

Section 4: Findings and Recommendations

FINDING #1	TESTING RESULTS – CONDITIONAL PERMIT APPLICATIONS																
Criteria	<p>Testing was conducted to assess compliance with established regulations, policies and procedures. Additional information on the testing activities is provided in Appendix B.</p>																
Condition	<p>Testing results identified the following exceptions related to non-compliance.</p> <ol style="list-style-type: none"> <p><i>NDCC 61-04-02 – Permit for Beneficial Use of Water Required</i></p> <p>A permit is required prior to the appropriation of water for a beneficial use.</p> <ul style="list-style-type: none"> 3% of the sample population reported use prior to the approval date of the conditional water permit. <table border="1" data-bbox="472 688 1386 827"> <thead> <tr> <th>Test Condition</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of exceptions</th> </tr> </thead> <tbody> <tr> <td>Permit Issuance Prior to Water Use</td> <td>65</td> <td>97%</td> <td>2</td> </tr> </tbody> </table> <p><i>NDCC 61-04-09 – Application to Beneficial Use – Inspection – Perfected Water Permit, NDCC 61-04-14 – Extending Time for Application of Water to Beneficial Use, and NDAC 89-03-01-12 – Extensions and Cancellation</i></p> <p>An inspection is required to be performed by the Water Appropriations Division on or before the beneficial use date established by the permit, or prior to the application of water for a beneficial use unless an extension request is received from the applicant.</p> <ul style="list-style-type: none"> 80% of the sample permits requiring an inspection did not have evidence to substantiate that an inspection had been conducted (i.e., inspection form) or evidence that an extension request had been filed. Please refer to Finding #3 for additional information. <table border="1" data-bbox="472 1213 1386 1352"> <thead> <tr> <th>Test Condition</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of exceptions</th> </tr> </thead> <tbody> <tr> <td>Permit Inspections Completed</td> <td>50</td> <td>20%</td> <td>40</td> </tr> </tbody> </table> <p><i>NDAC89-03-01-01.1 – Priority Date, NDCC 61-04-04 – Filing and Correction of Application, NDCC 61-04-05 – Notice of Application – Contents – Proof – Failure to File Satisfactory Proof, and NDAC 89-03-01-04 – Notice of Application</i></p> <p>The priority date is established as the date the application is received unless application processing steps are not completed within the timeframes established by regulation. Earlier priority dates are given precedence during times of limited appropriation (i.e., drought).</p> <ul style="list-style-type: none"> 7% of the sample population had inaccurately assigned priority dates. <ul style="list-style-type: none"> 4% of the sample population had priority dates that changed without evidence to substantiate that established regulatory timelines had been exceeded. 3% of the sample population contained evidence to substantiate that established 	Test Condition	Sample Population	Compliance Rate	No. of exceptions	Permit Issuance Prior to Water Use	65	97%	2	Test Condition	Sample Population	Compliance Rate	No. of exceptions	Permit Inspections Completed	50	20%	40
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	<p>regulatory timelines had been exceeded; however, no change was reflected in the priority date.</p> <table border="1" data-bbox="472 384 1385 525"> <thead> <tr> <th>Test Condition</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of exceptions</th> </tr> </thead> <tbody> <tr> <td>Priority Date Accurately Established</td> <td>76</td> <td>93%</td> <td>5</td> </tr> </tbody> </table> <p>4. <i>NDAC 89-03-01-01 – Submission of Application for Conditional Water Permit</i></p> <p>An applicant is required to submit a map prepared and certified by a licensed surveyor as part of the application packet.</p> <ul style="list-style-type: none"> 3% of the sample population did not include a map signed by a licensed surveyor. <table border="1" data-bbox="477 695 1380 835"> <thead> <tr> <th>Test Condition</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of exceptions</th> </tr> </thead> <tbody> <tr> <td>Application Packet Complete</td> <td>79</td> <td>97%</td> <td>2</td> </tr> </tbody> </table> <p>5. <i>SWC Policy – Recommended Decision Issued to All Parties of Record</i></p> <p>SWC policy requires that the <i>Recommended Decision</i> be sent to all parties of record.</p> <ul style="list-style-type: none"> 2% of the sample population did not include evidence to substantiate that the <i>Recommended Decision</i> had been mailed to all parties of record. <table border="1" data-bbox="482 1010 1375 1150"> <thead> <tr> <th>Test Condition</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of exceptions</th> </tr> </thead> <tbody> <tr> <td>Communication Protocols Followed</td> <td>65</td> <td>98%</td> <td>1</td> </tr> </tbody> </table>	Test Condition	Sample Population	Compliance Rate	No. of exceptions	Priority Date Accurately Established	76	93%	5	Test Condition	Sample Population	Compliance Rate	No. of exceptions	Application Packet Complete	79	97%	2	Test Condition	Sample Population	Compliance Rate	No. of exceptions	Communication Protocols Followed	65	98%	1
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Effect	<p>Exceptions may:</p> <ul style="list-style-type: none"> Indicate non-compliance with laws, regulations and/or policies. Impact the ability of the Water Appropriations Division to efficiently and accurately monitor water usage. The inspection process serves to confirm the conditions of the permit have been met, including the installation of an in-line metering devices used to collect and report water use data. Impact permit holders during times of reduced appropriation by assigning priority dates that do not accurately reflect the date of submission. In times of reduced appropriation, the priority date establishes the superiority of the water right. 																								
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> Review exceptions in Appendix B and take appropriate action to remediate. Ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the conditional permit application process. Leverage technology to enhance controls. <ul style="list-style-type: none"> Consideration should be given to implementing database system notifications to alert 																								

