

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2090

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to create and enact sections 61-04-02.2, 61-04-04.3, 61-04-07.2, 61-04-07.3,
2 61-04-15.2, 61-04-15.3, and 61-04-15.4 of the North Dakota Century Code, relating to permits
3 for the appropriation of water; to amend and reenact sections 61-04-01, 61-04-01.1, 61-04-01.2,
4 61-04-02, 61-04-03, 61-04-03.1, 61-04-04, and 61-04-04.1, subsections 3, 4, and 5 of section
5 61-04-05, and sections 61-04-05.1, 61-04-06, 61-04-06.1, 61-04-06.2, 61-04-06.3, 61-04-09,
6 61-04-11, 61-04-14, 61-04-15, 61-04-23, 61-04-24, 61-04-25, 61-04-26, 61-04-27, 61-04-28,
7 and 61-04-29 of the North Dakota Century Code, relating to the appropriation of water; and to
8 repeal sections 61-04-07, 61-04-15.1, 61-04-17, and 61-04-22 of the North Dakota Century
9 Code, relating to appeals of permit application rejections, change in point of diversion or use,
10 surplus water delivery, and a prescriptive water right.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 **SECTION 1. AMENDMENT.** Section 61-04-01 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-04-01. Petitions, reports, surveys, and other documents filed ~~in office of~~with the**
15 **commission.**

16 Any petitions, applications, surveys, reports, orders, or other documents provided for in this
17 chapter shall ~~shall~~ must be filed ~~in~~ with the ~~office of the~~ commission in the city of Bismarck, where they
18 shall ~~shall~~ must be kept on file under the control of the state engineer.

19 **SECTION 2. AMENDMENT.** Section 61-04-01.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-04-01.1. Definitions.**

22 In this chapter, unless the context or subject matter otherwise requires:

- 1 1. ~~"Adjudicative proceeding" as defined under chapter 28-32 provides for~~means an
2 appeal under chapter 28-32 of a recommended decision prepared by the state
3 engineer for a water permit application.
- 4 2. "Assignment" means the change of a water permit from one permitholder to another
5 permitholder.
- 6 3. "Beneficial use" means a use of water for a purpose consistent with the best interests
7 of the people of the state.
- 8 ~~3.4.~~ "Commission" means the state water commission.
- 9 4.5. "Conditional water permit" means a water permit that has not been perfected.
- 10 6. "Domestic use" means the use of water by at least one family unit or household
11 obtaining water from the same system for personal needs and for household
12 purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of
13 land not exceeding five acres [2.0 hectares] in area for each family unit or household
14 for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household
15 pets and domestic animals kept for household sustenance and not for sale or
16 commercial use.
- 17 ~~5.7.~~ "Fish, wildlife, and ~~recreation~~other recreational uses" means the use of water for the
18 purposes of propagating and sustaining fish and wildlife resources and for the
19 development and maintenance of water areas necessary for outdoor recreation
20 activities.
- 21 ~~6.8.~~ "Industrial use" means the use of water for the furtherance of a commercial enterprise
22 wherever located, including manufacturing, mining, or processing.
- 23 7.9. "Informational hearing" means an administrative proceeding, not an adjudicative
24 proceeding, which provides all interested persons an opportunity to present oral or
25 written comments on a water permit application.
- 26 8.10. "Irrigation use" means the use of water for application to more than five acres
27 [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens,
28 orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as
29 athletic fields, golf courses, parks, and similar types of areas, except when the water
30 for the facility is provided by a municipal water system.

- 1 ~~9-11.~~ "Livestock use" means the use of water for drinking purposes by herds, flocks, or
2 bands of animals kept for commercial purposes.
- 3 ~~10-12.~~ "Municipal or public use" means the use of water by the state through its political
4 subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by
5 unincorporated communities, subdivision developments, rural water systems, and
6 other entities, whether supplied by the government or by a privately owned public
7 utility or other agency or entity, for primarily domestic purposes, as defined herein.
- 8 ~~11.~~ "Person" includes ~~political subdivisions, corporations, limited liability companies,~~
9 ~~partnerships, associations, the United States and its departments or agencies, the~~
10 ~~state of North Dakota and its departments or agencies, and any other legal entity.~~
- 11 ~~12.~~ "Party of record" means a person who filed written comments by the date specified
12 under subsection 5 of section 61-04-05.
- 13 ~~13.~~ "Perfected water permit" means a water permit where the water appropriated under a
14 conditional water permit has been applied to a beneficial use and the state engineer
15 has inspected the works to verify all conditions have been met.
- 16 ~~14.~~ "Permitholder" means the name of the entity holding a water permit.
- 17 ~~15.~~ "Point of diversion" means the tract of land where the waters of the state are
18 withdrawn or diverted.
- 19 ~~16.~~ "Priority date" means the date assigned to an application or water right.
- 20 ~~17-18.~~ "Rural water system" means a water supply system designed to serve regional needs.
- 21 ~~19-20.~~ "Water of the state" or "waters of the state" means those waters identified in section
22 61-01-01.
- 23 ~~21.~~ "Water right" means the right established under this title to appropriate or store waters
24 of the state.

