memo file

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Prepared by the North Dakota Legislative Council staff for the Garrison Diversion Overview Committee

October 1997

WATERSHED DISTRICTS STUDY - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4041 (1997), a copy of which is attached as Appendix A, directs the Legislative Council to study the establishment of watershed districts to manage water based on watershed boundaries. Proponents of the study testified at the standing committee hearings on the resolution that the establishment of watershed districts to manage water based on watershed boundaries should be studied in light of the flooding at Devils Lake. The resolution was supported by representatives of the North Dakota Water Resource Districts Association, North Dakota Water Users Association, Rural Water Systems Association, and the State Engineer.

WATER RESOURCE DISTRICTS

The creation and operation of water resource districts is governed by North Dakota Century Code (NDCC) Chapters 61-16 and 61-16.1. Section 61-16-05 requires that all land in North Dakota must be within a water resource district. Section 61-16-06.1 provides that any two or more water resource districts may be consolidated into a single district or existing districts may be adjusted to reflect watershed boundaries, as determined by the State Engineer, by filing with the State Water Commission a petition signed by a majority of the members of the board of each of the districts or 50 percent or more of the landowners within each of the districts. A petition filed by the district boards must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition.

A petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. The plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The State Water Commission is required to hold a public hearing and the State Engineer is required to make, before the hearing, an investigation of the need for consolidation of the petitioning districts and to submit a report of the findings to the State Water Commission at the petition hearing. If the State Water Commission finds that it is not feasible, desirable, or practicable to consolidate the petitioning districts, it must deny the petition and state the reasons for the denial. If, however, the State Water Commission finds the problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water resource district desirable, it must grant the petition and create the district. Upon creation of the new water resource district, the State Water Commission is to dissolve the included districts or make necessary boundary adjustments to existing districts.

Chapter 61-16.1 governs the operation of water resource districts. This chapter contains the powers and duties of water resource districts, including their basic authority, authority to finance projects, regulatory powers, and enforcement powers. Briefly, a water resource district may finance its operations or local projects through a general districtwide mill levy of not more than four mills for each individual water resource district, special assessments, user fees, revenue bonds or improvement warrants, and state or federal cost-sharing. In addition, joint water resource boards may levy an additional two mills for water projects.

Concerning the regulatory powers of water resource districts, districts are charged with the statutory responsibility to review and improve or deny permits for dikes, dams, and other devices that are capable of retaining, impounding, diverting, or obstructing more than 12.5 acre feet of water and drains that drain a pond, slough, or lake, or any series thereof with a watershed area of 80 acres or more. Under NDCC Sections 61-16.1-51, 61-16.1-53, and 61-32-07, water resource districts have statutory responsibility to remove obstructions to artificial drains and restructure watercourses; take enforcement actions for unauthorized construction of a dike, dam, or other device for retaining, obstructing, or diverting water; and take enforcement actions for the unauthorized drainage of wetlands.

HISTORY OF WATER RESOURCE DISTRICTS

The State Water Commission has described the history of North Dakota's water resource districts in a water guide on water resource districts. This guide notes that the earliest beginnings of water resource districts can be traced to county drain boards. Legislation enabling the creation of drain boards was first enacted in 1895 to provide for the drainage of agricultural lands. However, it was not until 1935 that the Legislative Assembly established water conservation districts responsible for a broad range of water management and water development matters at the local level. Under 1935 S.L., ch. 228, water

conservation districts could be established only by the order of the State Water Conservation Commission upon receipt of a petition from any county, city, or township, or from 50 percent of the landowners within the proposed district. However, the Legislative Assembly, because it recognized the advantage of watershed boundaries over artificial or political boundaries, specifically directed the State Water Conservation Commission not to be constrained to county and township boundaries when creating districts.

The initial water management laws, codified as Chapter 61-16, remained virtually unchanged until 1957. At that time, the Legislative Assembly enacted a comprehensive reform of water management statutes and changed the name of local water conservation districts to water conservation and flood control districts. The State Water Conservation Commission retained authority to create districts and establish the boundaries upon receipt of a proper petition. However, the commission was given the authority to include additional watershed areas benefited by the creation of the district.

In 1973, the Legislative Assembly determined that all land in the state should be contained within a water conservation and flood control district. Most districts were created along county boundaries. Also, at this time, the name of water conservation and flood control districts was changed to water management districts.

The Legislative Assembly enacted a second comprehensive reform of water management in 1981. The Legislative Assembly expanded the powers and authority of water management districts and made several changes to improve the effectiveness of local government in addressing water issues. The Legislative Assembly eliminated legal drain boards, transferred the powers and authority of legal drain boards to water management districts and renamed legal drains assessment drains. Also, recognizing the increased responsibilities of water management districts, the Legislative Assembly again changed their name, this time to water resource districts.

When water resource districts were first created in 1935, the Legislative Assembly gave the State Water Commission the authority to set boundaries and specifically directed the commission not to consider county and township boundaries when creating districts. Section 61-16-05, as it existed in 1935, provided:

> **Areas to be included within district - How determined.** In determining the area to be included within the district, the commission shall disregard township and county boundaries and shall consider only the drainage areas to be affected by the water development proposed and the probable future development thereof. Whenever practicable, such boundaries shall follow section lines.

Thus, at that time, the Legislative Assembly preferred watershed boundaries over artificial or political boundaries for water resource districts and gave the State Water Commission sole discretion to determine and establish the boundaries of water resource districts.

Section 61-16-05 was amended in 1957 to provide:

> **Area to be included within district - How determined.** The area or areas to be included in a water conservation and flood control district shall embrace the territory described in the petition for the creation thereof. The commission shall, however, consider and may include within boundaries of the district, the watershed and drainage areas which will be benefited by the construction and maintenance of works therein for water conservation, flood control or drainage as the case may be.

Thus, beginning in 1957, boundaries for water resource districts were established as requested in the petition, yet the State Water Commission had the authority to include additional watershed and drainage areas benefited by the creation of the district. The evolution of water resource districts has resulted in a water resource district in every county in North Dakota. A map of North Dakota's Water Resource Districts is attached as Appendix B. In five counties, more than one water resource district exists. Also, there are 11 joint water resource districts operating in North Dakota. These include the West River Joint Board, the BOMMM Joint Board, the Souris River Joint Board, the Hurricane Lake Joint Board, the Rocky Run Joint Board, the Red River Joint Board, the Upper Sheyenne Joint Board, the Maple-Richland Joint Board, the Devils Lake Joint Board, the James River Joint Board, and the Tri-County Joint Board.

1979-80 WATER MANAGEMENT STUDY

House Concurrent Resolution No. 3022 (1979) directed a Legislative Council study of the powers, duties, and jurisdictional boundaries of water management districts and legal drain boards. The objective of the study was to determine the most effective and efficient methods to provide for management, at the local level, of the state's water resources. The issue before the 1979-80 interim Natural Resources Committee was whether the then current water management system represented the most effective and efficient method of providing for local water management and, if not, what steps could be taken to provide for such water management. The

committee heard testimony that water could be more effectively managed on the local level if the management agencies had jurisdictional boundaries along watershed lines and if local efforts were not duplicated by their agency. As a result of the study, the committee recommended a bill that would have established water district boundaries along watershed lines where feasible. However, in no event could water district boundaries divide a section or a city and the bill established a minimum of 25 and a maximum of 40 water resource districts in the state. A copy of the bill, as introduced, is attached as Appendix C. Although this bill was enacted by the 1981 Legislative Assembly, the provisions relating to establishing water resource district boundaries on watershed boundaries were removed.

POSSIBLE STUDY APPROACH

In carrying out the study of the establishment of watershed districts to manage water based on watershed boundaries, the committee could solicit testimony on the operation of water resource districts and whether water could be more effectively and efficiently managed on watershed, as opposed to artificial, boundaries. In conducting this study, the committee could solicit testimony from a number of sources, including the State Engineer, the North Dakota Association of Water Resource Districts, the North Dakota Association of Counties, the North Dakota Water Users Association, the North Dakota Water Coalition, and representatives from various agricultural groups.

ATTACH:3

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Monday, the sixth day of January, one thousand nine hundred and ninety-seven

SENATE CONCURRENT RESOLUTION NO. 4041
(Senators Lindaas, Thane)
(Representative Aarsvold)

A concurrent resolution directing the Legislative Council to study the establishment of watershed districts to manage water based on watershed boundaries.

WHEREAS, the effective management of the state's water resources is essential to the health, prosperity, and general welfare of the citizens of North Dakota; and

WHEREAS, most of the state's existing water resource political subdivisions are based upon political boundaries and not hydrologic boundaries; and

WHEREAS, the state's rivers, streams, and watersheds do not correspond with existing political boundaries; and

WHEREAS, many watershedwide issues such as channel maintenance, upstream drainage, and drain maintenance extend across the boundaries of existing water-related political subdivisions and necessarily require watershedwide or regionwide solutions that smaller water-related political entities are incapable of providing;

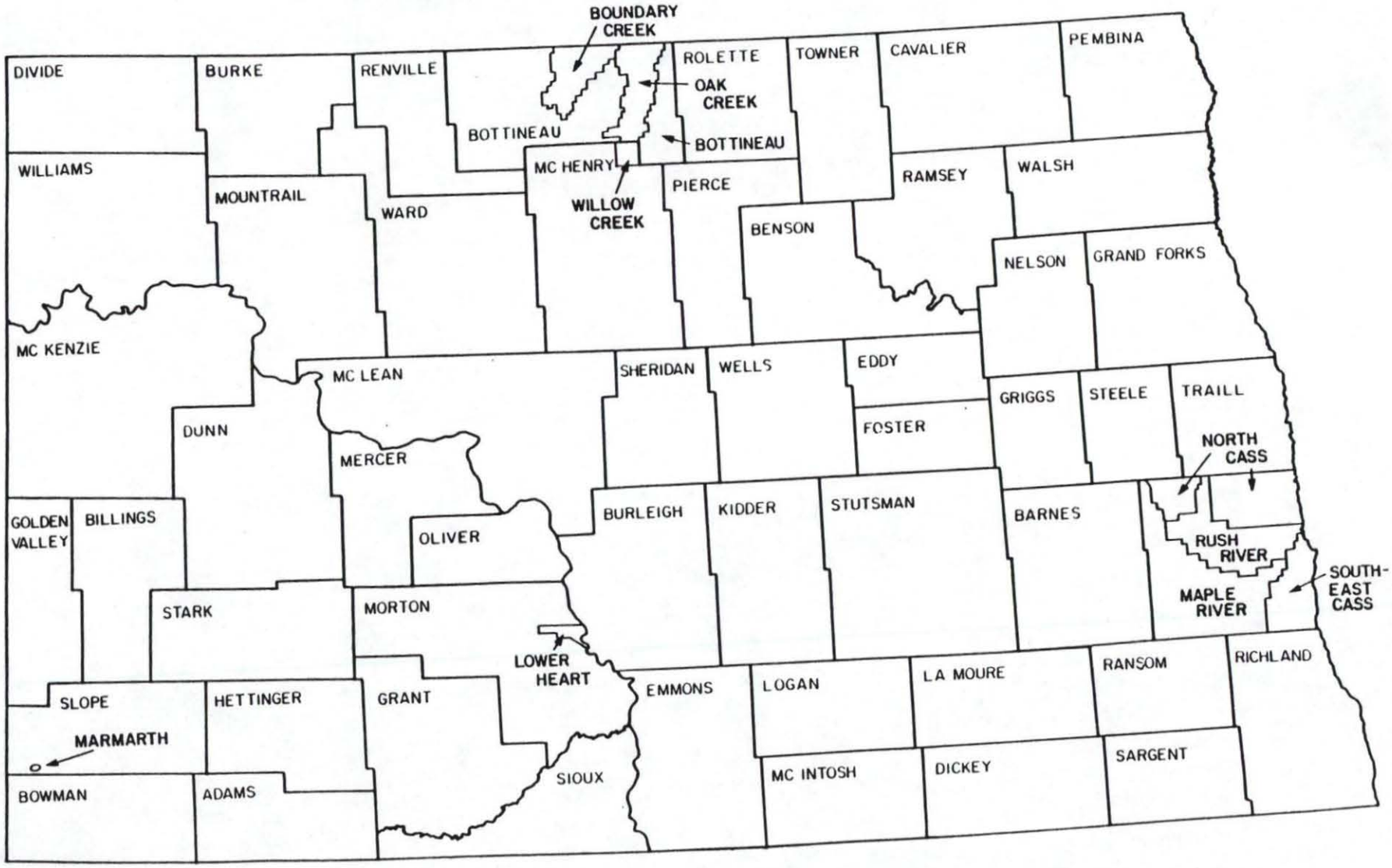
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the establishment of watershed districts to manage water based on watershed boundaries; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 28, 1997

ND WATER RESOURCE DISTRICTS



APPENDIX B

Forty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL No. 1077

Introduced by

Legislative Council

(Interim Natural Resources Committee)

