



North Dakota State Water Commission

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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 January 2015 Supplement to the North Dakota Administrative Code

DATE: December 8, 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.*

The rules did not result from statutory changes.

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 Water-Related Topics Overview Committee, State Water Commission, the 53 County Water Resource Districts, and representatives with the Public Service Commission and Department of Transportation. A public hearing was held on September 9, 2014, in Bismarck. The comment period was open until September 19. The rules were submitted to the Attorney General on October 1 for a legal opinion; and the Attorney General approved the rules on October 24.

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.

Changes were made to N.D.A.C. §§ 89-08-01-01(3) & (4), 89-12-01-03(1)(d) & (e), 89-12-01-03(4), 89-12-01-06(4) & (5), 89-12-01-08(1) & (2), and 89-14-01-02(2). These changes resulted from comments made during the rulemaking process and are addressed in the agency's summary of comments and responses (Attachment 1).

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 \$2,126.76.

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

N.D. Admin. Code Articles: 89-02 (drainage of water), 89-03 (water appropriations), 89-04 (water management plans for surface coal mining operations), 89-08 (dams, dikes, and other devices), 89-12 (municipal, rural, and industrial water supply program), and 89-14 (stream crossings). These articles are being amended mostly to clarify language and resolve ambiguities that have arisen during regulatory enforcement. With the exception of those changes referenced in Attachment 1, Attachment 2 sets out 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 not required.

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.*

The rules have no fiscal effect on state revenues and expenditures.

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

Summary of Comments and Responses to Proposed Administrative Changes

The State Engineer/State Water Commission (SE/SWC) received four sets of comments on the proposed administrative code changes. Additionally, one comment was presented at the public hearing, but it referenced written testimony that had already been submitted. A summary of the changes and the SE/SWC responses follows.

Article 89-02 (No changes were made from proposed.)

General Comment: The Red River Joint Board Water Resource District (Joint Board) recommended adopting new rules to address tile drain permitting.

The Legislature adopted N.D.C.C. § 61-32-03.1 in 2011, essentially giving water resource districts jurisdiction over tile drains. The state engineer believes that where there is no conflict between the general drainage code statutes and rules, the current drainage code applies to both surface and subsurface (tile) drains. Therefore, no additional code is necessary at this time to specifically address tile drainage.

N.D.A.C. § 89-02-01-03: The Joint Board supports the proposed amendments.

N.D.A.C. § 89-02-01-07: The Joint Board supports the proposed amendments. Additionally, the Joint Board requests language that would require drainage permit applicants to identify a flow path; however, the Joint Board indicates perhaps this could be done by amending the application form rather than by administrative rule.

The state engineer agrees that this is a good idea. The application form is currently being updated.

N.D.A.C. § 89-02-01-08: The Joint Board requests that joint boards be allowed to analyze and approve or deny drainage permits if requested by both the local water resource district and the joint water resource district in an area.

The state engineer believes that N.D.C.C. § 61-16.1-11 (Joint Exercise of Powers) already gives this authority to joint boards that have entered agreements with a water resource district.

N.D.A.C. § 89-02-01-09.3: The Joint Board requests that a greater amount of time be given to consider projects of statewide or interdistrict significance.

The proposed change already doubled the time from 60 days to 120 days.

N.D.A.C. § 89-02-01-09.3: The Joint Board requests a revision allowing an applicant or a joint board to request a time extension.

The state engineer is not proposing any additional changes in response to the comment. After speaking with the Joint Board's attorney regarding further clarification on this comment, it seems the concern stems from the fact that sometimes applicants are requested to provide additional information and perhaps do not provide this information in a timely manner. The Joint Board wanted to put some onus back on applicants to keep the process moving along in a timely fashion. However, the state engineer believes the applicant now has sufficient motivation to respond in a timely manner because the proposed changes also declare an application void if no extension is requested.

N.D.A.C. § 89-02-01-09.4: The Joint Board requests a time limit for the State Engineer's final determination on permit applications of statewide or interdistrict significance.

