

7 Yes

8 No

9 Notice is further given that a board consisting of _____ directors will be elected,
10 one from each district division, ~~who will~~to serve as provided by law after the establishment
11 of the district is approved. Polls will be open from one p.m. to seven p.m. Notice is further
12 given that any elector desiring to be a candidate for the office of district director and to have
13 the elector's name appear on the ballot ~~must~~shall file the elector's request in writing with the
14 ~~state engineer~~department of water resources not less than twenty days before the election.

15 Dated _____, _____.

16 Signed _____

17 ~~State Engineer~~Director of the

18 Department of Water Resources

19 **SECTION 116. AMENDMENT.** Section 61-05-16 of the North Dakota Century Code is amended and
20 reenacted as follows:

21 **61-05-16. ~~State engineer~~Department of water resources to appoint clerk and two**
22 **judges of election - Filling vacancies on board.**

23 Prior to the holding of an election upon the question of establishing and organizing an
24 irrigation district, the ~~state engineer~~department of water resources shall appoint from the
25 electors of the district one clerk and two judges ~~who shall~~to constitute a board of election for
26 ~~such~~the district. If the district is divided into divisions or precincts, ~~such~~the board of election
27 ~~shall~~must be appointed from the electors of each ~~such~~ division and shall serve as a board of
28 election ~~therein~~for the district. If the members appointed do not attend at the opening of the
29 polls on the day of election, the electors present at that hour may choose the members of the
30 election board or fill the place of an absent member ~~thereof~~of the election board.

1 **SECTION 117. AMENDMENT.** Section 61-05-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-05-17. Conduct of election - Votes canvassed by board and state-**
4 **engineerdepartment of water resources - Retaining ballots.**

5 An election upon the question of organizing an irrigation district ~~shall~~must be conducted in
6 accordance with the general election laws of the state. After the polls are closed, the election
7 board shall proceed to canvass the votes cast ~~thereat~~, and the clerk of the election board shall
8 certify to the ~~state engineer~~department of water resources the result of ~~such~~the election. The
9 clerk of the board then shall wrap securely the ballots cast at ~~such~~the election and shall express
10 or mail the ~~same~~secured ballots by registered or certified mail to the ~~state engineer-~~
11 ~~wh~~department, which also shall canvass the ballots and verify the result. The ~~state-~~
12 ~~engineer~~department shall file and retain in the ~~state engineer's~~department's office the ballots
13 cast at ~~such~~the election.

14 **SECTION 118. AMENDMENT.** Section 61-05-18 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-05-18. Election governing organization of district - Filing record of election -**
17 **Certificates of election to directors.**

18 ~~If, upon a canvass of the votes cast and after such~~After the canvass of votes has been
19 verified by the ~~state engineer~~department of water resources, if a majority of all
20 votes cast are in favor of the organization of an irrigation district, the ~~state engineer~~department,
21 by an order, shall declare ~~such~~the territory duly organized as an irrigation district under the
22 name and style designated and shall declare the persons receiving the highest number of votes
23 duly elected as directors. The ~~state engineer~~department shall cause a certified copy of ~~such~~the
24 ~~order, duly certified,~~ to be filed immediately for record in the office of the recorder of each
25 county in which any portion of the irrigation district is situated and also shall file a copy of
26 ~~such~~the order with the county auditor of each ~~such~~ county, ~~and from and after the date of such~~
27 ~~filing, the organization of such district shall be complete~~county in which any portion of the
28 district is situated. The organization of the district is complete upon the filings required in this
29 section. The ~~state engineer~~department of water resources immediately shall make out and mail,
30 by registered or certified mail, to each person elected to the office of director a certificate of
31 election signed by the ~~state engineer.~~ ~~The directors thereupon shall enter upon the duties of~~

1 ~~their office~~director of the department, and the directors shall take office upon receipt of the
2 certification.

3 **SECTION 119. AMENDMENT.** Section 61-05-19 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-05-19. State engineer**~~Department of water resources to file order with secretary of~~
6 **state - Secretary of state to make certificate - Evidence.**

7 The ~~state engineer~~department of water resources shall file in the office of the secretary of
8 state a certified copy, ~~duly certified by the state engineer, of the state engineer's~~department's
9 order declaring any territory to be duly organized as an irrigation district, and the secretary of
10 state shall make and issue to the ~~state engineer~~department a certificate under the seal of the
11 state; of the due organization of ~~such~~the district and. The secretary of state also shall file in the
12 secretary's office a copy of ~~such~~the secretary's certificate and the said order of the ~~state-~~
13 ~~engineer~~department. ~~Such~~The certificate of the secretary of state, or a copy thereof of the
14 certificate, authenticated by the secretary of state, shall be is prima facie evidence of the
15 organization and existence of ~~such~~the irrigation district.

16 **SECTION 120. AMENDMENT.** Section 61-05-20 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-05-20. Appeal to district court from orders and decisions of the state-**
19 **engineer**~~department of water resources - Time - Undertaking.~~

20 An appeal may be taken to the district court from any order or decision of the ~~state-~~
21 ~~engineer~~department of water resources by any person who is aggrieved ~~thereby~~by the order or
22 decision, at any time within thirty days after the order or decision ~~appealed from~~ has been filed
23 with the county auditor of the county in which the appeal is taken. ~~Such appeal shall~~The appeal
24 must be taken by serving notice of appeal on the ~~state engineer~~director of the department of
25 water resources and by filing the notice of appeal, proof of service thereof of the notice, and the
26 undertaking required in this section with the clerk of the district court of the county in which the
27 appeal is taken. To effect an appeal an undertaking must be executed by the appellant and
28 sufficient surety conditioned that the appellant will prosecute ~~such~~the appeal without delay and
29 will pay all costs adjudged against the appellant in the district court. ~~Such~~The undertaking
30 ~~shall~~must be made in favor of the ~~state engineer~~department of water resources as obligee and
31 may be enforced by the ~~state engineer~~department. The appeal shall must be taken to the district

1 court of the county in which the land claimed to be affected adversely by the order or decision
2 appealed from is situated ~~and if such~~. If the land is situated in more than one county, such the
3 appeal may be taken to the district court of any county in which any part of ~~such the~~ land is
4 situated. Any appeal ~~thus taken shall~~ taken under this section must be docketed in the district
5 court as any civil cause commenced in the district court is docketed ~~and thereupon the~~. The
6 district court has and shall ~~have and~~ exercise original jurisdiction in ~~such cause, the appeal~~ and
7 shall hear and ~~determine the same~~ rule on the case, without a jury, in ~~like the same~~ manner as a
8 civil cause originally commenced in that court. The court may require and fix the time for the
9 service and filing of formal pleadings ~~and fix the time therefor~~. Appeals to the supreme court
10 may be taken by the ~~state engineer~~ department of water resources or any other party to the
11 cause from any judgment entered in the district court ~~in any such cause~~; and from any order of
12 ~~said the~~ court if an appeal would lie from ~~such an the~~ order if the ~~same order~~ were entered by the
13 court in any other civil action.

14 **SECTION 121. AMENDMENT.** Section 61-06-01 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-06-01. Board of directors of irrigation district - Terms - Vacancies.**

17 If an irrigation district contains less than twenty thousand irrigable acres [8093.72 irrigable
18 hectares] of land and is not divided into precincts or divisions, the board of directors consists of
19 five directors who must be residents of the state and electors of the district and must be elected
20 at large. Two directors elected at the election for the organization of the district serve until the
21 first Tuesday in April following the first regular district election, and three serve until the first
22 Tuesday in April following the second regular election.

23 If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares]
24 or more, it must be divided into five or seven divisions or precincts, as the case may be, and
25 one director must be elected from and by the electors of each division or precinct.

26 If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares]
27 or more and is divided into five divisions or precincts, the board of directors of the irrigation
28 district consists of five directors. Two directors elected at the election for the organization of the
29 district serve until the first Tuesday in April following the first regular district election, and three
30 directors serve until the first Tuesday in April following the second regular district election.

1 If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares]
2 or more and is divided into seven divisions or precincts, the board of directors of the irrigation
3 district consists of seven directors. Three directors elected at the election for the organization of
4 the district serve until the first Tuesday in April following the first regular district election, and
5 four directors serve until the first Tuesday in April following the second regular district election.

6 The terms of office of the directors elected at the first election for the organization of the
7 district must be determined by lot at their first meeting. Directors elected at subsequent
8 elections serve for four years and until their successors are duly elected and qualified. In case
9 the office of any director becomes vacant, the remaining members of the board shall fill the
10 vacancy by appointment. A director appointed to fill a vacancy serves the unexpired term of the
11 director whose office that director has been appointed to fill. If vacancies occur in the offices of
12 a majority of the directors of an irrigation district, the remaining members and the ~~state-~~
13 ~~engineer~~director of the department of water resources shall fill the vacancies; and if the offices
14 of all the directors become vacant, the ~~state-engineer~~director of the department of water
15 resources shall appoint the members of the board ~~and they~~who shall serve until the next regular
16 election of the district. ~~Their~~The successors in office must then of the appointed directors must
17 be elected to serve the unexpired term of the directors whose offices became vacant. The
18 unexpired term of office that each director ~~thus~~ in this manner fills must be determined
19 by lot.

20 **SECTION 122. AMENDMENT.** Section 61-06-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-06-03. Oath and bond of boards of directors - Filing.**

23 After receiving a certificate of election each director shall take the oath prescribed for civil
24 officers, and shall be bonded in the sum of one thousand dollars. ~~Such~~The oath of office and
25 bond ~~shall~~must be filed in the office of the ~~state-engineer~~department of water resources.

26 **SECTION 123. AMENDMENT.** Section 61-06-04 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-06-04. Meeting of directors - Organization - Officers - Quorum - Term of officers.**

29 The directors elected at the first election in an irrigation district shall meet at the time and
30 place designated by the ~~state-engineer~~department of water resources and shall organize by
31 selecting one of their members as chairman of the board. A temporary secretary ~~shall~~must be

1 designated until a permanent secretary of the board has been appointed. After the organization
2 of the board, a majority of the directors ~~shall constitute~~constitutes a quorum for the transaction
3 of ~~such business as may come before~~of the board. The board shall appoint and fix the
4 compensation of a secretary, a treasurer, and an assessor of the district and ~~such~~ other officers
5 or employees as the board ~~shall deem~~deems necessary for the efficient conduct of the district's
6 business ~~and shall fix their compensation~~. Officers and employees appointed by the board shall
7 hold office ~~during~~at the pleasure of the board. The office of secretary, assessor, and treasurer
8 may be held by the same person. Each succeeding board of directors shall choose or appoint
9 ~~its officers as herein provided~~ in this section.

10 **SECTION 124. AMENDMENT.** Section 61-06-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-06-05. Official bonds of assessor, district treasurer, and other employees -**
13 **Approval and filing of bonds.**

14 The assessor ~~shall~~must be bonded in the amount of five hundred dollars, and the district
15 treasurer ~~shall~~must be bonded in an amount not less than double the amount of money that
16 may come into the treasurer's hands, the amount to be determined by the board of directors,
17 but ~~such bond shall~~ not be less than one thousand dollars. Other employees and
18 ~~appointive~~appointed officers ~~shall~~must be bonded in ~~such amounts as prescribed by~~ the board
19 ~~may prescribe~~. The official bonds of the assessor, treasurer, and other officers and employees
20 ~~shall~~must be approved by the board. ~~Such bonds shall be~~ and filed in the office of the ~~state~~
21 ~~engineer~~department of water resources.

22 **SECTION 125. AMENDMENT.** Section 61-06-19 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-06-19. Secretary of board of directors to declare result of election - Contents.**

- 25 1. The secretary of the board of directors, as soon as the result of the election is
26 declared, shall ~~enter upon the records of the board a statement of such result which~~
27 ~~shall show~~record the election results including:
- 28 1. a. The whole number of votes cast in the district.
29 2. b. The names of the persons ~~voted for~~who received votes.
30 3. c. Each question voted upon.
31 4. d. The number of votes cast for each person ~~and the~~.

1 e. The number of votes cast for and against each question voted upon at the
2 election.

3 2. A copy of suchthe statement shall of election results must be recorded in a permanent
4 record of the board ~~to be kept for that purpose. Such~~The statement shallmust be
5 signed by the secretary of the board and authenticated by the seal of the district. A
6 copy of suchthe signed and authenticated statement ~~thus signed and authenticated~~
7 ~~shall~~must be filed with the county auditor of each county ~~wherein~~in which the irrigation
8 district is situated, ~~and a like copy shall~~another copy must be mailed to the state-
9 engineerdepartment of water resources.

10 **SECTION 126. AMENDMENT.** Section 61-07-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-07-08. Surveys, examinations, and plans made to determine cost of construction**
13 **in district - ~~State engineer~~Department of water resources to prepare report.**

14 ~~For the purpose of ascertaining~~To ascertain the cost of any irrigation construction work in a
15 district, the board shall cause such surveys, examinations, and plans to be made as may
16 demonstrate the practicability of the plan and furnish the proper basis for an estimate of the cost
17 of carrying out the plan. All surveys, examinations, maps, plans, and estimates must be made
18 under the direction of a registered professional engineer, who may be ~~the state engineer~~an
19 employee of the department of water resources, and must be certified by the registered
20 professional engineer. The board shall submit a copy to the ~~state engineer who~~the department
21 of water resources, which shall prepare a summary report and file the report with the board. The
22 report must contain ~~such matters as in the judgment of the state engineer are desirable~~the
23 matter required by the department. Upon receiving the report, the board of directors shall
24 determine the amount of money required to be raised.

25 **SECTION 127. AMENDMENT.** Section 61-07-19 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-07-19. Petition for specific orders or changes in canals or other conveyance**
28 **systems - Methods.**

29 Upon the filing of a petition in the office of the board of any irrigation district, signed by
30 electors who own a majority of the total number of acres [hectares] subject to assessment for
31 construction or other costs, ~~and requesting that rules be adopted by the board~~ adopt rules

1 permitting and providing for any of the following specific orders or changes in the method of
2 operating its canal, pipeline, or other conveyance system, ~~such~~the board immediately shall
3 provide for the adoption and enforcement of the ~~same~~rules:

4 1. That a measuring device of a type approved by the ~~state engineer~~department of water
5 resources be placed in or near the headgate of any main diverting gate of the main
6 canal, or in any pipeline, or other main conveyance system ~~in order that~~so the district
7 will keep a continuous record ~~shall be kept by such district~~ of the amount of water
8 received into the canal or pipeline for the use of the lands in ~~such~~the district.

9 2. That a measuring device of a type approved by the ~~state engineer~~department of water
10 resources be placed in the headgates or valves of all main laterals and distributing
11 laterals within the district from and by which water is diverted to tracts or units of
12 twenty acres [8.09 hectares]; or more; for the purpose of determining at all times the
13 amount of water going to or being received upon ~~any and all such~~the tracts of land,
14 and that it ~~be made the duty of~~ the district ~~to~~shall keep a separate and correct record
15 of the amount of water delivered through each of ~~such~~the headgates and valves at all
16 times; and ~~to file the same~~the record in the office of the board for public inspection.

17 **SECTION 128. AMENDMENT.** Section 61-07-27 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-07-27. Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies**
20 **of findings.**

21 Upon the conclusion of the hearing provided for in section 61-07-24, the court shall
22 determine the legality and validity of the proceedings ~~had~~ for the issuance of bonds or
23 improvement warrants, the making of any contract, or the levying of any assessments, as the
24 case may be, and shall determine the validity and legality of any other matter properly before
25 the court. The court shall prepare its findings of fact ~~and~~, conclusions of law, ~~and shall~~any
26 necessary order that the decree of the court be entered in conformity therewith. The court may
27 apportion the costs of the proceeding, ~~in the discretion of the court,~~ ~~may be allowed and~~
28 ~~apportioned between~~ to the parties ~~thereto~~. The secretary of the board of directors of the district
29 shall file with the ~~state engineer~~department of water resources a certified copy of the court's
30 findings of fact, conclusions of law, and order, ~~and decree~~.

1 **SECTION 129. AMENDMENT.** Section 61-09-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-09-02. District assessor to make list or prepare map to show apportionment of**
4 **assessments - Filing.**

5 The assessor shall make, or cause to be made, a list showing the apportionment or
6 distribution of assessments, ~~and containing~~ with a description of each unit or tract of land
7 assessed in the district, and the name of the record owner ~~thereof, or of each unit or tract.~~
8 Alternatively, the assessor may prepare a map on a convenient scale showing each unit or tract
9 of land with the amount per acre [.40 hectare] apportioned ~~thereto~~ to the unit or tract.
10 ~~Such~~ Where practicable, the units of land shall, ~~wherever practicable,~~ must consist of
11 governmental subdivisions of forty acres [16.19 hectares] or more. If all lands on ~~such~~ the
12 statement or map are assessed at the same amount or rate per acre [.40 hectare], a general
13 statement to that effect ~~shall be~~ is sufficient. A copy of ~~such~~ the list or map shall must be filed in
14 the office of the county auditor of each county in which the district is situated, ~~one copy shall be~~
15 ~~filed in the office of the state engineer, and one copy shall remain~~ and another copy must be filed
16 in the department of water resources. One copy must remain in the office of the board for public
17 inspection.