A BILL for an Act to create and enact chapter 61-16.1 of the North Dakota Century Code, relating to the creation of water resource districts with boundaries based on hydrologic patterns; selection of interim water resource boards; establishment of subdistricts; election of water resource boards; assumption of assets and obligations; expenses of managers; water resource district budget; powers, duties, and responsibilities of water resource board; revenue bonds; development of master plans; financing of water resource projects; procedures for construction of water resource projects; to amend and reenact sections 61-01-06, 61-21-01, 61-21-11, and 61-21-41 of the North Dakota Century Code, relating to watercourses and assessment drains; to repeal section 61-01-22, chapter 61-16, and sections 61-21-03, 61-21-04, 61-21-05, 61-21-06, 61-21-07, 61-21-08, 61-21-09 of the North Dakota Century Code, relating to drainage permits, water management districts, and board of drainage commissioners; to set partial effective dates; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

<u>61-16.1-01. SHORT TITLE. This chapter may be cited and shall be known as the Water Management Reorganization Act of 1981.</u>

<u>61-16.1-02. LEGISLATIVE INTENT AND PURPOSE. The legislative assembly of North Dakota hereby recognizes and</u>

1 declares that the general welfare and the protection of the
2 lives, health, property, and the rights of all people of this
3 state require that the management, conservation, protection,
4 development, and control of waters in this state, public or
5 private, navigable or nonnavigable, surface or subsurface, the
6 control of floods, the prevention of damage to property
7 therefrom, and the regulation and prevention of water
8 pollution, involve and necessitate the exercise of the
9 sovereign powers of this state and are affected with and
10 concern a public purpose. To realize these objectives it is
11 hereby declared to be the policy of the state to provide for
12 the management, conservation, protection, development, and
13 control of water resources and for the prevention of flood
14 damage in the watersheds of this state and thereby to protect
15 and promote the health, safety, and general welfare of the
16 people of this state.
17 The legislative assembly further recognizes the
18 significant achievements that have been made in the management,
19 conservation, protection, development, and control of our water
20 and related land resources, and declares that the most
21 efficient and effective method of furthering these achievements
22 is by creating water resource districts encompassing all of the
23 area of the state, in accordance with hydrologic boundaries, as
24 provided by this chapter. The legislative assembly further
25 declares that the functions heretofore performed by water
26 management districts and boards of drainage commissioners shall
27 be consolidated and made functions of water resource districts.
28 All acts necessary to complete the organization of water
29 resource districts as authorized by this chapter shall be
30 completed on or before January 1, 1983, and all water resource
31 districts shall commence operation on February 1, 1983, with
32 full authority to exercise the powers, duties, and
33 responsibilities provided in this chapter.
34 61-16.1-03. DEFINITIONS. In this chapter, unless the
35 context or subject matter otherwise provides:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.
2. "Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a single drainage area.
3. "Commission" means the state water commission.
4. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
5. "District" means a water resource district.
6. "Project" means any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement, drainage of surface waters, collection, processing, and treatment of sewage, or discharge of sewage effluent, or any combination thereof, including incidental features of any such undertaking.
7. "Water resource board" means the water resource district's board of managers.

61-16.1-04. WATER RESOURCE DISTRICTS - BOUNDARIES. In furtherance of the policy set forth in section 61-16.1-02, the entire area of the state of North Dakota shall be divided into water resource districts. The state engineer, in accordance with this section, is hereby authorized and directed to determine and establish the exact number, and the boundaries of such districts. The exact number and boundaries of districts as determined by the state engineer shall be subject to the

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1 approval of the state water commission. Final approval of the
2 state water commission shall be subject to appeal to the
3 district court, if taken within thirty days. Boundaries of
4 water resource districts shall be established and approved on
5 or before January 1, 1982. When establishing such boundaries,
6 the state engineer shall employ the following guidelines and
7 criteria:
8 1. The primary objective shall be to establish
9 boundaries which provide for effective coordination,
10 planning, development, and general management of
11 areas which have related water resource issues. To
12 the extent that this primary objective will be
13 accomplished, these areas shall be determined
14 according to hydrologic patterns, utilizing
15 recognized river basins of the state. However,
16 existing boundaries of counties, townships, and other
17 political subdivisions or taxing districts shall be
18 followed wherever feasible and consistent with the
19 primary objective. Where appropriate and necessary
20 for more efficient development and general
21 management, two or more districts may be created
22 within a river basin.
23 2. The state engineer shall prepare suggested
24 boundaries, and shall send such suggested boundaries
25 and associated material to each water management
26 district and county auditor in the state. Not less
27 than thirty days later, the state engineer shall
28 arrange a meeting with the water management districts
29 and county auditors in each area of the state to
30 establish water resource district boundaries in
31 accordance with this section. The state engineer
32 shall then hold extensive public hearings in each
33 area. Notice of those public hearings shall be
34 published at least once a week for two consecutive
35 weeks in the newspaper or newspapers of general

circulation in each area, and in the official county newspaper of each county. In determining and establishing the boundaries for districts, due recognition and emphasis shall be given to the wishes of the local people, the affected water management districts, and any affected county administrative officials, consistent with these guidelines and criteria.

3. Watershed boundaries shall follow approximate hydrologic patterns except where doing so would divide a section or a city, or produce similar incongruities which might hinder the effective operation of the districts.

4. Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement, and at the same time provide for optimum local representation.

5. The number of water resource districts shall be not less than twenty-five nor more than forty.

61-16.1-05. ORDER CREATING WATER RESOURCE DISTRICTS. Upon final determination and approval of the number and boundaries of water resource districts, the state water commission shall issue an order of establishment for each water resource district. The commission's order shall specify the name by which a district shall be known. A certified copy of the order establishing each water resource district shall be filed with the county auditor of each county all or any portion of which is encompassed by the district. A copy of the order shall also be filed with the secretary of state. The secretary of state shall issue to the state water commission a certificate, bearing the seal of the state, of the due organization of the district, and shall file a copy of the certificate and the commission's order creating the district. The secretary of state's certificate, or a copy authenticated by the secretary of state, shall be prima facie evidence of the

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organization of the district. This new district shall be a governmental agency, and a body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied therefrom.

61-16.1-06. CHANGE OF BOUNDARIES.

1. Upon written request from one or more districts, made upon majority vote of each involved water resource board, the state water commission shall have the power to change the boundaries of the water resource districts to combine two or more such districts into a single district, or to divide one district into two or more districts. The written request shall set forth the existing boundaries of the affected districts and the proposed new boundaries or the legal description of lands proposed to be transferred to any adjoining district, or both. In considering such request, the state water commission shall be bound by the criteria and procedures provided by this chapter for the initial establishment of water resource districts and shall follow the procedure set forth in subsections 2 through 4 of this section.

2. Within sixty days after a proposal for a change of boundaries is made and filed with the commission, the commission shall publish notice of a public hearing on the question at least once a week for two consecutive weeks in the legal newspaper or newspapers of general circulation in the areas affected, and in the official county newspaper of each county all or a portion of which is affected by the proposed change. A public hearing shall then be held as set forth in the notice.

3. After the hearing, as provided in subsection 2 of this section, the commission, after considering the recommendations of the affected water resource boards, shall determine upon the basis of the

1 proposed change; upon the facts and evidence
2 presented at such hearing, upon consideration of the
3 standards provided in section 61-16.1-04 relative to
4 the organization of districts, and upon such other
5 relevant facts and information as may be available,
6 whether such changes in boundaries would improve the
7 efficient development and general management of water
8 resources, and would be administratively and
9 financially practicable and feasible.
10 4. If the commission approves the change or changes, it
11 shall forward a resolution to the secretary of state
12 certifying that the boundary between the districts
13 has been changed in accordance with the procedures
14 prescribed in this section and setting forth the new
15 boundary line, or the legal descriptions of the lands
16 transferred or both, as in the judgment of the
17 commission shall be adequate to describe such
18 boundary changes. When the resolutions and statement
19 have been filed with the secretary of state, the
20 change in boundary shall be deemed effective and the
21 secretary of state shall issue to the commission a
22 certificate evidencing the change of boundaries. The
23 commission shall provide a copy of the certificate to
24 the water resource board of each affected district
25 and to the county auditor of each county affected by
26 the change in boundaries.
27 61-16.1-07. ASSUMPTION OF ASSETS AND LIABILITIES.
28 1. Each district established pursuant to section
29 61-16.1-04 shall assume, on or before April 1, 1983,
30 all assets, liabilities and obligations of any water
31 management district or county drain board whose
32 territory is included within the boundaries of the
33 water resource district. When the jurisdiction of
34 any water management district or county drain board
35 is included within two or more water resource

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1 districts, the state engineer shall determine the
2 apportionment of any assets, liabilities, and
3 obligations. Such apportionment shall be based on
4 the proportionate amount of taxable valuation
5 included in each district. Property interests and
6 physical assets attached to the land shall be assumed
7 by the district in which they are located. The value
8 of property interests and attached physical assets
9 shall be considered in the apportionment of the
10 assets, liabilities, and obligations, and any such
11 assets may be encumbered or otherwise liquidated by
12 the assuming district to effect the proper
13 apportionment. Prior to February 1, 1983, and for
14 review by each affected water resource board, each
15 water management district and county drain board
16 shall have a certified public accountant prepare a
17 final audit of its financial records, including all
18 assets, liabilities, and obligations.
19 2. All taxes levied in 1982 pursuant to sections
20 61-16-12 and 61-21-09 for water management districts
21 or county drain boards which are not available or
22 paid to such districts until after January 1, 1983,
23 shall be treated as assets of such water management
24 districts and county drain boards, and such funds
25 shall be paid to the order of the water resource
26 district or districts in which such water management
27 district or county drainage district is located, in
28 the proportionate amounts as other assets are to be
29 divided. Tax funds in possession of or payable to
30 each water management district or county drain board
31 at the time of merger shall be put in a special fund
32 of the water resource district or districts receiving
33 the assets of such water management district or
34 county drain board. Such funds shall be expended
35 within the boundaries of the water management

1 districts or county drainage districts for projects
2 which benefit those districts, or shall be used to
3 satisfy general mill levy obligations of the area
4 within those districts. Expenditure of the funds for
5 projects shall be limited to the amount of benefits
6 accruing to the area within such water management
7 district or county drainage district.
8 3. Tax funds available through 1982 which have been
9 committed by a water management district to a project
10 which has been approved by the water management
11 district prior to July 1, 1982, shall be transferred
12 to the water resource district in which area the
13 project is located, and shall be reserved by the
14 water resource district for the designated project.
15 61-16.1-08. NUMBER OF MANAGERS. Beginning on
16 January 1, 1983, each district shall be governed by a water
17 resource board of three, five, seven, or nine managers, the
18 number to be recommended to the state engineer by the interim
19 board of managers on or before July 1, 1982. The state
20 engineer, with the approval of the state water commission,
21 shall determine the number of managers, and in making such
22 determination shall consider the number recommended by the
23 interim board, the complexity of the foreseeable programs, the
24 population and land area of the district, and the number of
25 subdistricts.
26 In addition to the three, five, seven, or nine managers
27 elected to a water resource board, water management district
28 commissioners not elected to water resource boards may, if they
29 desire, serve as ex officio, nonvoting members on the water
30 resource board of the resource district in which they reside,
31 beginning on January 1, 1983, and terminating on
32 December 31, 1984, or at the expiration of their regular terms,
33 whichever is first. These ex officio members shall receive
34 compensation and expenses for their service as provided in
35 section 61-16.1-13.