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	<p>staff of pending process milestones and regulatory deadlines.</p>
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) review exceptions in Appendix B and take appropriate action to remediate, 2) ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the conditional permit application process, 3) consider implementing data base system notifications to alert staff of pending process milestones and regulatory deadlines.</p> <p>It is important to note that the large number of exceptions (80%) regarding permit inspections completed is a staff based issue. For the 2013-2015 biennium budget, the State Engineer has requested an additional FTE (Water Resource Manager) to primarily perform water permit inspections.</p> <p>One of the two positions requested in the Water Appropriations Division is a Water Resource Manager to primarily perform water permit inspections. As in past budgets, the Water Appropriations Division has allocated funding for a temporary summer inspector during the 2013-2015 biennium. Water Appropriations Division anticipates that with these inspectors we will eliminate the large backlog of inspections. However, if this backlog persists, Water Appropriations Division can have the hydrologists perform inspections in their respective project areas. During the 1990's hydrologists performed water permit inspections. In doing so, they were not able to perform analytical tasks leading to new conditional water permit approval.</p>
<p>Auditor's Concluding Remarks</p>	<p>There are several actions required in the Perfection Phase to perfect a permit, to include the inspection conducted by a Water Appropriations Division contractor(s), and the analysis conducted by the Hydrologist after the inspection has been completed. A permit cannot be perfected until all comments/discrepancies identified during the inspection have been cleared.</p> <p>Additional staff resources may assist the Water Appropriations Division in conducting analysis and applicable follow-up once the inspection has been completed; however, the Water Appropriations Division should ensure there is a process in place to timely identify, notify, and remediate potential issues/ backlogs that may hinder a permit from being perfected. As it is not clearly identified at which point in the Perfection Phase the delays are incurring, the Water Appropriations Division should ensure adequate resources are allocated, where applicable, to help expedite the process of bringing appropriate permits to perfection status. Clear delineation of roles and responsibilities of the Hydrologist, contractors, and others involved in the Perfection Phase should be documented and communicated.</p> <p>Since it appears that the Water Appropriations Division is in noncompliance with North Dakota Century Code and North Dakota Administrative Code, it is critical that appropriate steps are taken to ensure compliance.</p>

FINDING #2	TESTING RESULTS – TEMPORARY PERMIT APPLICATIONS																																										
Criteria	Testing was conducted to assess compliance with established regulations, policies and procedures. Additional information on the testing activities is provided in Appendix B.																																										
Condition	<p>NDCC 61-04-02.1 authorizes the State Engineer to issue emergency or temporary use of water for periods not to exceed twelve (12) months if the State Engineer determines that such use will not negatively impact existing appropriators. The statute also provides the State Engineer the authority to establish a separate procedure for the processing of applications for emergency or temporary use.</p> <p>While the Water Appropriations Division has established procedures for the processing of temporary use permits, the internal policies and processes are not formally or adequately documented (See Finding #7). As such, testing was conducted based on our understanding of current practices developed through interviews with Water Appropriations Division staff.</p> <p>Testing results include:</p> <ol style="list-style-type: none"> 5% of the in lieu of irrigation and 28% of the industrial use permits did not contain evidence of an original permit application. As a result, it was not possible to verify completion of the application and/or the presence of a signature. <table border="1" data-bbox="483 905 1414 1066"> <thead> <tr> <th>Test Condition</th> <th>Permit Type</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of Exceptions</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Application Complete</td> <td>Industrial Use</td> <td>40</td> <td>95%</td> <td>2</td> </tr> <tr> <td>In Lieu of Irrigation</td> <td>25</td> <td>72%</td> <td>7</td> </tr> </tbody> </table> <ol style="list-style-type: none"> The Water Appropriations Division requires that all temporary water permits be reviewed by a Project Hydrologist prior to issuance; however, the current practice does not require documentation of the hydrologic review for temporary industrial use permits to be filed in the document management system by the Project Hydrologist. As a result, it was not possible to verify that a hydrologic review was conducted for 90% of the temporary industrial use permits included in the sample population. <table border="1" data-bbox="483 1293 1414 1444"> <thead> <tr> <th>Test Condition</th> <th>Permit Type</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of Exceptions</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Evidence of Project Hydrologist Analysis</td> <td>Industrial Use</td> <td>40</td> <td>10%</td> <td>36</td> </tr> <tr> <td>In Lieu of Irrigation</td> <td>25</td> <td>100%</td> <td>0</td> </tr> </tbody> </table> <ol style="list-style-type: none"> The permit must be signed by the State Engineer or an approved delegate (i.e., Water Appropriations Division Director). However, 16% of the sample population of in lieu of irrigation permits reviewed did not include a signature. As such, it was not possible to verify that the permits had obtained the appropriate approvals. <table border="1" data-bbox="483 1598 1414 1745"> <thead> <tr> <th>Test Condition</th> <th>Permit Type</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of Exceptions</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Permit Signed</td> <td>Industrial Use</td> <td>40</td> <td>100%</td> <td>0</td> </tr> <tr> <td>In Lieu of Irrigation</td> <td>25</td> <td>84%</td> <td>4</td> </tr> </tbody> </table>	Test Condition	Permit Type	Sample Population	Compliance Rate	No. of Exceptions	Application Complete	Industrial Use	40	95%	2	In Lieu of Irrigation	25	72%	7	Test Condition	Permit Type	Sample Population	Compliance Rate	No. of Exceptions	Evidence of Project Hydrologist Analysis	Industrial Use	40	10%	36	In Lieu of Irrigation	25	100%	0	Test Condition	Permit Type	Sample Population	Compliance Rate	No. of Exceptions	Permit Signed	Industrial Use	40	100%	0	In Lieu of Irrigation	25	84%	4
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FINDING #2	TESTING RESULTS – TEMPORARY PERMIT APPLICATIONS
Effect	<p>Observations from testing may:</p> <ul style="list-style-type: none"> • Result in the inconsistent application of practices due to a lack of formally documented policies and procedures. • Impact the ability to substantiate that applications were adequately reviewed to assess the impact on existing appropriators and/or subject to the appropriate approval process.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Review observations in Appendix B and take appropriate action to remediate. • Ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the conditional permit application process. • Document policies and procedures to govern the temporary permit application process (See Finding #7). <ul style="list-style-type: none"> ○ Consideration should be given to defining appropriate approval protocols for temporary permits. ○ Consideration should be given to requiring formal documentation of the hydrologic review process for temporary industrial use permits.
Management Response	<p>We agree, and the Water Appropriation Division will 1) review observations in Appendix B and take appropriate action to remediate, 2) ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the temporary permit application process, and 3) document policies and procedures to govern the temporary permit application process.</p> <p>It is important to note that as stated in Finding 2, Condition item 2, the current practice does not require documentation of the hydrologic review (Recommended Decision) for all temporary industrial permits. Because most temporary water permits are for small amounts of water and, for the most part, divert surface water from small ponds and sloughs, the impact on other water users is virtually non-existent. This statement should not be misleading given the following context. During the current wet climate conditions the landscape throughout North Dakota has seen a dramatic increase in the number of small-scale surface water bodies (ponds and sloughs). These water bodies are for the most part ephemeral and will dry up during normal and dry climate periods. As a result, these water bodies are not managed as long-term sustainable sources of water where the rights of prior appropriators must be considered. Most of the water in these small-scale surface water bodies will be lost to the atmosphere by evaporation and plant transpiration.</p> <p>In addition, the temporary water permit applicant if not the landowner at the water source must obtain permission from the landowner to divert water. Most landowners would like to have the water removed to increase agricultural production. Further, some of the surface water bodies are flooding roads and other infrastructure that can be mitigated by putting this water to beneficial industrial use.</p> <p>As a result, and given the current permit workload, it is deemed unnecessary to prepare</p>