18 **SECTION 130. AMENDMENT.** Section 61-10-27 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-10-27. Board may include lands in district.**

21 If the board of directors deems ~~it not for the best interest of the district that~~ a change in
22 ~~its~~ district boundaries ~~be made so as to include any of the lands mentioned in the petition, or any~~
23 ~~part thereof, it is not in the best interests of the district, the board~~ shall reject the petition. If it
24 ~~deems it for~~ the board deems the change is in the best interest of the district, the board shall
25 grant the petition in whole or in part and by resolution direct the chairman and the secretary of
26 the board to issue ~~its~~ an order, including all or any part of the lands mentioned in the petition in
27 the district, unless electors who together own at least ten percent of the whole number of acres
28 [hectares] in the district subject to assessment for irrigation costs object in writing at or before
29 the time of hearing to the inclusion of ~~such~~ the lands. When lands are included in a district, the
30 order of the board of directors allowing inclusion shall must be filed with the ~~state~~
31 ~~engineer~~ department of water resources and with the county auditor of each county in which

1 ~~such~~the lands are situated and ~~shall~~. The order also must be filed and recorded in the office of
2 the recorder of each such county.

3 **SECTION 131. AMENDMENT.** Section 61-10-30 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-10-30. Result of election - Duty of the board and secretary.**

6 If a majority of the votes cast at the election ~~shall be~~are against the inclusion of the land
7 described in the resolution of the board of directors, the board shall deny the petition and
8 ~~shall may not~~ proceed ~~no~~ further in the matter. If, ~~however~~, a majority of the votes cast at the
9 election ~~shall be~~are in favor of including ~~such~~the lands in the district, the board shall issue its
10 order setting forth the filing of the petition, the action of the board ~~thereon~~on the petition, and
11 the result of the election, and shall order ~~such~~the lands added to the district. The order
12 ~~shall~~must describe the lands to be included in the district. A certified copy of the order of the
13 board ~~shall~~must be filed with the ~~state engineer~~department of water resources and the county
14 auditor of each county in which the included lands lie. A certified copy of ~~such~~the order ~~shall~~
15 also must be filed and recorded in the office of the recorder in each such county.

16 **SECTION 132. AMENDMENT.** Section 61-10-35 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-10-35. Outstanding bonds or improvement warrants or contractual obligations -**
19 **Order excluding lands - Assent.**

20 If the holders of outstanding bonds or improvement warrants, or of contracts obligating the
21 district, consent in writing to exclusion of lands mentioned in the petition, the board of directors
22 may by resolution direct the chairman and the secretary of the board to execute ~~it~~the board's
23 order excluding ~~such~~the lands from the district. The assent in writing of holders of district bonds
24 or improvement warrants, or of anyone interested in a contract obligating the district, ~~shall~~must
25 be filed with the secretary of the district and ~~shall be~~ copied in the minutes of the board, and
26 ~~such~~the minutes or a certified copy ~~thereof~~of the minutes are admissible in evidence
27 with the same effect as the written assent. If ~~such~~ assent is not given, the board shall deny and
28 dismiss the petition. When lands are excluded from the district, a certified copy of the order of
29 the board ~~shall~~must be filed in the ~~offices of the state engineer~~department of water resources
30 and the county auditor of each county in which the excluded lands are situated and filed and
31 recorded in the office of the recorder of each ~~such county~~of those counties.

1 **SECTION 133. AMENDMENT.** Section 61-10-37 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-10-37. Result of election - Order excluding lands.**

4 If at an election for exclusion of lands from an irrigation district, a majority of the votes cast
5 ~~shall be~~ against exclusion, the board shall dismiss the petition and may not proceed ~~no~~
6 ~~further in the matter, but if.~~ If a majority of ~~such~~ the votes ~~shall be~~ in favor of excluding
7 ~~such~~ the lands from the district, the board shall issue its order setting forth the filing of the
8 petition, the action of the board ~~thereon~~ on the petition, and the result of the election, and shall
9 order ~~such~~ the lands excluded from the district. A certified copy of ~~such~~ the order ~~shall~~ must be
10 filed in the ~~offices of the state engineer~~ department of water resources and the county auditor of
11 each county in which the excluded lands lie and ~~shall~~ must be filed and recorded in the office of
12 the recorder of each such county.

13 **SECTION 134. AMENDMENT.** Section 61-11-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-11-04. Conduct of election - Canvassing and reporting result of election.**

16 An election on the question of dissolution in all respects ~~shall~~ must be conducted, and the
17 votes ~~therefrom~~ canvassed, in the same manner as provided for a regular election of the
18 district. A certified copy of the statement of the election result by the district's board of directors
19 and all ballots, lists, tally sheets, and other documents pertaining to the election ~~shall~~ must be
20 forwarded to the ~~state engineer~~ department of water resources by registered or certified mail or
21 express.

22 **SECTION 135. AMENDMENT.** Section 61-11-08 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-11-08. Sale of district property authorized - Appraisers appointed - Oath -**
25 **Compensation.**

26 If a majority of the votes cast at an election for dissolution of a district favor dissolution and
27 sale, the irrigation works, franchises, and other property of the district may be sold at not less
28 than a valuation ~~to be~~ determined by a board of three appraisers. One member of ~~such~~ the
29 board of appraisers ~~shall~~ must be appointed by the board of directors of the district, one
30 ~~shall~~ must be appointed by the ~~state engineer~~ director of the department of water resources, and
31 the two appointed appraisers ~~thus selected~~ shall choose the third appraiser. The board of

1 appraisers ~~shall~~must be sworn by an officer who is authorized to administer oaths and who has
2 an official seal. ~~Such~~The board shall appraise the irrigation works, franchises, and all other
3 property of the district at ~~its~~their cash value, and ~~to determine such value~~, with the consent of
4 the board of directors of the district, may employ engineers, accountants, and ~~such~~other expert
5 assistance as ~~may be~~ necessary. The board of directors shall fix the compensation of ~~such~~the
6 appraisers, engineers, accountants, and others ~~shall be fixed by the board of directors~~.

7 **SECTION 136. AMENDMENT.** Section 61-11-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-11-09. Appraisal of property by appraisers - Report to board - Advertising property**
10 **for sale - Opening of bids.**

11 The board of appraisers shall appraise all of the property of the district and shall make a
12 report of ~~its appraisal~~the appraisal to the board of directors. A copy of ~~such~~the report
13 ~~shall~~must be filed by the secretary of the district with the ~~state engineer~~department of water
14 resources. The board of directors shall advertise for sale all of the property of the district and
15 shall publish a notice once each week for two consecutive weeks specifying that sealed bids will
16 be received, opened, and considered by the board at the time and place specified in ~~such~~the
17 notice, and ~~setting forth a description of~~describing the property. At the time and place
18 designated in ~~such~~the notice, or as soon ~~thereafter~~after the time as the board can meet, ~~it~~the
19 board shall open and consider all bids received for the purchase of the property, and ~~it~~the board
20 may reject ~~any and all~~ bids which do not, in the judgment of the board, offer a fair and just
21 consideration.

22 **SECTION 137. AMENDMENT.** Section 61-11-15 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-11-15. Report of dissolution when - Where filed - Contents - Recording of in office**
25 **of recorder.**

26 After all the property of an irrigation district ~~shall have been~~is disposed of upon dissolution
27 and all the obligations ~~thereof shall have been~~of the district are paid, the directors of ~~such~~the
28 district shall file in the office of the county auditor of each county in which ~~such~~the district is
29 situated, and in the ~~office of the state engineer~~department of water resources, a report signed
30 by the chairman of the board and attested by the secretary, and bearing the seal of the district,
31 stating ~~that~~ the district has disposed of its property and franchises, ~~that~~ all of the obligations of

1 the district have been paid fully paid, and that the district has been disorganized and dissolved.
2 ~~Such~~The report shall must be recorded in the miscellaneous records of the recorder in each of
3 the counties in which the district is located, and from and after ~~such~~the filing and recording,
4 ~~such~~the irrigation district shall be deemed ~~to be~~ dissolved.

5 **SECTION 138. AMENDMENT.** Section 61-12-46 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-12-46. State engineer**~~Department of water resources to assist county board of~~
8 **flood irrigation.**

9 The ~~state engineer~~department of water resources, upon the request of the board of flood
10 irrigation of any county in this state, shall assist ~~said~~the board in determining whether ~~or not~~ the
11 construction of any proposed dams, gates, and necessary ditches and canals for the purpose of
12 controlling, regulating, and forcing the overflow of water in non-navigable rivers or streams
13 within this state would be conducive to the public health, convenience, or welfare.

14 **SECTION 139. AMENDMENT.** Section 61-14-01 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-14-01. Units of measurement.**

17 The standard of measurement for the flow and volume of water shall be established by rule
18 by the ~~state engineer~~department of water resources.

19 **SECTION 140. AMENDMENT.** Section 61-14-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-14-03. Amount of water for irrigation.**

22 ~~In the issuance of~~When issuing a permit to appropriate water for irrigation or ~~in the~~
23 ~~adjudication of~~adjudicating the rights to the use of water for such purpose, the amount of water
24 ~~allowed by the state engineer shall not be in excess of~~use water for irrigation, the department of
25 water resources may not allow more than two acre-feet [2466.96 cubic meters] of water per
26 acre [.40 hectare] per year, or the equivalent thereof, to be delivered on the land, except that
27 during periods of sufficient water supply the state engineer~~department may allow up to three~~
28 acre-feet per acre [3700.45 cubic meters per .40 hectare] per irrigation season to be delivered
29 on the land for a specified period of time, in accordance with the method of irrigation being
30 used, the type of soil to which the water is to be applied, and other criteria established by the
31 ~~state engineer, may increase the amount of water allowed to three acre-feet per acre [3700.45-~~

1 cubic meters per .40 hectare], per irrigation season, for a specified period of time which in no-
2 event shall be of greater duration than the period of sufficient water supply. Notwithstanding any
3 other provision of this section, the state engineer may not allow more of an amount of water
4 than can be beneficially used department. The department may not allow more water to be
5 delivered on the land than can be used beneficially.

6 **SECTION 141. AMENDMENT.** Section 61-14-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-14-06. Measuring devices - Unlawful to take water without using.**

9 Every ditch owner shall construct and maintain a substantial headgate at the point where
10 the water is diverted and shall construct a measuring device, of a design approved by the state-
11 engineer department of water resources, at the most practicable point or points for measuring
12 and apportioning the water as determined by the state-engineer department. The state-
13 engineer department may order the construction of ~~such~~ the measuring device by the ditch
14 owner, and if construction is not completed within twenty days thereafter after receipt of the
15 order, the person in charge of the irrigation works, upon instructions from the state-
16 engineer department, shall refuse to deliver water to ~~such~~ the ditch owner. The ~~taking of water by~~
17 ~~such~~ ditch owner may not take water from the irrigation works until the construction of
18 ~~such~~ measuring device and the approval thereof by the state engineer shall be unlawful is
19 constructed and the department approves the device. Such Measuring devices shall be ~~so~~ must
20 be arranged that so they can be locked in place, and when locked by the person in charge of the
21 irrigation works or that person's authorized agent, for the measurement or apportionment of
22 water, ~~it shall be unlawful to~~ other persons may not interfere with, disturb, or change the same,
23 ~~and the devices. The use of water through such~~ a measuring device after having been that was
24 interfered with, disturbed, or changed shall be constitutes prima facie evidence of the guilt of the
25 person benefited by ~~such~~ the interference, disturbance, or change violated this section.

26 **SECTION 142. AMENDMENT.** Section 61-14-07 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-14-07. Unlawful interference with rights to use of water - Penalty.**

29 Any person interfering with or injuring or destroying any headgate, weir, benchmark, well, or
30 other appliance or works for the appropriation, diversion, storage, apportionment, or
31 measurement of water, or for any hydrographic or hydrologic surveys, or ~~who shall~~

1 ~~interfere~~interfering with any person engaged in the discharge of duties connected therewithwith
2 a headgate, weir, benchmark, well, or other appliance or works for those purposes, shall be is
3 guilty of a class A misdemeanor, and ~~also shall be~~ liable for the injury or damage resulting from
4 ~~such~~the unlawful act. The ~~state engineer~~department of water resources and the person in
5 charge of an irrigation work, and their authorized assistants and agents, may enter upon private
6 property for the performance of their respective duties, but ~~shall do no unnecessary injury~~
7 ~~thereto~~may not damage the property unnecessarily.

8 **SECTION 143. AMENDMENT.** Section 61-14-13 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-14-13. Seepage water.**

11 ~~In the case of seepage water from any constructed works, any party desiring to use the~~
12 ~~same shall make application to the state engineer, as in the case of unappropriated water, and~~
13 ~~such party shall~~A person wishing to use seepage water from a constructed works shall apply to
14 the department of water resources for the use in the same manner as applying for a permit to
15 use unappropriated water and shall pay to the owner of such~~the~~ works a reasonable charge for
16 the storage or carriage of ~~such~~the water in ~~such~~the works, if the appearance of ~~such~~the
17 seepage water can be traced beyond reasonable doubt to the storage or carriage of water in
18 ~~such~~the works. The ~~state engineer shall~~department of water resources may not issue a permit
19 to appropriate ~~such~~the seepage waters until ~~an~~any agreement for the payment of ~~such~~ charges
20 ~~shall have been entered into by the said parties~~reasonable charges required by this section is
21 executed.

22 **SECTION 144. AMENDMENT.** Section 61-15-03 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-15-03. Water and wildlife conservation projects - Supervision.**

25 The authority, control, and supervision of all water and wildlife conservation projects and
26 wildlife reservations ~~shall be is~~ vested in the ~~state engineer~~department of water resources. The
27 ~~state engineer~~department may accept cooperation, aid, and assistance from the United States
28 of America, its instrumentalities or agencies, in the construction, maintenance, and operation of
29 any structure for the purposes set forth in this chapter, and may do any act necessary to make
30 ~~such~~ aid, assistance, and cooperation from the federal government available, ~~and shall have~~

1 ~~the right to.~~ The department may grant such easements to the United States of America, its
2 instrumentalities or agencies, as may be required.

3 **SECTION 145. AMENDMENT.** Section 61-15-09 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-15-09. Conservation of lakes and streams of Turtle Mountain region.**

6 ~~The state engineer of this state~~department of water resources shall take such any necessary
7 action as may be necessary to conserve the water levels and rehabilitate the streams and
8 brooks in the Turtle Mountain region of North Dakota lying in Bottineau and Rolette Counties,
9 and shall do any act necessary to bring about such rehabilitation of streams, lakes, and brooks.

10 **SECTION 146. AMENDMENT.** Section 61-16-06.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-16-06.1. Consolidation of water resource districts.**

13 1. Any two or more water resource districts may be consolidated into a single district, or
14 existing districts may be adjusted to reflect watershed boundaries, as determined by
15 ~~the state engineer~~department of water resources, by filing with the state water
16 commission a petition signed by:

- 17 a. ~~A~~ a majority of the members of the board of each of the districts; or
18 b. ~~Fifty~~ fifty percent or more of the landowners within each of the districts.

19 When the petition is filed by the district boards, it must be accompanied by a certified
20 copy of the resolution of the governing boards authorizing the signing of the petition.
21 The petition must contain a detailed plan for the disposition of the property, assets,
22 and liabilities of each of the districts. This plan must be as equitable as practicable to
23 every landowner within the districts and must fully protect creditors and the holders of
24 improvement warrants of the petitioning districts. The plan may provide for a
25 continuance of assessments upon properties in the petitioning districts to retire
26 outstanding obligations, or for the assumption of outstanding obligations and the
27 spreading of assessments for the payment ~~thereof~~of the outstanding obligations over
28 properties in the newly created district. ~~No petition may be approved by the~~The state
29 water commission may not approve the petition unless ~~it~~the petition fully meets the
30 requirements of this section.

- 1 2. The state water commission shall fix a time and place for a public hearing on a petition
2 filed under this section at a site convenient and accessible for a majority of the
3 affected individuals. At least fifteen days prior to the date of hearing, the commission
4 shall publish notice of the hearing in at least one newspaper of general circulation in
5 each of the districts being consolidated or adjusted. Additional notice of the hearing
6 may be given in a manner prescribed by the state water commission.
- 7 3. Prior to the hearing, the ~~state engineer~~department of water resources shall make, or
8 cause to be made, an investigation of the need for consolidation of the petitioning
9 districts and shall submit a report of the findings to the state water commission. This
10 report must be presented at the petition hearing. If the state water commission finds it
11 is not feasible, desirable, or practical to consolidate the petitioning districts, ~~it~~the
12 commission shall deny the petition and state the reasons for denial. If, ~~however,~~ the
13 state water commission finds that problems of flood control, watershed development
14 or improvement, drainage, water supply, or other reasons make consolidation or
15 boundary adjustment and establishment of the proposed water resource district
16 desirable, ~~it~~the commission shall grant the petition and create the district. Upon
17 creation of the new water resource district, the state water commission shall dissolve
18 the included districts or make necessary boundary adjustments to existing districts.

