



State of North Dakota

Office of the State Engineer

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MEMORANDUM

TO: Legislative Council Administrative Rules Committee

FROM:  Todd Sando, P.E., State Engineer

RE: Rules to be Published in the July 2014 Supplement to the North Dakota Administrative Code

DATE: June 11, 2014

Title 89 - Water Commission.

A brief description of the amendments that have been made by the State Engineer and an explanation regarding the matters of concern to the committee are as follows:

1. *Whether the rules resulted from statutory changes made by the Legislative Assembly.*

S.B. 2048 (2013) added language to N.D.C.C. § 57-51.1-07.1 relating to the resources trust fund stating: "The rules must consider project revenues, local cost sharing, and ability to pay. The rules may provide for repayment of a portion of funds, allocated from the resources trust fund." Although we believe the rules already generally required this information be provided for consideration, clarifying language was added to N.D. Admin. Code § 89-06-01-02(1)(f) regarding project revenues rather than just asking for general information about the benefits of the project (Attachment 1, page 2).
2. *Whether the rules are related to any federal statute or regulation.*

No.
3. *A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.*

An abbreviated notice of hearing was published once in each official county newspaper in North Dakota and a full notice of hearing was filed with the Legislative Council. Notice and the proposed rules were available on the agency's web page. Notice was also provided to members of the Legislative Management Committee, Water-Related Topics Overview Committee, and State Water Commission. A public hearing was held on March 27, 2014, in Bismarck. The comment period was open until April 7. The rules were

submitted to the Attorney General on April 8 for a legal opinion; and the Attorney General approved the rules on April 28.

4. *Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.*

No concerns, objections, or complaints were received and no comments were received at the public hearing regarding these rules; therefore, no changes were made to the rules. One comment was received after the public hearing from the North Dakota Game and Fish Department in support of the amendment to N.D.A.C. § 89-10-01-13(10).

5. *The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.*

The cost for publication of the public hearing notices was \$2,077.76.

6. *An explanation of the subject matter of the rules and the reasons for adopting those rules.*

N.D. Admin. Code Articles: 89-03 (water appropriations), 89-06 (funding from the resources trust fund), 89-07 (atmospheric resource board), 89-10 (sovereign lands), and 89-11 (drought disaster livestock water supply project assistance program). These articles are being amended mostly to clarify language, implement auditor recommendations, and resolve ambiguities that have arisen during regulatory enforcement. Attachment 1 sets out all of the changes and indicates whether the changes are housekeeping or substantive.

7. *Whether a regulatory analysis was required by North Dakota Century Code (N.D.C.C.) § 28-32-08 and whether a regulatory analysis was issued.*

A regulatory analysis was issued for N.D. Admin Code § 89-03-01-10.2 (Attachment 2).

8. *Whether a regulatory analysis or economic impact statement of impact on small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued.*

Regulatory analysis and economic impact statements on small entities were issued (Attachment 3).

9. *Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by the agency.*

N.D. Admin Code §§ 89-03-01-10.2 and 89-03-01-13.1 could have a fiscal impact (Attachment 4).

10. *Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09.*

A constitutional takings assessment was not required.

11. *If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.*

These rules were not adopted as emergency rules.