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	<p>Recommended Decisions for most of the temporary water permits. However, there are circumstances where a thorough analysis is required and is documented in a Recommended Decision. Recommended Decisions for temporary water permits are prepared on an as need basis by the project hydrologist.</p>

FINDING #3	LACK OF FORMAL INSPECTION PROTOCOLS
<p>Criteria</p>	<p>NDCC 61-04-09 requires that the State Engineer inspect the works associated with a conditional permit on or before the beneficial use date established during the application process or upon notice from the owner that the water has been applied to a beneficial use.</p> <p>NDCC 61-04-14 indicates that the State Engineer can extend the time for a permit holder to apply the permitted water to the beneficial use cited in the conditional permit for good cause. However, when the beneficial use date has passed and no request for renewal has been received within sixty (60) days of the permit holder being notified that the beneficial use date has expired, the State Engineer shall consider the permit forfeited, abandoned or void.</p>
<p>Condition</p>	<p>NDCC 61-04-09 states that the inspection process is intended to determine the actual capacity of the works, its safety, and efficiency. The inspection process verifies that all permit conditions have been met, including validation that an in-line metering device meeting defined specifications has been installed to measure usage.</p> <ol style="list-style-type: none"> 1. <i>Inspections Not Consistently Performed</i> <p>The Water Appropriations Division indicated that they primarily utilize contractors to conduct inspections of the works of conditional permits that met the criteria established by NDCC 61-04-09; however, only 20% of the sample population of conditional water permits which had reached their beneficial use date or which had reported water use through the Annual Use Reporting process had been inspected and perfected by the Water Appropriations Division. The lack of inspection performance is further impacted by the fact that the policies and procedures governing the process are not formally documented.</p> 2. <i>Notification of Beneficial Use Date Expiration Not Consistently Issued</i> <p>If a conditional permit holder is unable to put the appropriated water to beneficial use prior to the date established by the permit, an extension of time can be requested. To facilitate this process, the Water Appropriations Division is required to notify the permit holder that the period for applying water to the beneficial use cited in the conditional permit has expired. However, based on the review it does not appear that the Water Appropriations Division consistently issued notifications to the permit holder regarding the expiration of the beneficial use date. In the instances where evidence of notification was observed, the notifications appear to have been issued after the beneficial use date.</p>