19 **SECTION 147. AMENDMENT.** Subsection 1 of section 61-16.1-09.1 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 1. A water resource board may undertake the snagging, clearing, and maintaining of
22 natural watercourses and the debris removal of bridges and low-water crossings. The
23 board may finance the project in whole or in part with funds raised through the
24 collection of a special assessment levied against the land and premises benefited by
25 the project. The benefits of a project must be determined in the manner provided in
26 section 61-16.1-17. Revenue from an assessment under this section may not be used
27 for construction of a drain or reconstruction or maintenance of an existing assessment
28 drain. Any question as to whether the board is maintaining a natural watercourse or is
29 constructing a drain or reconstructing or maintaining an existing assessment drain
30 must be ~~determined~~resolved by the ~~state engineer~~department of water resources. All
31 provisions of this chapter apply to assessments levied under this section except:

- 1 a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on
2 agricultural lands and may not exceed fifty cents annually for each five hundred
3 dollars of taxable valuation of nonagricultural property; and
- 4 b. If the assessment is for a project costing less than one hundred thousand dollars,
5 no action is required for the establishment of the assessment district or the
6 assessments except the board must approve the project and assessment by a
7 vote of two-thirds of the members and the board of county commissioners of the
8 county in which the project is located must approve and levy the assessments to
9 be made by a vote of two-thirds of its members.
- 10 (1) If a board that undertakes a project finds that the project will benefit lands
11 outside water resource district boundaries, the board shall provide notice to
12 the water resource board where the benefited lands are located together
13 with the report prepared under section 61-16.1-17.
- 14 (2) The board of each water resource district containing lands benefited by a
15 project must approve the project and assessment by a vote of two-thirds of
16 its members. The board of county commissioners in each county that
17 contains lands benefited by a project must approve and levy the
18 assessment to be made by a vote of two-thirds of its members.
- 19 (3) If a project and assessment is not approved by all affected water resource
20 boards and county commission boards, the board of each water resource
21 district and the board of county commissioners of each county shall meet to
22 ensure that all common water management problems are resolved pursuant
23 to section 61-16.1-10. In addition, the water resource board that undertakes
24 the project may proceed with the project if the board finances the cost of the
25 project and does not assess land outside the boundaries of the district.
- 26 c. All revenue from an assessment under this section must be exhausted before a
27 subsequent assessment covering any portion of lands subject to a prior
28 assessment may be levied.

29 **SECTION 148. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-16.1-23. Appeal to state engineer department of water resources.**

2 After the hearing provided for in section 61-16.1-22, affected landowners and any political
3 subdivision subject to assessment, having not less than twenty percent of the possible votes, as
4 determined by section 61-16.1-20, who believe that the assessment had not been ~~was not made~~
5 fairly or equitably made, or that ~~or~~ the project is not properly located or designed properly, may
6 appeal to the ~~state engineer~~ department of water resources by petition, within ten days after the
7 hearing on assessments, to make a review of the assessments and to examine the location and
8 design of the proposed project. Upon receipt of such ~~the~~ petition the ~~state engineer~~ department
9 shall examine the lands assessed and the location and design of the proposed project, and if it
10 appears that the assessments have not been ~~were not~~ made equitably, the state-
11 engineer ~~department~~ may proceed to correct the same ~~assessments~~, and the state-
12 engineer's ~~department's~~ correction and adjustment of said ~~the~~ assessment is final. Should it
13 appear that, in the judgment of the state engineer, ~~if the department believes~~ the project has
14 been ~~improperly~~ was located or designed ~~improperly~~, the ~~state engineer~~ department may order a
15 relocation and redesign. ~~Such relocation and redesign that~~ must be followed in the construction
16 of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the
17 payment of the costs of the ~~state engineer~~ department in the matter, any landowner or political
18 subdivision ~~who or which claims that~~ claiming the landowner or political subdivision will receive
19 no benefit at all from the construction of a new project may appeal ~~that issue~~ to the state-
20 engineer ~~department~~ within ten days after the hearing on assessments, ~~the question of whether~~
21 there is any benefit. The state engineer may not determine the specific amount of benefit
22 ~~upon~~ Upon an appeal by an individual landowner or political subdivision, ~~but shall only~~ the
23 ~~department may~~ determine if ~~whether~~ there is any benefit to the landowner or political
24 subdivision, ~~and the~~ but not the specific amount of benefit. The determination of the state-
25 engineer ~~upon such question~~ department regarding whether there is a benefit is final.

26 **SECTION 149. AMENDMENT.** Section 61-16.1-37 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-37. Commission, state engineer department of water resources, and water**
29 **resource board shall encourage both structural and nonstructural alternatives.**

30 The commission, ~~state engineer~~ department of water resources, and the appropriate water
31 resource board shall encourage both structural and nonstructural solutions to water

1 management problems within the district by federal and state agencies, private individuals,
2 ~~public and private corporations, and limited liability companies and other persons~~, and shall lend
3 their aid, ~~counsel, and assistance to any such~~ facilitate appropriate solutions. All structural
4 alternatives, including dams, dikes, drains, and other works, whether constructed by public
5 authorities or private persons, ~~unless specifically exempted therefrom, shall be~~ subject to all
6 the provisions of this chapter unless specifically exempted.

7 **SECTION 150. AMENDMENT.** Section 61-16.1-38 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-16.1-38. Permit to construct or modify dam, dike, or other device**
10 **required - Penalty - Emergency.**

11 No dikes, dams, or other devices for water conservation, flood control regulation, watershed
12 improvement, or storage of water which are capable of retaining, obstructing, or diverting more
13 than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic
14 meters] of water for a medium-hazard or high-hazard dam, may be constructed within any
15 district except in accordance with the provisions of this chapter. An application for the
16 construction of any dike, dam, or other device, along with complete plans and specifications,
17 must be presented first to the ~~state engineer~~ department of water resources. Except for
18 low-hazard dams less than ten feet [3.05 meters] in height or agricultural dikes less than
19 two feet [0.61 meters] in height, the plans and specifications must be completed by a
20 professional engineer registered in this state. After receipt, the ~~state engineer~~ department shall
21 consider the application in such detail as the ~~state engineer~~ department deems necessary and
22 proper. The ~~state engineer~~ department shall refuse to allow the construction of any unsafe or
23 improper dike, dam, or other device which would interfere with the orderly control of the water
24 resources of the district, or may order ~~such~~ changes, conditions, or modifications as in the
25 judgment of the ~~state engineer~~ department may be necessary for safety or the protection of
26 property. Within forty-five days after receipt of the application, except in unique or complex
27 situations, the ~~state engineer~~ department shall complete the ~~state engineer's~~ initial review of the
28 application and forward the application, along with any changes, conditions, or modifications, to
29 the water resource board of the district within which the contemplated project is located. The
30 board ~~thereupon~~ shall consider; the application within forty-five days, ~~the application~~, and
31 suggest any changes, conditions, or modifications to the ~~state engineer~~ department. If the board

1 ~~approves the~~ application meets with the board's approval, the board shall forward the approved
2 application to the ~~state engineer~~department. If the board fails to respond within forty-five days, it
3 ~~shall be determined~~ the board ~~has~~will be deemed to have no changes, conditions, or
4 modifications to make. The ~~state engineer~~department shall make the final decision on the
5 application and forward that decision to the applicant and the local water resource board. The
6 ~~state engineer~~department may issue temporary permits for dikes, dams, or other devices in
7 cases of an emergency. Any person constructing a dam, dike, or other device, ~~which is~~ capable
8 of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water
9 or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard
10 dam, without first securing a permit to do so, as required by this section, is liable for all
11 damages proximately caused by the dam, dike, or other device, and is guilty of a class B
12 misdemeanor.

13 **SECTION 151. AMENDMENT.** Section 61-16.1-39 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.1-39. Dams or other devices constructed within a district shall come under**
16 **control of a water resource board.**

17 All dams, dikes, and other water conservation and flood control works or devices
18 constructed within any district, unless specifically exempted therefrom, ~~shall, without affecting~~
19 ~~the commission's or the state engineer's authority relative to such works, automatically come,~~
20 are under the jurisdiction of the water resource board for the district within which the dam, dike,
21 works, or device exists or is to be constructed. The district's jurisdiction over the dam, dike,
22 works, or device does not affect the commission's or department's authority relative to the dam,
23 dike, works, or device. No changes or modification of any existing dams, dikes, or other works
24 or devices ~~shall~~may be made without complying fully with the provisions of this chapter.

25 **SECTION 152. AMENDMENT.** Section 61-16.1-53.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-16.1-53.1. Appeal of board decisions - ~~State engineer~~Department of water**
28 **resources review - Closing of noncomplying dams, dikes, or other devices for water**
29 **conservation, flood control, regulation, and watershed improvement.**

30 1. The board shall make the decision required by section 61-16.1-53 within a reasonable
31 time, not exceeding one hundred twenty days, after receiving the complaint. The board

1 shall notify all parties of its decision by certified mail. Any aggrieved party may appeal
2 the board's decision to the ~~state engineer~~department of water resources. The appeal
3 to the ~~state engineer~~department must be made within thirty days from the date notice
4 of the board's decision has been received. The appeal must be made by submitting a
5 written notice to the ~~state engineer,~~department which must state specifically ~~set forth~~
6 the reason why the board's decision is erroneous. The appealing party ~~shall~~ also shall
7 submit copies of the written appeal notice to the board and to all nonappealing parties.
8 Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other
9 device, is relieved of its obligation to procure the removal of the dam, dike, or other
10 device. The ~~state engineer~~department shall handle the appeal by conducting an
11 independent investigation and making an independent determination of the matter.
12 The ~~state engineer~~department may enter property affected by the complaint to
13 investigate the complaint.

- 14 2. If the board fails to investigate and make a determination concerning the complaint
15 within a reasonable time, not exceeding one hundred twenty days, the person filing the
16 complaint may file the complaint with the ~~state engineer~~department of water resources
17 within one hundred fifty days of the submittal date of the original complaint. ~~The state~~
18 ~~engineer shall, without~~Without reference to chapter 28-32, the department shall cause
19 the investigation and determination to be made, either by action against the board or
20 by conducting the investigation and making the determination.
- 21 3. If the ~~state engineer~~department of water resources determines that a dam, dike, or
22 other device has been constructed or established by a landowner or tenant contrary to
23 title 61 or any rules adopted by the board, the ~~state engineer~~department shall take one
24 of these three actions:
- 25 a. Notify the landowner by certified mail at the landowner's post-office address of
26 record;
 - 27 b. Return the matter to the jurisdiction of the board along with the investigation
28 report; or
 - 29 c. Forward the dam, dike, or other device complaint and investigation report to the
30 state's attorney.

- 1 4. If the ~~state-engineer~~department of water resources decides to notify the landowner,
2 the notice must specify the nature and extent of the noncompliance and state that if
3 the dam, dike, or other device is not removed within a reasonable time as determined
4 by the ~~state-engineer~~department, but not less than thirty days, the ~~state-~~
5 ~~engineer~~department shall procure the removal of the dam, dike, or other device and
6 assess the cost of removal against the responsible landowner's property. The notice
7 from the ~~state-engineer~~department also must state that, within fifteen days of the date
8 the notice is mailed, the affected landowner may demand, in writing, a hearing on the
9 matter. Upon receipt of the demand, the ~~state-engineer~~department shall set a hearing
10 date within fifteen days from the date the demand is received. If, in the opinion of the
11 ~~state-engineer~~department, more than one landowner or tenant has been responsible,
12 the costs may be assessed on a pro rata basis in proportion to the responsibility of the
13 landowners. Upon assessment of costs, the ~~state-engineer~~department shall certify the
14 assessment to the county auditor of the county where the noncomplying dam, dike, or
15 other device is located. The county auditor shall extend the assessment against the
16 property assessed. Each assessment must be collected and paid as other property
17 taxes are collected and paid. Assessments collected must be deposited with the state
18 treasurer and credited to the contract fund established by section 61-02-64.1. Any
19 person aggrieved by action of the ~~state-engineer~~department under this section may
20 appeal the decision of the ~~state-engineer~~department to the district court under
21 chapter 28-32. A hearing by the ~~state-engineer~~department as provided for in this
22 section is a prerequisite to an appeal.
- 23 5. If the ~~state-engineer~~department of water resources, after completing the investigation
24 required under this section, decides to return the matter to the board, a complete copy
25 of the investigation report must be forwarded to the board and it must include the
26 nature and extent of the noncompliance. Upon having the matter returned to its
27 jurisdiction, the board shall carry out the ~~state-engineer's~~department's decision under
28 the terms of this section.
- 29 6. If the ~~state-engineer~~department of water resources, after completing the investigation
30 required under this section, decides to forward the dam, dike, or other device
31 complaint to the state's attorney, a complete copy of the investigation report must also

1 be forwarded, ~~which~~ and must include the nature and extent of the noncompliance.

2 The state's attorney shall prosecute the complaint under the statutory responsibilities
3 prescribed in chapter 11-16.

4 7. In addition to the penalty imposed by the court on conviction under this statute, the
5 court shall order the dam, dike, or other device removed within a reasonable time
6 period as the court determines, but not less than thirty days. If the dam, dike, or other
7 device is not removed within the time prescribed by the court, the court shall procure
8 the removal of the dam, dike, or other device, and assess the cost against the property
9 of the landowner responsible, in the same manner as other assessments under
10 chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or
11 tenant has been responsible, the costs may be assessed on a pro rata basis in
12 proportion to the responsibility of the landowners.

13 **SECTION 153. AMENDMENT.** Section 61-16.2-01 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.2-01. Legislative intent and purpose.**

16 The legislative assembly finds and declares that a large portion of the state's land
17 resources is subject to recurrent flooding by overflow of streams and other watercourses
18 causing loss of life and property, disruption of commerce and governmental services, unsanitary
19 conditions, and interruption of transportation and communications, all of which are detrimental
20 to the health, safety, welfare, and property of the occupants of flooded lands and the people of
21 this state. The legislative assembly further finds that public interest necessitates that the
22 floodplains of this state be developed in a manner which will alleviate loss of life and threat to
23 health, and reduce private and public economic loss caused by flooding.

24 It is therefore the policy of this state and the purpose of this chapter to guide development
25 of the floodplains of this state in accordance with the enumerated legislative findings, to reduce
26 flood damages through sound floodplain management, stressing nonstructural measures such
27 as floodplain zoning and floodproofing, acquisition and relocation, and flood warning practices;
28 and to ensure as far as practicable that the channels and those portions of the floodplains of
29 watercourses which are the floodways are not inhabited and are kept free and clear of
30 interference or obstructions which may cause any undue restriction of the capacity of the
31 floodways.

1 It is also the policy of this state and purpose of this chapter to provide state coordination
2 and assistance to communities in floodplain management activities, to encourage communities
3 to adopt, administer, and enforce sound floodplain management ordinances, and to provide the
4 ~~state engineer with~~department of water resources the authority necessary to carry out and
5 enforce a floodplain management program for the state and to coordinate federal, state, and
6 local floodplain management activities in this state.

7 **SECTION 154. AMENDMENT.** Section 61-16.2-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-16.2-02. Definitions.**

- 10 1. In this chapter, unless the context or subject matter otherwise provides:
- 11 1. a. "Commission" means state water commission.
- 12 2. b. "Community" means any political subdivision that has the authority to zone.
- 13 3. c. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a
14 river or watercourse at a given point that determines the flow-carrying capacity at
15 that point.
- 16 4. d. "Department" means the department of water resources.
- 17 e. "District" means a water resource district, as defined in chapter 61-16.1.
- 18 5. f. "Flood fringe" means that portion of a floodplain outside of the floodway.
- 19 6. g. "Floodway" or "regulatory floodway" means the channel of a river or other
20 watercourse and the adjacent land areas that must be reserved in order to
21 discharge the base flood without cumulatively increasing the water surface
22 elevation more than one foot [30.48 centimeters].
- 23 7. h. "Person" means any person, firm, partnership, association, corporation, limited
24 liability company, agency, or any other private or governmental organization,
25 which includes any agency of the United States, a state agency, or any political
26 subdivision of the state.
- 27 8. ~~"State engineer" means the state engineer appointed pursuant to section 61-03-01,~~
28 ~~who is also the chief executive officer of the commission, or, for the purpose of this~~
29 ~~chapter, the state engineer's designee.~~
- 30 2. For the purposes of this chapter, the ~~state engineer~~department shall, ~~in addition to the~~
31 ~~definitions listed above,~~ follow the definitions in this section and the definitions under

1 the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing
2 regulations, ~~which are hereby incorporated into and made a part of this chapter by~~
3 reference.

4 **SECTION 155. AMENDMENT.** Section 61-16.2-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.2-03. Duties of ~~state engineer~~the department.**

7 The ~~state engineer~~department shall:

- 8 1. Collect and distribute information relating to flooding and floodplain management.
- 9 2. Coordinate local, state, and federal floodplain management activities to the greatest
10 extent possible, and encourage appropriate federal agencies to make their flood
11 control planning data available to communities and districts for planning purposes, in
12 order to allow adequate local participation in the planning process and in the selection
13 of desirable alternatives.
- 14 3. Assist communities and districts in their floodplain management activities within the
15 limits of available appropriations and personnel in cooperation with the division of
16 homeland security.
- 17 4. Do all other things, within lawful authority, which are necessary or desirable to manage
18 the floodplains for uses compatible with the preservation of the capacity of the
19 floodplain to carry and discharge the base flood. In cooperation with communities and
20 districts, the ~~state engineer~~department shall conduct, whenever possible, periodic
21 inspections to determine the effectiveness of local floodplain management programs,
22 including an evaluation of the enforcement of and compliance with local floodplain
23 management ordinances.