25 **SECTION 3. AMENDMENT.** Section 61-04-01.2 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-04-01.2. Right to use water -- Basis Beneficial use requirement.**

28 A right to appropriate water can be acquired for beneficial use only as provided in this
29 chapter. Beneficial use shall be the basis, the measure, and the limit of the right to the use of
30 water.

1 **SECTION 4. AMENDMENT.** Section 61-04-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-04-02. Permit for beneficial use of water required.**

4 Any person, before commencing any construction for the purpose of appropriating waters of
5 the state or before taking waters of the state from any constructed works, shall first secure a
6 water permit from the state engineer unless such construction or taking from such constructed
7 works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or
8 unless otherwise provided by law. However, immediately upon completing any constructed
9 works for domestic or livestock purposes or for fish, wildlife, and other recreational uses, the
10 water user shall notify the state engineer of the location and acre-feet [1233.48 cubic meters]
11 capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however,
12 all water users, except those reusing fossil byproduct water, shall secure a water permit prior to
13 constructing an impoundment capable of retaining more than twelve and one-half acre-feet
14 [15418.52 cubic meters] of water or the construction of a well from which more than twelve and
15 one-half acre-feet [15418.52 cubic meters] of water per year will be appropriated. If a permit is
16 not required of a landowner or the landowner's lessee to appropriate less than twelve and
17 one-half acre-feet [15418.52 cubic meters] of water from any source for domestic or livestock
18 purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for
19 water permits in order to clearly establish a priority date and the state engineer may waive any
20 fee or hearing for such applications. An applicant for a water permit to irrigate need not be the
21 owner of the land to be irrigated.

22 **SECTION 5.** Section 61-04-02.2 of the North Dakota Century Code is created and enacted
23 as follows:

24 **61-04-02.2. Property interest required to hold a water permit.**

25 A permitholder shall have a legal interest in each point of diversion identified on the permit.
26 If the permitholder does not have a legal interest in each point of diversion, the state engineer
27 shall assign the permit, or portion of the permit, as provided in this chapter to the title owner.

28 A permitholder shall have a legal interest in each irrigated tract of land identified on the
29 permit. If the permitholder does not have a legal interest in each irrigated tract of land, the
30 permitholder may transfer the approved acres to other land, as provided in this chapter.

1 **SECTION 6. AMENDMENT.** Section 61-04-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-04-03. ~~Application for water~~Water permit application - Contents - Information to**
4 **accompany.**

5 ~~The application for a~~A permit application to make beneficial use of any waters of the state
6 ~~shall~~must be in the form required by the rules established by the state engineer. ~~Such~~The rules
7 shall prescribe the form and contents of, and the procedure for filing, the application. The
8 application, along with all other information filed with it, ~~shall~~must be retained ~~in~~with the office of
9 ~~the~~ commission after approval or disapproval of the application. The state engineer may require
10 additional information not provided for in the general rules if the state engineer deems it to be
11 necessary.

12 **SECTION 7. AMENDMENT.** Section 61-04-03.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-04-03.1. Limitation on amount of water.**

15 An individual may not apply for a permit or permits for irrigation which, if approved, would
16 enable the individual, at any one time, to hold a conditional water permit or permits for more
17 than seven hundred twenty acre-feet [888106.75 cubic meters] of water which has not been
18 applied to beneficial use. Applications submitted in violation of this section ~~shall~~may not be
19 assigned a priority date and ~~shall~~must be returned to the applicant by the state engineer. This
20 section ~~shall~~may not apply to water permit applications ~~for water permits~~ from the Missouri
21 River or to applications submitted by irrigation districts organized pursuant to this title. For the
22 purposes of this section, an individual means any person, including the person's spouse, and
23 dependents thereof within the meaning of the Internal Revenue Code [26 U.S.C. 152].

24 **SECTION 8. AMENDMENT.** Section 61-04-04 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-04-04. Filing and correction of application.**

27 The date of ~~the~~ receipt of the application provided for in section 61-04-03 in the commission
28 office shall be noted ~~thereon~~on the application. If the application is defective as to form,
29 incomplete, or otherwise unsatisfactory, it ~~shall~~must be returned with a statement of the
30 corrections, amendments, or changes required, within thirty days after its receipt, and sixty days
31 ~~shall~~must be allowed for ~~the~~ refiling thereof. If the application is corrected as required and is

1 refiled within suchthe time allowed, it, upon being accepted, shallmust take priority as of the
2 date of its original filing. Any corrected application filed after the time allowed shallmust be
3 treated in all respects as an original application received on the date of its refiling. The
4 application may be amended by the applicant at any time prior to the commencement of
5 administrative action by the state engineer as provided in sections 61-04-05 through
6 ~~61-04-07~~61-04-06.3.