Due to the inherent complexity of processing applications of statewide or interdistrict significance, establishing a hard deadline for this process is not practicable.

N.D.A.C. § 89-02-01-09.6: The Joint Board recommends a time limit for the State Engineer's final determination for requests of a State Engineer's hearing on permits of statewide or interdistrict significance.

Due to the inherent complexity and unknown volume of comments and hearing requests that may be received, establishing a hard deadline for this process is not practicable.

N.D.A.C. § 89-02-04: The Joint Board requests additional language that would allow water resource districts to obtain a court order to compel access to investigate complaints. (Note: presumed typo in original comment referring to N.D.A.C. § 89-02-01.)

Water resource districts already have the ability to seek a court order to enter property. This right does not need to be codified.

Article 89-03 (No changes were made from proposed.)

No comments were received regarding the proposed change to this article.

Article 89-04 (No changes were made from proposed.)

One comment letter was received from the Public Service Commission implicitly supporting the proposed repeal of article 89-04.

Article 89-08 (N.D.A.C. §§ 89-08-01-01(3) and (4) changed from proposed.)

N.D.A.C. § 89-08-01-01(4): The Joint Board recommends additional language in the definition of "dike" to include levees along rivers or other watercourses.

The definitions of both "dike" and "dam" were modified in response to this comment.

N.D.A.C. § 89-08-02-01: The Joint Board asked for language to indicate whether culvert openings should be considered when determining the impounding capacity for dikes and dams.

The language of the current rule would indicate that the openings do not count, which is the state engineer's interpretation and intent.

N.D.A.C. § 89-08-02: The Joint Board would like the State Engineer to identify a minimal amount of "acceptable" impact under which an applicant would not be required to obtain a flowage easement.

The state engineer does not have the authority to establish what an acceptable amount of impact is from a project on a downstream neighbor's property. If an applicant is unable to obtain a landowner easement from a neighbor, there are judicial remedies available. If the state engineer were to establish that, for example, flooding your neighbor's property to a depth of one inch is acceptable, this would likely result in a takings claim. Additionally, all situations will be factually different.

N.D.A.C. § 89-08-03: The Joint Board requests additional language that would allow water resource districts to obtain a court order to compel access to investigate complaints. (Note: presumed typo in original comment referring to N.D.A.C. § 89-02-01.)

Water resource districts already have the ability to seek a court order to enter property. This right does not need to be codified.

Article 89-12 (N.D.A.C. §§ 89-12-01-03(1) and (4), §§ 89-12-01-06(4) and (5), and §§ 89-12-01-08(1) and (2) changed from proposed.)

N.D.A.C. § 89-12-01-01: Garrison Diversion Conservancy District (GDCCD) requests an additional definition for MOU to mean a Memorandum of Understanding entered between GDCCD and SWC in 1986.

Adding this definition would elevate the MOU from a contract to a law. This is not appropriate, nor was it the intent of the SWC when the MOU was signed.

N.D.A.C. § 89-12-01-03(1)(d): Upon further review by the Commission, the words “carrying out” have been deleted.

N.D.A.C. § 89-12-01-03(1)(e): Upon further review by the Commission, the words “carry out” have been deleted. Additionally, “project” needs to be changed to “feasibility study.”

N.D.A.C. § 89-12-01-03: The GDCCD requests a new section adding language that the SWC and GDCCD will make a joint determination of approval pursuant to the MOU.

A new subsection (4) with revised wording has been added.

N.D.A.C. § 89-12-01-03: The GDCCD requests addition of a reference to the MOU.

Reference to the MOU in the administrative code is not appropriate.

N.D.A.C. § 89-12-01-06: The GDCCD requests a new section adding language that the SWC and GDCCD will make a joint determination of approval pursuant to the MOU.

Subsection 4 has been reformatted and a new subsection (5) with revised wording has been added.

N.D.A.C. § 89-12-01-06: The GDCCD requests addition of a reference to the MOU.

Reference to the MOU in the administrative code is not appropriate.