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Attachments

Section	Housekeeping	Substantive	Comments
Article 89-03 – Water Appropriations			
Chapter 89-03-01 – Water Permits			
TOC	Updating titles to reflect changes		
89-03-01-01	Language clarifications		
89-03-01-01.1	Language clarifications		
89-03-01-01.2	Language clarifications		
89-03-01-01.3	Language clarifications		
89-03-01-01.4	Language clarifications		
89-03-01-01.5	Language clarifications	Excess water may not be sold for uses other than allowed by the permit.	Limiting ability of municipalities/rural water systems to sell excess water to oil industry unless such uses were already contemplated by the permit.
89-03-01-02	Language clarifications		
89-03-01-03	Language clarifications		
89-03-01-03.1	Language clarifications		
89-03-01-03.2	Language clarifications		
89-03-01-03.3	Language clarifications		
89-03-01-04	Language clarifications	Repeal majority of subsections 2 and 3.	Repetitive of N.D.C.C. § 61-04-05.
89-03-01-05	Language clarifications	Repeal subsections 1, 2, and 4.	Repetitive of N.D.C.C. § 61-04-05.
89-03-01-06.2		Repealed.	Once a hearing is requested, governed according to N.D.C.C. ch. 28-32 and N.D. Rules of Civil Procedure.
89-03-01-06.3	Language clarifications		Distinguishing between records maintained by the state engineer and the State Water Commission.
89-03-01-07	Language clarifications		
89-03-01-08	Language clarifications		
89-03-01-09	Language clarifications		
89-03-01-10	Language clarifications		
89-03-01-10.2		Requires temporary permit applicants to pay an application fee based on volume requested. Exception for emergency uses and irrigation transfers.	Implementing audit recommendation.
89-03-01-12	Language clarifications		
89-03-01-13	Language clarifications		
89-03-01-13.1		Assesses a \$250 fine for not properly submitting yearly water use form by March 31 deadline. Reduces fine to \$50 if submitted before June 1.	Implementing audit recommendation.
89-03-01-14	Language clarifications		
Chapter 89-03-02 – Modification of a Water Permit			
TOC	Updating titles to reflect changes		
89-03-02-01	Language clarifications		
89-03-02-02	Language clarifications		
89-03-02-03	Language clarifications		
89-03-02-05	Language clarifications		
89-03-02-06	Language clarifications		
89-03-02-08	Language clarifications		

Section	Housekeeping	Substantive	Comments
89-03-02-09	Language clarifications		
89-03-02-10	Language clarifications		
89-03-02-11	Language clarifications		
89-03-02-12	Language clarifications	An increase in acreage cannot be more than 10% of the originally approved acreage.	Implementing staff practice.
Chapter 89-03-03 – Definitions			
TOC	Updating titles to reflect changes		
89-03-03-01	Language clarifications Alphabetizing Moved definitions from other sections to this section.	Added definition for “measuring device.”	Implementing audit recommendation.
89-03-03-02	Moved to § 89-03-03-01.		
89-03-03-03		Repealed.	Never used in N.D.A.C. or N.D.C.C.
89-03-03-04	Moved to § 89-03-03-01.		
89-03-03-05	Moved to § 89-03-03-01.		
Article 89-06 – Funding From the Resources Trust Fund			
Title	Shortening Chapter Title		
Chapter 89-06-01 – Funding From the Resources Trust Fund (Proposed Title)			
TOC	Updating titles to reflect changes		
89-06-01-01	Language clarifications Alphabetizing Delete “resources trust fund” definition		“Resources trust fund” already defined by N.D.C.C. § 57-51-07.1
89-06-01-02	Language clarifications	Removed requirement that applications be submitted 30 days before meeting. Revised subsection 4 to reflect actual practice.	Added clarifying language (1)(f) in response to SB 2048, which stated, “RTF - rules must consider project revenues, local cost sharing, and ability to pay. May provide for repayment of a portion of funds, allocated from the RTF.” The requirements of SB 2048 were already being met. Policy will still require applications be submitted at least 30 days before meeting, but more flexibility necessary, especially for emergency situations.
89-06-01-03		Repealed.	Combined with N.D.A.C. § 89-06-01-02 (added studies.)
Article 89-07 – Atmospheric Resource Board			
Chapter 89-07-02 – Weather Modification Operations			
TOC	Updating titles to reflect changes		
89-07-02-01	Language clarifications		
89-07-02-02	Language clarifications Alphabetizing		