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1 61-16.1-09. INTERIM BOARD OF MANAGERS. To ensure
2 continuity in completing existing programs and to promote the
3 efficient and effective transition of powers and programs of
4 existing water management districts and county drain boards, as
5 provided by this chapter, all commissioners of a water
6 management distrct or drain board the majority or entirety of
7 which is located within a water resource district shall
8 comprise the interim board of the water resource district.
9 These individuals shall be officially convened on or before
10 February 1, 1982, by the state engineer as interim boards of
11 the respective water resource districts. The state engineer
12 shall, by order, establish the time, date, and place of the
13 first meeting of the interim board, at which time and place the
14 board members shall elect temporary officers. The duties of
15 each interim board shall be completed no later than
16 April 1, 1983. The responsibility of this interim board shall
17 include assumption of assets and liabilities pursuant to
18 section 61-16.1-07, all acts necessary to accomplish the
19 requirements of section 61-16.1-10 for the first election, and
20 creation of subdistricts for nomination of candidates for
21 managers. In the establishment of subdistricts, which shall be
22 complete on or before July 1, 1982, the interim board shall
23 give due regard to all factors including the extent that works
24 of improvement are located in rural areas and the extent to
25 which population and taxable property are located in urban
26 areas and the wishes of the people in the district. Creation
27 of subdistricts shall require approval of the state water
28 commission. Vacancies on such boards during the period of
29 February 1, 1982, to January 1, 1983, shall be filled through
30 appointment by the interim board.
31 61-16.1-10. ELECTION OF MANAGERS.
32 1. An election of water resource district managers shall
33 be held on the first Tuesday in October of each
34 even-numbered year. At each biennial election,
35 members of the water resource board shall be elected

1 to fill all vacancies caused by the expiration of
2 terms of office or otherwise. District managers
3 shall be elected for four-year terms, except when
4 elected to serve an unexpired term. Regular terms
5 shall commence on January 1 following the regular
6 election.
7 2. Managers of water resource districts shall be elected
8 on a nonpartisan ballot and shall pay no filing fee.
9 Candidates may place their names on the ballot by
10 filing petitions with the secretary of the district
11 not less than sixty days before the biennial election
12 at which managers of the district are to be elected.
13 Qualified electors residing within the district or
14 subdistrict shall be eligible for nomination and to
15 sign petitions. Petitions shall bear the signatures
16 of not less than twenty-five qualified electors
17 residing within the district to which each signer has
18 added an address, and the date of signing; and the
19 petition shall state whether the nominee is to be
20 placed on the ballot as a candidate from the district
21 at large or from a subdistrict.
22 3. The petition shall be accompanied by an affidavit
23 substantially as follows:
24 STATE OF NORTH DAKOTA)
25) ss.
26 County of ----------)
27 I, --------, being duly sworn, depose and say that I
28 reside in the water resource district of -------- and
29 State of North Dakota; that I am a qualified voter
30 therein; that I am a candidate for nomination to the
31 office of manager (from subdistrict) (at large) of the
32 -------- water resource district to be chosen at the
33 election to be held on the -------- day of October, 19--,
34 and I do hereby request that my name be printed on the

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1 ballot as provided by law, as a candidate for said
2 office.
3 ----------
4 Subscribed and sworn to before me this -------- day of
5 --------, 19--.
6 ----------
7 Notary Public,
8 North Dakota
9 4. Each water resource district shall be divided into
10 subdistricts pursuant to this chapter. The number of
11 subdistricts for a district shall equal a number
12 which is one less than the number of managers for the
13 district. The ballots shall list each nomination
14 subdistrict and candidates therefrom and also the
15 at-large candidates. Candidates must be residents of
16 the subdistrict designated on their nomination
17 petition. Qualified electors may each cast a number
18 of votes not larger than the total number of managers
19 to be elect. However, qualified electors shall cast
20 only one vote for each nomination subdistrict and one
21 vote at large when applicable. The candidate
22 receiving the most votes in each listed subdistrict,
23 or the district at large when applicable, shall be
24 elected. Whenever the number of managers to be
25 elected exceeds one-half the number of subdistricts,
26 candidates may petition from the district at large,
27 in which case the ballots shall list such candidates
28 under an appropriate heading.
29 5. Notice of the biennial district election shall be
30 given by the secretary of the district by publishing,
31 in the official county newspaper in each county which
32 is located wholly or partially in the district, and
33 in newspapers of general circulation in the district,
34 notice that the biennial election will be held on the
35 first Tuesday in October in the water resource

district. Such notice shall be published for two consecutive weeks, not more than twenty or less than ten days before the election.

6. The notice of election shall be in substantially the following form:

Notice is hereby given that on the first Tuesday, the -------- day of October, --------, an election will be held for the purpose of electing managers of water resource districts, and the polls will be open at ten a.m. -------- (insert time standard) and will close at seven p.m. -------- (insert time standard) of that day.

7. At all elections held in a water resource district, the polls shall be opened at ten a.m. and shall remain open until seven p.m. on the day of election. The water resource board shall designate in the notice of election the time standard to be used for polling hours.

8. At least twenty days before the election, the secretary of the district shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all persons who have filed as herein provided. The arrangement of the names of the candidates on the ballot shall be determined by lot by the secretary in the presence of the candidates or their representatives. The ballot shall be headed "official ballot", shall be nonpartisan in form, and shall contain the following:

a. The name of the district.

b. The date of the election.

c. The number of persons to be elected to each office.

d. A list of nomination subdistricts.

e. The candidates for election from each subdistrict and any at-large candidates.

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f. Blank spaces below the names listed as candidates for each office in which names not stated on the ballot may be written.

9. At least twenty-one days prior to the first Tuesday in October in each even-numbered year, the water resource board shall designate one or more precincts and polling places for the district election. Such precincts shall be arranged in accordance with subdistricts; however, there may be more than one polling place for each subdistrict. The polling places established in such precincts shall be located as conveniently as possible for the voters in each subdistrict, and a polling place once established by the board shall remain the polling place for the precinct until it is changed by subsequent action of the board. The board shall appoint two persons to act as judges and two persons to act as clerks of the election in each precinct. Before opening the polls, each of the judges and clerks shall take an oath or affirmation that he will perform the duties as judge or clerk, as the case may be, according to law and to the best of his ability. The oath or affirmation may be administered by any officer authorized to administer oaths, or by any of the judges or clerks to the others.

10. Election officials at water resource district elections shall receive the same compensation and expenses as water resource district managers pursuant to section 61-16.1-13.

11. The provisions of sections 16-12-04, 16-12-05, 16-12-11, 16-12-15, 16-13-01, 16-13-04, 16-20-01, 16-20-06, 16-20-07, 16-20-08, 16-20-14, 16-20-15, 16-20-17, 16-20-19, 16-20-22, 16-20-23, and 16-20-24 shall apply to elections held under the provisions of this section. After the votes are canvassed, and

1 within twenty-four hours after the polls are closed,
2 the judges shall make their returns to the secretary
3 of the district. All expenses of elections held by a
4 water resource district, shall be paid by the
5 district.
6 12. In the 1982 election one candidate shall be elected
7 from each subdistrict and one candidate shall be
8 elected at large. The candidates elected from
9 even-numbered subdistricts shall serve for four years
10 and the candidates elected from odd-numbered
11 subdistricts shall serve for two years. In addition,
12 when there are candidates on the ballot from the
13 district at large, one manager shall be elected to
14 serve for four years from this slate of candidates.
15 13. The board of managers of a water resource district
16 may, upon approval by the commission, change
17 subdistrict boundaries in accordance with this
18 section. Any changes shall be made with due regard
19 to all factors including but not limited to the
20 extent that works of improvement are located in rural
21 areas and the extent to which population and taxable
22 values are located in urban areas and the wishes of
23 the people in the district. Any changes must be
24 proposed to the commission by May first of any
25 election year, and approved by the commission no
26 later than June first of any election year.
27 61-16.1-11. VACANCY. A vacancy on the board shall exist
28 in the event of the death, resignation or removal from the
29 district of any manager or the elimination or detachment from
30 the district of the territory in which a manager resides. In
31 the event of a vacancy from any of such causes, or otherwise,
32 such vacancy shall be filled by the board of managers. Such
33 appointments shall be in writing and shall be effective until
34 the next election, at which time a successor shall be elected

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1 and qualified. The written appointment shall be filed with the
2 secretary of state and the state engineer.
3 61-16.1-12. REMOVAL OF MANAGER. Members of the board
4 may be removed from office for the same reasons and in the same
5 manner as provided by law for the removal of county officers.
6 61-16.1-13. COMPENSATION AND EXPENSES OF BOARD MEMBERS.
7 Each member of the water resource board shall receive the same
8 compensation per day as provided for in section 54-35-10 for
9 members of the legislative council while performing duties as a
10 member of the board, and an allowance for meals and lodging
11 expenses at the same rate and under the same conditions as
12 provided for state officials and employees. The allowance for
13 travel expenses shall be at the same rate as provided by
14 section 11-10-15 and shall be evidenced by a subvoucher or
15 receipt as provided by section 21-05-01.
16 61-16.1-14. OATH OF OFFICE - APPOINTMENT OF EMPLOYEES -
17 MEETINGS. Upon receiving notice of election to serve as a
18 member of the board of managers of a water resource district,
19 the manager shall take the oath of office prescribed for civil
20 officers. The oath shall be filed with the secretary of the
21 board.
22 The water resource board shall be officially convened by
23 the state engineer no later than February 1, 1983. The
24 managers of a water resource district, shall select a chairman
25 and vice chairman of the board and shall name a temporary
26 secretary pending appointment of a permanent secretary. The
27 board shall appoint a secretary and treasurer and such other
28 employees deemed necessary for the efficient conduct of the
29 district's business and shall fix their compensation. The
30 offices of secretary and treasurer may be held by the same
31 person. Officers and employees shall hold office during the
32 pleasure of the board.
33 The board shall provide an office suitable for its use as
34 a meeting place and for conducting the affairs of the district.
35 It shall adopt such rules or regulations for transacting the

1 business of the district as it may deem necessary, including
2 the time and place of holding regular meetings. Special
3 meetings may be called by the secretary on order of the
4 chairman of the board or upon written request of two members of
5 the board. Notice of a special meeting shall be mailed to each
6 member of the board at least five days before the meeting,
7 provided that a special meeting may be held whenever all
8 members of the board are present or consent thereto in writing.
9 61-16.1-15. MINUTES, BOOKS, AND RECORDS. The board
10 shall keep accurate minutes of its meetings and accurate
11 records and books of account, clearly setting out and
12 reflecting the entire operation, management, and business of
13 the district. These books and records shall be kept at the
14 principal office of the district or at such other regularly
15 maintained office or offices of the district as shall be
16 designated by the board, with due regard to the convenience of
17 the district, its customers, and electors. The books and
18 records shall be open to public inspection during reasonable
19 business hours.
20 61-16.1-16. BONDS OF TREASURER AND APPOINTIVE OFFICERS.
21 The treasurer of a water resource district shall be bonded in
22 the amount set by the water resource board but the bond shall
23 not be less than one thousand dollars. Other district
24 employees shall be bonded in any amount set by the board.
25 Every officer or employee of whom a bond is required shall be
26 deemed bonded with the state bonding fund upon notice of that
27 appointment given to the state commissioner of insurance by the
28 secretary of the district. Upon notification by the state
29 bonding fund of the premium required, the district treasurer
30 shall remit the same.
31 61-16.1-17. DISTRICT BUDGET - TAX LEVY - FINANCING BY
32 SPECIAL ASSESSMENT. The fiscal year of the district shall
33 begin July first and end June thirtieth. The board of managers
34 shall estimate the expenses of the district before July first
35 of each year. Estimates of district expenses may include costs

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1 of rights of way, easements, or other interests in property
2 deemed necessary for the construction, operation, and
3 maintenance of any projects. The district budget may also
4 include an amount necessary for future projects which are part
5 of a master plan prepared and adopted pursuant to section
6 61-16.1-25. Upon completion and adoption of a budget covering
7 necessary expenses, the board of managers shall send a copy of
8 the budget to the county auditor of each county in the
9 district. The estimates of necessary expenditures and the tax
10 levies required therefor, together with a notice that the water
11 resource board will meet on a specified date for the purpose of
12 making tax levies as set forth in the estimates, naming the
13 time and place of holding such meeting, shall be published at
14 least once a week for two consecutive weeks in the newspaper or
15 newspapers of general circulation in the district, and in the
16 official county newspaper of each county located entirely or
17 partially in the district. The water resource board shall meet
18 at the time and place designated in the public notice, at which
19 time any taxpayer may appear in favor of or against any
20 proposed expenditures or tax levies. When the hearing is
21 concluded, the board shall adopt such estimate as it finally
22 determines, but not to exceed the amount specified in the
23 published estimates. The board shall then, by resolution, levy
24 and authorize and direct the county auditor or county auditors
25 of the county or counties wholly or partially within the
26 district to extend and spread upon the tax roll of the county
27 or portion of the county in the district a tax of not to exceed
28 four mills on each dollar of taxable valuation in the same
29 manner, and with the same effect, as general property taxes are
30 extended and spread. Funds produced each year by such tax levy
31 shall be available until expended, and if such tax levy in any
32 year will not produce sufficient revenue to cover district
33 expenses, a fund sufficient to pay the same may be accumulated.
34 The acquisition of rights of way, easements, and the
35 construction, operation, and maintenance of a project in a

1 district may, in the discretion of the water resource board, be
2 financed in whole or in part by special assessments against
3 property benefited by such project, or from revenues realized
4 from general tax collections, or from net revenues to be
5 derived from service charges to be imposed and collected for
6 the services of the project, or any combination of such
7 sources.
8 61-16.1-18. DISTRICT MAY ISSUE WARRANTS IN ANTICIPATION
9 OF TAXES LEVIED TO PAY CURRENT EXPENSES. After a water
10 resource district has been established and organized and a
11 water resource board has been elected, the water resource
12 board, for the purpose of paying current district expenses
13 including per diem, compensation, and expenses of managers and
14 wages or salaries of officers and employees, by resolution, may
15 authorize and issue district warrants in anticipation of and
16 pending collection and receipt of taxes levied. The warrants
17 shall bear the rate of interest set by the board. The district
18 treasurer shall keep a register in which to enter each warrant
19 issued, showing the date and amount of each warrant, the date
20 of payment, and the amount paid in redemption thereof. All
21 warrants shall be paid in order of their presentation for
22 payment to the district treasurer. The warrants shall be drawn
23 to the claimant or bearer in the same manner as a county
24 warrant, and shall be signed by the chairman of the water
25 resources board and countersigned by the treasurer of the
26 district. The aggregate total amount of warrants issued in any
27 year to pay current district expenses shall not exceed eighty
28 percent of the district's tax levy for that year.
29 61-16.1-19. COUNTY TREASURER TO COLLECT AND REMIT TAXES
30 TO DISTRICT TREASURER - INVESTMENT OF DISTRICT FUNDS -
31 EXPENDITURE OF DISTRICT FUNDS. The treasurer of each county in
32 which a water resource district, or a part of such district, is
33 situated shall collect all district taxes and special
34 assessments together with any penalty and interest thereon in
35 the same manner as county taxes are collected, and shall,