24 **SECTION 156. AMENDMENT.** Section 61-16.2-04 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-16.2-04. Delineation of floodplains and floodways.**

27 The ~~state engineer~~department shall assist communities in preparing and obtaining data and
28 other necessary information for the delineation of floodplains and floodways. When the ~~state~~
29 ~~engineer~~department determines that sufficient technical information is available for the
30 delineation of floodplains and floodways on a watercourse or lake, the ~~state engineer shall~~
31 ~~the~~department shall consult with the appropriate district and each affected community. The

1 ~~state engineer~~department, the affected community, and the appropriate district shall consider
2 flooding experiences, plans to avoid potential hazards, estimates of economic impacts of
3 flooding on the community, both historical and prospective, and ~~such~~ other data as the district
4 and community may consider appropriate. Upon obtaining and developing the necessary
5 information for delineation of the floodplain and floodway, the ~~state engineer~~department and the
6 affected community shall notify the appropriate federal agency and request that ~~such-~~
7 ~~material~~the information be used to delineate the floodplain and floodway under the national
8 flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to
9 carry the waters of the base flood without cumulatively increasing the water surface elevation of
10 the base flood more than one foot [30.48 centimeters] at any point.

11 **SECTION 157. AMENDMENT.** Section 61-16.2-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-16.2-05. Floodplain management ordinances.**

- 14 1. Each community shall submit the floodplain management ordinances adopted under
15 the national flood insurance program [42 U.S.C. 4001 et seq.] to the ~~state-~~
16 ~~engineer~~department for review.
- 17 2. If the ~~state engineer~~department determines ~~that~~ there is a failure by a community to
18 comply with the intent, purposes, and provisions of this chapter and the minimum
19 ordinances adopted under the national flood insurance program [42 U.S.C. 4001
20 et seq.], the ~~state engineer~~department shall notify the appropriate federal agency and
21 the community of those findings. ~~The state engineer shall also~~department also shall
22 notify the community of the state and federal penalties for such noncompliance and
23 shall work with the community until such time as the ~~state engineer~~department
24 determines ~~that~~ the community will comply or is complying.

25 **SECTION 158. AMENDMENT.** Subsection 1 of section 61-16.2-09 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 1. It is unlawful for any person to establish any use ~~which is not in accordance with that~~
28 does not comply with this chapter within any floodplain without prior written approval of
29 the affected community. Every use placed in the floodplain in violation of this chapter
30 or a floodplain management ordinance adopted under or in compliance with the
31 provisions of this chapter, or adopted under the national flood insurance program [42

1 U.S.C. 4001 et seq.], is a public nuisance, and the construction or installation thereof
2 the use may be enjoined by an action brought by the state-engineerdepartment or the
3 appropriate community. The state-engineerdepartment or community may obtain a
4 court order directing the removal or elimination of ~~such~~the public nuisance, or
5 authorizing the state-engineerdepartment or community to remove the public
6 nuisance, or cause the public nuisance to be removed, at the expense of the owner. A
7 person who violates any of the provisions of this chapter is guilty of a class B
8 misdemeanor.

9 **SECTION 159. AMENDMENT.** Section 61-16.2-11 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.2-11. Authority to enter and investigate lands or waters.**

12 The state-engineerdepartment or any community must notify all landowners prior to making
13 any entry upon any lands and waters in the state for the purpose of making an investigation,
14 survey, removal, or repair contemplated by this chapter. An investigation of a nonconforming
15 use or existing construction or structure ~~shall~~must be made by the state-engineerdepartment
16 either on the state-engineer'sdepartment's own initiative, on the written request of an owner of
17 land abutting the watercourse involved, or on the written request of a community.

18 **SECTION 160. AMENDMENT.** Section 61-16.2-13 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-16.2-13. Flood insurance.**

21 Communities that have residential and nonresidential structures in areas subject to
22 excessive flooding, as determined by the state-engineerdepartment, shall participate in the
23 national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or
24 supplementary thereto, ~~so that the people of North Dakota may have the opportunity to~~
25 ~~indemnify themselves from future flood losses through the purchase of this~~
26 ~~insurance administered by the federal emergency management agency.~~ A community is not
27 required to participate in the program if all of the land under the jurisdiction of the community is
28 enrolled as a result of another community's participation in the program.

29 **SECTION 161. AMENDMENT.** Section 61-16.2-14 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-16.2-14. State-engineerDepartment review of development in regulatory floodways**
2 **- Exceptions.**

3 Before issuing a permit or authorization to allow a use in a regulatory floodway, the
4 community responsible for permitting or authorizing ~~such~~the use shall notify the ~~state-~~
5 ~~engineerdepartment~~ of the proposed use. The ~~state-engineerdepartment~~ shall determine
6 whether a functioning hydraulic model is needed to measure the effect of the proposed use.
7 Upon the request of the ~~state-engineerdepartment~~, the community shall submit to the ~~state-~~
8 ~~engineerdepartment~~ for review all technical documentation, including a functioning hydraulic
9 model and other technical information needed for the ~~state-engineer'sdepartment's~~ review to
10 analyze the proposed use and to identify its proposed impact. The ~~state-engineerdepartment~~
11 shall complete the ~~state-engineer's~~ review within thirty days after receiving the technical
12 documentation. Upon completion of the ~~state-engineer's~~ review, the ~~state-engineerdepartment~~
13 shall notify the community whether the proposed use is in compliance with state and federal
14 law. A community may apply to the ~~state-engineerdepartment~~ for an exemption on a
15 case-by-case basis from this section. The ~~state-engineerdepartment~~ may grant the exemption if
16 the ~~state-engineerdepartment~~ determines ~~that~~ the community, by using its own technical review,
17 can determine ~~ifwhether~~ the proposed use is in compliance with state and federal law.

18 **SECTION 162. AMENDMENT.** Section 61-20-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-20-02. Drilling artesian or flowing well - Requirements.**

21 Every person, stock company, association, corporation, or limited liability company that
22 shall drill an artesian or flowing well shall comply with the rules of the ~~state-engineerdepartment~~
23 ~~of water resources~~ regarding such activity.

24 **SECTION 163. AMENDMENT.** Section 61-20-03 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-20-03. Wild wells.**

27 The provisions of this chapter shall apply to a wild well, or a well out of control, except ~~that~~ if
28 it is determined by the ~~state-engineer~~ ~~that such~~~~department of water resources~~ the well cannot
29 be repaired for use, no valve shall~~may~~ be attached, but every effort shall~~must~~ be made by the
30 owner to seal, plug, or cut off the ~~same~~well. Old wells ~~which~~~~that~~ might be damaged by so doing

1 need not be shut off, but such wells shall ~~shall~~must be put in repair at the earliest possible date and
2 shall ~~shall~~must be regulated thereafter ~~after~~ after the repair.

3 **SECTION 164. AMENDMENT.** Section 61-20-06 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-20-06. Duties of ~~state engineer~~the department of water resources.**

6 The ~~state engineer~~department of water resources shall advise the citizens of the state as to
7 the practicability of measures affecting the underground waters of this state. ~~The state engineer~~
8 shall by:

- 9 1. ~~Counsel and consult with the owner and assist~~Counseling, consulting, and assisting
10 the owner to work out the most desirable control and use of the owner's well.
- 11 2. ~~Select~~Selecting at least three representative flowing wells in each county having that
12 number, and as many more as ~~it~~the department may deem advisable.
- 13 3. ~~Cause~~Causing the record of ~~their~~the wells' flows and pressures to be taken, from time
14 to time, to learn as much as possible of the decline, fluctuations, and permanence of
15 the artesian supply.
- 16 4. ~~Plan and conduct such~~Planning and conducting other investigations as ~~it~~the
17 department may find advisable to ascertain the best method of prolonging the utility of
18 the same.
- 19 5. ~~Keep~~Keeping a record of the location, size, depth, flow, size of flow, character of
20 water, construction, and history of all artesian wells of the state, and ~~keep it~~keeping
21 the record on file for public reference.
- 22 6. ~~Secure~~Securing the enforcement of all laws pertaining to artesian and phreatic waters
23 of the state.
- 24 7. ~~Publish from time to time, as it may deem advantageous,~~Publishing bulletins
25 containing information concerning the artesian wells and phreatic waters of the state
26 as often as the department deems advantageous.

27 ~~The state engineer may make such~~

- 28 8. Making any additional, reasonable rules and ~~regulations~~ governing ~~such~~artesian wells
29 as it shall determineas the department determines are necessary.

30 **SECTION 165. AMENDMENT.** Section 61-20-07 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **61-20-07. Enforcement of chapter by state engineer - Appeal.**

2 The provisions of this chapter must be enforced by the ~~state engineer~~department of water
3 resources. The ~~state engineer~~department may issue administrative orders requiring compliance
4 with this chapter. An appeal from ~~the engineer's~~a ruling of the department may be taken under
5 the provisions of chapter 28-32.

6 **SECTION 166. AMENDMENT.** Section 61-21-02.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-21-02.1. Assessment drain culverts.**

9 As part of the design and construction of a proposed assessment drain or the maintenance
10 or reconstruction of an existing assessment drain, the board, upon approval of the appropriate
11 road authority, may locate, relocate, size, and install culverts through roads which are not on the
12 routes of assessment drains but which are within the assessment area and which are
13 necessary for surface water to reach the assessment drain. The design and installation of
14 culverts under this section must be consistent with chapters 24-03 and 24-06 and the
15 streamcrossing and construction site protection standards prepared by the department of
16 transportation and the ~~state engineer~~department of water resources.

17 **SECTION 167. AMENDMENT.** Section 61-21-22 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-21-22. Hearing on assessment - Appeal to state engineer - Correction of**
20 **assessments - Relocating drain - Fees of state engineer.**

21 At the hearing provided for in section 61-21-21, the board shall proceed to hear all
22 complaints relative to the percentage assessments and shall correct or confirm the same.
23 Should landowners subject to assessment or whose property is subject to condemnation for the
24 construction of the proposed drain having a majority of the possible votes, as determined by
25 section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the
26 drain is not properly located or designed, they may appeal to the ~~state engineer~~department of
27 water resources by petition within ten days after the hearing on assessments, to ~~make a~~ review
28 ~~of such~~the percentage assessments and to examine the location and design of the proposed
29 drain. Upon the receipt of ~~such~~the petition, the ~~state engineer~~department shall ~~proceed to~~
30 examine the lands assessed and the location and design of the proposed drain, and should it
31 appear to the ~~state engineer~~ that ~~such~~the department determine the assessments have not

1 been made equitably, the ~~state engineer~~department may proceed to correct the
2 ~~same assessments~~, and the ~~state engineer's~~department's correction and adjustment of said
3 assessments shall be final. Should it appear that, in the judgment of the ~~state engineer~~,the
4 department determine the drain has been improperly located or designed, the ~~state-~~
5 ~~engineer~~department may order a relocation and redesign. ~~Such~~The relocation and redesign
6 shall must be followed in the construction of the proposed drain. For the ~~state-~~
7 ~~engineer's~~department's services in ~~making such review of~~reviewing the assessments and
8 examination of examining the location and design, the ~~state engineer~~ shall be
9 ~~allowed~~department is entitled to ten dollars per day and actual and necessary expenses during
10 the time the ~~state engineer~~department is engaged upon ~~such~~the work. All moneys received by
11 the ~~state engineer~~ shall department must be paid into the state treasury and credited to the
12 general fund. After the hearing provided in this section, the board shall make a finding that the
13 benefits to all tracts of land will exceed the costs that will be assessed against the lands. Any
14 landowner who ~~may claim that~~claims the landowner will receive no benefit ~~at all~~ from the
15 construction of a new drain may appeal the question of whether there is any benefit to the ~~state-~~
16 ~~engineer~~department upon the filing of a bond in the sum of two hundred fifty dollars with the
17 board for the payment of the costs of the ~~state engineer~~department in the matter. The ~~state-~~
18 ~~engineer~~ shall department may not determine the specific amount of benefits upon an appeal by
19 an individual landowner, but shall ~~only~~ determine if only whether there is any benefit to the
20 landowner, and the determination of the ~~state engineer~~ upon such question shall be department
21 is final.

22 **SECTION 168. AMENDMENT.** Section 61-21-34 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-21-34. Procedure to construct or extend a drain through or into two or more**
25 **counties.**

26 In order to construct or extend a drain through or into two or more counties in this state, a
27 petition shall must be presented to the several boards for the establishment of ~~such~~the drain in
28 their several counties as provided in this chapter. The boards of ~~such several~~the counties shall
29 hold a joint meeting and shall determine the necessity or expediency of the establishment of
30 ~~such~~the drain. The several boards of all counties through or into which ~~such~~the proposed drain
31 may run shall agree upon the proportion of damages and benefits to accrue to the lands

1 affected in each county, and for this purpose ~~they~~the boards shall consider the entire course of
2 ~~said~~the drain through all ~~said~~the counties as one drain. Should the boards fail to agree upon the
3 benefits to accrue to the lands in each county, ~~they~~the boards shall submit the points in
4 controversy to the ~~state engineer of the state water commission~~department of water resources,
5 and the ~~state engineer's decision thereon shall be~~department's decision is final. ~~They~~The
6 boards may apportion the cost of establishing and constructing ~~such~~the entire drain ratably and
7 equitably upon the lands in each ~~such~~the county in proportion to the benefits to accrue to ~~such~~the
8 county's lands. When ~~they~~the boards have so apportioned the same, ~~they~~costs, the boards
9 shall make written reports of ~~such~~the apportionment to the auditors of the several counties
10 affected, ~~which~~The reports shall ~~show~~must show the portion of cost of ~~such~~the entire drain to be
11 paid by taxes upon the lands in each of ~~such~~the counties and ~~such reports shall~~must be signed
12 by the boards of all counties affected. Upon the filing of ~~such~~the reports, the several boards
13 shall meet and assess against the lands in each of ~~such~~the counties, ratably and equitably as
14 provided by this chapter, an amount sufficient to pay the proportion of the cost of ~~such~~the drain
15 in each of ~~such~~counties so fixed by all said boardscounty. The provisions of this chapter
16 relating to drains within a single county shall govern the establishment, construction,
17 maintenance, repair, and cleanout of ~~such~~the drains.

18 **SECTION 169. AMENDMENT.** Section 61-24-07 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-24-07. Attorney general shall act as legal adviser - ~~Chief engineer of state water~~**
21 **~~commission~~Department of water resources to assist board - Employment of counsel and**
22 **engineers.**

23 The attorney general shall, ~~as far as the attorney general's duties permit~~, act as the legal
24 adviser of the board to the extent the duties of the attorney general permit. The ~~chief engineer~~
25 ~~of the state water commission~~department of water resources shall furnish ~~such~~ engineering
26 services and assistance ~~as to the extent the duties of the chief engineer's office~~department
27 permit. When the district has funds available, the board of directors may employ other counsel
28 to advise and represent ~~it~~the board in ~~its~~the board's proceedings and affairs, and may employ
29 other engineers and engineering services in connection with ~~its~~the board's work and the affairs
30 of the district.

1 **SECTION 170. AMENDMENT.** Section 61-24.3-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-24.3-01. Legislative findings and intent.**

4 The legislative assembly finds that adequate water supplies for municipal, domestic,
5 livestock, rural, irrigation, industrial, and other uses are essential for the social stability and
6 economic security of the people of the state of North Dakota. It is further found that the
7 development and utilization of the water resources of this state are necessary for the protection
8 of health, property, and enterprise, and for the promotion of prosperity and general welfare of
9 the people of the state of North Dakota, and that such development and utilization of water
10 resources in this state involves, ~~necessitates,~~ and requires the exercise of the sovereign powers
11 of the state and concern a public purpose. ~~Therefore, it is hereby declared~~ It is necessary that
12 the southwest pipeline project, as authorized and approved pursuant to this chapter, be
13 established and constructed, to provide for the supplementation of the water resources of a
14 portion of the area of North Dakota south and west of the Missouri River with water supplies
15 from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In
16 furtherance of this public purpose, the state water commission may provide for the issuance of
17 bonds not to exceed twenty-five million dollars in accordance with chapter 61-02 to finance the
18 cost of the project. The provisions of this chapter may not be construed to, ~~in any manner,~~
19 abrogate or limit the rights, powers, duties, or functions of the state water commission or the
20 state engineer ~~department of water resources,~~ but are supplementary thereto to the rights,
21 powers, duties, or functions. Nor may this chapter be construed as limiting or ~~in any way~~
22 affecting the laws of this state relating to the organization or operation of irrigation districts,
23 water resource districts, or other political subdivisions.

24 **SECTION 171. AMENDMENT.** Section 61-24.5-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-24.5-01. Findings and declaration of policy.**

27 ~~It is hereby found and declared by the legislative assembly that many~~

- 28 1. Many areas and localities in southwestern North Dakota do not enjoy adequate
29 quantities of high-quality drinking water. ~~It is also found and declared that other~~ Other
30 areas and localities in southwestern North Dakota do not have sufficient quantities of
31 water to ensure a dependable, long-term supply. ~~It is further found and declared that~~

1 ~~supplementation~~Supplementation of the water resources of southwestern North
2 Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a
3 pipeline transmission and delivery system, is a feasible approach to provide
4 southwestern North Dakota with a safe, good quality, dependable source, and
5 adequate quantity of water.