Section	Housekeeping	Substantive	Comments
89-07-02-03	Language clarifications		
89-07-02-04	Language clarifications		
89-07-02-05	Language clarifications		
89-07-02-06	Language clarifications		
89-07-02-07	Language clarifications		
89-07-02-08	Language clarifications		
89-07-02-09	Language clarifications		
89-07-02-10	Language clarifications		
89-07-02-11	Language clarifications		
89-07-02-12	Language clarifications		
89-07-02-13	Language clarifications		
89-07-02-14	Language clarifications		
89-07-02-15	Language clarifications		
89-07-02-16	Language clarifications		
89-07-02-17	Language clarifications	Removed Operations Manual for Hail Decrease and Precipitation Increase as permit condition. Added requirements that permittee must submit for permit.	Clarified the information required in an operations plan rather than naming a specific document.
89-07-02-18	Language clarifications		
89-07-02-19	Language clarifications		
89-07-02-20	Language clarifications		
89-07-02-21	Language clarifications		
89-07-02-22	Language clarifications		
89-07-02-23	Language clarifications		
89-07-02-24	Language clarifications	Eliminated monthly reporting requirements. Changed final reporting from 30 days to 60 days.	Monthly reports duplicative with the capability of consolidating digital data. Allows completion of a more comprehensive final report.
89-07-02-25		Repealed.	State bidding and procurement laws still applicable.
89-07-02-26	Language clarifications	Eliminated point scoring system for bids. Eliminated preference to ND bidders.	State bidding and procurement laws still applicable. Bidding preference already in N.D.C.C. § 44-08-01.
Article 89-10 – Sovereign Lands			
Chapter 89-10-01 – Sovereign Lands			
TOC	Updating titles to reflect changes		
89-10-01-01	Language clarifications		
89-10-01-02	Language clarifications		
89-10-01-03	Language clarifications	Added definition for “livestock.” Removed partial list of navigable waters from definition. Added definition for “snagging and clearing.” Added equipment to definition for “structure.” Added definition for “watercraft.”	The list of navigable waters changes as additional water bodies are studied or additional evidence of navigation at statehood is discovered. While the rule indicates the list is only a partial list, confusion has resulted. The State Engineer will now just informally maintain the list.

Section	Housekeeping	Substantive	Comments
89-10-01-04	Language clarifications		
89-10-01-05	Language clarifications		
89-10-01-06	Language clarifications	Eliminated requirement to provide decision by certified mail.	
89-10-01-06.1		Added new section to automatically include various items as part of the sovereign land permit record unless otherwise specifically excluded.	The intent is to automatically include certain publications, photographs, maps, etc. in the official record for use by both parties in permit application review or legal proceedings.
89-10-01-07	Language clarifications		
89-10-01-08	Language clarifications		
89-10-01-09		Repealed.	A permit for sand/gravel mining is necessary under N.D.A.C. § 89-10-01-26. These conditions can be attached to the permit, as applicable.
89-10-01-10	Language clarifications	Added snagging and clearing performed by a federal or state entity or political subdivision as a project that does not require a permit.	Clarifying that snagging and clearing projects do not require a sovereign lands permit.
89-10-01-10.1		Clarified that fee for illegal docks is a per day fee. Also docks will be subject to removal at owner's expense.	
89-10-01-10.2	Language clarifications	Clarified that fee for non-registered docks not requiring a permit is per occurrence.	
89-10-01-11	Language clarifications		
89-10-01-13	Language clarifications	Narrowed vehicular use exception to adjacent riparian owners for livestock and agricultural purposes. Clarified that fee for vehicular access violations is per occurrence.	Trying to eliminate problem of people riding and driving motorized vehicles on sandbars and claiming they are adjacent owners.
89-10-01-14	Language clarifications	Added language that new applications submitted by those who are named in active enforcement actions may be held in abeyance under the enforcement actions are resolved.	
89-10-01-15	Language clarifications		
89-10-01-16	Language clarifications		
89-10-01-18	Language clarifications		
89-10-01-19	Language clarifications		
89-10-01-20	Language clarifications		
89-10-01-21	Language clarifications	Clarified that fee for organized group activity violations is per occurrence.	
89-10-01-22	Language clarifications	Clarified that fee for pet violations is per occurrence.	
89-10-01-23	Language clarifications	Clarified that fee for camping violations is per occurrence.	
89-10-01-24	Language clarifications	Clarified that fee for hunting, fishing, and trapping violations is per occurrence.	
89-10-01-25	Language clarifications	Eliminating ability for riparian owners to leave unattended watercraft below the OHWM unless moored to an authorized dock or to	