N.D.A.C. § 89-12-01-08(1)(g): Upon further review by the Commission, the words “that are in most need of funding” have been deleted.

N.D.A.C. § 89-12-01-08(2): The GDCCD requests addition of a reference to the MOU. GDCCD also suggests changing “provided” to “approved”.

Reference to the MOU in the administrative code is not appropriate. The language has been changed from “provided” to “approved”, and one use of provided has been deleted as redundant.

Article 89-14 (N.D.A.C. § 89-14-01-02(2) changed from proposed.)

One comment was received from the Department of Transportation (DOT) requesting a modification of the definition of “reconstruct.” Additionally, the State Engineer worked with DOT attorneys on this article’s proposed changes prior to initial submission. DOT was verbally supportive of the remainder of the changes proposed.

The state engineer accepted the change proposed by DOT with slight modification. The substantive change to DOT’s proposed language is replacing “pavement” with “road surface.” These stream crossing standards also apply to the reconstruction of gravel roads. The intent of DOT’s proposed change was to exempt “sliver grading,” and that would still be exempt because it is not “full depth road surface replacement.”

Section	Housekeeping	Substantive	Comments
Article 89-02 – Drainage of Water			
<i>Chapter 89-02-01 – Drainage of Ponds, Sloughs, Lakes, of Sheetwater, or Any Series Thereof, and of Meandered Lakes</i>			
Chapter Title	Updating title to reflect legislative changes		
TOC	Updating titles to reflect changes		
89-02-01-01		Repealed	This intent language is unnecessary.
89-02-01-02	Language clarifications	Moved definition for “emergency.” Deleted “meandered lake” definition. Deleted “person” definition. Deleted “state engineer” definition.	“Emergency” previously defined in N.D.A.C. § 89-02-05.1-04. Moved here so all definitions for article in one location at the beginning. Referenced many definitions back to N.D.C.C. rather than double-defining terms. Meandered lake language (N.D.C.C. § 61-15-08) was repealed in 2013 legislative session. “Person” defined by N.D.C.C. § 1-01-49. “State engineer” defined by N.D.C.C. § 61-03-01.
89-02-01-03	Language clarifications		Eliminates portions that are repetitive of N.D.C.C.
89-02-01-05	Language clarifications		
89-02-01-06	Language clarifications		
89-02-01-07	Language clarifications		
89-02-01-08	Language clarifications		
89-02-01-09	Language clarifications		
89-02-01-09.1	Language clarifications	Added NRCS as a party to be given notice of statewide or interdistrict significance drainage applications.	
89-02-01-09.2	Language clarifications		
89-02-01-09.3	Language clarifications	Extended the time for board action from 60 days to 120 days.	

Section	Housekeeping	Substantive	Comments
89-02-01-09.3 cont'd		Added language that applications are considered void if the board does not act or request an extension within the 120 days.	
89-02-01-09.4	Language clarifications		
89-02-01-09.5	Language clarifications	Removed language restricting when copies of notice may be requested.	
89-02-01-09.6	Language clarifications		
89-02-01-09.7	Language clarifications		
89-02-01-09.8	Language clarifications and corrected reference.		
89-02-01-09.9	Language clarifications		
89-02-01-09.10	Language clarifications		
89-02-01-09.11	Language clarifications	Added language that a permit does not absolve applicants from liability.	Moved language about time extensions to § 89-02-01-09.12. Moved from § 89-02-01-09.12 language that time period to complete construction does not begin until any appeals are completed.
89-02-01-09.12	Language clarifications	Added language that only two one-year extensions may be granted.	See above comment. Added extension limitation to minimize the potential for changes to conditions between when the permit is approved and when the project is constructed.
89-02-01-28	Language clarifications		
<i>Chapter 89-02-04 – Drainage Complaint Appeals</i>			
89-02-04-01	Language clarifications		Removed date because N.D.C.C. modified during 2013 session so that all drainage appeals handled the same regardless of date constructed. Substantive changes to this Chapter will be considered in a future revision.