6 ~~It is further declared that opportunity~~

7 ~~2.~~ 2. Opportunity for greater economic security, protection of health, property, enterprise,
8 preservation of the benefits from the land and water resources of this state, and the
9 promotion of the prosperity and general welfare of all of the people of North Dakota
10 depends on the effective development and utilization of the land and water resources
11 of this state, and ~~necessitate and~~ require the exercise of the sovereign powers of the
12 state and concern a public purpose. ~~Therefore, in order to~~To accomplish this public
13 purpose, ~~it is hereby declared necessary that~~ a project to supply and distribute water
14 to southwestern North Dakota, as authorized by chapter 61-24.3, ~~and acts amendatory~~
15 ~~thereof and supplementary thereto,~~ must be established and constructed, to:

16 ~~4.~~ a. Provide for the supply and distribution of water to the people of southwestern
17 North Dakota through a pipeline transmission and delivery system for purposes
18 including domestic, rural water, municipal, livestock, light industrial, mining, and
19 other uses, with primary emphasis on domestic, rural water, and municipal uses.

20 ~~2.~~ b. Provide for the future economic welfare and property of the people of this state,
21 and particularly the people of southwestern North Dakota, by making available
22 waters from Lake Sakakawea and the Missouri River for beneficial and public
23 uses.

24 ~~3.~~ 3. ~~It is also declared necessary to study and further develop water resources to provide~~
25 adequate water supplies for energy, industrial, agriculture, and other opportunities in
26 southwest North Dakota. ~~The provisions hereof~~This section may not be construed to
27 ~~abrogate or~~ limit the rights, powers, duties, and functions of the state water
28 commission or the ~~state engineer~~department of water resources, but must be
29 considered supplementary ~~thereto~~to those rights, powers, duties, and functions.

30 **SECTION 172. AMENDMENT.** Section 61-24.5-18 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **61-24.5-18. Easement granted for ditches, canals, tramways, and transmission lines**
2 **on any public lands.**

3 In connection with the construction and development of the southwest pipeline project,
4 there is granted over all the lands belonging to the state, including lands owned or acquired for
5 highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other
6 appurtenant facilities constructed as part of the southwest pipeline project, provided, however,
7 ~~that the director of the department of transportation and the state engineer~~director of the
8 department of water resources must approve the plans of the authority with respect to ~~regarding~~
9 the use of ~~any and all right of way of roads prior to such~~before the grant becoming effective.

10 **SECTION 173. AMENDMENT.** Section 61-24.6-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-24.6-01. Findings and declaration of policy.**

13 ~~It is hereby found and declared by the legislative assembly that many~~Many areas and
14 localities in northwestern North Dakota do not enjoy safe drinking water, and ~~that the water in~~
15 these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other
16 hazardous and discoloring substances. ~~It is also found and declared that other~~Other areas and
17 localities in northwestern North Dakota do not have sufficient quantities of water to ensure a
18 dependable, long-term supply. ~~It is further found and declared that~~
19 ~~supplementation~~Supplementation of the water resources of northwestern North Dakota with
20 water supplies from the Missouri River, utilizing a pipeline transmission and delivery system,
21 may be the only alternative to provide northwestern North Dakota with a safe, good quality,
22 dependable source, and adequate quantity of water.

23 ~~It is further declared that effective~~Effective development and utilization of the land and water
24 resources of this state; the opportunity for greater economic security; the protection of health,
25 property, enterprise, and the preservation of the benefits from the land and water resources of
26 this state; and the promotion of the prosperity and general welfare of all of the people of North
27 Dakota involve, ~~necessitate~~, and require the exercise of the sovereign powers of the state and
28 concern a public purpose. ~~Therefore, in order to~~To accomplish this public purpose, ~~it is hereby~~
29 ~~declared necessary that a project be pursued that would~~to supply and distribute water to the
30 people of northwestern North Dakota through a pipeline transmission and delivery system for
31 purposes, including domestic, rural water districts, municipal, livestock, light industrial, mining,

1 and other uses, with primary emphasis on domestic, rural water district, and municipal uses
2 must be pursued. In furtherance of this public purpose, the state water commission may provide
3 for the issuance of bonds in accordance with chapter 61-02 to finance the costs of the project.

4 ~~The provisions of this~~This chapter may not be construed to ~~abrogate~~ or limit the rights,
5 powers, duties, and functions of the state water commission or the ~~state engineer~~department of
6 water resources, but must be considered supplementary to those rights, powers, duties, and
7 functions.

8 **SECTION 174. AMENDMENT.** Section 61-24.6-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-24.6-02. Northwest area water supply advisory committee - Created.**

11 The northwest area water supply advisory committee consists of the following
12 representatives, appointed by the ~~state engineer~~director of the department of water resources:

- 13 1. One person from the city of Minot recommended by the Minot city council.
- 14 2. One person from the city of Williston recommended by the Williston city council.
- 15 3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce,
16 Renville, Ward, or Williams County water resource districts recommended jointly by
17 the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail,
18 Pierce, Renville, Ward, or Williams County water resource districts.
- 19 4. One representative of the state water commission recommended by the commission.
- 20 5. One representative of the Three Affiliated Tribes, representing that area of the Fort
21 Berthold Indian Reservation north of the Missouri River and Lake Sakakawea
22 recommended by the tribal council.
- 23 6. One representative of rural water distribution systems located in northwestern North
24 Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry,
25 McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
- 26 7. One representative of a municipality other than the city of Minot, located in Bottineau,
27 Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams
28 County.
- 29 8. One representative of the Garrison Diversion Conservancy District recommended by
30 the board of directors of the conservancy district.
- 31 9. One at-large representative.

1 **SECTION 175. AMENDMENT.** Section 61-24.6-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-24.6-03. Advisory committee - Officers - Meetings - Compensation.**

4 The northwest area water supply advisory committee shall elect a chairman and vice
5 chairman. The advisory committee shall meet at the times and places necessary to carry out the
6 purposes of this chapter. The advisory committee members may be reimbursed for their
7 mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The
8 advisory committee members serve at the pleasure of the ~~state engineer~~director of the
9 department of water resources. Vacancies must be filled in the same manner as original
10 appointments are made.

11 **SECTION 176. AMENDMENT.** Section 61-24.6-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-24.6-05. ~~State engineer~~Department of water resources - Employment of staff.**

14 The ~~state engineer~~director of the department of water resources may employ full-time and
15 other personnel and may employ such other personnel as areas necessary for the
16 ~~administration of~~administer this chapter and as available funds permit. Notwithstanding
17 section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of
18 administering this chapter may be used for salaries and expenses of persons employed
19 pursuant to this chapter.

20 **SECTION 177. AMENDMENT.** Section 61-24.8-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-24.8-01. Definitions.**

23 As used in this chapter:

- 24 1. "Auditor" means the county auditor.
- 25 2. "Board" means the board of directors of the Garrison Diversion Conservancy District.
- 26 3. "Bond" means any revenue bond, refunding bond, improvement bond, or other
27 evidence of indebtedness, including indebtedness owed to banks, or other public or
28 private lending sources, of the district issued under this chapter.
- 29 4. "Direct benefit" means water is delivered to a tract of land.
- 30 5. "Director" means a member of the board of directors.
- 31 6. "District" means the Garrison Diversion Conservancy District.

- 1 7. "Federal agency" includes the United States, the president of the United States, or any
2 agency, instrumentality, or corporation of the United States which has been or may be
3 designated or created by or pursuant to any act or acts or joint resolutions of the
4 Congress of the United States or which may be owned or controlled, directly or
5 indirectly, by the United States.
- 6 8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the
7 registered owner of any outstanding revenue bond, improvement bond, or refunding
8 bond.
- 9 9. "Law" means any statute of this state.
- 10 10. "Project" means any work, undertaking, enterprise, or any combination of two or more
11 projects, which the district is authorized to construct. The term includes all irrigation
12 improvements, betterments, extensions, and replacements of work, undertaking, or
13 enterprises, and all appurtenances, facilities, easements, lands, rights in land, water
14 rights, contract rights, approaches, dams, reservoirs, generating stations, trunk
15 connections, other water mains, filtration works, pumping stations, equipment,
16 franchises, and structures in connection with or incidental to any irrigation work,
17 undertaking, or enterprise the district is authorized to construct.
- 18 11. "Refinancing" means funding, refunding, paying, or discharging by means of refunding
19 bonds or the proceeds from the sale of refunding bonds, all or any part of any notes,
20 bonds, or other obligations issued to finance or to aid in financing the acquisition,
21 construction, or improvement of a project.
- 22 12. "Refunding bonds" means notes, bonds, certificates, or other obligations of the district
23 issued under this chapter, the proceeds of which are to be used to pay the principal of
24 or interest on any outstanding bonds or other obligations.
- 25 13. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by
26 the district in connection with, and all other income and receipts of whatever kind or
27 character derived by the district from, the operation of any project.
- 28 14. ~~"State engineer" has the same meaning as provided in chapter 61-03.~~
- 29 45. "Warrant" means an order drawn by the proper official of the district on its treasury, the
30 warrant to be so drawn that when signed by the district treasurer in an appropriate
31 place it becomes a check on the depository of the district, and a warrant upon the

1 treasury may not be delivered or mailed to the payee or the payee's agent or
2 representative until the warrant has been signed by the district treasurer and entered
3 on the district's books as a check drawn on a bank depository.

4 **SECTION 178. AMENDMENT.** Section 61-24.8-18 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-24.8-18. Appeal to ~~state engineer~~department of water resources.**

7 Within ten days after the hearing under section 61-24.8-17, affected landowners subject to
8 assessment, who believe that the assessment has not been fairly or equitably made, or that the
9 project is not properly located or designed, may petition the ~~state engineer~~department of water
10 resources to review the assessments and examine the location and design of the proposed
11 project. Upon receipt of a petition, the ~~state engineer~~department shall examine the lands
12 assessed and the location and design of the proposed project. If it appears to the ~~state engineer~~
13 ~~that~~department the assessments have not been made equitably, the ~~state engineer~~department
14 may proceed to correct the assessments. The ~~state engineer's~~department's correction and
15 adjustment of assessments is final. If it appears to the ~~state engineer~~ ~~that~~department the project
16 has been improperly located or designed, the ~~state engineer~~department may order a relocation
17 and redesign, which must be followed in the construction of the proposed project. Any
18 landowner claiming to receive no direct benefit from the project may appeal to the ~~state~~
19 ~~engineer~~department the question of whether there is any direct benefit. The appeal must be
20 filed with the ~~state engineer~~department within ten days after the hearing on assessments in
21 section 61-24.8-17. The ~~state engineer~~department may not determine the specific amount of
22 benefit upon an appeal by an individual landowner and may determine only if there is any direct
23 benefit to the landowner. The determination of the ~~state engineer~~department upon the appeal is
24 final.

25 **SECTION 179. AMENDMENT.** Section 61-29-04 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-29-04. Administration.**

28 This chapter must be administered by a Little Missouri River commission composed of the
29 director of the parks and recreation department, the director of the department of environmental
30 quality, the ~~chief engineer of the state water commission~~director of the department of water
31 resources, or their designated representatives, and one member from each of the following

1 counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission
2 members representing the above-mentioned counties must be appointed by their respective
3 boards of county commissioners and shall serve without compensation except that each
4 appointing board of county commissioners may reimburse its county representative for actual
5 and necessary mileage to and from meetings of the commission at the same rate as state
6 officers. The county representatives appointed must be resident landowners who live adjacent
7 to the Little Missouri River with the exception of the Golden Valley County representative. A
8 county representative unable to attend a meeting of the commission may be represented by a
9 person who has a written proxy from the representative authorizing that person to act and vote
10 for the representative. The proxy must be a resident landowner of the county that the proxy is
11 representing, but need not live adjacent to the Little Missouri River. The county members shall
12 serve terms of office as follows: two members shall serve one-year terms, two members shall
13 serve two-year terms, and two members shall serve three-year terms.

14 **SECTION 180. AMENDMENT.** Subsection 6 of section 61-31-02 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 6. "State assessment team" means representatives from the department of agriculture,
17 the game and fish department, the ~~state engineer's staff~~department of water
18 resources, the United States department of agriculture's soil conservation service, and
19 the United States fish and wildlife service.

20 **SECTION 181. AMENDMENT.** Section 61-32-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-32-03. Permit to drain waters required - Penalty.**

23 Any person, before draining a pond, slough, lake, or sheetwater, or any series thereof,
24 which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure
25 a permit to do so. The permit application must be submitted to the ~~state engineer~~department of
26 water resources. The ~~state engineer~~department shall refer the application to the water resource
27 district or districts within which is found a majority of the watershed or drainage area of the
28 pond, slough, lake, or sheetwater for consideration and approval, but the ~~state-~~
29 ~~engineer~~department may require that applications proposing drainage of statewide or
30 interdistrict significance be returned to the ~~state engineer~~department for final approval. A permit
31 may not be granted until an investigation discloses ~~that~~ the quantity of water which will be

1 drained from the pond, slough, lake, or sheetwater, or any series thereof those water bodies,
2 will not flood or adversely affect downstream lands. If the investigation shows that the proposed
3 drainage will flood or adversely affect lands of downstream landowners, the water resource
4 board may not issue a permit until flowage easements are obtained. The flowage easements
5 must be filed for record in the office of the recorder of the county or counties in which the lands
6 are situated. An owner of land proposing to drain shall undertake and agree to pay the
7 expenses incurred in making the required investigation. This section does not apply to the
8 construction or maintenance of any existing or prospective drain constructed under the
9 supervision of a state or federal agency, as determined by the ~~state engineer~~ department of
10 water resources.

11 Any person draining, or causing to be drained, a pond, slough, lake, or sheetwater, or any
12 series thereof those water bodies, which has a watershed area comprising eighty acres [32.37
13 hectares] or more, without first securing a permit to do so, as provided by this section, is liable
14 for all damage sustained by any person caused by the draining, and is guilty of an infraction. As
15 used in this section, sheetwater means shallow water that floods land not normally subject to
16 standing water. The ~~state engineer~~ department of water resources may adopt rules for
17 temporary permits for emergency drainage.

18 **SECTION 182. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

- 21 1. a. Installation of a subsurface water management system comprising eighty acres
22 [32.37 hectares] of land area or more requires a permit. The watershed area
23 drained by a subsurface water management system may not be used to
24 determine whether the system requires a permit under this section.
- 25 b. Subsurface water management systems that use surface intakes must be
26 permitted exclusively under this section if the system will have a drainage
27 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
28 water management systems that use surface intakes must be permitted
29 exclusively under section 61-32-03 if the system will have a drainage coefficient
30 exceeding three-eighths of an inch [0.95 centimeters].

- 1 c. Installation of a subsurface water management system comprising less than
2 eighty acres [32.37 hectares] of land area does not require a permit.
- 3 2. a. ~~The state engineer~~department of water resources shall develop an application
4 form for a permit required under this section. A person seeking to construct a
5 subsurface water management system that requires a permit under this section
6 must submit a completed application to the water resource district board within
7 which is found a majority of the land area for consideration and approval. The
8 water resource district board may charge permit applicants a fee up to one
9 hundred fifty dollars. Water resource districts shall forward copies of all approved
10 permits to the ~~state engineer~~department of water resources.
- 11 b. Upon submission of a completed application for a permit, the water resource
12 district board immediately shall give notice and a copy of the submission via
13 certified mail to each owner of land within one mile [1.61 kilometers] downstream
14 of the proposed subsurface water management system outlet unless the distance
15 to the nearest waterway depicted as a perennial or intermittent stream or river on
16 a United States geological survey topography map, assessment drain, natural
17 watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case
18 notice and a copy of the submission must be given immediately to each owner of
19 land between the outlet and the nearest assessment drain, natural watercourse,
20 slough, or lake. The notice requirement in this section must be waived if the
21 applicant presents signed, notarized letters of approval from all downstream
22 landowners entitled to notice in this subsection.
- 23 3. a. If the water resource board receives notarized letters of approval from all
24 downstream landowners entitled to notice, the board shall approve the completed
25 permit application as soon as practicable but no later than thirty days after receipt
26 of the last letter. Otherwise, the water resource board shall review the completed
27 application at its next meeting that is at least thirty days after receipt of the
28 application. The board shall consider any written, technical evidence provided by
29 the applicant or a landowner notified under subsection 2 addressing whether the
30 land of a notified landowner will be flooded or unreasonably harmed by the
31 proposed subsurface water management system. For purposes of this section

1 "technical evidence" means written information regarding the proposed
2 subsurface water management system, prepared after consideration of the
3 design and physical aspects of the proposed system, and any adverse hydraulic
4 effects, including erosion, flood duration, crop loss, and downstream water
5 control device operation impacts, which may occur to land owned by a landowner
6 provided under subsection 2. Technical evidence must be submitted to the permit
7 applicant, notified landowners, and the board within thirty days of the receipt of
8 the completed permit application by the board. A notified landowner may not
9 object to the proposed system unless the landowner presents technical evidence
10 under this subsection.