Section	Housekeeping	Substantive	Comments
		property above the OHWM. Clarified that fee for unattended watercraft violations is per day.	
89-10-01-26	Language clarifications	Clarified that fee for removal of public property violations is per occurrence.	
89-10-01-27	Language clarifications		
89-10-01-28	Language clarifications	Clarified that fee for disposal of waste violations is per occurrence.	
89-10-01-29	Language clarifications	Clarified that fee for glass containers violations is per occurrence.	
89-10-01-31	Language clarifications	Clarified that fee for firearms violations is per occurrence.	
89-10-01-32	Language clarifications	Clarified that fee for tree stand violations is per tree stand.	
89-10-01-33	Language clarifications	Clarified that fee for baiting violations is per occurrence.	
89-10-01-34	Language clarifications	Adds language allowing a violator 20 days to take corrective action unless an emergency exists.	Allowing 20 days to correct a violation is consistent with other N.D.C.C. and N.D.A.C. sections.
Article 89-11 – Drought Disaster Livestock Water Supply Project Assistance Program			
Chapter 89-11-01 - Drought Disaster Livestock Water Supply Project Assistance Program			
89-11-01-01	Language clarifications		
89-11-01-02	Language clarifications		
89-11-01-04	Language clarifications	Clarified there is a limit of three projects on land owned by an applicant.	Eliminates confusion about whether an applicant is an individual, corporation, etc. by tying to land ownership. This is consistent with federal rules.
89-11-01-05	Language clarifications		
89-11-01-06	Language clarifications		

REGULATORY ANALYSIS OF PROPOSED N.D.A.C. § 89-03-01-10.2

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to a proposed amendment to North Dakota Administrative Code chapter 89-03-01 (Water Permits). The amendment is anticipated to have an aggregate fiscal impact on the regulated community in excess of \$50,000.

Purpose

The proposed addition of N.D.A.C. § 89-03-01-10.2 is a response to the legislatively mandated audit recommendation that the State Engineer charge a fee for temporary water appropriation permit to use the state's water. Temporary water permits can be valid for up to one year.

Approximately 600 applications were received by the State Engineer in 2013. Each application requires between approximately 3 to 8 hours of hydrologist review time to process. The majority of the temporary permits are for industrial water sales to the oil industry.

Classes of People Who Will be Affected

Except in emergency situations, all water users who request temporary water appropriation permits to use the state's water would be subject to the proposed rule.

Probable Impact

Since temporary water appropriation permits are already required for the class of people affected, the impact is monetary and dependent on the amount of water being requested. The monetary impact would range from \$75 to \$200.

Probable Cost of Implementation

There is negligible cost associated with the implementation of this rule. It is being done in conjunction with other administrative rules updates, so the costs associated with the rulemaking notice and publishing are already being incurred. In addition, there will be minimal finance duties associated with the collection of application fees as part of the permit application processing.

Consideration of Alternative Methods

The State Engineer did not consider alternative methods because the proposed rule is in a response to the legislatively mandated audit recommendation. However, a survey of the western states indicates that every state except South Dakota and Nebraska charges an application fee for temporary water permits. The fees range from as little as \$5 to over \$2,000.

N.D. ADMIN. CODE ARTICLE 89-03

SMALL ENTITY REGULATORY ANALYSIS

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements. However, a fine will now be assessed for failing to comply with reporting requirements.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what result?

The proposed rules do not change compliance or reporting requirement deadlines; the deadline is set by N.D.C.C.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements.

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?

Replacement design and operational standards are not required under the proposed rules.

5. Was exemption of small entities from all or any part of the requirements in the proposed rule consider? To what result?

The proposed rules do not change compliance or reporting requirements.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Which small entities are subject to the proposed rule?

N.D.A.C. § 89-03-01-01.5: Municipalities and rural water systems may not sell their excess water other than for uses authorized by the permit.

