

**SWC Water Appropriations Division Update
to the
Legislative Audit and Fiscal Review Committee
January 21, 2014**

Regarding the commission's water permit fee structure and changes to the fee structure, the recent performance audit of the Water Appropriations Division of the Office of the State Engineer's (State Engineer) water permitting processes included the following recommendation by KPMG LLP (KPMG) and the State Auditor:

Finding 5.2 The Water Appropriations Division should:

- Develop a fee structure for temporary permit applications that corresponds to the level of effort required for processing.

Administrative rules must be supported in statute. The State Engineer has been given authority to establish rules for temporary water permits in **61-04-02.1. Emergency or temporary authorization.**

... The state engineer shall establish by rule a separate procedure for the processing of applications for emergency or temporary use. ...

and N.D.C.C. 61-04-06.2 **Terms of permit.**

The state engineer may issue a permit subject to fees for water use ...

N.D.C.C. 61-04-30 and 61-03-23 allow the State Engineer to establish rules for civil penalties and fines.

Therefore, the following rules are being proposed in response to the recommendation by KPMG and the State Auditor:

PROPOSED 89-03-01-10.2 Temporary permit fees. The following filing fee must be included with a temporary water permit application. The State Engineer may waive the fee for certain emergency uses, including fire-fighting.

Volume of water requested:

Less than 1 acre-foot	\$75
1 to 10 acre-feet	\$125
more than 10 acre-feet	\$200

Filing fees are not required for requests made under N.D.A.C. **89-03-01-10.1 (Temporary water transfer for irrigation).**

PROPOSED 89-03-01-13.1 Civil fines; water use reporting. (a) Each holder of

a water permit with any portion approved for municipal, rural-water, irrigation, or industrial purposes, who fails to submit a complete and accurate annual water use report as required by NDCC 61-04-27 shall be assessed a civil penalty of \$250 per permit violation. (b) If the permit holder submits both the complete and accurate water use report and payment of the civil penalty before June 1, the civil penalty will be reduced to \$50 per permit.

Tentative timeline for rules adoption – rules to be effective date July 1, 2014.

Proposed date for hearing – **March 25, 2014**

February 18, 2013 - File notice/proposed rules with Legislative Council (*rules must be ready for publication by this date*)

Send rules/notice to interested/requesting parties.

Send notice to ND Newspaper Ass'n for publication.

20 days must elapse from the date of the last publication to date of the hearing.

March 25, 2014 - hearing

April 4, 2014 - comment period ends.

Comment period must remain open for 10 days after the hearing.

Work on finalizing the rules and acquiring Attorney General's approval.

Effective date:

Rules filed with the Legislative Council from February 16 through May 15 become effective on July 1.