

## **CHAPTER 61-21.1**

### **WATER PROJECT DEVELOPMENT**

**61-21.1-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the state water commission.
2. "Cost of works" means necessary costs for designing, engineering, surveying, and construction of a water project.
3. "Landowner" means any person who holds ownership rights in real estate sufficient to have a legally protectable interest in the real estate, including a tenancy or leasehold interest.
4. "Lender" includes the Bank of North Dakota.
5. "Person" does not include any governmental entity or an urban or rural water users association.
6. "Water project" means any project for conserving, draining, and distributing water, including reservoirs, dams, diversion canals, distribution canals, channels, ditches, lateral ditches, drains, dikes, and pumping units, constructed for the purpose of irrigation, watering stock, or supplying water for domestic, agricultural, recreational, fish and wildlife use, flood control, drainage, water conservation and regulation, storage, diversion, or carrying of water.

**61-21.1-02. Industrial commission to issue bonds - Program administered by agriculture commissioner.** Bonds may be issued by the industrial commission pursuant to chapter 4-36 for the purpose of making loans to lenders and requiring the proceeds of the loans to be used by the lenders to make loans to landowners for water projects. The industrial commission, for the administration of the program established pursuant to this chapter, may delegate to the agriculture commissioner, and the agriculture commissioner is authorized to exercise, all administrative powers granted to the industrial commission pursuant to chapter 4-36.

**61-21.1-03. Contents of application - Approval by water commission.** A water project and the cost of works must be approved by the commission before a loan to finance the cost of works is eligible to be made by a lender with the proceeds of a loan from the industrial commission. An application for approval must be in writing in a form prescribed by the commission and must include:

1. The name and address of the applicant;
2. An economic analysis of the water project;
3. An engineering analysis of the water project;
4. An analysis of the water project's impact upon surrounding land and landowners;
5. Copies of all governmental permits and licenses and private rights or permissions required to complete the water project;
6. Maps, plans, and other documentation describing the water project and its location;
7. Proof of the necessary ownership rights to construct the water project; and
8. Any other information the commission may require.

**61-21.1-04. Review of applications - Conditions - Approval.** An applicant shall submit the application to the commission. The commission shall review all applications received. If the commission determines that further information is required or that the proposed water project is not meritorious or feasible, the application must be returned to the applicant. Upon return of the application, an applicant may provide the information or make necessary modifications and refile the application. An application that has been returned twice may not be resubmitted without prior approval of the commission. If no further information is required and the commission determines that the proposed water project is meritorious and feasible, the commission shall approve the application and forward it to the agriculture commissioner.

**61-21.1-05. Meritorious and feasible water project - Determination.** A water project is meritorious and feasible if it meets the following criteria:

1. The benefit of the water project must exceed all costs of the water project, or be beneficial for water conservation, fish and wildlife, and recreation use.
2. The water project must be designed, engineered, surveyed, and constructed in a safe manner using existing proven knowledge and techniques.
3. All governmental permits and rights and private rights or permissions required to complete the water project must be obtained.

**61-21.1-06. Eminent domain unaffected.** The approval or provision of financial assistance for any water project under this chapter does not change the right of any entity to exercise the power of eminent domain. The exercise of the power of eminent domain under this chapter is subject to chapter 32-15.

**61-21.1-07. Assumption of liability - Condition to obtaining funding.** The state assumes no liability and provides no guarantee that a water project that is financially assisted under this chapter will not cause damages or will operate as expected. In order to obtain any financial assistance under this chapter, a landowner shall agree in writing to indemnify and hold harmless the state, its employees, and its agents and assigns, for any liability or claim of liability arising from the establishment, construction, reconstruction, repair, maintenance, or operation of the water project.