N.D.A.C. § 89-03-01-10.2: Except in emergency situations, all water users who request temporary water appropriation permits would be subject to the proposed rule. Temporary water permits can be valid for up to one year.

N.D.A.C. § 89-03-01-13.1: All water permit holders must file annual use reports. All permit holders would be subject to the proposed fine system.

2. What are the administrative and other costs required for small entities to compliance with the proposed rule.

The administrative costs for compliance with the proposed rules should be negligible.

The cost for compliance with proposed rule N.D.A.C. § 89-03-01-10.2 would depend on how much water is being requested, and would vary from \$75 to \$200 per permit. (\$75 – less than 1 acre-foot of water requested; \$125 – 1-10 acre-feet of water requested; \$200 – more than 10 acre-feet of water requested.)

The cost for compliance with proposed rule N.D.A.C. § 89-03-01-13.1 would be \$250 for failure to comply with reporting requirements by March 31, as required by N.D.C.C. The fine would be reduced if the permit holder complies before June 1.

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

With the exception of proposed rule N.D.A.C. § 89-03-01-10.2, there should be no cost for compliance, only non-compliance.

The cost for compliance with the proposed rule N.D.A.C. § 89-03-01-10.2 would depend on how much water is being requested, and would vary from \$75 to \$200 per permit. (\$75 – less than 1 acre-foot of water requested; \$125 – 1-10 acre-feet of water requested; \$200 – more than 10 acre-feet of water requested.)

The benefit for compliance depends on what the individual plans to do with the water. Many users are selling their water to the oil industry, at an average rate of approximately \$6,500/acre-foot. Other users may be using the water for temporary construction projects, irrigation uses, etc.

4. What is the probable effect of the proposed rule on state revenues?

The majority of the proposed rules would not have an effect on state revenues.

N.D.A.C. § 89-03-01-10.2: In calendar year 2013, there were 599 temporary water permit applications, which would have resulted in \$94,050 in state revenue.

Volume Requested	Number of Permits Requested	Proposed Application Fee	Projected Total
Less than 1 acre-foot	131	\$ 75	\$ 9,825
1-10 acre-feet	125	\$125	\$15,625
More than 10 acre-feet	343	\$200	\$68,600
Total Projected Revenue			\$94,050

N.D.A.C. § 89-03-01-13.1: For calendar year 2013, 157 permit holders have failed to properly file their annual water use reports by the March 31 deadline. This would result in \$39,250 in potential state revenue. If everyone subject to the rule complied by the June 1 deadline, the state revenue would be reduced to \$7,850.

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

N.D.A.C. § 89-03-01-10.2: The rule is being proposed because of the legislatively mandated audit finding. A less costly alternative would be to adjust the application fee amounts.

N.D.A.C. § 89-03-01-13.1: The rule is being proposed because of the legislatively mandated audit finding. A less costly alternative would be to adjust the fine amount.

N.D. ADMIN. CODE ARTICLE 89-06

SMALL ENTITY REGULATORY ANALYSIS

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what result?

The proposed rules do not change compliance or reporting requirements.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements.

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?

Replacement design and operational standards are not required under the proposed rules.

5. Was exemption of small entities from all or any part of the requirements in the proposed rule consider? To what result?

The proposed rules do not change compliance or reporting requirements.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Which small entities are subject to the proposed rule?

All applicants for cost-share from the Resources Trust Fund are subject to the proposed rules.

2. What are the administrative and other costs required for small entities to compliance with the proposed rule.

The increased cost for compliance with the proposed rules should be negligible.

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

The probable costs and benefits should not be substantially impacted by the proposed rules.

4. What is the probable effect of the proposed rule on state revenues?

The proposed rules should not have an effect on state revenues.

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

N/A

N.D. ADMIN. CODE ARTICLE 89-07

SMALL ENTITY REGULATORY ANALYSIS

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?

The proposed rules eliminate monthly reporting requirements.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what result?

The proposed rules eliminate monthly reporting requirements and extend the period for completing final operations reports from 30 to 60 days.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?