FINDING #3	LACK OF FORMAL INSPECTION PROTOCOLS
<p>Effect</p>	<p>The lack of a formal and consistently executed notification and inspection process may:</p> <ul style="list-style-type: none"> • Result in the inconsistent application of practices. • Result in non-compliance with laws, regulations and/or policies. • Limit the ability to verify the capacity of the works, its safety, and efficiency. • Increase the risk associated with the collection and verification of water use data.
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Ensure compliance with NDCC 61-04-09 and NDCC 61-04-14 by conducting inspections and communicating with the permit holder about the permit perfection process. • Assess staffing responsibilities to determine if current resource levels are sufficient to meet operational requirements. Re-prioritization of staff responsibilities may be necessary to help ensure compliance. • Establish formal policies and procedures to govern the permit inspection process. This should include consistent inspection forms and document filing protocols. • Develop a notification tool within the database to assist in the identification of conditional permits with beneficial use dates expiring in the near future to facilitate the issuance of notifications required by NDCC 61-04-14. <ul style="list-style-type: none"> ○ Consideration should also be given to validating that inspections have been conducted for all permits reporting usage during the Annual Use Reporting process.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) ensure compliance with NDCC 61-04-09 and NDCC 61-04-14 by conducting inspections and communicating with the permit holder about the permit perfection process, 2) assess staffing responsibilities to determine if current resource levels are sufficient to meet operational requirements, 3) establish formal policies and procedures to govern the permit inspection process. This should include consistent inspection forms and documents filing protocols, 4) develop a notification tool within the database to assist in the identification of conditional permits with beneficial use dates expiring in the near future to facilitate the issuance of notifications required by NDCC 61-04-14.</p> <p>It is important to note that the large number of exceptions (80%) regarding permit inspections completed is a staff based issue. For the 2013-2015 biennium budget the State Engineer has requested an additional FTE (Water Resource Manager) to primarily perform water permit inspections.</p> <p>One of the two positions requested in the Water Appropriations Division is a Water Resource Manager to primarily perform water permit inspections. As in past budgets, the Water Appropriations Division has allocated funding for a temporary summer inspector during the 2013-2015 biennium. Water Appropriations Division anticipates that with these inspectors we will eliminate the large backlog of inspections. However, if this backlog persists, Water Appropriations Division can have the hydrologists perform inspections in their respective project areas. During the 1990's hydrologists performed water permit inspections. In doing so, they were not able to perform analytical tasks leading to new conditional water permit</p>

FINDING #3	LACK OF FORMAL INSPECTION PROTOCOLS
	<p>approval.</p> <p>The Water Appropriation Division provides inspection report forms on its electronic database. Further, an additional "checklist" form is provided to inspectors. Prior to retaining a temporary summer inspector the SWC electronic database is queried to provide a list of conditional water permits needing inspections. This is the basis for selecting inspections. Lacking staff, as previously indicated, has prevented timely inspections on or before all beneficial use dates. This deficiency will be addressed through the requested additional FTE (Water Resource Manager).</p>
<p>Auditor's Concluding Remarks</p>	<p>There are several actions required in the Perfection Phase to perfect a permit, to include the inspection conducted by a Water Appropriations Division contractor(s), and the analysis conducted by the Hydrologist after the inspection has been completed. A permit cannot be perfected until all comments/discrepancies identified during the inspection have been cleared. Additional staff resources may assist the Water Appropriations Division in conducting analysis and applicable follow-up once the inspection has been completed; however, the Water Appropriations Division should ensure there is a process in place to timely identify, notify, and remediate potential issues/ backlogs that may hinder a permit from being perfected. As it is not clearly identified at which point in the Perfection Phase the delays are incurring, the Water Appropriations Division should ensure adequate resources are allocated, where applicable, to help expedite the process of bringing appropriate permits to perfection status. Clear delineation of roles and responsibilities of the Hydrologist, contractors, and others involved in the Perfection Phase should be documented and communicated.</p> <p>Since it appears that the Water Appropriations Division is in noncompliance with North Dakota Century Code and North Dakota Administrative Code, it is critical that appropriate steps are taken to ensure compliance.</p>

FINDING #4	FEE STRUCTURE FOR CONDITIONAL PERMIT HAS REMAINED CONSTANT SINCE 1991						
Criteria	NDCC 61-04-04 establishes the fee structure for conditional water permit applications.						
Condition	<p>NDCC 61-04-04.1 sets the fees that must accompany a conditional water permit application. The fees collected are to be paid by the State Engineer into the Water Use Fund of the state treasury.</p> <ol style="list-style-type: none"> <i>Fee Structure Last Amended in 1991</i> The fee structure for conditional water permit applications has not been updated in approximately twenty-two (22) years. <i>Application Fee Represents the only Cost to the Applicant/Permit Holder</i> The application fee is currently the only fee imposed on applicants/permit holders. The current fee structure for industrial use conditional permits is as follows: <table border="1" data-bbox="581 747 1281 905"> <thead> <tr> <th data-bbox="581 747 1032 800">Allocation Request</th> <th data-bbox="1032 747 1281 800">Application Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="581 800 1032 852">Industrial Use – 724 acre-feet or less</td> <td data-bbox="1032 800 1281 852">\$250</td> </tr> <tr> <td data-bbox="581 852 1032 905">Industrial Use – greater than 724 acre-feet</td> <td data-bbox="1032 852 1281 905">\$750</td> </tr> </tbody> </table> <i>Increase in Application Volume</i> While the fee structure for conditional permits has remained constant, the volume of total conditional permit applications has increased by 142% since 2009 based on data supplied by the Water Appropriations Division; and the volume of industrial use conditional permits has increased 204% during the same timeframe. <i>Comparative Research</i> The comparative research identified alternative fee structures employed by other states. Examples of different fee components include: <ul style="list-style-type: none"> Colorado charges a variety of fees, including fees associated with the late filing of evidence of well construction and/or pump installation. Minnesota charges an annual usage fee. Montana and Wyoming set the one-time application fee based on the water source from which the applicant is proposing to divert water. South Dakota employs an application fee structure based on 120 acre-feet thresholds. South Dakota charges an inspection fee (\$200) to supplement the application fee. The application fees identified through the comparative research ranged from \$50 - \$1,000. 	Allocation Request	Application Fee	Industrial Use – 724 acre-feet or less	\$250	Industrial Use – greater than 724 acre-feet	\$750
Allocation Request	Application Fee						
Industrial Use – 724 acre-feet or less	\$250						
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Effect	The fee structure may not be representative of the current processing effort.						
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> Explore alternative fee structures to reflect current application processing and use monitoring activities. Potential structures may include: <ul style="list-style-type: none"> <i>Annual Permit Fee</i> – Charge a fee for permit maintenance (i.e., monitoring). 						