Section	Housekeeping	Substantive	Comments
89-02-04-02	Language clarifications		See above comment.
89-02-04-03	Language clarifications		
89-02-04-04	Language clarifications		
89-02-04-05	Language clarifications		
89-02-04-06	Language clarifications		
89-02-04-07	Language clarifications		
89-02-04-08	Language clarifications		
89-02-04-09	Language clarifications		
89-02-04-10	Language clarifications		
89-02-04-13	Language clarifications		
89-02-04-14	Language clarifications		
89-02-04-16	Language clarifications		
89-02-04-17	Language clarifications		
89-02-04-18	Language clarifications		
89-02-04-19	Language clarifications		
89-02-04-20	Language clarifications		
89-02-04-21	Language clarifications		
89-02-04-23	Language clarifications		
<i>Chapter 89-02-05.1 – Licenses for Emergency Drainage</i>			
Chapter Title	Language clarifications		
TOC	Updating titles to reflect changes		
89-02-05.1-01		Repealed	Restating the scope of the chapter is redundant.
89-02-05.1-02		Repealed	"Application" does not need a definition. "Board" and "drain" are both already defined in N.D.A.C. § 89-02-01-02 which references back to N.D.C.C. definitions.
89-02-05.1-03	Language clarifications		
89-02-05.1-04		Repealed	Moved definition to N.D.A.C. § 89-02-01-02.
89-02-05.1-05	Language clarifications		
89-02-05.1-06	Language clarifications		
89-02-05.1-07	Language clarifications		Moved language from N.D.A.C. § 89-02-05.1-10 regarding liability.
89-02-05.1-08	Language clarifications	Added language that emergency drain permits for drains that are intended to become permanent can be extended by the state engineer under this section while the permanent drain license	Clarified the intent to provide a mechanism to permanently permit an existing emergency drain.

Section	Housekeeping	Substantive	Comments
89-02-05.1-08 cont'd		is being processed if the permanent drain has the same alignment as the emergency drain.	
89-02-05.1-09	Language clarifications	Added language that the applicant must notify the board and the state engineer when an emergency drain has been completely closed.	
89-02-05.1-09.1		Added this section to discuss extensions of emergency permits and limit the extension to six months.	
89-02-05.1-10		Repealed	Moved language to N.D.A.C. § 89-02-05.1-07.
Article 89-03 – Water Appropriations			
<i>Chapter 89-03-01 – Water Permits</i>			
89-03-01-01.3	Language clarifications		Revised wording at suggestion of Sen. Triplett from previous hearing.
Article 89-04 – Water Management Plans for Surface Coal Mining Operations			
Repeal of Article. The intent of the water management plan was a separate permitting process that satisfied the construction and drainage permitting requirements of the state engineer. Specifically, a water management plan approved by the state engineer was to serve as an approval of permit requirements under N.D.C.C. §§ 61-15-08, 61-16.1-38, and 61-16.1-41. However, §§ 61-15-08 and 61-16.1-41 have both been repealed. Further, the permitting requirements addressed by N.D.A.C. art. 89-04 are already addressed by N.D.A.C. arts. 89-02 and 89-08. Lastly, PSC administrative code (art. 69-05.2) duplicates the majority of art. 89-04, but is frequently updated to comply with changing federal regulations.			
Article 89-08 – Dams, Dikes, and Other Devices			
TOC	Updating titles to reflect changes		
<i>Chapter 89-08-01 – Definitions</i>			
89-08-01-01	Language clarifications	Clarified language for “dam” to include the entire structure. Clarified that “dikes” divert surface waters. Clarified definition of “height.”	Many regulatory issues with the difference between dikes, dams, diversions, and embankments. Subject of litigation. Issues in oil producing areas regarding what types of “ponds” are regulated by state engineer.

