

# TITLE 61 WATERS

## CHAPTER 61-01 GENERAL PROVISIONS

**61-01-01. Waters of the state - Public waters.** All waters within the limits of the state from the following sources of water supply belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use must be acquired pursuant to chapter 61-04:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes;
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water;
3. All residual waters resulting from beneficial use, and all waters artificially drained; and
4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.

**61-01-01.1. Reciprocal rights of riparian owners.** Repealed by S.L. 1977, ch. 569, § 27.

**61-01-01.2. Findings and declaration of policy - Use of ground water for irrigation.** The legislative assembly finds that the use of ground water for irrigation purposes is vitally important to the economic future of this state. The reliance on processing plants for the consistent quality resulting from irrigation is an important factor in preserving this state's reputation for quality agricultural production. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission strongly discourages the conversion of agricultural water permits to any other use. Further, the legislative assembly declares that any feasible or reasonable alternative supply of water be made available for municipal or domestic use to enable the continued use of ground water for irrigated agriculture and agricultural processing.

**61-01-02. Right to use water - Basis - Waters appropriated for irrigation purposes - Priority in time.** Repealed by S.L. 1977, ch. 569, § 27.

**61-01-03. Claims to the use of water initiated prior to and after March 1, 1905.** In all cases of claims to the use of water initiated prior to March 1, 1905, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. All claims to the use of water initiated after March 1, 1905, shall relate back to the date of receipt of an application therefor in the office of the state engineer, subject to compliance with the applicable provisions of law, and the rules and regulations established thereunder.

**61-01-04. Eminent domain - Who may exercise.** The United States, or any person, corporation, limited liability company, or association may exercise the right of eminent domain to acquire for a public use any property or rights existing when found necessary for the application of water to beneficial uses, including the right to enlarge existing structures and use the same in

common with the former owner. Any canal right of way so acquired shall be located so as to do the least damage to private or public property, consistent with proper and economical engineering construction. Such property or rights may be acquired in the manner provided in chapter 32-15 and the North Dakota Rules of Civil Procedure.

**61-01-05. Reclaiming waters turned into natural or artificial watercourse.** Water turned into any natural or artificial watercourse by any party entitled to the use of such water may be reclaimed below and diverted therefrom by such party, subject to existing rights, due allowance for losses being made, as determined by the state engineer.

**61-01-06. Watercourse - Definition.** A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the state engineer shall determine if a watercourse is constituted.

**61-01-07. Obstruction of watercourses - Penalty.** If any person illegally obstructs any ditch, drain, or watercourse, or diverts the water therein from its natural or artificial course, the person is liable to the party suffering injury from the obstruction or diversion for the full amount of the damage done, and, in addition, is guilty of a class B misdemeanor.

**61-01-08. Obstructing navigation - Penalty.** Every person who in any manner obstructs the free navigation of any navigable watercourse within this state is guilty of a misdemeanor.

**61-01-09. Destruction of dams - Penalty.** Every person who willfully destroys or tampers with any dam or structure erected to retain water or any embankment necessary for the support thereof, or who willfully makes or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a class A misdemeanor.

**61-01-10. Interference with piers or booms - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**61-01-11. Removing or injuring piles - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**61-01-12. Fouling waters with gas tar or other refuse - Penalty.** Repealed by S.L. 1975, ch. 106, § 673; 1975, ch. 568, § 1.

**61-01-13. Fouling public waters with dead animals or other refuse - Penalty.** Repealed by S.L. 1975, ch. 106, § 673; 1975, ch. 568, § 1.

**61-01-14. Fouling public water - What included.** Repealed by S.L. 1975, ch. 568, § 1.

**61-01-15. Riparian owners of land lying adjacent to nonnavigable streams.** Repealed by S.L. 1959, ch. 408, § 2.

**61-01-16. Erection of guards when cutting ice - Penalty for failure to do so.** All persons cutting ice in or upon any waters within the boundaries of this state, for the purpose of removing such ice for sale or commercial use, shall surround the cuttings and openings made with fences or bushes or other guards sufficient to warn all persons of such cuttings and openings, and shall maintain the same until ice has formed again in such openings to a thickness of at least six inches [15.24 centimeters]. Any person violating this section may be prosecuted under section 12.1-17-03.

**61-01-17. Lawful to boom logs in navigable rivers.** Any person, having logs or lumber in any stream navigable for watercraft in this state, may boom such logs or lumber along the shore, and shall secure the boom by means of piles driven in the stream, or by chains, ropes,

timber, or traverse poles made fast at points along the shore. There shall be sufficient channel left clear at all times for the free passage of any craft usually navigating such stream.

**61-01-18. State or municipalities may join water users' associations - Fee for recording articles by recorder.** Repealed by S.L. 1975, ch. 106, § 673.