FINDING #4	FEE STRUCTURE FOR CONDITIONAL PERMIT HAS REMAINED CONSTANT SINCE 1991
	<ul style="list-style-type: none"> ○ <i>Annual Use Fee</i> – Charge a fee based on annual usage. ○ <i>Inspection Fee</i> – Charge a fee for the inspection process. ○ <i>Alternative Fee Tiers</i> – Establish additional fee tiers based on requested allocation amount. The current fee structure has only two tiers. • Consider alternative variables on which to base the fee structure. <ul style="list-style-type: none"> ○ Assess the correlation between the requested allocation and processing effort to determine if allocation is the most appropriate variable on which to base fees. • Conduct a workload analysis of the permit application process to determine an approximate processing cost per application. The analysis may include assessing elapsed and direct processing time, processing expectations and objectives, resource availability and resource capacity to quantify the processing effort. • Request a potential revision to NDCC 61-04-04. Potential fee changes could be based on a cost per application value, an inflation multiplier or an alternative methodology.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) explore alternative fee structures to reflect current application processing and use monitoring activities as per potential fee structures as noted, 2) consider alternative variables on which to base the fee structure by assessing the correlation between the requested allocation and processing effort to determine if allocation is the most appropriate variable on which to base fees, 3) conduct a workload analysis of the permit application process to determine an approximate processing cost per application. The analysis may include assessing elapsed and direct processing time, processing expectations and objectives, resource availability and resource capacity to quantify the processing effort, 4) request a potential revision to NDCC 61-04-04. Potential fee changes could be based on a cost per application value, an inflation multiplier or an alternative methodology.</p> <p>Due to current staffing constraints, any work on the above recommendations would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. The Water Appropriation Division can provide options or evaluate alternatives relating to the fee structure or intent of what costs to cover with the fee structure depending on direction provided by the legislative committee.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p>

FINDING #5	NO FEE IS REQUIRED FOR TEMPORARY PERMIT APPLICATIONS
Criteria	No statutes, rules and/or polices require a fee for a temporary permit application.
Condition	<p>Per NDCC 61-04-02.1, the State Engineer has the authority to grant temporary water permit applications for a period of up to twelve (12) months; however, there is currently no fee required for a temporary permit application.</p> <ol style="list-style-type: none"> 1. <i>Application Processing Time</i> Temporary permit applicants are required to submit only the temporary application in order to initiate the permitting process. Upon receipt, the temporary permit application is reviewed by a Project Hydrologist and a decision is rendered as to whether to grant the requested allocation. Temporary permits are addressed upon receipt and, due to the nature of the permits, are processed in an expedited manner. Based on the sample population of temporary permits tested, the average processing duration from receipt through issuance was thirteen (13) days. 2. <i>Increase in Application Volume</i> In recent years, the Water Appropriations Division has seen an increase in temporary permit applications, including those designated for industrial purposes. Based on data provided by the Water Appropriations Division, there has been a steady increase from year to year in both temporary in lieu permit applications and temporary industrial use permit applications associated with oil-related activities (i.e., Oil Well Development and Water Depots) since 2009. 3. <i>Comparative Research</i> Comparative research identified two states, Wyoming (\$50) and Colorado (\$100) that charge a fee for temporary permit applications. The other states did not provide any information about fees related to temporary permit applications.
Effect	<p>The lack of a fee structure for temporary water permits may:</p> <ul style="list-style-type: none"> • Negatively impact the processing time of conditional permit applications by diverting resource efforts. • Not be reflective of processing requirements associated with increasing conditional and temporary application volumes.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Assess the time, resource and cost impact of temporary permit applications on the conditional permit application population. <ul style="list-style-type: none"> ○ Conditional permit applications represent a fee-for-service model; if the temporary permit process is negatively impacting the processing of conditional permits, a cost assessment should be conducted to quantify cost recovery. • Develop a fee structure for temporary permit applications that corresponds to the level of effort required for processing. <ul style="list-style-type: none"> ○ The fee structure could assume a variety of forms, including targeting specific

FINDING #5	NO FEE IS REQUIRED FOR TEMPORARY PERMIT APPLICATIONS
	beneficial purposes (i.e., industrial). Additional variables to consider in establishing a fee structure may include requested allocation amount and/or water source.
Management Response	<p>We agree, and the Water Appropriation Division will 1) assess the time, resource and cost impact of temporary permit applications on the conditional permit application population, 2) explore the implementation of a fee structure for temporary permit applications that corresponds to the level of effort required for processing.</p> <p>Due to current staffing constraints, any work on this recommendation would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. The Water Appropriation Division can provide options or evaluate alternatives relating to creation of a new fee structure for temporary water permits or intent of what costs to cover with the fee structure depending on direction provided by the legislative committee.</p> <p>It is important to note that development of a fee structure for temporary water permit applications is a complex issue in part due to different temporary use purposes and use amounts. For example, a filing fee for temporary use to suppress a fire should be different in relation to that for oil field industrial use sales.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p>