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1 within twenty days after the close of each month, pay to the
2 treasurer of the district those taxes and assessments collected
3 during the preceding month, and shall notify the secretary of
4 the district of the payment. The district treasurer shall on
5 or before the twentieth day of each month report to each member
6 of the board the amount of money in the district treasury, the
7 amount of receipts in the preceding month, and items and
8 amounts of expenditures. At each regular meeting of the board
9 the treasurer shall submit to the board a statement of the
10 district's finances.
11 Each district may invest any money in the district
12 treasury, including money in any sinking fund established for
13 the purpose of providing for the payment of the principal or
14 interest of any contract, bond, or other indebtedness or for
15 any other purpose, not required for the immediate needs of the
16 district, in accordance with chapter 21-04.
17 Funds of the district shall be paid out or expended only
18 upon the authorization or approval of the water resource board
19 and by check, draft, warrant, or other instrument in writing,
20 signed by the treasurer, assistant treasurer, or any other
21 officer, employee, or agent of the district authorized by the
22 treasurer to sign on behalf of the treasurer. The
23 authorization shall be in writing and filed with the secretary
24 of the district.
25 61-16.1-20. REVENUE BONDS. Each district shall have the
26 power and authority to issue revenue bonds, not exceeding an
27 aggregate total outstanding of ten million dollars, for the
28 purpose of financing construction of projects and incidental
29 facilities authorized by this chapter. Issuance of revenue
30 bonds must be approved by two-thirds of all of the members of
31 the board of managers of the district. The district shall
32 pledge sufficient revenue from any revenue-producing facility
33 constructed with the aid of revenue bonds for the payment of
34 principal and interest on the bonds, and shall establish rates
35 for the facilities at a sufficient level to provide for the

1 operation of such facilities and for the bond payments. Upon
2 specific authorization by the legislative assembly and in
3 accordance with this section, a district may issue revenue
4 bonds in excess of an aggregate total of ten million dollars.
5 61-16.1-21. POWERS OF WATER RESOURCE BOARD. Each water
6 resource board shall have the power and authority to:
7 1. Sue and be sued in the name of the district.
8 2. Exercise the power of eminent domain in the manner
9 provided by title 32 for the purpose of acquiring and
10 securing any rights, titles, interests, estates, or
11 easements necessary or proper to carry out the duties
12 imposed by this chapter, and particularly to acquire
13 the necessary rights in land for the construction of
14 dams, flood control projects, and other water
15 conservation, distribution, and supply works of any
16 nature and to permit the flooding of lands, and to
17 secure the right of access to such dams and other
18 devices and the right of public access to any waters
19 impounded thereby.
20 3. Accept funds and property or other assistance,
21 financial or otherwise, from federal, state, and
22 other public or private sources for the purposes of
23 aiding the construction or maintenance of water
24 conservation, distribution, and flood control
25 projects; and cooperate and contract with the state
26 or federal government, or any department or agency
27 thereof, in furnishing assurances and meeting local
28 cooperation requirements of any project involving
29 control, conservation, distribution, and use of
30 water.
31 4. Procure the services of engineers and other technical
32 experts, and employ an attorney or attorneys to
33 assist, advise, and act for it in its proceedings.
34 5. Plan, locate, relocate, construct, reconstruct,
35 modify, maintain, repair, and control all dams and

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water conservation and management devices of every nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.

6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district, and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.

7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.

8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.

9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.

10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.

11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the procedures and provisions of chapter 61-21.

12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.

13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.

14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.

15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.

16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris and any artificial block which hinders or decreases the flow of water through such bridge or culvert.

17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such

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1 destruction is permitted, the party or parties
2 responsible for the destruction must, when the board
3 has determined that such destruction will cause
4 excessive property damage from overflow flooding due
5 to the erosion or blocking of the river channel,
6 plant a shelterbelt which meets the specifications of
7 the board. In the event the native woodland within
8 such area has already been destroyed, the board may,
9 in its discretion, order the planting of a
10 shelterbelt which, in the judgment of the board, will
11 curtail the erosion or blocking of such river channel
12 where overflow flooding has caused extensive property
13 damage. For purposes of this subsection, the words
14 "riverbank" and "river channel" relate to rivers as
15 defined in the United States geological survey base
16 map of North Dakota, edition of 1963. The provisions
17 of this subsection shall not be construed to limit,
18 impair, or abrogate the rights, powers, duties, or
19 functions of any federal, state, or local entity to
20 construct and maintain any flood control, irrigation,
21 recreational, or municipal or industrial water supply
22 project.
23 18. Petition any zoning authority established pursuant to
24 chapters 11-33, 11-35, or 40-47 or section 58-03-13
25 to assume jurisdiction over a floodplain for zoning
26 purposes when such zoning is required to regulate and
27 enforce the placement erection, construction,
28 reconstruction, repair, and use of buildings and
29 structures to protect and promote the health, safety,
30 and general welfare of the public within a floodplain
31 area. In the event such zoning authority fails to
32 act or does not exist, the board may request the
33 state water commission to assist it in a study to
34 determine and delineate the floodplain area. Upon
35 completion of such study, the board shall make

suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.

19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.

20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.

21. Require the state highway department, railroads, counties, and townships in the district, to coordinate proposals for installation, modification, or construction of culverts and bridges with the district, in an effort to achieve appropriate sizing and maximum consistency of road openings, and to consider the possibility of incorporating appropriate water control structures into such road openings.

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1 61-16.1-22. RESPONSIBILITIES AND DUTIES OF WATER
2 RESOURCE BOARD. Each water resource board shall have the
3 following responsibilities and mandatory duties:
4 1. To meet jointly with other water resource boards
5 within a common river basin at least twice each year
6 at such times and places as may be mutually agreed
7 upon for the purpose of reviewing and coordinating
8 efforts for the maximum benefit of the entire river
9 basin.
10 2. To cooperate with other water resource boards of a
11 common river basin and provide mutual assistance to
12 the maximum extent possible.
13 3. Upon order of the state water commission, to enter
14 into an agreement with all water resource districts
15 of a river basin to address collectively and attempt
16 to resolve significant water management problems of
17 the river basin. If the districts of a river basin
18 are not able to agree to the provisions of a joint
19 exercise of powers agreement in accordance with
20 section 61-16.1-23, the state water commission shall
21 establish the terms of the agreement.
22 4. To encourage all landowners to retain water on the
23 land to the maximum extent possible in accordance
24 with sound water management policies, and to carry
25 out to the maximum extent possible the water
26 management policy that upstream landowners who have
27 artificially altered the hydrologic scheme must share
28 with downstream landowners the responsibility of
29 providing for proper management and control of
30 surface waters.
31 5. In the planning of any surface water project which
32 will have an impact downstream in the water resource
33 district or another water resource district, to
34 address and consider fully such impacts. A
35 determination of whether to proceed with the

1 construction of any such project shall be based on
2 the following principles:
3 a. Reasonable necessity of the project.
4 b. Reasonable care to be taken to avoid unnecessary
5 injury by fully considering all alternatives.
6 c. Consideration of whether the utility or benefit
7 accruing from the project reasonably outweighs
8 the adverse impacts resulting from the project.
9 6. To require that appropriate easements be obtained in
10 accordance with applicable state and federal law when
11 projects will cause an adverse impact to lands of
12 other landowners.
13 61-16.1-23. JOINT EXERCISE OF POWERS.
14 1. Two or more districts may, by agreement, jointly or
15 cooperatively exercise any power which is authorized
16 a board by title 61. The agreement shall state its
17 purpose and the powers to be exercised, and shall
18 provide for the method by which the power or powers
19 shall be exercised. When the agreement provides for
20 the use of a joint board, the joint board shall be
21 representative of the boards which are parties to the
22 agreement. Notwithstanding other provisions of law,
23 the agreement may specify the number, composition,
24 terms, or qualifications of the members of the joint
25 board.
26 2. The districts which are parties to such an agreement
27 may provide for disbursements from their individual
28 budgets to carry out the purpose of the agreement.
29 In addition, a joint board established pursuant to
30 this section may adopt, by resolution, on or before
31 July first of each year, a budget showing estimated
32 expenses for the ensuing fiscal year and the proposed
33 contributions of each member district as determined
34 by the agreement. The boards of the member districts
35 then shall levy by resolution, an ad valorem tax not

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1 to exceed two mills upon the real property within
2 each district. The levy may be in excess of any
3 other levy authorized for a district.
4 3. The proceeds of one-half of this levy shall be
5 credited to the joint board's administrative fund and
6 shall be used for regulatory activities and for the
7 construction and maintenance of projects of common
8 benefit to the member districts. The remainder shall
9 be credited to the construction funds of the joint
10 board and shall be used for the construction and
11 maintenance of projects of common benefit to more
12 than one district.
13 4. Funds may be paid to and disbursed by the joint board
14 as agreed upon, but the method of disbursement shall
15 agree as far as practicable with the method provided
16 by law for the disbursement of funds by individual
17 districts. Contracts let and purchases made under
18 the agreements shall conform to the requirements
19 applicable to contracts and purchases by individual
20 districts. The joint board shall be accountable for
21 all funds and reports of all receipts and
22 disbursements to the state water commission in a
23 manner prescribed by the commission.
24 5. The agreement may be continued for a definite term or
25 until rescinded or terminated in accordance with its
26 terms. The agreement shall provide for the
27 disposition of any property required as the result of
28 a joint or cooperative exercise of powers, and the
29 return of any surplus moneys in proportion to
30 contributions of the several contracting districts
31 after the purpose of the agreement has been
32 completed.
33 6. Residence requirements for holding office in a
34 district shall not apply to any officer appointed to
35 carry out any agreement.

1 7. This section does not dispense with procedural
2 requirements of any other statute providing for the
3 joint or cooperative exercise of any governmental
4 power.
5 61-16.1-24. SCOPE OF BOARD'S EXTRATERRITORIAL
6 CONTRACTUAL AUTHORITY - BOARD MAY ACQUIRE PROPERTY IN ADJOINING
7 STATES AND PROVINCES. A water resource board shall have the
8 right, power, and authority to enter into contracts or other
9 arrangements for water conservation, water supply, flood
10 control, or other authorized projects with the United States
11 government or any department thereof, with the Canadian
12 government or any department thereof or any of its provinces or
13 municipalities, with persons, railroads, or other corporations,
14 with public corporations, and state governments of this or
15 other states, with drainage, water resource, conservation,
16 conservancy, or improvement districts, or other such districts
17 in this or other states. Such contracts or arrangements can
18 provide for cooperation or assistance in planning,
19 constructing, maintaining, and operating such projects and in
20 making investigations and reports thereon, and for the carrying
21 out of any other provision of this chapter. A water resource
22 board may purchase, lease, or acquire land or other property in
23 adjoining states or provinces to secure outlets to construct
24 and maintain dikes or dams, or for other purposes authorized by
25 this chapter and may let contracts or spend money for securing
26 such outlets or works in adjoining states or provinces. No
27 water resource board of any water resource district shall have
28 the right, power, or authority to connect boundary waters
29 having different natural outlets by artificial means so that
30 the waters of one may be discharged into the other.
31 61-16.1-25. MASTER PLANS.
32 1. Each water resource district shall prepare and adopt
33 a master plan to include a statement of goals and
34 objectives for each of the various water management
35 activities in the district, such as drainage, flood

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1 control, water supply, and recreation. The master
2 plan for each specific water management activity
3 shall be reviewed and updated as often as deemed
4 necessary by the district. A copy of the master plan
5 as adopted and all revisions and updates shall be
6 filed with the commission.
7 2. Each district shall also prepare and adopt a two-year
8 priorities schedule which shall summarize planned
9 district projects and financial needs of the district
10 for at least the next two years. A copy of the
11 priorities schedule shall be filed with the
12 commission on or before May first of each
13 even-numbered year.
14 3. The commission shall develop and make available to
15 the districts guidelines regarding the format and
16 general content of master plans, which shall be
17 utilized by each district. The commission shall
18 provide such assistance, within appropriate budget
19 limitations, as may be necessary to help districts
20 develop master plans and priority schedules.
21 4. The district shall give notice and hold public
22 hearings on all proposed master plans. All comments
23 on plans shall be reviewed by the district and
24 alterations of the plans shall be made as are
25 appropriate. Plans shall then be submitted to the
26 commission by the district for review and comment.
27 Failure to reply within thirty days shall be
28 conclusive that the plans have been endorsed by the
29 commission.
30 5. No state funds shall be allocated or disbursed to a
31 district, after July 1, 1985, unless that district
32 has submitted a master plan pursuant to this section
33 for the specific water management activity for which
34 state funds were requested, and until the commission
35 has determined that such funds are for projects and