- 11 b. If the board finds, based on technical evidence, the proposed subsurface water
12 management system will flood or unreasonably harm lands of a landowner
13 notified under subsection 2, the board may require the applicant to obtain a
14 notarized letter of approval before issuing a permit for the system. The board may
15 not require a letter of approval for any land downstream of a system that outlets
16 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
17 landowners did not provide technical evidence to the district.
- 18 c. A water resource district may attach reasonable conditions to an approved permit
19 for a subsurface water management system that outlets directly into a legal
20 assessment drain or public highway right of way. For purposes of this subsection,
21 "reasonable conditions" means conditions that address the outlet location, proper
22 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
23 stabilization, and conditions that require all work to be done in a neat and
24 professional manner. Any condition to locate the project a minimum distance from
25 rural water supply lines may not extend beyond an existing easement for lines, or
26 no greater than twenty feet [6.1 meters] from either side of the water line if the
27 rural water line was installed under a blanket easement.
- 28 d. A water resource district may require a subsurface water management system
29 granted a permit under this section to incorporate a control structure at the outlet
30 into the design of the system and may require the control structure be closed
31 during critical flood periods.

- 1 e. A water resource district board may not deny a completed permit application
2 under this section unless the board determines, based on technical evidence
3 submitted by a landowner notified under subsection 2, the proposed water
4 management system will flood or unreasonably harm land of a notified
5 landowner, and a notarized letter of approval required by the board has not been
6 obtained by the applicant. For purposes of this section, "unreasonable harm" is
7 limited to hydraulic impacts, including erosion or other adverse impacts that
8 degrade the physical integrity of a roadway or real property within one mile [1.61
9 kilometers] downstream of the system's outlet. The board shall include a written
10 explanation of the reasons for a denial of a completed application and notify, by
11 certified mail, the applicant and all landowners notified under subsection 2 of the
12 approval or denial.
- 13 f. The board may not deny a permit more than sixty days after receipt of the
14 completed application for the permit. If the board fails to deny the permit
15 application within sixty days of receipt, the permit application is deemed
16 approved.
- 17 4. A denial of a completed permit application by a water resource district board may be
18 appealed, under section 28-34-01, to the district court of the county in which the permit
19 application was filed. The court may approve a completed permit application denied by
20 a water resource district board or the ~~state engineer~~department of water resources if
21 the application meets the requirements of this section.
- 22 5. A water resource district board may not be held liable to any person for issuing a
23 permit under this section.
- 24 6. A person that installs a subsurface water management system requiring a permit
25 under this section without first securing the permit is liable for all damages sustained
26 by a person caused by the subsurface water management system.
- 27 7. A person that installs a subsurface water management system requiring a permit
28 under this section without first securing the permit is guilty of an infraction.
- 29 **SECTION 183. AMENDMENT.** Section 61-32-08 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-32-08. Appeal of board decisions - ~~State engineer~~Department of water resources**
2 **review - Closing of noncomplying drains.**

- 3 1. The board shall make the decision required by section 61-32-07 within a reasonable
4 time, but not to exceed one hundred twenty days, after receiving the complaint. The
5 board shall notify all parties of its decision by certified mail. Any aggrieved party may
6 appeal the board's decision to the ~~state engineer~~department of water resources. The
7 appeal to the ~~state engineer~~department must be made within thirty days from the date
8 notice of the board's decision has been received. The appeal must be made by
9 submitting a written notice to the ~~state engineer~~department, ~~which~~and the notice must
10 ~~specifically set forth~~specify the reason why the board's decision is erroneous. The
11 appealing party also shall ~~also~~ submit copies of the written appeal notice to the board
12 and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered
13 closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the
14 closing or filling of the drain, lateral drain, or ditch. The ~~state engineer~~department shall
15 handle the appeal by conducting an independent investigation and making an
16 independent determination of the matter. The ~~state engineer~~department may enter
17 property affected by the complaint to investigate the complaint.
- 18 2. If the board fails to investigate and make a determination concerning the complaint
19 within a reasonable time, but not to exceed one hundred twenty days, the person filing
20 the complaint may file the complaint with the ~~state engineer~~department of water
21 resources within one hundred fifty days of the submittal date of the original complaint.
22 The ~~state engineer~~department, without reference to chapter 28-32, shall cause
23 the investigation and determination to be made, either by action against the board or
24 by conducting the investigation and making the determination.
- 25 3. If the ~~state engineer~~department of water resources determines that a drain, lateral
26 drain, or ditch has been opened or established by a landowner or tenant contrary to
27 title 61 or any rules adopted by the board, the ~~state engineer~~department shall take one
28 of three actions:
- 29 a. Notify the landowner by certified mail at the landowner's post-office address of
30 record;

- 1 b. Return the matter to the jurisdiction of the board along with the investigation
2 report; or
- 3 c. Forward the drainage complaint and investigation report to the state's attorney.
- 4 4. If the ~~state engineer~~department of water resources decides to notify the landowner,
5 the notice must specify the nature and extent of the noncompliance and state that if
6 the drain, lateral drain, or ditch is not closed or filled within a reasonable time as
7 determined by the ~~state engineer~~department, but not less than thirty days, the ~~state~~
8 ~~engineer~~department shall procure the closing or filling of the drain, lateral drain, or
9 ditch and assess the cost, against the responsible landowner's property. The notice
10 from the ~~state engineer~~department must state that the affected landowner may
11 demand in writing, within fifteen days of the date the notice is mailed, ~~demand in~~
12 ~~writing~~ a hearing on the matter. Upon receipt of the demand, the ~~state~~
13 ~~engineer~~department shall set a hearing date within fifteen days from the date the
14 demand is received. If, in the opinion of the ~~state engineer~~department, more than one
15 landowner or tenant has been responsible, the costs may be assessed on a pro rata
16 basis in proportion to the responsibility of the landowners. Upon assessment of costs,
17 the ~~state engineer~~department shall certify the assessment to the county auditor of the
18 county where the noncomplying drain, lateral drain, or ditch is located. The county
19 auditor shall extend the assessment against the property assessed. Each assessment
20 must be collected and paid as other property taxes are collected and paid.
21 Assessments collected must be deposited with the state treasurer and credited to the
22 contract fund established by section 61-02-64.1. Any person aggrieved by action of the
23 ~~state engineer~~department under the ~~provisions of~~ this section may appeal the decision
24 of the ~~state engineer~~department to the district court under chapter 28-32. A hearing by
25 the ~~state engineer as provided for in~~department under this section is a prerequisite to
26 an appeal.
- 27 5. If the ~~state engineer~~department of water resources, after completing the investigation
28 required under this section, decides to return the matter to the board, a complete copy
29 of the investigation report must be forwarded to the board and it must include the
30 nature and extent of the noncompliance. Upon having the matter returned to its

1 jurisdiction, the board shall carry out the ~~state engineer's department's~~ decision under
2 ~~the terms of~~ this section.

3 6. If the ~~state engineer~~department of water resources, after completing the investigation
4 required under this section, decides to forward the drainage complaint to the state's
5 attorney, a complete copy of the investigation report must ~~also be forwarded, which~~
6 and must include the nature and extent of the noncompliance. The state's attorney
7 shall prosecute the complaint under the statutory responsibilities prescribed in
8 chapter 11-16.

9 7. In addition to the penalty imposed by the court on conviction under this statute, the
10 court shall order the drain, lateral drain, or ditch closed or filled within a reasonable
11 time period as the court determines, but not less than thirty days. If the drain, lateral
12 drain, or ditch is not closed or filled within the time prescribed by the court, the court
13 shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the
14 cost against the property of the landowner responsible, in the same manner as other
15 assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more
16 than one landowner or tenant has been responsible, the costs may be assessed on a
17 pro rata basis in proportion to the responsibility of the landowners.

18 **SECTION 184. AMENDMENT.** Section 61-33-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-33-01. Definitions.**

21 As used in this chapter, unless the context otherwise requires:

- 22 1. "Board" means the sovereign lands advisory board.
- 23 2. "Board of university and school lands" means that entity created by section 15-01-01.
- 24 3. "Navigable waters" means waters that were in fact navigable at the time of statehood,
25 and that are used, were used, or were susceptible of being used in their ordinary
26 condition as highways for commerce over which trade and travel were or may have
27 been conducted in the customary modes of trade on water.
- 28 4. "Ordinary high water mark" means that line below which the presence and action of
29 the water upon the land is continuous enough so as to prevent the growth of terrestrial
30 vegetation, destroy its value for agricultural purposes by preventing the growth of what

1 may be termed an ordinary agricultural crop, including hay, or restrict its growth to
2 predominantly aquatic species.

3 5. "Sovereign lands" means those areas, including beds and islands, lying within the
4 ordinary high water mark of navigable lakes and streams. Lands established to be
5 riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be
6 above the ordinary high water mark and are not sovereign lands.

7 ~~6. "State engineer" means the person appointed by the state water commission pursuant~~
8 ~~to section 61-03-01.~~

9 **SECTION 185. AMENDMENT.** Section 61-33-01.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-33-01.1. Ordinary high water mark determination - Factors to be considered.**

12 ~~The state engineer~~department of water resources shall maintain ordinary high water mark
13 delineation guidelines consistent with this section.

14 1. When determining the ordinary high water mark for delineating the boundary of
15 sovereign lands, vegetation and soils analysis must be considered the primary
16 physical indicators. When considering vegetation, the ordinary high water mark is the
17 line below which the presence and action of the water is frequent enough to prevent
18 the growth of terrestrial vegetation or restrict vegetation growth to predominately
19 aquatic species. Generally, land, including hay land, where the high and continuous
20 presence of water has destroyed the value of the land for agricultural purposes must
21 be deemed within the ordinary high water mark.

22 2. When feasible, direct hydrological and hydraulic measurements from stream gauge
23 data, elevation data, historic records of water flow, high resolution light detection and
24 ranging systems, prior elevation and survey maps, and statistical hydrological
25 evidence must be considered when determining the ordinary high water mark. The
26 ~~state engineer~~department of water resources shall establish appropriate guidelines,
27 technical standards, and other criteria, including use of light detection and ranging
28 systems or other future technological advancements, as necessary, for conducting
29 hydrologic and hydraulic modeling required by this section.

30 3. Secondary physical indicators, including litter, debris, or staining, may be considered
31 to supplement the analysis of the ordinary high water mark investigation but may not

1 supersede primary physical indicators unless primary physical indicators are deemed
2 inadequate or inconclusive. Physical indicators directly affected by influent
3 non-navigable tributaries, adjoining water bodies, or wetlands may not be used to
4 delineate the sovereign land boundary of a navigable body of water.

5 **SECTION 186. AMENDMENT.** Section 61-33-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-33-02. Administration of sovereign lands.**

8 All sovereign lands of the state must be administered by the ~~state engineer~~department of
9 water resources and the board of university and school lands subject to the provisions of this
10 chapter. Lands managed pursuant to this chapter are not subject to leasing provisions found
11 elsewhere in this code.

12 **SECTION 187. AMENDMENT.** Section 61-33-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-33-03. Transfer of possessory interests in real property.**

15 All possessory interests now owned or that may be acquired except oil, gas, and related
16 hydrocarbons, in the sovereign lands of the state owned or controlled by the state or any of its
17 officers, departments, or the Bank of North Dakota, together with any future increments, are
18 transferred to the state of North Dakota, acting by and through the ~~state engineer~~director of the
19 department of water resources. All ~~such~~ possessory interests in oil, gas, and related
20 hydrocarbons in the sovereign lands of the state are transferred to the state of North Dakota,
21 acting by and through the board of university and school lands. These transfers are
22 self-executing. No evidence other than the provisions of this chapter is required to establish the
23 fact of transfer of title to the state of North Dakota, acting by and through the ~~state-~~
24 ~~engineer~~director of the department of water resources and board of university and school lands.
25 Proper and sufficient delivery of all title documents is conclusively presumed.

26 **SECTION 188. AMENDMENT.** Section 61-33-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-33-05. Duties and powers of the ~~state engineer~~department of water resources.**

29 The ~~state engineer~~department of water resources shall manage, operate, and supervise all
30 properties transferred to it by this chapter; may enter into any agreements regarding ~~such~~the
31 property; may enforce all rights of the owner in its own name; may issue and enforce

1 administrative orders and recover the cost of the enforcement from the party against which
2 enforcement is sought; and may make and execute all instruments of release or conveyance as
3 may be required pursuant to agreements made with respect to ~~such~~the assets, whether ~~such~~the
4 agreements were made ~~heretofore, or are made hereafter~~before or after this section was
5 enacted. The ~~state engineer~~department of water resources may enter agreements with the
6 game and fish department or other law enforcement entities to enforce this chapter and rules
7 adopted under this chapter.

8 **SECTION 189. AMENDMENT.** Section 61-33-05.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-33-05.1. Navigability determinations.**

- 11 1. Before making a determination that a body of water or portion of a body of water is
12 navigable, the ~~state engineer~~department of water resources shall:
- 13 a. Develop and deliver to the state water commission a preliminary finding
14 regarding the navigability of the body of water or portion of a body of water and
15 the legal rationale for the preliminary finding; and
- 16 b. Consult with the state water commission in an open meeting and demonstrate
17 the public need and purpose for the determination to be made.
- 18 2. After completing the requirements of subsection 1, the ~~state engineer~~department of
19 water resources may proceed with making a final determination of navigability by:
- 20 a. Providing reasonable public notice of the preliminary finding, legal rationale for
21 the preliminary finding, and opportunity for the public to provide comments for no
22 less than sixty days. The notice must:
- 23 (1) Include the address and electronic mail address to which public comments
24 may be sent and the deadline by which public comments must be received;
- 25 (2) Clearly identify the specific body of water or portion of a body of water for
26 which the finding of navigability is sought;
- 27 (3) State the ~~state engineer~~department will hold a public hearing regarding the
28 preliminary finding before a final determination of navigability is made, and
29 provide the date, time, and location of the public hearing;

- 1 (4) Be provided to the governing body of each soil conservation district, water
2 resource district, and county adjacent to the body of water or portion of a
3 body of water for which the preliminary finding was made;
- 4 (5) Be published in the official county newspaper for each county adjacent to
5 the body of water or portion of a body of water for which the preliminary
6 finding was made; and
- 7 (6) Briefly state the purpose of the hearing and describe the impact or effect a
8 determination of navigability will have on the property rights of persons who
9 own property adjacent to the body of water or portion of a body of water for
10 which the determination of navigability may be made; and
- 11 b. Holding a public hearing regarding the preliminary finding.
- 12 3. After completing the requirements of subsection 2 and making a determination of
13 navigability, the ~~state engineer~~department of water resources shall prepare a report
14 regarding the determination, including summaries of the information provided to the
15 state water commission, the public hearings held, and the public comments received.
16 The ~~state engineer~~department shall provide the report to the state water commission,
17 send the report by certified mail to any person that appeared at the public hearing
18 required under subsection 2 or provided written comments by the deadline, make the
19 report available to the public, including on the website for the office of the secretary of
20 state, and provide public notice of the report's availability. The report is final on the
21 date it is provided to the state water commission.
- 22 4. A determination of navigability may be appealed directly to a court of competent
23 jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections
24 28-32-50 and 28-32-51.

25 **SECTION 190. AMENDMENT.** Section 61-33-07 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-33-07. Deposit of income.**

28 All income derived from the lease and management of the lands acquired by the ~~state~~
29 ~~engineer~~department of water resources and board of university and school lands pursuant to
30 this chapter and not belonging to other trust funds must be deposited in the strategic investment
31 and improvements fund.

1 **SECTION 191. AMENDMENT.** Section 61-33-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-33-08. Advisory board - Responsibilities.**

4 There is created a sovereign lands advisory board. The board's responsibility is to advise
5 the ~~state engineer~~department of water resources and the board of university and school lands
6 on general policies as well as specific projects, programs, and uses regarding sovereign lands.
7 The board, being solely advisory, has no authority to require the ~~state engineer~~department of
8 water resources or the board of university and school lands to implement or otherwise accept
9 the board's recommendations.

10 **SECTION 192. AMENDMENT.** Section 61-33-09 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-33-09. Members of the board - Organization - Meetings.**

- 13 1. The board consists of the manager of the Garrison Diversion Conservancy District, the
14 ~~state engineer~~director of the department of water resources, the commissioner of
15 university and school lands, the director of the parks and recreation department, the
16 director of the game and fish department, and the director of the department of
17 environmental quality, or their representatives.
- 18 2. The ~~state engineer~~director of the department of water resources is the board's
19 secretary.
- 20 3. The board shall meet at least once a year or at the call of the ~~state engineer~~director of
21 the department of water resources or two or more members of the board. The board
22 shall meet at the office of the ~~state engineer~~director of the department of water
23 resources or at any other place decided upon by the board.
- 24 4. The board may adopt rules to govern its activities.

25 **SECTION 193. AMENDMENT.** Section 61-33-10 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-33-10. Penalty.**

28 A person who violates this chapter or any rule implementing this chapter is guilty of a
29 class B misdemeanor unless a lesser penalty is indicated. A civil penalty may be imposed by a
30 court in a civil proceeding or by the ~~state engineer~~department of water resources through an
31 adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not

1 preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted
2 under this chapter. The ~~state engineer~~department of water resources may bring a civil action to
3 recover damages resulting from violations and may also recover any costs incurred.