Section	Housekeeping	Substantive	Comments
89-08-01-01 cont'd		Added definitions for "diversion," "embankment," "holding pond, lagoon, or dugout," and "top of dam."	Moved definition for "unsafe dam, dike, or other device" from N.D.A.C. § 89-08-01-02.
89-08-01-02		Repealed	See above comment.
<i>Chapter 89-08-02 – Construction Permits</i>			
TOC	Updating titles to reflect changes		
89-08-02-01	Language clarifications		
89-08-02-02	Language clarifications		Confusion regarding current language of "evidence recognized in a court of law sufficient to establish a prima facie case of a property right."
89-08-02-03	Language clarifications		
89-08-02-03.1		New section establishing a two year period within which construction must be completed.	This would also be consistent with the time period established in Article 89-02 for drainage.
89-08-02-03.2		New section regarding extensions of time for construction completion.	This would also be consistent with the extension period established in Article 89-02 for drainage.
89-08-02-04	Language clarifications		Makes language consistent with Article 89-02 for drainage.
89-08-02-05		New section regarding extension of emergency construction permits.	Makes language consistent with Article 89-02 for drainage.
89-08-02-06		New section requiring the removal of emergency structures.	
89-08-02-07	Language clarifications		Moved from N.D.A.C. § 89-08-03-06.
<i>Chapter 89-08-03 - Inspections</i>			
TOC	Updating titles to reflect changes		
89-08-03-01	Language clarifications		
89-08-03-03	Language clarifications		
89-08-03-04	Language clarifications	Removed language that state engineer will continue to make	State engineer has typically not collected costs. Further, this is considered part of the

Section	Housekeeping	Substantive	Comments
89-08-03-04 cont'd		unjustified inspections at the cost of the complainant. Added language that construction activities must cease until the state engineer completes the inspection. Removed sections regarding payment.	state engineer's regulatory duties.
89-08-03-05		Removed language tying inspections to construction permits.	Not all dams require a construction permit, but they still all should be subject to inspection.
89-08-03-06		Repealed	Moved to N.D.A.C. § 89-08-02-07.
89-08-03-07		Added section to clarify procedure for entering land to inspect a dam. State engineer must request landowner permission (except in emergencies), and after five days may request a court order.	
<i>Chapter 89-08-04 – Operating Plan</i>			
Title	Updating Title		
89-08-04-01	Language clarifications	Deleted language regarding maintenance and emergency procedures.	Deleted language has been broken out in further detail in newly created N.D.A.C. §§ 89-08-04-02 and -03.
89-08-04-02		Created new section regarding maintenance plans.	Broke out requirements from N.D.A.C. § 89-08-04-01 into separate sections so there is a specific section regarding operating plans, maintenance plans, and emergency action plans.
89-08-04-03		Created new section regarding emergency action plans.	See above comment.
Article 89-12 – Municipal, Rural, and Industrial Water Supply Program			
<i>Chapter 89-12-01 - Municipal, Rural, and Industrial Water Supply Program</i>			
Chapter Title	Fix spelling error		

Section	Housekeeping	Substantive	Comments
TOC	Updating titles to reflect changes		
89-12-01-01	Language clarifications	Deleted definitions for "applicant," "bureau," "C-district," "city," "proposal," and "state engineer." Added definition for "Garrison Diversion." Modified definition of "program funds."	Modified definition of program funds to recognize that the Garrison Diversion Reformulation Act of 1986 has been amended by the Water Resources Development Act of 2000.
89-12-01-02	Language clarifications		
89-12-01-03	Language clarifications	Added language that the SWC's chief engineer in consultation with Garrison Diversion may decide eligibility. Added language that the chief engineer may prepare a report for recommendations regarding funding.	Added eligibility language here and repealed N.D.A.C. § 89-12-01-04. Language regarding preparation of report reflects current practice where chief engineer makes a funding recommendation to SWC.
89-12-01-04		Repealed	See above comment.
89-12-01-05		Repealed	
89-12-01-06	Language clarifications	Removes specific requirements for feasibility studies. Added language regarding consultation with Garrison Diversion.	
89-12-01-07		Repealed	Any specific design and construction requirements will be addressed in the cost share agreement developed with the project sponsor.
89-12-01-08	Language clarifications		
89-12-01-09		Repealed	Any reporting requirements will be addressed in the cost share agreement developed with the project sponsor.
89-12-01-10		Repealed	Any contracting requirements will be addressed in the cost share agreement developed with the project sponsor.