1 programs which are related to that water management
2 activity and which are in conformance with the plans
3 of the commission and the district.
4 61-16.1-26. PERMIT TO CONSTRUCT OR MODIFY DAM, DIKE, OR
5 OTHER DEVICE REQUIRED - PENALTY. No dikes, dams, or other
6 devices for water conservation, flood control regulation,
7 watershed improvement, or storage of water which are capable of
8 retaining, obstructing, or diverting more than twelve and
9 one-half acre-feet [15418.52 cubic meters] of water shall be
10 constructed within any water resource district except in
11 accordance with the provisions of this chapter. An application
12 for the construction of any dike, dam, or other device, along
13 with complete plans and specifications, shall be presented
14 first to the state engineer. After receipt, the state engineer
15 shall consider the application in such detail as he deems
16 necessary and proper. The state engineer shall refuse to allow
17 the construction of any unsafe or improper dike, dam, or other
18 device which would interfere with the orderly control of the
19 water resources of the district, or may order such changes,
20 conditions, or modifications as in the judgment of the state
21 engineer may be necessary for safety or the protection of
22 property. Within forty-five days after receipt of the
23 application, except in unique or complex situations, the state
24 engineer shall complete his review of the application, and if
25 he approves it, shall forward the application, along with any
26 changes, conditions, or modifications, to the water resource
27 board of the district within which the contemplated project is
28 located. The board thereupon shall consider, within forty-five
29 days, the application, and any changes, conditions, or
30 modifications of the state engineer, and if the same shall meet
31 with the board's approval, the board shall forward the approved
32 application to the applicant, and shall send a certification of
33 its action to the state engineer. Any person aggrieved by any
34 ruling of the state engineer under this section shall have the
35 right to a full hearing before the state engineer and a full

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1 consideration of all evidence available before a final order of
2 the state engineer shall be entered. Any person constructing a
3 dam, dike, or other device, which is capable of retaining
4 twelve and one-half acre-feet [15418.52 cubic meters] of water,
5 without first securing a permit to do so, as required by this
6 section, shall be liable for all damages proximately caused by
7 such dam, dike, or other device, and shall be guilty of a class
8 B misdemeanor.
9 61-16.1-27. COMMISSION, STATE ENGINEER, AND WATER
10 RESOURCE BOARD SHALL ENCOURAGE BOTH STRUCTURAL AND
11 NONSTRUCTURAL ALTERNATIVES. The state water commission, state
12 engineer, and the appropriate water resource board shall
13 encourage both structural and nonstructural solutions to water
14 management problems within the district by federal and state
15 agencies, private individuals, and public and private
16 corporations, and shall lend their aid, counsel, and assistance
17 to any such solutions. All structural alternatives, including
18 dams, dikes, drains, and other works, whether constructed by
19 public authorities or private persons, unless specifically
20 exempted therefrom, shall be subject to all the provisions of
21 this chapter.
22 61-16.1-28. DAMS OR OTHER DEVICES CONSTRUCTED WITHIN A
23 DISTRICT SHALL COME UNDER CONTROL OF A WATER RESOURCE BOARD.
24 All dams, dikes, and other water conservation and flood control
25 works or devices constructed within any district, unless
26 specifically exempted therefrom, shall, without affecting the
27 state water commission's or the state engineer's authority
28 relative to such works, automatically come under the
29 jurisdiction of the water resource board for the district
30 within which the dam, dike, work, or devices exists or is to be
31 constructed. No changes or modification of any existing dams,
32 dikes, or other works or devices shall be made without
33 complying fully with the provisions of this chapter.
34 61-16.1-29. WHEN DAMS CONSTRUCTED BY FEDERAL AGENCY
35 UNDER CONTROL OF WATER RESOURCE DISTRICT. Any dam, dike, or

1 other water control device or flood control project constructed
2 by or with the assistance of any federal agency but which is
3 not maintained or operated by any federal agency shall become
4 the responsibility of the water resource district where it is
5 located. The water resource district may take any action
6 concerning this dam, dike, or other water control device it
7 deems feasible or necessary.
8 61-16.1-30. CONTRACTS FOR CONSTRUCTION OR MAINTENANCE OF
9 PROJECT. If the cost of construction or maintenance of a
10 project does not exceed fifteen thousand dollars, such work may
11 be done on a day work basis or a contract may be let without
12 being advertised. In cases where the cost of such construction
13 or maintenance exceeds fifteen thousand dollars, the lowest and
14 best bid shall be accepted. The water resource board shall
15 give at least ten days' notice of the time and place where
16 contract will be let. The notice shall be published at least
17 once in a newspaper of general circulation in the district in
18 which the work is to be carried on and shall be mailed to any
19 prospective bidders known to the water resource board.
20 Any person receiving a contract for construction or
21 maintenance of a project shall give a performance bond in an
22 amount set by the water resource board, conditioned upon the
23 proper performance of the contract within the time specified by
24 such contract. The board shall reserve the right to reject any
25 or all bids and may postpone the letting of contracts from time
26 to time or to such other time and place as the board may
27 publicly announce. Any contracts not let at the original
28 contract letting may be let by the board at a later time after
29 notice and in accordance with the provisions of this section.
30 The competitive bid requirement of this section shall be
31 waived, upon the determination of the water resource board that
32 an emergency situation exists requiring the prompt repair of a
33 project, and a contract may be made for the prompt repair of
34 the project without seeking bids.

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1 61-16.1-31. FINANCING PROJECT THROUGH REVENUE BONDS,
2 GENERAL TAXES, OR SPECIAL ASSESSMENTS - APPORTIONMENT OF
3 BENEFITS. A water resource board shall have the authority,
4 either upon request or by its own motion, to acquire needed
5 interest in property and provide for the cost of construction,
6 alteration, repair, operation, and maintenance of a project
7 through issuance of improvement warrants or with funds raised
8 by special assessments, general tax levy, issuance of revenue
9 bonds, or by a combination of general ad valorem tax, special
10 assessments, and revenue bonds. Whenever a water resource
11 board decides to acquire property or interests in property to
12 construct, operate, alter, repair, or maintain a project with
13 funds raised in whole or in part through special assessments,
14 such assessments shall be apportioned to and spread upon lands
15 or premises benefited by the project in proportion to and in
16 accordance with benefits accruing thereto. The board shall
17 assess the proportion of the cost of the project, or the part
18 of the cost to be financed with funds raised through levy and
19 collection of special assessments which any lot, piece, or
20 parcel of land shall bear in proportion to the benefits
21 accruing thereto and any county, city, or township which is
22 benefited thereby. In determining assessments the water
23 resource board shall carry out to the maximum extent possible
24 the water management policy of this chapter that upstream
25 landowners must share with downstream landowners the
26 responsibility to provide for the proper management of surface
27 waters.
28 61-16.1-32. FINANCING OF SPECIAL IMPROVEMENTS -
29 PROCEDURE. When it is proposed to finance in whole or in part
30 the construction of a project with funds raised through the
31 collection of special assessments levied against lands and
32 premises benefited by construction and maintenance of such
33 project, the board shall examine the proposed project, and if
34 in its opinion further proceedings are warranted, it shall
35 adopt a resolution and declare that it is necessary to

1 construct and maintain the project. The resolution shall
2 briefly state the nature and purpose of the proposed project,
3 and shall designate a registered land surveyor or engineer to
4 assist the board. For the purpose of making examinations or
5 surveys, the board or its employees, after written notice to
6 each landowner, may enter upon any land on which the proposed
7 project is located or any other lands necessary to gain access.
8 The surveyor or engineer shall prepare profiles, plans, and
9 specifications of the proposed project and estimates of the
10 total cost thereof. The estimate of costs prepared by the
11 surveyor or engineer shall include acquisition of right of way,
12 and shall be in sufficient detail to allow the board to
13 determine the probable share of the total costs that will be
14 assessed against each of the affected landowners in the
15 proposed project assessment district.
16 61-16.1-33. HEARING - NOTICE - CONTENTS. Upon the
17 filing of the surveyor's or engineer's report provided for in
18 section 61-16.1-32, and after satisfying the requirements of
19 section 61-16.1-36, the board shall fix a date and place for
20 public hearing on the proposed project. Such place of hearing
21 shall be in the vicinity of the proposed project and shall be
22 convenient and accessible for the majority of the landowners
23 subject to assessment for such project or whose property shall
24 be subject to condemnation for the proposed project. The board
25 shall cause a complete list of the benefits and assessments to
26 be made, setting forth each county, township, or city assessed
27 in its corporate capacity as well as each lot, piece, or parcel
28 of land assessed, the amount each is benefited by the
29 improvement and the amount assessed against each. At least ten
30 days before the hearing, the board shall file with the county
31 auditor of each county or counties in which the project is or
32 will be located the list showing the percentage assessment
33 against each parcel of land benefited by the proposed project
34 and the approximate assessment in terms of money apportioned
35 thereto. Notice of such filing shall be included in the notice

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of hearing. Notices of the hearing shall contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing shall specify the general nature of the project as finally determined by the engineer and the board. The notice of hearing shall also specify when and where protests against such proposed project shall be filed and an assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside. The date set for such hearing shall not be less than twenty days after the first publication of the notice. A record of the hearing shall be made by the board, including a list of affected landowners present in person or by agent, and such record shall be preserved in the minutes of the meeting. Affected landowners shall be informed at the hearing of the probable total cost of the project and their individual share of such cost and the portion of their property, if any, to be condemned for such project.

61-16.1-34. PROTEST. At the hearing, the affected landowners shall also be informed when and where protests against such proposed project may be filed. Affected landowners shall then have thirty days after the date of the hearing to file written protests with the secretary of the board, protesting the project. Any form of written objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing protests against the proposed project has been reached, no more protests may be filed and no person may withdraw his or her name from the list of those filing protests against the proposed project. Any withdrawal of a protest against the proposed project before that time must be in writing. When the protests of affected

1 landowners have been filed and the deadline for filing protests
2 has passed, the board shall immediately determine the
3 sufficiency of the protests. If the board finds that fifty
4 percent or more of the total votes of affected landowners, as
5 determined by section 61-16.1-35, have protested against the
6 proposed project, then the protests shall be a bar against
7 proceeding further with the project. If the protests are found
8 to be insufficient in number or invalid, the board shall issue
9 an order establishing the proposed project and may proceed,
10 after complying with the requirements of sections 61-16.1-36
11 and 61-16.1-37, to contract or provide for the construction or
12 maintenance of the project in substantially the manner and
13 according to the forms and procedure provided in title 40 for
14 the construction of sewers within municipalities. Upon making
15 an order establishing or denying establishment of a project,
16 the board shall publish notice of the order in a newspaper of
17 general circulation in the area affected. Any right of appeal
18 shall begin to run on the date of publication of the notice.
19 61-16.1-35. VOTING RIGHT OR POWERS OF LANDOWNERS. In
20 order that there may be a fair relation between the amount of
21 liability for assessments and the power of objecting to the
22 establishment of a proposed project, the voting rights of
23 affected landowners on the question of establishing the project
24 shall be as provided in this section. The landowner or
25 landowners of tracts of land affected by the project shall have
26 one vote for each dollar of assessment that his land is subject
27 to or one vote for each dollar of the assessed valuation of
28 land condemned for the project, as determined in accordance
29 with title 57. It is the intent of this section to allow one
30 vote for each dollar of assessment, regardless of the number of
31 owners of such tract of land. Where more than one owner of
32 such land exists, the votes shall be prorated among them in
33 accordance with each owner's property interest. A written
34 power of attorney shall authorize an agent to protest a project
35 on behalf of any affected landowner or landowners.