4 **SECTION 194. AMENDMENT.** Section 61-33.1-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-33.1-07. ~~State engineer~~Department of water resources regulatory jurisdiction.**
7 **(Retroactive application - [See note](#))**

8 This chapter does not affect the authority of the ~~state engineer~~department of water
9 resources to regulate the historical Missouri riverbed channel, minerals other than oil and gas,
10 or the waters of the state, provided the regulation does not affect ownership of oil and gas
11 minerals in and under the riverbed or lands above the ordinary high water mark of the historical
12 Missouri riverbed channel subject to inundation by Pick-Sloan Missouri basin project dams.

13 **SECTION 195. AMENDMENT.** Section 61-34-01 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-34-01. Definitions.**

16 In this chapter, unless the context otherwise requires:

- 17 1. "Commission" means the state water commission.
- 18 2. "Program" means the drought disaster livestock water assistance program.
- 19 3. ~~"State engineer" means the state engineer appointed under section 61-03-01.~~

20 **SECTION 196. AMENDMENT.** Section 61-34-04 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-34-04. Eligibility - Application for assistance.**

23 Applicants with livestock water supply problems caused by drought may apply for
24 assistance from the program. An applicant must first apply for water cost-share assistance from
25 the United States department of agriculture farm service agency. If cost-share assistance is
26 denied by the agency, the applicant may forward the application to the commission for
27 consideration. An application forwarded to the commission must include a document from the
28 United States department of agriculture farm service agency stating the reason for denial of
29 cost-share assistance. The ~~state engineer~~department of water resources shall review all
30 applications received by the commission. Notwithstanding any other provision of law, a water
31 supply project commenced after application for funding is made but without prior approval of the

1 state-engineerdepartment is eligible for funding consideration from the program. The state-
2 engineerdepartment shall provide funds for approved applications in accordance with rules and
3 criteria for eligibility and only to the extent that funding is available. A drought disaster livestock
4 water assistance program project located on Indian land is eligible for the program.

5 **SECTION 197. AMENDMENT.** Section 61-35-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-35-01. Definitions.**

8 As used in this chapter:

- 9 1. "Auditor" means the county auditor.
- 10 2. "Benefit unit" means the fee each member pays, for each service that is planned to be
11 connected to the water system, for the privilege of using the district's facilities.
- 12 3. "Board" means the board of directors of a district.
- 13 4. "Bond" means any revenue bond, refunding bond, or improvement bond, or other
14 evidence of indebtedness of a district issued under this chapter.
- 15 5. "Director" means a member of the board of directors.
- 16 6. "District" means a water district organized under this chapter.
- 17 7. "Federal agency" includes the United States, the president of the United States, or any
18 agency, instrumentality, or corporation of the United States which has been or may be
19 designated or created by or pursuant to any act or acts or joint resolutions of the
20 Congress of the United States or which may be owned or controlled, directly or
21 indirectly, by the United States.
- 22 8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the
23 registered owner of any outstanding revenue bond, improvement bond, or refunding
24 bonds.
- 25 9. "Law" means any statute of this state.
- 26 10. "Member" means an owner of real property that is located within a district, the tenant
27 of the real property, or another person acting for the owner with the owner's written
28 consent.
- 29 11. "Participating member" means a member who has subscribed to and paid the
30 established fee for at least one benefit unit in a district, in the manner provided by this
31 chapter.

- 1 12. "Project" means any work, undertaking, enterprise, or any combination of two or more
2 projects which a district is authorized to construct and from which the district has
3 derived or may derive revenues. "Project" includes all improvements, betterments,
4 extensions, and replacements of work, undertaking, or enterprises, and all
5 appurtenances, facilities, easements, lands, rights in land, water rights, contract rights,
6 approaches, dams, reservoirs, generating stations, sewage disposal plants,
7 intercepting sewers, trunk connections, other sewer and water mains, filtration works,
8 pumping stations, equipment, franchises, and structures in connection with or
9 incidental to any work, undertaking, or enterprise a district is authorized to construct.
- 10 13. "Refinancing" means funding, refunding, paying, or discharging, by means of
11 refunding bonds or the proceeds from the sale of refunding bonds, all or any part of
12 any notes, bonds, or other obligations issued to finance or to aid in financing the
13 acquisition, construction, or improvement of a project and payable solely from all or
14 any part of the revenue or interest on the revenue of the project in arrears or about to
15 become due whether or not such interest is represented by interest certificates.
- 16 14. "Refunding bonds" means notes, bonds, certificates, or other obligations of a district
17 issued under this chapter, the proceeds of which are to be used to pay the principal of
18 or interest on any outstanding bonds or other obligations.
- 19 15. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by a
20 district in connection with, and all other income and receipts of whatever kind or
21 character derived by a district from, the operation of any project.
- 22 16. ~~"State engineer" has the same meaning as provided in chapter 61-03.~~
- 23 47. "Warrant" means an order drawn by the proper official of a district on its treasury, the
24 warrant of order to be so drawn that when signed by the district treasurer in an
25 appropriate place it becomes a check on the depository of such district, and a warrant
26 upon the treasury may not be delivered or mailed to the payee or the payee's agent or
27 representative until the warrant has been signed by the district treasurer and entered
28 on the district's books as a check drawn on a bank depository.

29 **SECTION 198. AMENDMENT.** Section 61-35-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-35-02. Petition.**

2 A petition may at any time be filed with the ~~state engineer~~department of water resources
3 requesting the ~~state engineer~~department to organize a district encompassing an area in one
4 county or in two or more adjacent counties for the purpose of providing an adequate supply of
5 water for the residents of the area. An area to be included in a district may not include property
6 then included in any other district or included in the service area of a nonprofit corporation or
7 cooperative association established under title 10 to operate a rural water system, except as
8 otherwise permitted under section 61-35-25.

9 **SECTION 199. AMENDMENT.** Section 61-35-02.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-35-02.1. Conversion of water resource district water supply system to water**
12 **district.**

13 A water resource district that has developed a water supply system under chapter 61-16.1
14 may convert that system to a water district as provided in this section. The water resource
15 district board operating a water supply system may petition the ~~state engineer~~department of
16 water resources to organize a district in the manner provided by section 61-35-02. The
17 signatures of the water resource district's board of directors on the petition and a resolution
18 adopted by the water supply system's users approving the petition suffice in lieu of signatures of
19 owners of fifty percent of the real property in the proposed district, if the petition presenter
20 provides evidence satisfactory to the ~~state engineer~~department that a sufficient number of
21 members of the proposed district will subscribe or have subscribed to benefit units to make its
22 operation feasible. The procedure for hearing and determination of disposition of the petition is
23 as provided by this chapter. In any district organized upon the petition of a water resource board
24 of directors, the following procedures apply:

- 25 1. After final approval of the petition by the ~~state engineer~~department of water resources,
26 the secretary of the water resource board shall file a notice with the secretary of state.
- 27 2. Upon filing of the notice, the assets and liabilities of the water supply system become
28 the assets and liabilities of the newly organized district without any further meetings,
29 voting, notice to creditors, or other actions by the members of the board.
- 30 3. The officers and board of directors of the water resource district are the officers and
31 board of the district.

1 4. The applicable laws of the state governing the water resource district board control the
2 initial size and the initial terms of office of officers and the board, in lieu of sections
3 61-35-08 through 61-35-11.

4 5. The district shall bring its operation and structure into compliance with the
5 requirements of section 61-35-08 regarding the number and qualification of directors,
6 section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its
7 directors into classes, and section 61-35-11 regarding board meetings at the first
8 annual meeting of the participating members and board. The new district has all the
9 rights and all the property of the original water supply system and is responsible for all
10 its obligations. Title to any property is vested in the new district with no reversion or
11 impairment of ownership rights caused by the conversion to a district. A water supply
12 agreement entered by a water resource district is binding for its term on a successor
13 district organized by the water resource district, unless otherwise agreed in writing by
14 all parties to the agreement. The right of any creditor may not be impaired by this
15 section without the creditor's consent.

16 **SECTION 200. AMENDMENT.** Section 61-35-04 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-35-04. Hearing after filing.**

19 When a petition for the organization of a district is filed with the ~~state engineer~~department of
20 water resources, the ~~state engineer~~department shall fix a time for a hearing on the petition not
21 less than fifteen nor more than forty-five days after the filing of the petition. The ~~state-~~
22 ~~engineer~~department shall prepare a notice as required by section 61-35-05. At least seven days
23 before the date fixed for the hearing on the petition, the notice must be published in the official
24 county newspapers in the counties included within the district. The applicant shall pay all costs
25 of the publication notice.

26 **SECTION 201. AMENDMENT.** Section 61-35-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-35-05. Contents of notice.**

29 The notice prepared by the ~~state engineer~~department of water resources must set forth:

30 1. The location of the area designated by the petitioners to be included in the proposed
31 district, as described or shown by the original petition.

1 2. The time and place fixed by the ~~state-engineer~~department of water resources for the
2 hearing on the petition.

3 3. That all owners or tenants of real property or other interested persons within the
4 boundaries described may appear and be heard.

5 4. That the proposed district, if organized, has no power or authority to levy any taxes.

6 **SECTION 202. AMENDMENT.** Section 61-35-07 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-35-07. Findings - Order.**

9 After the hearing, the ~~state-engineer~~department of water resources may strike off any part
10 of the territory that testimony shows will not be benefited by the creation of the district. If the
11 ~~state-engineer~~department does not find that the district is reasonably necessary, the ~~state-~~
12 ~~engineer~~department shall dismiss the petition. If the ~~state-engineer~~department finds ~~that~~the
13 required notice of the hearing has been given and ~~that~~ the proposed district is reasonably
14 necessary for the public health, convenience, and comfort of the residents, the ~~state-~~
15 ~~engineer~~department shall make an order establishing the district as a political subdivision,
16 designating its boundary, and identifying it by name or number. The order ~~shall~~must be
17 published in the same newspaper or newspapers that published the notice of hearing. The
18 applicant shall pay all costs of the publication of the order. The ~~state-engineer~~department shall
19 prepare and preserve a complete record of the hearing on the petition and the ~~state-~~
20 ~~engineer's~~department's findings and action.

21 **SECTION 203. AMENDMENT.** Section 61-35-08 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-35-08. Meeting of members - Election of board.**

24 As a part of the order organizing the district, the ~~state-engineer~~department of water
25 resources shall fix the time and place at which the members shall meet to select from their
26 number a board of directors. Selection of the initial board may not be later than thirty days after
27 the order is issued. The number of directors on the board, not to exceed nine, must be
28 determined by a majority vote of those members present. Any member elected a director who
29 fails to become a participating member, within thirty days after entry in the minutes of the board
30 of a declaration of availability of benefit units for subscription, forfeits the office of director.

1 **SECTION 204. AMENDMENT.** Section 61-35-16 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-35-16. Plans and specifications.**

4 As soon as reasonably possible after organizing a district, the board shall file with the ~~state-~~
5 ~~engineer~~department of water resources copies of the plans and specifications for, and
6 estimates of the cost of, any improvements authorized by this chapter which the board
7 proposes to construct or acquire. The board shall determine a reasonable fee that each
8 member shall pay for the privilege of utilizing the district's facilities, which shall be known as a
9 benefit unit. By publication in the official county newspaper of each county in which all or part of
10 the district is located, the board shall ~~generally~~ describe generally the planned improvements,
11 the area to be served, and the fee members will be required to pay for each service connected
12 to the water system.

13 **SECTION 205. AMENDMENT.** Section 61-35-18 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-35-18. Inclusion of property in district - Inclusion of municipality - Merger.**

- 16 1. Owners of real property outside any district which can ~~economically~~ be served
17 economically by the facilities of the district may petition to be attached to the district.
18 The petition must be filed with the ~~state-engineer~~department of water resources, and
19 the ~~state-engineer~~department shall proceed in substantially the same manner as is-
20 provided by this chapter for filing of and proceeding on a petition for organization of a
21 district.
- 22 2. All or part of an incorporated city may be included in the boundaries of any existing
23 district or a district being newly organized, provided the governing body of the city by
24 resolution or ordinance gives its consent.
- 25 3. Boards of two or more districts by concurrent action and by approval of the ~~state-~~
26 ~~engineer~~department of water resources may merge their districts into one. In case of
27 merger, the members of the boards of the merged districts may serve until the next
28 annual meeting at which time the district shall comply with the requirements of section
29 61-35-08 regarding the number and eligibility of directors, adopt new bylaws, and set
30 the terms of the new board according to section 61-35-10. The resulting district shall
31 take over all the assets and legal liabilities of the districts joining in the merger.

1 Obligations of any district secured by the revenue of the systems operated by the
2 district must continue to be required, or a sinking fund must be established for that
3 purpose created from revenue from the system operated over the same area by the
4 resulting district in accordance with the laws under which the obligations were issued,
5 until all obligations of the old district have been retired.

6 4. If there is a conflict between two or more districts concerning which district will serve
7 an area, the ~~state engineer~~department of water resources, after a public hearing, shall
8 determine which district can provide services more adequately and economically
9 ~~provide service~~ within the area.

10 **SECTION 206. AMENDMENT.** Section 61-35-20 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-35-20. Exclusion of real property from district.**

13 If it becomes apparent that any real property included within a district but contiguous to a
14 border cannot economically or adequately be served by the facilities of the district, the owners
15 of the real property or the board may file with the ~~state engineer~~department of water resources
16 a petition ~~to the state engineer~~ requesting that the real property be excluded from the district.

17 The petition must:

- 18 1. Describe by full and partial section and by township and range, or by lot number and
19 subdivision, ~~as the case may be, the real property that it is proposed~~the petitioner
20 proposes to exclude from the district.
- 21 2. State that the real property cannot be served economically or adequately ~~be served~~ by
22 the facilities of the district, and that it is not feasible for the district to enlarge or extend
23 its facilities to serve economically and adequately ~~serve~~ the real property.
- 24 3. Be signed by the owners of all the real property ~~that it is desired to exclude~~proposed
25 to be excluded from the district or by all of the board.

26 **SECTION 207. AMENDMENT.** Section 61-35-21 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-35-21. Inactive district dissolved.**

29 A petition may be filed with the ~~state engineer~~department of water resources requesting the
30 ~~state engineer~~department to dissolve an inactive district. The petition must:

- 1 1. List all real and personal property of any kind exclusive of records, maps, plans, and
- 2 files and state ~~that~~ all of its debts and obligations have been fully paid fully.
- 3 2. State ~~that~~ the district is not functioning and probably will ~~probably~~ continue to be
- 4 inoperative.
- 5 3. Be signed by three-fourths of the members of the district.

6 **SECTION 208. AMENDMENT.** Section 61-35-22 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-35-22. Hearing.**

- 9 1. Upon the filing with the ~~state engineer~~department of water resources of a petition
- 10 under section 61-35-20 or 61-35-21, the ~~state engineer~~department shall fix a time for
- 11 consideration of the petition. The ~~state engineer~~department may hold a hearing on the
- 12 petition. After consideration of the petition, and after the hearing if one is held, the
- 13 ~~state engineer~~department shall ascertain whether:
 - 14 1. a. The petition meets all of the requirements prescribed by section 61-35-20 or
 - 15 61-35-21.
 - 16 2. b. It appears from all information available to the ~~state engineer~~department that
 - 17 each allegation included in the petition is factual.
 - 18 2. If the ~~state engineer's~~department's finding on each of the foregoing points is positive,
 - 19 the ~~state engineer~~department shall declare the real property described in the petition
 - 20 detached from the district or declare the district dissolved, ~~as the case may be~~. The
 - 21 ~~state engineer~~department shall notify the secretary of the district of the ~~state-~~
 - 22 ~~engineer's~~department's action, and the secretary shall amend the records of the
 - 23 district to show ~~that~~ the real property described in the petition has been detached from
 - 24 the district. Within thirty days, the secretary shall deliver to the ~~state-~~
 - 25 ~~engineer~~department all records, maps, plans, and files of the dissolved district.

26 **SECTION 209. AMENDMENT.** Section 61-35-23 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-35-23. Disposition of assets.**

29 If a district is dissolved, the ~~state engineer~~department of water resources shall provide for
30 the disposition of any property owned by the district and for the apportionment of the proceeds
31 and any other moneys belonging to the district to an adjoining district. If there is no adjoining

1 district, the ~~state engineer~~department shall apportion and dispose of the property and proceeds
2 to the general fund of each county in the district in proportion to the county's area in the district.
3 Any pledge or lien given with respect to any outstanding bonds of the district remains and any
4 property so encumbered must be handled in conformity with the bond resolution or trust
5 indenture. Money, property, or the proceeds from property may not be distributed to any private
6 interests.