FINDING #6	APPLICATION PROCESS IS MANUAL IN NATURE
Criteria	Timely review of permit applications promotes efficiency.
Condition	<p>In 2012, the Water Appropriations Division processed 133 conditional permit applications, including 76 designated for industrial use, and 527 temporary applications, including 222 designated for use by the oil industry. All conditional permit applications are submitted in hard copy format via mail. Temporary permit applications are submitted via mail, email or fax because they do not require support documentation (i.e., map) or an application fee.</p> <p>Upon receipt of the applications, the Water Appropriations Division manually:</p> <ol style="list-style-type: none"> 1. Receipts the application and fee. 2. Reviews the application packet for completeness 3. Issues correspondence regarding public notice and permit issuance. <ul style="list-style-type: none"> o Current practice requires the submission of affidavits, including the <i>Affidavit of Notice</i> and the <i>Affidavit of Publication</i>, as well as the issuance of the <i>Recommended Decision</i> and the permit. 4. Enters application information into the appropriate database – Permit Database or Temporary Permit Database.

FINDING #6	APPLICATION PROCESS IS MANUAL IN NATURE
	<p>5. Scans permit documentation to the appropriate database – Permit Database or Temporary Permit Database.</p> <p>6. Files the permit documentation in a hard copy permit file.</p>
Effect	<p>Manual processes may:</p> <ul style="list-style-type: none"> • Increase processing times. • Result in data entry errors. • Create document management issues. • Result in the inefficient utilization of resources.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Develop and Implement an online application intake tool to allow permit applicants to submit application data and pay fees electronically. Design elements of an online reporting system to consider may include: <ul style="list-style-type: none"> ○ Interface with databases (i.e., 4D) ○ Form design (e.g., required fields) ○ Communication forums (e.g., correspondence) ○ Electronic notification capabilities (e.g., beneficial use date) <p>The online application tool could be linked to an online account management system through which annual, monthly and weekly use reporting and general communications could be performed.</p> <p>The implementation of an online system may require a change to NDAC 89-03-01-01 that requires the submission of a certified map as part of the application packet. As such, an analysis should be conducted to determine the necessity of the map given current practices and available technologies.</p>
Management Response	<p>We agree, and the Water Appropriation Division will develop and implement an online application intake tool to allow permit applicants to submit application data and explore a system to pay fees electronically.</p> <p>The performance audit proposes changes to the current process that are aimed at long-term improvements to the water permitting process that we believe may take considerable staff resources to implement and we know we currently have staffing constraints in completing inspections and processing applications. Due to current staffing constraints, any work on this recommendation would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. It is important to note that during the transition period from paper to electronic filing, a dual filing system will be maintained.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p>

FINDING #7	NO FORMAL POLICIES AND PROCEDURES FOR THE PROCESSING TEMPORARY APPLICATIONS
Criteria	The Water Appropriations Division is responsible for the administration of temporary permits per NDCC 61-04-02.1.
Condition	<p>NDCC 61-04-02.01 provides the State Engineer with the authority to develop and implement separate procedures for the processing of applications for temporary uses, and the Water Appropriations Division has developed documentation on the temporary permit application process, specifically the "Policy for Obtaining a Temporary Water Permit for Industrial Use, In Lieu of Irrigation", which is available on the SWC website. While the 2011 policy document provides an overview of the temporary in lieu of irrigation application process, it does not address the internal processing requirements or provide reference to temporary industrial use permits that aren't associated with an existing irrigation permit.</p> <p>Due to the lack of formal policy and procedure documentation, current observed practices could not be verified against formal policy or procedure. Noted process observations include:</p> <ol style="list-style-type: none"> 1. <i>Documentation of Project Hydrologist Review Not Required</i> <p>There was a lack of evidence of a review by a Project Hydrologist for temporary industrial use permit applications within the document management system. It was noted that 90% of temporary industrial use permits included no evidence of a review by a Project Hydrologist. Per the Water Appropriations Division, the completion of a review is required; however, the filing of the analysis is not a current practice.</p> 2. <i>Permit Approval Protocols Not Documented</i> <p>There was no evidence of formal establishment of delegates able to approve temporary permits on behalf of the State Engineer. During the review it was noted that multiple individuals within the Water Appropriations Division had approved temporary industrial use permit applications on behalf of the State Engineer, including the Division Director, the Assistant Division Director and Project Hydrologists. The Water Appropriations Division indicated that current policy allows for specified staff to approve temporary industrial use permits on behalf of the State Engineer; however, due to the lack of policy and process documentation related to the approval process, no evidence was available to confirm that all permits were subject to the appropriate approval protocols.</p>
Effect	<p>The lack of formally documented policies and procedures may:</p> <ul style="list-style-type: none"> • Result in the inconsistent application of practices. • Result in the loss of institutional knowledge due to staff turnover. • Limit ability to manage and communicate protocols and updates. • Result in non-compliance with division policies.