**61-01-19. Right of way granted.** A right of way is granted to any duly incorporated water users' association by and with the consent of the board of university and school lands, to construct over and across any state, school, and institution lands, flumes, ditches, and canals for irrigation purposes and to construct on such lands reservoirs for the storage of water for irrigation purposes.

**61-01-20. When special assessments shall become a lien.** As between vendor and vendee, all special assessments upon real property levied pursuant to the provisions of this title shall become and be a lien upon the real property upon which the same are assessed, from and after the first day of January next after such assessments shall have been certified and returned to the county auditor, to the amount so certified and returned, and no more.

**61-01-21. Foreclosure of property when only special assessment is delinquent.** If there are no delinquent general taxes against any parcel of real estate and it is foreclosed for special assessments under this title, the notice of foreclosure of tax lien shall contain a statement to the effect that the foreclosure is for special assessments. If the foreclosure is made only for special assessments levied by a municipality or by a taxing district other than the county, the county auditor shall issue a tax deed to the municipality or taxing district which levied such special assessments in the usual course of procedure.

**61-01-22. Permit to drain waters required - Penalty.** Repealed by S.L. 1981, ch. 632, § 11.

**61-01-23. Investigation or removal of obstructions in channel.** In order to investigate or remove obstructions from the channel or bed of any watercourse and thus prevent ice from gorging therein and to prevent flooding or pollution of such watercourse, the state water commission, any water resource district, any municipality, any board of county commissioners, and any federal agency authorized to construct works for prevention of damage by floods or for abatement of stream pollution, may enter upon lands lying adjacent to such watercourse to investigate or remove, or cause to be removed from the bed, channel, or banks of such watercourse obstructions which prevent or hinder the free flow of water or passage of ice therein. However, such entry upon adjacent lands must be by the most accessible route and the entering agency is responsible to the landowner for any damage.

**61-01-24. Mouse official name of river.** That body of water which enters the state in or adjacent to that township described as township one hundred sixty-four, north, range eighty-seven, west, in the county of Renville, and proceeds in a generally southerly course through the city of Minot, thence in a generally easterly and northerly course through the cities of Velva and Towner to a point in or adjacent to that township described as township one hundred sixty-four, north, range seventy-nine, west, in the county of Bottineau, at which point it leaves the state of North Dakota, shall be known as the "Mouse" river. Nothing herein shall be considered as invalidating any national or international agreements designating the river as the Souris.

**61-01-25. Penalty.** Any person violating any of the provisions of this chapter or any rule or regulation of the state engineer for which another penalty is not specifically provided is guilty of a class B misdemeanor.

**61-01-26. Declaration of state water resources policy.** In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety, and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depend in large measure upon the optimum protection, management, and wise utilization of all of the water and related land resources of the state.
2. Well-being of all of the people of the state shall be the overriding determinant in considering the best use, or combination of uses, of water and related land resources.
3. Storage of the maximum water supplies shall be provided wherever and whenever deemed feasible and practicable.
4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor. The plans and programs for the conservation and development of these resources may include implementation of a program to cost-share with local sponsors of water quality improvement projects.
5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities, including consideration of cost-sharing for water quality improvement projects.
6. Required assurances of state cooperation and for meeting nonfederal repayment obligations of the state in connection with federal-assisted state projects shall be provided by the appropriate state department or agency.
7. Required assurances of local cooperation and for meeting nonfederal repayment obligations of local interests in connection with federal-assisted local projects may, at the request of political subdivisions or other local interests be provided by the appropriate state department or agency, provided, if for any reason it is deemed necessary by any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision or other local interests in connection with the construction, operation, or maintenance of any such project, the state shall have and may enforce a claim against the political subdivision or other local interests for such expenditures.

The provisions of this section may not be construed in any manner to limit, impair, or abrogate the rights, powers, duties, or functions of any department or agency of the state having jurisdiction or responsibilities in the field of water and related land resources conservation, development, or utilization.

**61-01-26.1. Findings and declaration of policy - Water to eastern North Dakota a critical priority - Water supplementation study - Employment of staff.** The legislative assembly finds that many areas and localities in eastern North Dakota do not enjoy safe drinking water. It is also found that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term water supply. The legislative assembly further finds that supplementation of the water resources of eastern North Dakota from other available sources, including the Missouri River, may be the only alternative to provide eastern North Dakota with a dependable source of safe, good quality water and an adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of

this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is declared necessary that a means to supply and distribute water to the people of eastern North Dakota for all beneficial purposes must be developed. In furtherance of this public purpose, the supply and delivery of water to eastern North Dakota is established as a critical priority and the state water commission shall, in cooperation with the Garrison Diversion Conservancy District and the communities and rural water systems in eastern North Dakota, address this critical priority by developing a plan and estimate of the costs for supplementing the water resources of eastern North Dakota with water supplies from other available resources, including the Missouri River.

The state water commission may employ full-time personnel and may employ such other personnel as are necessary for the administration of this section as appropriated funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this section may be used for salaries and expenses of persons employed pursuant to this section.