The proposed rules eliminate monthly reporting requirements.

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?

Replacement design and operational standards are not required under the proposed rules.

5. Was exemption of small entities from all or any part of the requirements in the proposed rule consider? To what result?

N.A.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Which small entities are subject to the proposed rule?

Weather modification operators are subject to the proposed rules.

2. What are the administrative and other costs required for small entities to compliance with the proposed rule.

The administrative costs for compliance with the proposed rules should be negligible.

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

N.A.

4. What is the probable effect of the proposed rule on state revenues?

The proposed rules would not have an effect on state revenues.

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

N.A.

N.D. ADMIN. CODE ARTICLE 89-10

SMALL ENTITY REGULATORY ANALYSIS

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what result?

The proposed rules do not change compliance or reporting requirements.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements.

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?

Replacement design and operational standards are not required under the proposed rules.

5. Was exemption of small entities from all or any part of the requirements in the proposed rule consider? To what result?

The proposed rules do not change compliance or reporting requirements.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Which small entities are subject to the proposed rule?

All users of sovereign land are subject to the proposed rules.

2. What are the administrative and other costs required for small entities to compliance with the proposed rule.

There should be no increased cost for compliance with the rules. The costs for non-compliance with the proposed rules have not changed, but been clarified.

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

The probable costs and benefits should not be substantially impacted by the proposed rules.

4. What is the probable effect of the proposed rule on state revenues?

The proposed rules should not have an effect on state revenues.

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

N/A

N.D. ADMIN. CODE ARTICLE 89-11

SMALL ENTITY REGULATORY ANALYSIS

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what result?

The proposed rules do not change compliance or reporting requirements.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not change compliance or reporting requirements.

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?

Replacement design and operational standards are not required under the proposed rules.

5. Was exemption of small entities from all or any part of the requirements in the proposed rule consider? To what result?

The proposed rules do not change compliance or reporting requirements.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Which small entities are subject to the proposed rule?

Applicants for Drought Disaster Livestock Water Supply Project Assistance are subject to the proposed rules.

2. What are the administrative and other costs required for small entities to compliance with the proposed rule.

N.A.

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

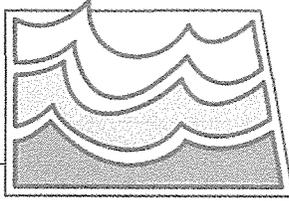
N.A.

4. What is the probable effect of the proposed rule on state revenues?

N.A.

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

N.A.



North Dakota State Water Commission

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MEMORANDUM

TO: Administrative Rules Committee

FROM: 
David Laschkewitsch,
Director of Administrative Services

SUBJECT: Fiscal Note Regarding Proposed Rules

DATE: April 4, 2014

This fiscal note is to fulfill the requirement of N.D.C.C. § 28-32-08.2 which provides that when an agency presents rules for Administrative Rules Committee consideration, the agency shall provide a fiscal note or statement. The proposed rules include two sections that could have a fiscal impact.

The first is N.D.A.C. § 89-03-01-10.2: In calendar year 2013, there were 599 temporary water permit applications, which would have resulted in \$94,050. This could provide approximately \$188,000 per biennium in state revenue.

Volume Requested	Number of Permits Requested	Proposed Application Fee	Projected Total
Less than 1 acre-foot	131	\$ 75	\$ 9,825
1-10 acre-feet	125	\$125	\$15,625
More than 10 acre-feet	343	\$200	\$68,600
Total Projected Revenue			\$94,050

This revenue would be deposited into the Water Commission's operating fund, which is where the permanent water right filing fees are currently deposited. In order to expend these revenues, the agency would require appropriation authority from the Legislature.

The second section with a fiscal impact is N.D.A.C. § 89-03-01-13.1: In calendar year 2013, 157 permit holders failed to properly file their annual water use reports by the March 31 deadline. This would have resulted in penalties totaling \$39,250 (157 X \$250.) This could provide \$78,500 per biennium to the general fund, although by assessing a penalty it is hoped that the permit holders failing to file will decrease.