FINDING #7	NO FORMAL POLICIES AND PROCEDURES FOR THE PROCESSING TEMPORARY APPLICATIONS
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Develop formal policies and procedures to reflect current practices for processing temporary permit applications. Documentation should address the following potential process gaps: <ul style="list-style-type: none"> ○ Define the temporary permit application approval process and identify staff eligible to approve permits on behalf of the State Engineer. ○ Develop a process to document and file the hydrologic review performed for temporary industrial use permits. This practice is currently in place for temporary in lieu of irrigation permit applications and will provide greater visibility into the decision process. ○ Include a task to verify the existence of related pending conditional permit applications, and to assess the potential circumvention of the conditional permit application process. ○ Document scanning and filing requirements should be established to help ensure that appropriate documentation is retained and available within the document management system. Please refer to Finding #9 for additional information.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will develop formal policies and procedures to reflect current practices for processing temporary permit applications, which will address the potential process gaps as identified.</p> <p>It is important to note that as stated in Finding 2, Condition item2, the current practice does not require documentation of the hydrologic review (Recommended Decision) for all temporary industrial permits. Because most temporary water permits are for small amounts of water and, for the most part, divert surface water from small ponds and sloughs, the impact on other water users is virtually non-existent. This statement should not be misleading given the following context. During the current wet climate conditions the landscape throughout North Dakota has seen a dramatic increase in the number of small-scale surface water bodies (ponds and sloughs). These water bodies are for the most part ephemeral and will dry up during normal and dry climate periods. As a result, these water bodies are not managed as long-term sustainable sources of water where the rights of prior appropriators must be considered. Most of the water in these small-scale surface water bodies will be lost to the atmosphere by evaporation and plant transpiration. In addition, the temporary water permit applicant if not the landowner at the water source must obtain permission from the landowner to divert water. Most landowners would like to have the water removed to increase agricultural production. Further, some of the surface water bodies are flooding roads and other infrastructure that can be mitigated by putting this water to beneficial industrial use.</p> <p>As a result, and given the current permit workload, it is deemed unnecessary to prepare Recommended Decisions for most of the temporary water permits. However, there are circumstances where a thorough analysis is required and is documented in a Recommended Decision. Recommended Decisions for temporary water permits are prepared on an as need basis by the project hydrologist.</p>

FINDING #8	LACK OF FORMAL COMMUNICATIONS MANAGEMENT PROTOCOLS
Criteria	The Water Appropriations Division is responsible for communicating with the general public, applicants and permit holders on the rules, requirements and processes of obtaining water rights.
Condition	<p>Formal communication protocols have not been established to govern interaction with the public.</p> <ol style="list-style-type: none"> 1. <i>Permitting Process – Conditional Permits</i> The SWC website includes instructions on the filing of conditional water permits (<i>Conditional Water Permit Application Completion Instructions</i>) and references to applicable statutes and rules that address components of the application process. However, no publically available documentation outlines the end-to-end process or specifically addresses the hydrologic review which accounts for approximately 60% of the application processing time based on the processing time analysis conducted on the sample population. 2. <i>Permitting Process – Temporary Permits</i> With the exception of the guidance provided for temporary in lieu of irrigation permit applications (<i>Policy for Obtaining a Temporary Water Permit for Industrial Use</i>) and the <i>Application for a Temporary Water Permit</i> form, there is no other information available to the public regarding the temporary permit process and/or permit requirements, including the need for temporary industrial use permit holders with a granted allocation >15 acre-feet to install an in-line continuous metering device. 3. <i>In-Process Communications</i> Formal communication protocols to facilitate interaction with the applicant during the permitting process have not been established. Current practice places the responsibility on the applicants to contact the Water Appropriations Division directly via phone and/or email to obtain processing instructions, status updates and other pertinent information.
Effect	<p>The lack of formal communications management protocols may:</p> <ul style="list-style-type: none"> • Divert Water Appropriations Division resources from application processing and use monitoring activities to field and respond to inquiries. • Not accurately reflect the complexity of the process.

FINDING #8	LACK OF FORMAL COMMUNICATIONS MANAGEMENT PROTOCOLS
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Develop an online status reporting tool to provide applicants with an alternative means by which to obtain status information. <ul style="list-style-type: none"> ○ The online status tool could potentially be linked to the permit database system. ○ The development of an online status tool could coincide with the addition of new statuses within the permit database system. <p>Currently the permit database only allows for the assignment of two statuses for conditional permit application: "Application in Processing" or "Withheld/Deferred". Consideration should be given to expanding the status options to include statuses that align to process milestones, such as Notification, Publication, Hydrologic Review, etc.</p> <ul style="list-style-type: none"> • Update the current application instructions to include additional details about the permitting process, specifically information on the hydrologic review component of the process and the time required to complete the step. • Provide information on water sources and associated processing times/permit availability. <ul style="list-style-type: none"> ○ Since processing times are often impacted by the water source, providing additional information on the water sources that are fully allocated or nearing full allocation may increase applicant awareness of potential processing delays. • Develop and publish additional information on the temporary application process and permit requirements to better educate the public. • Establish formal communication procedures to govern interactions with applicants. <ul style="list-style-type: none"> ○ Formal protocols may include initial outreach by the Project Hydrologist once the application has been assigned for review and/or periodic status update calls/emails.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) develop an online status reporting tool to provide applicants with an alternative means by which to obtain status information, 2) update the current application instructions to include additional details about the permitting process, specifically information on the hydrologic review component of the process and the time required to complete the step, 3) provide information on water sources and associated processing times/permit availability, 4) develop and publish additional information on the temporary application process and permit requirements to better educate the public, and 5) establish formal communication procedures to govern interactions with applicants.</p> <p>The performance audit proposes changes to the current process that are aimed at long-term improvements to the water permitting process that we believe may take considerable staff resources to implement and we know we currently have staffing constraints in completing inspections and processing applications. Due to current staffing constraints, any work on this recommendation would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p> <p>Please see Appendix D for additional information related to this management response.</p>