7 **SECTION 210. AMENDMENT.** Section 61-35-25 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-35-25. Alternate operation by nonprofit corporation or cooperative.**

10 A nonprofit corporation or cooperative association established under title 10 for the specific
11 purpose of operating a rural water system may petition the ~~state engineer~~department of water
12 resources to organize a district, in the manner provided by section 61-35-02. The signatures of
13 the corporation's or cooperative's officers on the petition and a resolution adopted by the
14 members in the manner provided in section 10-15-37 for amendments to articles or in the
15 manner provided in chapter 10-33 for dissolution, ~~as the case may be~~, approving the petition
16 suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district,
17 if the petition presenter provides evidence satisfactory to the ~~state engineer~~department that a
18 sufficient number of members of the proposed district will subscribe or have subscribed to
19 benefit units to make its operation feasible. The procedure for hearing and determination of
20 disposition of the petition is as provided by this chapter. In any district organized upon the
21 petition of a nonprofit corporation or cooperative association, the following procedures apply:

- 22 1. After final approval of the petition by the ~~state engineer~~department, the secretary of
23 the corporation or cooperative shall file a notice with the secretary of state or attorney
24 general, if applicable, in accordance with title 10.
- 25 2. Upon filing of the notice, the nonprofit corporation or cooperative ceases to exist as a
26 title 10 entity and all assets and liabilities of the nonprofit corporation or cooperative
27 become the assets and liabilities of the newly organized district without any further
28 meetings, voting, notice to creditors, or other actions by the members of the board.
- 29 3. The officers and board of directors of the corporation or cooperative are the officers
30 and board of the district.

1 4. The applicable laws of the state and the articles of incorporation and bylaws of the
2 corporation or cooperative control the initial size and initial term of office of officers and
3 the board, in lieu of sections 61-35-08 through 61-35-11.

4 5. The district shall bring its operation and structure into compliance with the
5 requirements of section 61-35-08 regarding the number and qualification of directors,
6 section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its
7 directors into classes, and section 61-35-11 regarding board meetings at the first
8 annual meeting of the participating members and board. The new district has all the
9 rights and all the property of the original corporation or cooperative and is responsible
10 for all its obligations. Title to any property is vested in the new district with no reversion
11 or impairment of ownership rights caused by the conversion to a district. A water
12 supply agreement entered by a nonprofit corporation or cooperative association is
13 binding for its term on a successor district organized by the nonprofit corporation or
14 cooperative association, unless otherwise agreed in writing by all parties to the
15 agreement. The right of any creditor may not be impaired by this section without the
16 creditor's consent.

17 **SECTION 211. AMENDMENT.** Section 61-35-63 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-35-63. Appeal to ~~state engineer~~department of water resources.**

20 Within ten days after the hearing under section 61-35-62, affected landowners and any
21 political subdivision subject to assessment, having not less than twenty-five percent of the
22 possible votes as determined under section 61-35-60, who believe that the assessment has not
23 been fairly or equitably made, or that the project is not properly located or designed, may
24 appeal to the ~~state engineer~~department of water resources by petition, to review the
25 assessments and examine the location and design of the proposed project. Upon receipt of a
26 petition, the ~~state engineer~~department shall examine the lands assessed and the location and
27 design of the proposed project, and if it appears that the assessments have not been made
28 equitably, the ~~state engineer~~department may ~~proceed to~~ correct the assessments, and the ~~state~~
29 ~~engineer's~~department's correction and adjustment of assessments is final. If it appears to the
30 ~~state engineer that~~department the project has been ~~improperly~~ located or designed improperly,
31 the ~~state engineer~~department may order a relocation and redesign, which must be followed in

1 the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the
2 board for the payment of the costs of the ~~state engineer~~department in the matter, any
3 landowner or political subdivision claiming to receive no benefit from the project may appeal to
4 the ~~state engineer~~department the question of whether there is any benefit. The appeal must be
5 filed with the ~~state engineer~~department within ten days after the hearing on assessments in
6 section 61-35-62. The ~~state engineer~~department may not determine the specific amount of
7 benefit upon an appeal by an individual landowner or political subdivision ~~and but~~ may
8 determine only if there is any benefit to the landowner or political subdivision. The determination
9 of the ~~state engineer~~department upon the appeal is final.

10 **SECTION 212. AMENDMENT.** Section 61-38-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-38-01. Definitions. (Contingent effective date - [See note](#))**

13 The ~~state engineer~~department of water resources shall adopt definitions that are consistent
14 with federal law for, among other words: "dredged material", "fill material", "general permit",
15 "person", "waters of the state", and "wetlands".

16 **SECTION 213. AMENDMENT.** Section 61-38-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-38-02. Powers. (Contingent effective date - [See note](#))**

19 The ~~state engineer~~department of water resources has the following powers:

- 20 1. To exercise general supervision of the administration and enforcement of this chapter
21 and all rules and orders adopted pursuant to this chapter.
- 22 2. To advise, consult, and cooperate with other agencies of the state, the federal
23 government, and other states and interstate agencies, and with affected groups,
24 political subdivisions, and industries in furtherance of the purposes of this chapter.
- 25 3. To accept and administer loans and grants from the federal government and from
26 other sources, public or private, for carrying out any of its functions, ~~which.~~ The loans
27 and grants may not be expended for other than the purposes other than those for
28 which the loans and grants were provided.
- 29 4. To enter upon or through a permittee's premises where dredged or fill material is
30 discharged, after written notice to the permittee. ~~Such power may be exercised by~~
31 ~~authorized agents, representatives, and employees of the state engineer.~~

- 1 5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
- 2 6. To make rules governing the application, issuance, denial, modification, or revocation
- 3 of permits for the discharge of dredged or fill material into waters of the state and for
- 4 the administration of this chapter.
- 5 7. To hold any hearings necessary for the administration of this chapter.
- 6 8. To initiate actions in court for the enforcement of this chapter, including actions to
- 7 enjoin any threatened or continuing violation of any requirement.
- 8 9. To issue administrative orders to restrain any person from engaging in any
- 9 unauthorized activity.
- 10 10. To take all action necessary or appropriate to secure to the state the benefits of
- 11 section 404 of the Clean Water Act [33 U.S.C. 1344].

12 **SECTION 214. AMENDMENT.** Section 61-38-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-38-03. Permits - Certification from state department of health required.**
15 **(Contingent effective date - [See note](#))**

16 The ~~state engineer~~department of water resources may not issue a permit under this chapter
17 without a certification from the state department of health that the permitted activity will not
18 adversely affect water quality.

19 **SECTION 215. AMENDMENT.** Section 61-38-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-38-04. Specification of disposal sites. (Contingent effective date - [See note](#))**

22 The ~~state engineer~~department of water resources shall specify a disposal site for each
23 permit issued. Each disposal site must be specified for each permit through application of rules
24 adopted by the ~~state engineer~~department. The rules must be consistent with federal law. The
25 ~~state engineer~~department may prohibit the specification of any defined area as a disposal site,
26 withdraw any defined area from specification as a disposal site, or deny or restrict the use of
27 any defined area for specification as a disposal site ~~whenever the state engineer~~when the
28 department determines, after notice and opportunity for public hearing, ~~that the discharge of~~
29 dredged or fill materials will have an unacceptable adverse effect on municipal water supplies,
30 shellfish beds and fishery areas, wildlife, or recreational areas.

1 **SECTION 216. AMENDMENT.** Section 61-38-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-38-05. Discharge of dredged or fill material - Permit required - Exceptions.**
4 **(Contingent effective date - [See note](#))**

- 5 1. Except as otherwise provided by this chapter, no person may discharge dredged or fill
6 material into waters of the state unless that person has a permit from the ~~state-~~
7 ~~engineer~~department of water resources. No person may discharge dredged or fill
8 material in violation of a permit. A permit is not required for:
- 9 a. The discharge of dredged or fill material when an activity is authorized by a
10 general permit issued pursuant to section 61-38-06;
 - 11 b. Normal farming, silviculture, and ranching activities such as plowing, seeding,
12 cultivating, minor drainage, harvesting for the production of food, fiber, and forest
13 products, or upland soil and water conservation practices;
 - 14 c. Maintenance, including emergency reconstruction of recently damaged parts, of
15 currently serviceable structures such as dikes, dams, levies, groins, riprap,
16 breakwaters, causeways, bridge abutments or approaches, and transportation
17 structures, which does not change the character, scope, or size of the original fill
18 design;
 - 19 d. Construction or maintenance of farm or stock ponds or irrigation ditches or the
20 maintenance of drainage ditches;
 - 21 e. Construction of temporary sedimentation basins on a construction site ~~which~~that
22 does not include placement of fill material into waters of the state;
 - 23 f. Construction or maintenance of farm roads or forest roads, or temporary roads
24 for moving mining equipment, where ~~such~~the roads are constructed and
25 maintained, in accordance with best management practices, to assure ~~that~~ flow
26 and circulation patterns and chemical and biological characteristics of the waters
27 of the state are not impaired, ~~that~~ the reach of the waters of the state is not
28 reduced, and ~~that~~ any adverse effect on the aquatic environment will be
29 otherwise minimized; or
 - 30 g. The placement of fill material associated with activities ~~which~~ the state regulates
31 by requiring best management practices under chapter 61-28.

- 1 2. Any discharge of dredged or fill material into waters of the state incidental to any of the
2 activities identified in subdivisions a through g of subsection 1 must have a permit if it
3 is part of an activity ~~whose purpose is to convert~~with the purpose of converting an area
4 of waters of the state into a use to which it was not previously subject, where the flow
5 or circulation of waters of the state may be impaired or the reach of such waters
6 reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge
7 will result in significant discernible alterations to flow or circulation, the presumption is
8 that flow or circulation may be impaired by ~~such~~the alteration.

9 **SECTION 217. AMENDMENT.** Section 61-38-06 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-38-06. General permits. (Contingent effective date - [See note](#))**

- 12 1. In carrying out the functions relating to the discharge of dredged or fill material, the
13 ~~state engineer may~~department of water resources, after notice and opportunity for
14 public hearing, may issue general permits on a state or regional basis for any category
15 of activities involving discharges of dredged or fill material if the ~~state-~~
16 ~~engineer~~department determines that the activities in the category are similar in nature,
17 will cause only minimal adverse environmental effects when performed separately,
18 and will have only minimal accumulative adverse effects on the environment. Any
19 general permit issued under this section must set forth the requirements and
20 standards ~~which apply~~applicable to any activity authorized by the general permit.
21 General permits must be issued pursuant to rules adopted by the ~~state-~~
22 ~~engineer~~department which are consistent with federal law.
- 23 2. A general permit may be revoked or modified by the ~~state engineer if~~department of
24 water resources, after opportunity for public hearing, ~~the state engineer if the~~
25 department determines that the activities authorized by the general permit have an
26 adverse impact on the environment or ~~such activities are~~ authorized more
27 appropriately ~~authorized~~ by individual permits.
- 28 3. The ~~state engineer~~department of water resources may require an individual permit for
29 any proposed activity under a general permit where the nature or location of the
30 activity makes an individual permit more appropriate.

1 **SECTION 218. AMENDMENT.** Section 61-38-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-38-07. Emergency permits. (Contingent effective date - [See note](#))**

4 The ~~state engineer~~department of water resources may issue a temporary emergency permit
5 for the discharge of dredged or fill material if unacceptable harm to life or severe loss of
6 physical property is likely to occur before a permit could be issued or modified under
7 procedures normally required.

8 **SECTION 219. AMENDMENT.** Section 61-38-08 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-38-08. Permit application - Notice - Hearing. (Contingent effective date - [See note](#))**

11 Any person desiring to discharge dredged or fill material for which a permit is required shall
12 file an application with the ~~state engineer~~department of water resources. The application must
13 be on a form prescribed by the ~~state engineer~~department and must include information required
14 by the ~~state engineer~~department. The ~~state engineer~~department may issue a permit after notice
15 and opportunity for public hearing. Within fifteen days of receipt of all the information required to
16 complete an application for a permit, the ~~state engineer~~department shall publish the notice.

17 **SECTION 220. AMENDMENT.** Section 61-38-09 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-38-09. Proceedings. (Contingent effective date - [See note](#))**

- 20 1. Any proceeding to determine compliance with or violation of the provisions of this
21 chapter or any rule, order, or condition in a permit issued pursuant to this chapter by
22 the ~~state engineer~~department of water resources must be conducted in accordance
23 with chapter 28-32.
- 24 2. Any person claiming to be aggrieved or adversely affected by actions taken or by any
25 rule or order issued pursuant to this chapter may request a hearing by the ~~state-~~
26 ~~engineer~~department of water resources if no hearing on the matter resulting in the
27 action has been held. If a hearing has been held, the person claiming to be aggrieved
28 or adversely affected may petition for reconsideration and may appeal in accordance
29 with chapter 28-32.

30 **SECTION 221. AMENDMENT.** Section 61-38-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **61-38-10. Penalties. (Contingent effective date - [See note](#))**

2 The ~~state engineer~~department of water resources may assess or sue to recover civil
3 penalties and seek criminal remedies as provided in this section.

4 1. The ~~state engineer~~department may assess or recover civil penalties for discharges of
5 dredged or fill material without a required permit or in violation of any permit condition
6 of up to five thousand dollars per day of such violation.

7 2. The ~~state engineer~~department may seek criminal fines against any person who
8 willfully or with criminal negligence discharges dredged or fill material without a
9 required permit or violates any permit condition issued under this chapter of up to ten
10 thousand dollars per day of such ~~the~~ violation.

11 3. The ~~state engineer~~department of water resources may seek criminal fines against any
12 person who knowingly makes a false statement, representation, or certification in any
13 application, record, report, plan, or other document filed or required to be maintained
14 under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers
15 with, or knowingly renders inaccurate any monitoring device or method required to be
16 maintained under the permit of up to five thousand dollars for each instance of
17 violation.

18 **SECTION 222. AMENDMENT.** Section 61-38-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-38-11. Restoration. (Contingent effective date - [See note](#))**

21 In lieu of or in addition to the penalties authorized under section 61-38-10, the ~~state-~~
22 ~~engineer~~department of water resources may require restoration of areas in which dredged or fill
23 material has been illegally discharged illegally. If the ~~state engineer~~department determines that
24 any person has discharged dredged or fill material without a permit or in violation of any permit
25 condition, the ~~state engineer~~department shall notify the person by registered or certified mail.
26 The notice must specify the nature and extent of noncompliance and state that the area in
27 which the dredged or fill material is located must be restored to the satisfaction of the ~~state-~~
28 ~~engineer~~department within thirty days of receipt of the notice. If the area is not restored as
29 required, the ~~state engineer~~department shall cause the restoration of the area and assess the
30 cost of the restoration against the person ~~or persons~~ responsible for the illegal discharge.

1 **SECTION 223. AMENDMENT.** Section 61-39-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-39-01. Findings and declaration of policy.**

4 The legislative assembly declares ~~that~~ many areas and localities in eastern and central
5 North Dakota do not enjoy adequate quantities of high-quality drinking water; ~~that~~ other areas
6 and localities in eastern and central North Dakota do not have sufficient quantities of water to
7 ensure a dependable, long-term supply; ~~that~~ greater economic security and the protection of
8 health and property benefits the land and water resources of this state; and ~~that~~ the promotion
9 of the prosperity and general welfare of all of the people of this state depend on the effective
10 development and utilization of the land and water resources of this state and ~~necessitates and~~
11 requires the exercise of the sovereign powers of this state and concern a public purpose. To
12 accomplish this public purpose, ~~it is declared necessary that~~ a water authority is needed to
13 store and distribute water to eastern and central North Dakota ~~be established~~ to provide for the
14 supply and distribution of water to the people of eastern and central North Dakota for purposes,
15 including domestic, rural water, municipal, livestock, industrial, and other uses, with primary
16 emphasis on domestic, rural water, and municipal uses; and provide for the future economic
17 welfare and prosperity of the people of this state, and particularly the people of eastern and
18 central North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy
19 District delivered by the Red River valley water supply project for beneficial and public uses.
20 The Garrison Diversion Conservancy District may acquire, construct, and improve, ~~and own~~ the
21 Red River valley water supply project and may enter water supply contracts with member cities
22 and water districts for the sale of water for consumption within or outside the district or the state,
23 including with Canada. Alternatively, the Lake Agassiz water authority may enter one or more
24 contracts to provide for the authority to acquire bulk water from the Garrison Diversion
25 Conservancy District and may enter water supply contracts with member cities and water
26 districts for the resale of this water for consumption within or outside the state.

27 The legislative assembly acknowledges ~~that~~ North Dakota and Minnesota communities
28 jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota
29 also to study and possibly provide for the water needs of those Minnesota communities through
30 a Red River valley water supply project, particularly if that project maintains the use of the Red
31 River for North Dakota communities.

1 In furtherance of this public purpose, the state water commission may provide for the
2 issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to
3 deliver water to eastern and central North Dakota or utilize other financing as addressed in this
4 chapter. This chapter does not abrogate or limit the rights, powers, duties, and functions of the
5 state water commission or ~~state engineer~~department of water resources, but is supplementary
6 to those rights, powers, duties, and functions.

7 **SECTION 224. AMENDMENT.** Section 61-40-07 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-40-07. Easement granted for pipelines and appurtenant facilities on any public**
10 **lands.**

11 In connection with the construction and development of the project, there is granted over all
12 the lands belonging to the state, including lands owned or acquired for highway right-of-way
13 purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities
14 constructed as part of the project. However, ~~the director of the department of transportation and~~
15 ~~the state engineer must approve~~ the plans of the authority with respect to the use of right of way
16 of roads must be approved by the director of the department of transportation and the director
17 of the department of water resources before the grant becomes effective.

18 **SECTION 225. REPEAL.** Sections 61-03-01, 61-03-02, and 61-03-05.1 of the North Dakota
19 Century Code are repealed.