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1 61-16.1-36. ASSESSMENT OF COST OF PROJECT. Whenever the
2 water resource board proposes of make any special assessment
3 under the provisions of this chapter, the board, prior to the
4 hearing required under section 61-16.1-33, shall inspect any
5 and all lots and parcels of land, which may be subject to
6 assessment and shall determine from the inspection the
7 particular lots and parcels of lands which, in the opinion of
8 the board, will be especially benefited by the construction of
9 the work for which the assessment is made and shall assess the
10 proportion of the total cost of acquiring right of way and
11 constructing and maintaining such improvement in accordance
12 with benefits received but not exceeding such benefits,
13 against:
14 1. Any county, township, or city, in its corporate
15 capacity, which may be benefited directly or
16 indirectly thereby.
17 2. Any lot, piece, or parcel of land which is directly
18 benefited by such improvement.
19 In determining benefits the board shall consider, among other
20 factors, property values, degree of improvement of properties,
21 productivity and the water management policy as expressed in
22 61-16.1-31. Property belonging to the United States shall be
23 exempt from such assessment, unless the United States has
24 provided for the payment of any assessment which may be levied
25 against its property for benefits received. Benefited property
26 belonging to counties, cities, school districts, park
27 districts, and townships shall not be exempt from such
28 assessment and political subdivisions whose property is so
29 assessed shall provide for the payment of such assessments,
30 installments thereof, and interest thereon, by the levy of
31 taxes according to law. Any county, township, or city assessed
32 in its corporate capacity for benefits received shall provide
33 for the payment of such assessments, installments thereof and
34 interest thereon by levy of a general property tax against all
35 the taxable property therein in accordance with law, and no

1 land situated within such political subdivision which is
2 subject to such tax shall be assessed separately by the
3 district board. No tax limitation provided by an statute of
4 this state shall apply to tax levies made by any such political
5 subdivision for the purpose of paying any special assessments
6 made in accordance with the provisions of this chapter. There
7 shall be attached to the list of assessments a certificate
8 signed by a majority of the members of the board certifying
9 that the same is a true and correct assessment of the benefit
10 therein described to the best of their judgment and stating the
11 several items of expense included in the assessment.
12 61-16.1-37. ASSESSMENT LIST TO BE PUBLISHED - NOTICE OF
13 HEARING - ALTERATION OF ASSESSMENTS - CONFIRMATION OF
14 ASSESSMENT LIST - FILING. After entering an order establishing
15 the project, the board shall cause the assessment list to be
16 published once each week for two successive weeks in the
17 newspaper or newspapers of general circulation in the district
18 together with a notice of the time when, and place where, the
19 board will meet to hear objections to any assessment by any
20 interested party, or an agent or attorney for that party. The
21 date set for the hearing shall be not less than twenty days
22 after the first publication of the notice. At the hearing, the
23 board may make such alterations in the assessments as in its
24 opinion may be just and necessary to correct any error in the
25 assessment but must make the aggregate of all assessments equal
26 to the total amount required to pay the entire cost of the work
27 for which such assessments are made, or the part of such cost
28 to be paid by special assessment. No assessment shall exceed
29 the benefit as determined by the board to the parcel of land or
30 political subdivision assessed. The board shall then confirm
31 the assessment list and the secretary shall attach to the list
32 a certificate that the same is correct as confirmed by the
33 board and thereupon shall file the list in the office of the
34 secretary.

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1 61-16.1-38. APPEAL TO STATE ENGINEER. After the hearing
2 provided for in section 61-16.1-37, landowners subject to
3 assessment or whose property is subject to condemnation for the
4 construction of the proposed project may appeal pursuant to
5 this section. Affected landowners having not less than
6 twenty-five percent of the possible votes, as determined by
7 section 61-16.1-35, who believe that the assessment had not
8 been fairly or equitably made, or that the project is not
9 properly located or designed, may appeal to the state engineer
10 by petition, within ten days after the hearing on assessments,
11 to make a review of the assessments and to examine the location
12 and design of the proposed project. Upon receipt of such
13 petition the state engineer shall examine the lands assessed
14 and the location and design of the proposed project, and if it
15 appears that the assessments have not been made equitably, he
16 may proceed to correct the same, and his correction and
17 adjustment of said assessment shall be final. Should it appear
18 that, in the judgment of the state engineer, the project has
19 been improperly located or designed, he may order a relocation
20 and redesign. Such relocation and redesign shall be followed
21 in the construction of the proposed project. Any landowner who
22 claims that he will receive no benefit at all from the
23 construction of a new project may appeal the question of
24 whether there is any benefit to the state engineer. The state
25 engineer shall not determine the specific amount of benefit
26 upon an appeal by an individual landowner, but shall only
27 determine if there is any benefit to the landowner, and the
28 determination of the state engineer upon such question shall be
29 final.
30 61-16.1-39. WHEN ASSESSMENTS MAY BE MADE. After the
31 requirements of this chapter have been satisfied and a contract
32 and bond for any work for which a special assessment is to be
33 levied have been approved by the board, the board may direct
34 special assessments to be levied for the payment of appropriate
35 costs, and the secretary shall certify to the board the items

of total cost to be paid by special assessments so far as they have been ascertained. The certificate shall include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work which may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorneys' fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, and printing of improvement warrants, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

In no event shall any contract or contracts be awarded which exceed, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-16.1-40. LIABILITY FOR DEFICIENCIES. During the month of June of each year the board shall prepare a complete statement o the condition of the finances of each project. At its July meeting next following the filing of each statement of the financial condition of a project, the water resource board shall examine the statement and determine whether or not the project has defaulted or will default on its financial obligations. If it appears to a water resource board that any project does not have moneys and assessments receivable equal to one hundred percent of its obligations coming due within the following thirteen months, the board shall pay from the general fund into the sinking fund for project warrants or bonds or shall proceed to levy a general property tax, the proceeds of which, together with project moneys on hand and probable future yield of project assessments will amount to one hundred ten percent of the obligations of the project becoming due during the following thirteen months. Such tax or payments shall be appropriated to the sinking fund for the project warrants or bonds, and certificates of indebtedness may be issued against

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1 the same as levied. On redemption of all warrants or bonds
2 against any sinking fund, or upon accumulation of moneys in
3 such fund sufficient to redeem all outstanding warrants or
4 bonds, all surplus moneys in such fund shall be payable to the
5 general fund of the district.
6 No tax limitation provided by any statute of this state
7 shall apply to tax levies made by any district pursuant to this
8 section.
9 61-16.1-41. REASSESSMENT OF BENEFITS. The water
10 resource board may at any time, or upon petition of any
11 affected landowner after a project has been in existence for at
12 least one year shall, hold a hearing for the purpose of
13 determining the benefits of such project to each tract of land
14 affected. At least ten days' notice of the hearing shall be
15 given by publication in the newspaper or newspapers having
16 general circulation in the district and by mailing notice
17 thereof by ordinary mail to each owner of land affected by the
18 project as determined by the records of the register of deeds
19 or county treasurer. The provisions of this chapter governing
20 the original determination of benefits and assessment of costs
21 shall apply to any reassessment of benefits carried out under
22 this section. The board shall not be forced to make such
23 reassessment more than once every ten years, nor shall any
24 assessment or balance thereof supporting a project fund be
25 reduced or impaired by reassessment or otherwise so long as
26 bonds payable out of such fund remain unpaid and moneys are not
27 available in such fund to pay all such bonds in full, with
28 interest. Costs of maintenance shall be prorated in accordance
29 with any plan for reassessment of benefits that has been
30 adopted.
31 61-16.1-42. CORRECTION OF ERRORS AND MISTAKES IN SPECIAL
32 ASSESSMENTS - REGULATIONS GOVERNING. If mathematical errors or
33 other such mistakes occur in making any assessment resulting in
34 a deficiency in that assessment, the board shall cause
35 additional assessments to be made in a manner substantially

1 complying with chapter 40-26 as it relates to special
2 assessments.
3 61-16.1-43. CERTIFICATION OF ASSESSMENTS TO COUNTY
4 AUDITOR. When a water resource board, by resolution, has
5 caused special assessments to be levied to cover the cost of
6 constructing a project, the board shall determine the rate of
7 interest unpaid special assessments shall bear, which rate
8 shall not be less than the warrant rate. Interest on unpaid
9 special assessments shall commence on the date the assessments
10 are finally confirmed by the board. Special assessments may be
11 certified and made payable in equal annual installments, the
12 last of which shall be due and payable not more than thirty
13 years after date of the warrants to be paid. The secretary of
14 the district shall certify to the county auditor of the county
15 in which the district is situated, or if the district embraces
16 more than one county, to the county auditor of each county in
17 which district lands subject to such special assessments are
18 situated, the total amount levied against such lands in that
19 county and the proportion or percentage of such amount assessed
20 against each piece, parcel, lot, or tract of land. The
21 secretary of the district shall also file with the county
22 auditor of each county in which district lands lie a statement
23 showing the cost of the project, the part thereof, if any,
24 which will be paid out of the general taxes, and the part to be
25 financed by special assessments. Funds needed to pay the cost
26 of maintaining a project may be raised in the same manner as
27 funds were raised to meet construction costs. If the project
28 was financed in whole or in part through the use of special
29 assessments, the water resource board shall prorate the costs
30 of maintaining projects in the same proportion as were the
31 original costs of construction or, in the event a reassessment
32 of benefits has been adopted, the costs shall be prorated in
33 accordance with the reassessment of benefits as authorized by
34 section 61-16.1-41.

1 61-16.1-44. EXTENSION OF SPECIAL ASSESSMENTS ON TAX
2 LISTS - COLLECTION - PAYMENT TO WATER RESOURCE DISTRICT. The
3 county auditor of each county shall extend the special
4 assessments certified to the county auditor on the tax list of
5 the district for the current year and such assessments, with
6 interest and penalties, if any, shall be collected by the
7 county treasurer as general taxes are collected and shall be
8 paid to the treasurer of the district.
9 61-16.1-45. LIEN OF SPECIAL ASSESSMENT. A special
10 assessment imposed by a water resource district, together with
11 interest and penalties which accrue thereon, shall become a
12 lien upon the property on which the assessment is levied from
13 the time the assessment list is approved by the water resource
14 board until the assessment is fully paid. Such liens shall
15 have precedence over all other liens except general tax liens
16 and shall not be divested by any judicial sale. No mistake in
17 the description of the property covered by the special
18 assessment lien or in the name of the owner of such property
19 shall defeat the lien if the assessed property can be
20 identified by the description in the assessment list. This
21 chapter shall be considered notice to all subsequent
22 encumbrancers of the priority of special assessments imposed
23 under this chapter.
24 61-16.1-46. SALE OF PROPERTY WHEN GENERAL AND SPECIAL
25 ASSESSMENT TAXES ARE DELINQUENT. Special assessments imposed
26 under this chapter shall become due and delinquent and shall be
27 subject to penalties and nonpayment at the same date and rates
28 as first installments of real estate taxes. Real property
29 shall be sold to enforce the collection of special assessments
30 or installments of special assessments which have become
31 delinquent at the same time and in the same manner as provided
32 in title 57. The sale shall be made by the same officer making
33 the sale as in the case of the sale of real property for
34 general taxes. Delinquent general taxes and delinquent special
35 assessments, or installments thereof, shall be advertised and

1 sold together in one sum and one certificate shall be issued
2 therefor.
3 If real estate is sold for both delinquent general taxes
4 and delinquent special assessments or installments of special
5 assessments and there shall be no bidders, the county auditor
6 shall strike off the parcel of land to the county and one
7 certificate of sale shall cover both general taxes and special
8 assessments which are delinquent.
9 If there is no delinquent general property tax against a
10 tract or parcel of land and it is sold for special assessments
11 alone, the certificate of tax sale shall state that the sale
12 was for special assessments and, if there is no private bidder
13 the tax sale certificate and tax deed in such case shall be
14 issued to the district in the usual course of procedure.
15 61-16.1-47. COLLECTION OF TAX OR ASSESSMENT LEVIED NOT
16 TO BE ENJOINED OR DECLARED VOID - EXCEPTIONS. The collection
17 of any tax or assessment levied or ordered to be levied to pay
18 for the location and construction of any project under the
19 provisions of this chapter shall not be enjoined perpetually or
20 absolutely declared void by reason of any of the following:
21 1. Any error of any officer or board in the location and
22 establishment thereof.
23 2. Any error or informality appearing in the record of
24 the proceedings by which any project was established.
25 3. A lack of any proper conveyance or condemnation of
26 the right of way.
27 The court in which any proceeding is brought to reverse or
28 declare void the proceedings by which any project has been
29 established, or to enjoin the tax levied to pay therefor, on
30 application of either party, shall order examination of the
31 premises, or survey of the same, or both, as may be deemed
32 necessary. The court, on a final hearing, shall enter an order
33 which is just and equitable, and may order the tax or any part
34 thereof to remain on the tax lists for collection, or if the
35 tax were paid under protest, may order, if justice requires,

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1 the whole or any part thereof to be refunded. The costs of
2 such proceedings shall be apportioned among the parties as
3 justice may require.
4 61-16.1-48. WATER RESOURCE BOARD MAY APPORTION
5 ASSESSMENTS FOR BENEFITS OF A PROJECT AGAINST A COUNTY OR CITY
6 OR ANY TRACT OF LAND BENEFITED. Whenever a water resource
7 board discovers or ascertains that the county, a township, or
8 city therein, or that any tract, parcel, or piece of land is
9 being benefited by a project and that the county or such
10 township, municipality, tract, piece, or parcel of land was not
11 included in the project area assessed for the cost of
12 construction and maintenance of the project when established,
13 the board shall commence proceedings for reassessment of lands
14 originally assessed for the cost of establishing and
15 constructing such project and shall apportion and assess the
16 part of the balance remaining unpaid, if any, of the cost of
17 such project, and the expense of maintenance, which such
18 county, township, or city and each tract of land found
19 benefited thereby should bear.
20 Before making such reassessment or reapportionment of
21 benefits, the board shall hold a hearing for the purpose of
22 determining the benefits of the project to the county, such
23 township, or city and to each tract, piece or parcel of land
24 being benefited. At least ten days' notice of the hearing
25 shall be given by publication in the newspaper or newspapers
26 having general circulation in the county and by mailing notice
27 thereof to each owner of land assessed for the cost of
28 construction and maintenance when the project was established,
29 and by mailing such notice to the governing body of the county,
30 township, municipality and to the owner, as determined by the
31 records in the office of the register of deeds or county
32 treasurer of each tract, piece, or parcel of land found to be
33 benefited since the establishment of the project. The
34 provisions of this chapter governing the original determination
35 of benefits and assessment of costs shall apply to the