FINDING #9	INCONSISTENCIES WITHIN THE DOCUMENT MANAGEMENT SYSTEM
Criteria	Per NDCC 61-04-01, any documentation provided in the water permit application process shall be maintained on file under the control of the State Engineer.
Condition	<p>To help ensure adherence to the NDCC requirement, the Water Appropriations Division maintains a document management system that consists of a collection of permit databases and hard copy permit files. In 2011, the Water Appropriations Division implemented a new practice of scanning and uploading all permit documentation to the appropriate database at the conclusion of the permitting process (i.e., issuance of the permit). To incorporate historical records into the database, the Water Appropriations Division initiated a records digitization effort that is ongoing.</p> <p><i>1. Incomplete or No Permit Application Documentation</i></p> <p>During the course of the review, instances were identified in which incomplete or no application documentation had been uploaded to the database for both historical (pre-2011) and current (post-2011) application records.</p> <p><i>2. Inconsistency in File Structure</i></p> <p>The review also identified inconsistencies with regard to the types of documents uploaded, the filing location of document types, the naming convention used for document types, and the document description field.</p>
Effect	<p>Inconsistencies and gaps within the document management system may:</p> <ul style="list-style-type: none"> • Impact the ability to capture and retain historical information. • Impact the ability to track and manage permit records.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Amend/Develop policies and procedures for uploading files to include scanning at defined intervals in the process, such as at key milestones (e.g., Notice of Affidavit). • Define a structure to govern the electronic storage of records in the database. This process should address required documentation to be scanned, filing locations and standard naming conventions for each file type. <ul style="list-style-type: none"> ○ Currently the hydrologic review conducted for temporary industrial use permits is not filed in either the database or with the permit file. Consideration should be given to developing policies and procedures to ensure that the analytical review conducted for all industrial permits is documented and filed within the document management system.
Management Response	<p>We agree, and the Water Appropriation Division will 1) amend/develop policies and procedures for uploading files to include scanning at defined intervals in the process, such as at key milestones (e.g. Notice of Affidavit), 2) define a structure to govern the electronic storage of records in the database. This process should address required documentation to be scanned, filing locations and standard-naming conventions for each file type, including temporary industrial use permits.</p> <p>The performance audit proposes changes to the current process that are aimed at long-term</p>

FINDING #8	LACK OF FORMAL COMMUNICATIONS MANAGEMENT PROTOCOLS
	<p>improvements to the water permitting process that we believe may take considerable staff resources to implement and we know we currently have staffing constraints in completing inspections and processing applications. Due to current staffing constraints, any work on these recommendations would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p> <p>Please see Appendix E for additional information related to this management response.</p>

FINDING #10	BIFURCATED CONDITIONAL PERMIT APPLICATION PROCESS
Criteria	<p>The Water Appropriations Division is responsible for the administration of water rights through the permitting process.</p>
Condition	<p>Components of the conditional water permitting process occur outside the Water Appropriations Division. These process components include:</p> <ol style="list-style-type: none"> 1. <i>Application Documentation Receipt</i> All permit application materials are received by the Administrative Staff to the State Engineer, this includes the initial application. Upon receipt the Administrative Staff to the State Engineer reviews the application packet, assigns a priority date and processes the application fee prior to delivery to the Water Appropriations Division for processing. 2. <i>Permit Folder Creation</i> The Administrative Staff to the State Engineer creates and manages the permit application folder through the Permit Application Administration Phase. 3. <i>Public Notice Material Preparation and Issuance</i> The Administrative Staff to the State Engineer develops the <i>Public Notice Statement</i> and issues it to the applicant and appropriate county newspaper(s). 4. <i>Reviews and Obtains Final Approval</i> The Administrative Staff to the State Engineer reviews the final permit and obtains the signature of the State Engineer. 5. <i>Issuance of Permit</i> The Administrative Staff to the State Engineer issues the <i>Recommended Decision</i> and conditional water permit to the applicant. <p>A comprehensive process analysis was not conducted to assess the impact of the delegation of roles and responsibilities; however, the bifurcation of the process may result in duplicative effort and/or loss of control of process components.</p>

FINDING #10	BIFURCATED CONDITIONAL PERMIT APPLICATION PROCESS
Effect	<p>The current model may:</p> <ul style="list-style-type: none"> • Result in the duplication of application processing efforts (i.e., application review). • Delay application processing due to competing priorities. • Limit the ability of the Water Appropriations to manage the end-to-end process.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Assess the allocation of responsibilities on the efficiency of the permitting process. • Determine if the resource capacity exists to perform process components within the Water Appropriations Division. • Establish a dedicated mailbox for permit application documentation.
Management Response	<p>We agree, and the Water Appropriation Division will 1) assess the allocation of responsibilities on the efficiency of the permitting process, 2) determine if the resource capacity exists to perform process components with the Water Appropriation Division, and 3) establish a dedicated mailbox for permit application documentation.</p>