Section	Housekeeping	Substantive	Comments
Article 89-14 – Stream Crossings			
Article Title	Language clarifications		Clarify that the stream crossing rules only apply to public highways.
Chapter 89-14-01 – Stream Crossing Design			
89-14-01-01	Language clarifications	Added a comma between individual and firm.	<p>Inconsistencies exist between various N.D.C.C. and N.D.A.C. provisions. N.D.C.C. § 24-03-06 and N.D.A.C. § 89-14-01-01 do not contain the comma; N.D.A.C. § 89-14-01-06 does contain the comma.</p> <p>Without the comma, the statutes/regulations would seem to apply to individual “firms, corporations, or LLCs,” but not to a collection of “firms, corporations, or LLCs.” With the comma, the statutes/regulations would apply to individuals AND “firms, corporations, or LLCs.” After consultation with DOT staff and attorneys and the Attorney General’s office and a review of legislative history, consensus has been reached that a comma was intended. This error will also need to be corrected in N.D.C.C. § 24-03-06 during upcoming session.</p>
89-14-01-02	Language clarifications	Added definition for “stream crossing.”	
89-14-01-03	Language clarifications		
89-14-01-04	Language clarifications		
89-14-01-05	Moved language from N.D.A.C. § 89-14-01-06.		
89-14-01-06	Language clarifications		Deleted language was moved to N.D.A.C. § 89-14-01-05.

N.D. ADMIN. CODE ARTICLE 89-02

SMALL ENTITY REGULATORY ANALYSIS

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

N/A

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

Yes. N.D.C.C. § 89-02-01-09.3 extended the time for board action from 60 days to 120 days.

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

To the extent this question applies, the majority of the changes were made to simplify, consolidate, and clarify language and processes.

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

N/A

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?

Individuals required to get drainage permits under N.D.C.C.; Water resource districts.

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

Any associated costs should not be impacted by the proposed changes.

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

N.D. ADMIN. CODE § 89-03-01-01.3

SMALL ENTITY REGULATORY ANALYSIS

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

N/A

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

N/A

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

N/A

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

N/A

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?

Anyone who has water in storage that they want to put to beneficial use.

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

N.D. ADMIN. CODE ARTICLE 89-04

SMALL ENTITY REGULATORY ANALYSIS

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

N/A

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

N/A

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

Yes. These rules are duplicative of other sections of N.D.C.C. and N.D.A.C., so they are being repealed.

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

N/A

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?

N/A

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

N.D. ADMIN. CODE ARTICLE 89-08

SMALL ENTITY REGULATORY ANALYSIS

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

N/A

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

Several sections contain new deadlines to make construction permits similar to drainage permits.

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

The majority of the proposed changes are to simply and clarify compliance requirements.

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

N/A

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?

Individuals who want a construction permit for a dike, dam, or other water diversion device; owners of such water control structures.

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

Any increased cost due to the proposed changes should be negligible.

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

Any increased cost due to the proposed changes should be negligible.

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

N.D. ADMIN. CODE ARTICLE 89-12

SMALL ENTITY REGULATORY ANALYSIS

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

N/A

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

N/A

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

N/A

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

N/A

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?

Those seeking cost share assistance are subject to the proposed rule. However, the changes impact the way the State Water Commission processes the applications and should not impact the entities seeking assistance.

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

N.D. ADMIN. CODE ARTICLE 89-14

SMALL ENTITY REGULATORY ANALYSIS

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

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

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

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

N/A
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?

Those constructing or reconstructing highways are subject to the stream crossing standards in this article.
2. What are the administrative and other costs required for small entities to compliance with the proposed rule.

The costs should not change as a result of the proposed changes.
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