1 reassessment and assessment of benefits carried out under the
2 provisions of this section.
3 61-16.1-49. WARRANTS - WHEN PAYABLE - AMOUNTS - INTEREST
4 - INTEREST COUPONS. A water resource district may, at any time
5 after entering into a contract for a project to be financed in
6 whole or in part by special assessments, issue temporary and
7 definitive warrants on the project fund, created for that
8 purpose, in the manner and subject to the limitations
9 prescribed in section 40-24-19. Where the warrants are issued
10 to finance a sewer or water project, the net revenues derived
11 from the imposition of service charges to be imposed and
12 collected with respect thereto as provided in section 40-22-16
13 may be pledged to payment of those warrants, except that the
14 first maturity date of any such warrant shall not be less than
15 two years from the date of issuance. Warrants issued under
16 this section shall be in such amounts as in the judgment of the
17 district's board of commissioners will be necessary for the
18 project. The warrants shall bear interest at a rate to be
19 determined by the board, payable annually or semiannually.
20 Coupons evidencing the interest for each year or half year, as
21 the case may be, may be attached to the warrants. The warrants
22 shall state upon their face the purpose for which they are
23 issued and the project fund from which they are payable and
24 shall be signed by the chairman of the water resource board and
25 countersigned by the secretary of the district. The warrants
26 shall be payable serially in such amounts as the board
27 determines, extending over a period of not more than thirty
28 years.
29 61-16.1-50. WARRANTS MAY BE USED IN MAKING PAYMENTS ON
30 CONTRACT - WARRANTS PAYABLE OUT OF FUND ON WHICH DRAWN - MAY BE
31 USED TO PAY SPECIAL ASSESSMENTS. Improvement warrants may be
32 used in making payments on contracts for construction of the
33 project for which the special assessment fund was created, or
34 may be sold for cash at not less than ninety-eight percent of
35 par and accrued interest, and the proceeds thereof, less

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1 accrued interest, shall be credited to the construction account
2 of such fund and shall be used exclusively to pay such
3 contracts and construction costs. Any balance remaining in any
4 construction account after completion of a project shall be
5 transferred to the sinking fund account of the assessment fund.
6 The treasurer of the district shall pay special assessment
7 warrants and any interest coupons attached thereto as they
8 mature and are presented for payment out of the fund on which
9 they are drawn and shall cancel the warrants and any coupons
10 when paid.
11 61-16.1-51. REFUNDING SPECIAL ASSESSMENT WARRANTS -
12 PURPOSES FOR WHICH SUCH WARRANTS MAY BE ISSUED - PAYMENT OF
13 WARRANTS. Any district having outstanding special assessment
14 warrants, payable in whole or in part out of collections from
15 special assessments, which are past due or which are
16 redeemable, either at the option of the district or with the
17 consent of the warrant holders, may issue refunding special
18 assessment warrants or bonds if there is not sufficient money
19 in the project fund against which such warrants are drawn to
20 pay the same. The issuance of refunding warrants or bonds
21 shall be authorized by resolution of the water resource board.
22 The resolution shall describe the warrants to be refunded and
23 the amount and maturity thereof. Refunding warrants may be
24 issued for any of the following purposes:
25 1. Extend the maturities of warrants payable in whole or
26 in part by special assessments.
27 2. Reduce the interest on such warrants.
28 3. Equalize the general property tax which the district
29 may be, or may become, obligated to levy in order to
30 cover deficiencies in the fund against which warrants
31 were issued.
32 Refunding warrants or bonds shall bear such date, be in
33 such date, be in such denominations, and shall mature serially
34 within such time, not exceeding thirty years from date of
35 issuance, as the water resource board shall determine. The

1 average rate of interest on such warrants shall not exceed the
2 average rate of interest on refunded warrants.
3 The treasurer of the district shall pay special
4 assessment warrants, and the interest coupons attached thereto,
5 as they mature and are presented for payment out of the fund
6 against which they are drawn and shall cancel the warrants when
7 paid.
8 Any deficiency in any fund created for the payment of
9 district warrants payable in whole or in part out of
10 collections of special assessment taxes shall be the general
11 obligation of the water resource district.
12 61-16.1-52. APPEAL FROM DECISION OF WATER RESOURCE BOARD
13 - UNDERTAKING - JURISDICTION. An appeal may be taken to the
14 district court from any order or decision of the water resource
15 board by any person aggrieved. An appellant shall file an
16 undertaking in the sum of two hundred dollars with such
17 sureties as may be approved by the clerk of the district court
18 to which the appeal is taken. The undertaking shall be
19 conditioned that the appellant will prosecute the appeal
20 without delay and will pay all costs adjudged against the
21 appellant in the district court. The undertaking shall be in
22 favor of the water resource board as obligee, and may be sued
23 on in the name of the obligee. The appeal shall be taken to
24 the district court of the county in which the land claimed to
25 be affected adversely by the order or decision appealed from is
26 located.
27 61-16.1-53. APPEAL FROM DECISION OF WATER RESOURCE BOARD
28 - HOW TO BE TAKEN. The appeal provided for in this chapter is
29 taken by serving a written notice of appeal upon one of the
30 members of the water resource board and upon the secretary of
31 such board.
32 61-16.1-54. TIME FOR TAKING APPEAL FROM WATER RESOURCE
33 BOARD DECISION. An appeal as authorized by sections 61-16.1-52
34 and 61-16.1-53 must be taken within thirty days after the

1 decision has been entered by the secretary of the water
2 resources board.
3 61-16.1-55. FILING APPEAL - DOCKETING AND HEARING
4 APPEALS - FINAL JUDGMENT AND SENDING BACK. The appeal provided
5 for in this chapter shall be tried at the next term of the
6 district court after the appeal is taken. All appeals taken
7 under this chapter shall be docketed as are other causes
8 pending in the district court and the same shall be tried de
9 novo. The district court may enter a final judgment, or may
10 send the case back with directions on how to proceed.
11 61-16.1-56. ATTORNEY GENERAL TO ASSIST BOARDS -
12 EMPLOYMENT OF COUNSEL. The attorney general shall render legal
13 opinions or such other assistance to water resource boards as
14 is required to be rendered to state officers by
15 section 54-12-01. The water resource board, however, may
16 employ other counsel to advise and represent it in such actions
17 and appeals and in its proceedings.
18 61-16.1-57. PROCEEDINGS TO CONFIRM JUDICIALLY CONTRACTS,
19 SPECIAL ASSESSMENTS AND OTHER ACTS. Any water resource board,
20 before making any contract, or before levying special
21 assessments, or issuing special assessment warrants, or before
22 taking any special action, may commence a special proceeding in
23 district court by which the proceeding leading up to the making
24 of such contract, levying special assessments, issuing special
25 assessment warrants, or leading up to any other special action,
26 shall be judicially examined, approved, and confirmed. Such
27 judicial proceedings shall comply substantially with the
28 procedure required in the case of judicial confirmation of
29 proceedings, acts, and contracts of an irrigation district.
30 61-16.1-58. PENALTY FOR VIOLATION OF CHAPTER. Any
31 person violating any of the provisions of this chapter shall,
32 if no other criminal penalty is specifically provided, be
33 guilty of a class B misdemeanor.
34 61-16.1-59. VALIDATING ORGANIZATION AND ACTS OF WATER
35 MANAGEMENT DISTRICTS AND COUNTY DRAIN BOARDS. Nothing

1 contained in this chapter shall be construed as impairing,
2 invalidating or in any manner affecting the validity of acts or
3 proceedings of water management districts or county drain
4 boards which existed prior to the passage and approval of this
5 chapter.
6 61-16.1-60. MAINTENANCE OF DRAINAGE PROJECTS. If it is
7 desired to provide for maintenance of an assessment drain in
8 whole or in part by means of special assessments, the levy in
9 any year for such maintenance shall not exceed one dollar per
10 acre [.40 hectare] on any agricultural lands benefited by the
11 drain. Agricultural lands which carried the highest assessment
12 when the drain was originally established, or received the most
13 benefits under a reassessment of benefits, may be assessed the
14 maximum amount of one dollar per acre [.40 hectare]. The
15 assessment of other agricultural lands in the district shall be
16 based upon the proportion that the assessment of benefits at
17 the time of construction or at the time of any reassessment of
18 benefits bears to the assessment of the benefits of the
19 agricultural land assessed the full one dollar per acre [.40
20 hectare]. Nonagricultural property shall be assessed such sum
21 in any one year as the ratio of the benefits under the original
22 assessments or any reassessment bears to the assessment of
23 agricultural lands bearing the highest assessment. In case the
24 maximum levy of one dollar per acre [.40 hectare] for any year
25 will not produce an amount sufficient to cover the cost of
26 cleaning out and repairing such drain, a water resource board
27 may accumulate a fund in an amount not exceeding the sum
28 produced by such maximum permissible levy for two years.
29 61-16.1-61. DRAINS ALONG AND ACROSS PUBLIC ROADS AND
30 RAILROADS. Drains may be laid along, within the limits of, or
31 across any public road or highway, but not to the injury of
32 such road. In instances where it is necessary to run a drain
33 across a highway, the state highway department, the board of
34 county commissioners, or the board of township supervisors, as
35 the case may be, when notified by the water resource board to

do so, shall make necessary openings through the road or highway at its own expense, and shall build and keep in repair all required culverts or bridges as provided under section 61-16.1-62. In instances where drains are laid along or within the rights of way of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned. A drain may be laid along any railroad when necessary, but not to the injury of the railroad, and when it is necessary to run a drain across the railroad, the railroad company, when notified by the water resource board to do so, shall make the necessary opening through such railroad, shall build the required bridges and culverts, and shall keep them in repair.

61-16.1-62. CONSTRUCTION OF BRIDGES AND CULVERTS - COSTS. The water resource board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of such construction shall be charged as part of the cost of constructing the drain, and any such bridge, culvert, or passageway shall be maintained under the authority of the water resource board, and the necessary expense shall be deemed a part of the cost of maintenance. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, and the cost thereof shall exceed five hundred dollars, the cost of constructing such bridge or culvert shall be shared in the following manner:

1. The state water commission may, if funds are available, participate in the portion of the cost that exceeds five hundred dollars in accordance with such rules and regulations as it may prescribe.
2. The remaining cost shall be borne forty percent by the county and sixty percent by the water resource

district which has created the need for such construction.

3. If, however, moneys have not been made available to the commission for participation in accordance with subsection 1, then forty percent of the cost of a bridge or culvert costing in excess of one hundred dollars shall be paid by the county and sixty percent shall be charged as cost of the drain to the water resource district.

4. Whenever any bridge or culvert costing one hundred dollars or less is needed on any road, the cost of such bridge or culvert shall be charged on the basis of sixty percent to the water resource district and forty percent to the township, or county if the township is unorganized, in which the bridge or culvert is located.

5. Where such bridges or culverts are constructed with federal financial participation, the costs exceeding the amount of the federal participation shall be borne by the water resource district, county, or township, according to the provisions of this section, as the case may be.

61-16.1-63. PETITION FOR A LATERAL DRAIN - BOND OF PETITIONERS.

1. For the purposes of this section, "lateral drain" means a drain constructed after the establishment of an original assessment drain or drainage system and which flows into such original drain or drainage system from outside the limits of the assessed area of the original drain, provided that a determination by a water resource board as to whether an existing or proposed drain is a lateral or a new drain shall be conclusive when entered upon the records of the board.

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2. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. A petition for a lateral drain shall be sufficient if signed by one or more property owners whose property will be affected by the lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event the board determines that improvements to the original drain are also beneficial to property served by the original drain, the board may assess that portion of the cost of the improvements it determines appropriate to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board, within ten days, may commence proceedings for the construction of the lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except as provided in this section and with approval of the board. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by the petitioners. The petitioners shall pay

into the district treasury the amount so determined, and shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendance of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

3. Where one or more of the property owners to be benefited by the construction of a lateral drain or ditch petitions the water resource district for the construction of a lateral drain or ditch, the water resource district shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.