**61-01-26.2. Statewide water development goals.** The legislative assembly will support to the extent funds are available from the water development trust fund the comprehensive statewide water development program developed pursuant to section 2 of chapter 587 of the 1995 Session Laws and to the state water management plan established under section 61-01-26. In order to implement the state water management plan, the legislative assembly will support the following:

1. During the 1999-2001 biennium:
  - a. Southwest pipeline project: Six million dollars in state funds and eleven million five hundred thousand dollars in federal funds, assuming Perkins County water system payment to the state water commission of four million five hundred thousand dollars.
  - b. Northwest area water supply project: Eight million two hundred thousand dollars in local funds and fourteen million eight hundred thousand dollars in federal funds, with an option being considered of the state water commission bonding the local cost-share with local repayment of the total principal, interest, and cost of issuance of the bonds to the state water commission.
  - c. Other municipal, rural, and industrial projects: Twenty-five million five hundred thousand dollars in local funds and thirty-nine million nine hundred thousand dollars in federal funds.
  - d. Grand Forks flood control: Twenty-five million dollars in local funds, twenty-five million dollars in state funds, and thirty-eight million five hundred thousand dollars in federal funds. The state total cost-share of fifty-two million dollars or so much of the total cost-share that is required may be bonded, requiring a loan repayment estimated at three million nine hundred thousand dollars per year with repayment beginning in 2001.
  - e. Devils Lake outlet to the Sheyenne River and to west Stump Lake: Seventeen million five hundred thousand dollars in state funds and thirty-two million five hundred thousand dollars in federal funds. The total state cost-share of seventeen million five hundred thousand dollars includes mitigation costs and will be bonded, requiring a local repayment estimated at one million five hundred thousand dollars per year, with the split between state and local loan repayment to be determined. Before bonds may be issued for a Devils Lake outlet, construction of the outlet must be approved by the state water commission.
2. During the 2001-03 biennium:

- a. Water to eastern North Dakota: Seventeen million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
  - b. Southwest pipeline project: Five hundred thousand dollars in local funds, one million seven hundred thousand dollars in state funds, and twelve million five hundred thousand dollars in federal funds.
  - c. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
  - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
  - e. Grand Forks flood control: Thirty-five million seven hundred thousand dollars in local funds, twenty-seven million dollars in state funds, and sixty-two million nine hundred thousand dollars in federal funds; annual bond payments of three million nine hundred thousand dollars. Components of the Grand Forks flood control project involve water treatment plant improvements. Those federal costs are reflected in subdivision d because of potential cost-sharing using Garrison diversion municipal, rural, and industrial funds. Other projects, such as greenway, are listed under subdivision g.
  - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
  - g. General projects: Thirty-one million seven hundred thousand dollars in local funds, twenty-five million nine hundred thousand dollars in state funds, and thirty-nine million eight hundred thousand dollars in federal funds.
3. During the 2003-05 biennium:
- a. Water to eastern North Dakota: Six million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
  - b. Southwest pipeline project: One million dollars in local funds, five million dollars in state funds, and eleven million four hundred thousand dollars in federal funds.
  - c. Northwest area water supply project: Eleven million eight hundred thousand dollars in local funds and twenty-one million eight hundred thousand dollars in federal funds.
  - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
  - e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
  - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.



6. During the 2009-11 biennium:
  - a. Water to eastern North Dakota: Two million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
  - b. Northwest area water supply project: One million seven hundred thousand dollars in local funds and three million three hundred thousand dollars in federal funds.
  - c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
  - d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
  - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
  - f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
7. Beyond the year 2011:
  - a. Water to eastern North Dakota: The local cost has not been determined and will be determined after project configuration is complete.
  - b. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
  - c. Other municipal, rural, and industrial projects: One hundred thirty million two hundred thousand dollars in local funds and two hundred forty-one million two hundred thousand dollars in state funds. The anticipated three hundred forty-five million dollars in federal cost-share has been used in the previous bienniums and the remaining cost-share for projects has been identified as a potential state cost-share.
  - d. Grand Forks flood control: A total of fifty-eight million five hundred thousand dollars in bond repayments is anticipated.
  - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: A total of fifteen million dollars in bond repayments.
  - f. General projects: Two hundred twenty million two hundred thousand dollars in local funds, one hundred fifty-six million four hundred thousand dollars in state funds, and thirty-four million three hundred thousand dollars in federal funds.

**61-01-27. Procedure for converting mineral wells to water wells.** In order to protect the public's health, safety, and welfare and to protect this state's ground water supplies, and except for purposes related to chapters 38-08 and 38-08.1, no well that has been drilled for the purpose of the exploration or production of oil or gas may be converted to a water well without first obtaining approval from the industrial commission. Any person who converts an exploration or production well to a water well without first obtaining approval from the industrial commission

is guilty of a class A misdemeanor and shall be required to close the well in accordance with state standards and bear all costs associated with the closure.