61-16.1-64. ESTABLISHING NEW DRAINS IN LOCATION OF INVALID OR ABANDONED DRAIN. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of sections 61-16.1-32 through 61-16.1-73 to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not properly maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and

1 shall deliver such new warrants, pro rata, to the owners or
2 holders of old warrants or bonds issued under the invalid or
3 abandoned drainage proceedings, upon the surrender of such old
4 warrants or bonds by the holder or holders thereof.
5 61-16.1-65. DRAIN KEPT OPEN AND IN REPAIR BY BOARD. All
6 assessment drains that have been constructed in any district,
7 except township drains, shall be under the charge of the water
8 resource board and it shall be the duty of the board to keep
9 those drains open and in good repair. It shall be the
10 mandatory duty of the board, within the limits of available
11 funds, to clean out and repair any assessment drain when
12 requested to do so by petition of the affected landowners
13 having fifty percent or more of the possible votes, as
14 determined according to section 61-16.1-35.
15 61-16.1-66. ASSESSMENT OF COSTS OF CLEANING AND
16 REPAIRING DRAINS. The cost of cleaning out and repairing an
17 assessment drain shall be assessed pro rata against the lands
18 benefited in the same proportion as the original assessment of
19 the costs in establishing such drain, or in accordance with any
20 reassessment of benefits in instances where there has been a
21 reassessment of benefits under the provisions of
22 section 61-16.1-41. In cases where no assessment for
23 construction costs or reassessment of benefits has been made,
24 the board shall make assessments for the cost of cleaning and
25 repairing such drain in accordance with the provisions of this
26 chapter for the establishment of a new project. The governing
27 body of any incorporated city, by agreement with the board, is
28 authorized to contribute to the cost of cleaning out,
29 repairing, and maintaining a drain in excess of the amount
30 assessed under this section, and such excess contribution may
31 be expended for such purposes by the board.
32 61-16.1-67. DRAINS HAVING A COMMON OUTLET MAY BE
33 CONSOLIDATED. Whenever one or more drains which have from time
34 to time been constructed, empty into a drain that supplies the
35 outlet for waters flowing in all such drains, such drains may

1 by resolution or order of the water resource board, if the cost
2 of construction of such drains has been paid, be consolidated
3 into one drain or drainage system and shall be renumbered and
4 may be renamed.
5 61-16.1-68. REMOVAL OF OBSTRUCTIONS TO DRAIN - NOTICE
6 AND HEARING - APPEAL - INJUNCTION - DEFINITION. If the board
7 determines that an obstruction to a drain has been caused by
8 the negligent act or omission of a landowner or tenant, the
9 board shall notify the landowner by registered or certified
10 mail at the landowner's post-office address of record. A copy
11 of the notice shall also be sent to the tenant, if any. The
12 notice shall specify the nature and extent of the obstruction,
13 the opinion of the board as to its cause, and shall state that
14 if the obstruction is not removed within such period as the
15 board shall determine, but not less than thirty days, the board
16 shall procure removal of the obstruction and assess the cost
17 thereof, or such portion as the board shall determine
18 appropriate, against the property of the landowner responsible.
19 The notice shall also state that the affected landowner may,
20 within fifteen days of the date the notice is mailed, demand,
21 in writing, a hearing on the matter. Upon receipt of such
22 demand the board shall set a hearing date within fifteen days
23 from the date the demand is received. In the event of an
24 emergency the board may immediately apply to the appropriate
25 district court for an injunction prohibiting a landowner or
26 tenant from maintaining an obstruction. Any assessments levied
27 under the provisions of this section shall be collected in the
28 same manner as other assessments authorized by this chapter.
29 If, in the opinion of the board, more than one landowner or
30 tenant has been responsible, the costs may be assessed on a pro
31 rata basis in accordance with the proportionate responsibility
32 of the landowners. Any landowner aggrieved by action of the
33 board under the provisions of this section may appeal the
34 decision of the board to the district court of the county in
35 which the land is located in accordance with the procedure

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1 provided under sections 61-16.1-52 through 61-16.1-55. A
2 hearing as provided for in this section shall not be a
3 prerequisite to such an appeal.
4 For the purposes of this section, "an obstruction to a
5 drain" means any barrier to a watercourse, as defined by
6 section 61-01-06, or any artificial drain, which materially
7 affects the free flow of waters in such watercourse or drain.
8 61-16.1-69. CULVERT AND PIPE ARCH BIDS AND ACCEPTANCE.
9 A board may advertise for bids to supply culverts and pipe
10 arches and may accept one or more low bids. A board may
11 utilize bids for such materials received by the county within
12 which the board has jurisdiction and may accept one or more low
13 bids. The board may then purchase materials from the accepted
14 low bidder or bidders for a period of one year from the date of
15 the original acceptance of the bids.
16 61-16.1-70. PERMIT TO DRAIN WATERS REQUIRED - PENALTY.
17 Any person, before draining water from a pond, slough, or lake,
18 or any series thereof, which drains an area comprising eighty
19 acres [32.37 hectares] or more, shall first secure a permit to
20 do so. The permit application shall be submitted to the state
21 engineer. The state engineer shall refer the application to
22 the water resource district or districts within which is found
23 a majority of the watershed or drainage area of the pond,
24 slough, or lake for consideration and approval, but the state
25 engineer may require that applications proposing drainage of
26 statewide or interdistrict significance be returned to him for
27 final approval. A permit shall not be granted until an
28 investigation discloses that the quantity of water which will
29 be drained from the pond, slough, or lake, or any series
30 thereof, will not flood or adversely affect downstream lands.
31 In addition, consideration shall be given to the state water
32 resources policy set forth in section 61-01-26. If the
33 investigation shows that the proposed drainage will flood or
34 adversely affect lands of downstream landowners, the water
35 resource board or boards shall not issue a permit until flowage

1 easements are obtained. Such flowage easements shall be filed
2 for record in the office of the register of deeds of the county
3 or counties in which the lands are situated. An owner of land
4 proposing to drain shall undertake and agree to pay the
5 expenses incurred in making the required investigation. The
6 provisions of this section shall not be construed to apply to
7 the construction or maintenance of any existing or prospective
8 drain constructed under the supervision of a state or federal
9 agency.
10 Any person draining, or causing to be drained, water of a
11 pond, slough, or lake, or any series thereof, which drains an
12 area comprising eighty acres [32.37 hectares] or more, into a
13 watercourse, without first securing a permit to do so, as
14 provided by this section, shall be liable for all damage
15 sustained by any person caused by such draining, and shall be
16 guilty of an infraction. When temporary ponding of water
17 occurs due to spring runoff or heavy rains, an area not in
18 excess of eighty acres [32.37 hectares] may be drained without
19 first securing a permit.
20 61-16.1-71. CLOSING A NONCOMPLYING DRAIN - NOTICE AND
21 HEARING - APPEAL - INJUNCTION. Upon receipt of a complaint of
22 unauthorized drainage; the board shall promptly investigate and
23 make a determination of the facts with respect to the
24 complaint. If the board determines that a drain, lateral
25 drain, or ditch has been opened or established by a landowner
26 or tenant contrary to the provisions of title 61 or any rules
27 or regulations promulgated by the board, the board shall notify
28 the landowner by registered or certified mail at the
29 landowner's post-office address of record. A copy of the
30 notice shall also be sent to the tenant, if any. The notice
31 shall specify the nature and extent of the noncompliance and
32 shall state that if the drain, lateral drain, or ditch is not
33 closed or filled within such period as the board shall
34 determine, but not less than thirty days, the board shall
35 procure the closing or filling of the drain, lateral drain, or

1 ditch and assess the cost thereof, or such portion as the board
2 shall determine, against the property of the landowner
3 responsible. The notice shall also state that the affected
4 landowner may, within fifteen days of the date the notice is
5 mailed, demand, in writing, a hearing on the matter. Upon
6 receipt of the demand, the board shall set a hearing date
7 within fifteen days from the date the demand is received. In
8 the event of an emergency, the board may immediately apply to
9 the appropriate district court for an injunction prohibiting
10 the landowner or tenant from constructing or maintaining the
11 drain, lateral drain, or ditch and ordering the closure of the
12 illegal drain. Any assessments levied under the provisions of
13 this section shall be collected in the same manner as other
14 assessments authorized by this chapter. If, in the opinion of
15 the board, more than one landowner or tenant has been
16 responsible, the costs may be assessed on a pro rata basis in
17 proportion to the responsibility of the landowners. Any person
18 aggrieved by action of the board under the provisions of this
19 section may appeal the decision of the board to the district
20 court of the county in which the land is located in accordance
21 with the procedure provided under section 61-16.1-52 through
22 61-16.1-55. A hearing as provided for in this section shall
23 not be a prerequisite to such an appeal.
24 61-16.1-72. REMOVAL OF A NONCOMPLYING DIKE OR DAM -
25 NOTICE AND HEARING - APPEAL - INJUNCTION. Upon receipt of a
26 complaint of unauthorized construction of a dike, dam or other
27 device for water conservation, flood control, regulation,
28 watershed improvement, or storage of water, the board shall
29 promptly investigate and make a determination thereon. If the
30 board determines that a dam or other device, capable of
31 retaining, obstructing, or diverting more than twelve and
32 one-half acre-feet [15418.52 cubic meters] of water, has been
33 established or constructed by a landowner or tenant contrary to
34 the provisions of this title or any rules or regulations
35 promulgated by the board, the board shall notify the landowner

1 by registered or certified mail at the landowner's post-office
2 address of record. A copy of the notice shall also be sent to
3 the tenant, if any. The notice shall specify the nature and
4 extent of the noncompliance and shall state that if the dike,
5 dam, or other device is not removed within such period as the
6 board shall determine, but not less than thirty days, the board
7 shall cause the removal of the dike, dam, or other device and
8 assess the cost thereof, or such portion as the board shall
9 determine, against the property of the landowner responsible.
10 The notice shall also state that the affected landowner may,
11 within fifteen days of the date the notice is mailed, demand,
12 in writing, a hearing upon the matter. Upon receipt of such
13 demand, the board shall set a hearing date within fifteen days
14 from the date the demand is received. In the event of an
15 emergency, the board may immediately apply to the appropriate
16 district court for an injunction prohibiting the landowner or
17 tenant from constructing or maintaining the dike, dam, or other
18 device, or ordering the landowner to remove the dike, dam, or
19 other device. Any assessments levied under the provisions of
20 this section shall be collected in the same manner as other
21 assessments authorized by this chapter. If, in the opinion of
22 the board, more than one landowner or tenant has been
23 responsible, the costs may be assessed on a pro rata basis in
24 proportion to the responsibility of the landowners. Any person
25 aggrieved by action of the board under the provisions of this
26 section may appeal the decision of the board to the district
27 court of the county in which the land is located in accordance
28 with the procedure provided under sections 61-16.1-52 through
29 61-16.1-55. A hearing as provided for in this section shall
30 not be prerequisite to such an appeal.
31 61-16.1-73. AUTHORIZATION TO ORGANIZE ASSOCIATION OF
32 WATER RESOURCE DISTRICTS.
33 1. Water resource districts, organized and established
34 pursuant to this chapter, are hereby authorized upon

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resolution of the water resource boards to organize and participate in an association of districts.

2. The association or associations authorized hereunder shall be organized pursuant to chapters 10-24 through 10-28.

SECTION 2. AMENDMENT. Section 61-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-06. WATERCOURSE - DEFINITION. A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the state engineer shall determine if a watercourse is constituted.

SECTION 3. AMENDMENT. Section 61-21-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-01. DEFINITIONS. In this chapter, unless the subject matter otherwise requires:

1. "Drain" ~~shall include~~ means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12.

2. "Board" ~~shall mean~~ means the board of ~~drainage commissioners~~ managers of a water resource district.

3. "Cleaning out and repairing of drain" ~~shall include~~ means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.

4. "Lateral drain" ~~shall mean~~ means a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain, provided that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board.

5. "Affected landowners" ~~shall mean~~ means landowners whose land is subject to assessment or condemnation.

SECTION 4. AMENDMENT. Section 61-21-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-11. BOND REQUIRED FROM PETITIONERS. The board may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the drainage commissioners should the petition be later denied. However, in no event shall the petitioners be required to pay expenses of surveys and of the water resources board, and any other expenses that may be incurred, if the petition is later approved, but the drain is not constructed.

SECTION 5. AMENDMENT. Section 61-21-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-41. ESTABLISHING NEW DRAINS IN LOCATION OF INVALID OR ABANDONED DRAIN. If any of the proceedings for the

1 location, establishment, or construction of any drain under the
2 provisions of this chapter shall have been enjoined, vacated,
3 set aside, declared void, or voluntarily abandoned by the
4 board, for any reason whatsoever, the board may proceed under
5 the provisions of this chapter to locate, establish, and
6 construct a new drain at substantially the same location as the
7 abandoned or invalid drain. For the purposes of this chapter,
8 a drain that is not maintained shall be considered abandoned.
9 When a new drain is established at substantially the same
10 location, the board shall ascertain the real value of services
11 rendered, moneys expended and work done under the invalid or
12 abandoned proceedings and the extent to which the same
13 contributes to the construction and completion of the new
14 drain. The board shall then issue warrants in an amount not
15 exceeding the value to the new drain of the work completed on
16 the invalid or abandoned drain and shall deliver such new
17 warrants, pro rata, to the owners or holders of old warrants or
18 bonds issued under the invalid or abandoned drainage
19 proceedings, upon the surrender of such old warrants or bonds
20 by the holder or holders thereof.
21 SECTION 6. REPEAL. Chapter 61-16 and sections 61-21-05,
22 61-21-06, 61-21-07, 61-21-08, and 61-21-09 of the North Dakota
23 Century Code and sections 61-21-03 and 61-21-04 of the 1979
24 Supplement to the North Dakota Century Code are hereby
25 repealed. This section shall not take effect until
26 April 1, 1983.
27 SECTION 7. REPEAL. Section 61-01-22 of the 1979
28 Supplement to the North Dakota Century Code is hereby repealed.
29 SECTION 8. EMERGENCY. This Act is hereby declared to be
30 an emergency measure and shall be in effect from and after its
31 passage and approval.