7 **SECTION 9. AMENDMENT.** Section 61-04-04.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-04-04.1. Application fees.**

10 The following fees must accompany ~~ana~~ conditional water permit application and must be
11 paid by the state engineer into the ~~water user~~resources trust fund of the state treasury:

12	1. For municipal or public use in municipalities or other entities of	\$500
13	2,500 population or over according to the latest federal census	
14	<u>1. For municipal or public use</u>	<u>\$500</u>
15	2. For municipal or public use in municipalities or other entities of less than	\$250
16	2,500 population according to the latest federal census	
17	3. For irrigation	\$200
18	<u>2. For irrigation use</u>	<u>\$500</u>
19	4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet	\$250
20	[893039.52 cubic meters] or less	
21	<u>3. For industrial use of one acre-foot [1233.48 cubic meters] or less</u>	<u>\$250</u>
22	5. For industrial use in excess of one c.f.s., or in excess of seven hundred	\$750
23	twenty-four acre-feet [893039.52 cubic meters]	
24	<u>4. For industrial use in excess of one acre-foot [1233.48 cubic meters]</u>	<u>\$1,000</u>
25	6. For recreation, livestock, or fish and wildlife	\$100
26	<u>5. For recreation, livestock, or fish and wildlife</u>	<u>\$100</u>
27	7. For commercial recreation	\$200
28	8. Water permit amendment	\$50
29	<u>6. Water permit amendment</u>	<u>\$100</u>

30 **SECTION 10.** Section 61-04-04.3 of the North Dakota Century Code is created and enacted
31 as follows:

1 **61-04-04.3. Rejection of applications.**

2 If the state engineer determines a conditional water permit application does not meet this
3 chapter's requirements or the rules in North Dakota Administrative Code article 89-03, the state
4 engineer shall reject the application and decline to order the publication of notice of application.

5 **SECTION 11. AMENDMENT.** Subsections 3, 4, and 5 of section 61-04-05 of the North
6 Dakota Century Code are amended and reenacted as follows:

- 7 3. Give notice of the application by certified mail in the form prescribed by rule to all
8 municipal or public use water facilitiespermitholders within a twelve-mile
9 [19.32-kilometer] radius of the proposed water appropriation site. The state engineer
10 shall provide a list of all municipal or public use water facilities that must be notified
11 under this subsection to the applicant.
- 12 4. Provide the state engineer with an affidavit of notice by certified mail within sixty days
13 from the date of the engineer's instructions to provide notice. If the applicant fails to file
14 satisfactory proof of notice by certified mail within sixty days and in compliance with
15 the applicable rules, the state engineer shall treat the application as an original
16 application filed on the date of receipt of the affidavit of notice by certified mail in
17 proper form. If a properly completed affidavit of notice is not submitted within one
18 hundred twenty days, the state engineer shall consider the application withdrawn.
19 Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall
20 publish notice of the application, in a form prescribed by rule, in the official newspaper
21 of the county in which the proposed appropriation site is located, once a week for two
22 consecutive weeks.
- 23 5. The notice must give all essential facts as to the proposed appropriation, including the
24 places of appropriation and of use, amount of water, the use, the name and address of
25 the applicant, and the date by which written comments and requests for an
26 informational hearing regarding the proposed appropriation must be filed with the state
27 engineer. The notice must also state that anyone who files written comments with the
28 state engineer will be mailed ~~a copy~~ of the state engineer's recommended decision on
29 the application. Persons filing written comments will become a party of record to the
30 application. The comment deadline is five p.m. on the first business day thirty days

1 after the first published notice in the official county newspaper as specified in
2 subsection 4.

3 **SECTION 12. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-04-05.1. Comments - Hearing.**

6 1. Comments regarding a proposed appropriation must be in writing and filed by the date
7 specified by the state engineer under subsection 5 of section 61-04-05. The comments
8 must state the name and address of the person filing the comments. Comment letters
9 submitted electronically must be signed by the submitter to be considered valid and
10 part of the official record.

11 2. A person filing written comments may also request an informational hearing on the
12 application by the date specified by the state engineer under subsection 5 of section
13 61-04-05. If a request for an informational hearing is made and if the state engineer
14 determines an informational hearing is necessary to obtain additional information to
15 evaluate the application or to receive public input, the state engineer shall designate a
16 time and place for the informational hearing and serve a ~~copy of the~~ notice of hearing
17 upon the applicant and any person who filed written comments. Service must be made
18 in the manner allowed for service under the North Dakota Rules of Civil Procedure at
19 least twenty days before the hearing.

20 3. If two or more municipal or public use ~~water facilities~~ permitholders request the
21 informational hearing to be held locally, the state engineer shall hold the hearing in the
22 county seat of the county in which the proposed water appropriation site is located.

23 4. The state engineer shall consider all written comments received and testimony
24 presented at an informational hearing, if held, and shall ~~recommend~~ make a
25 recommended decision in writing ~~approval or disapproval of the application or that the~~
26 ~~application be held in abeyance. A copy of the.~~ The recommended decision must be
27 mailed to the applicant and any person who filed written comments. party of record and
28 may constitute:

29 a. Approval of all or a portion of the application, with the remainder held in
30 abeyance or denied;

31 b. Denial of the application; or

1 c. Deferral of the application.

2 5. Within thirty days of service of the recommended decision, the applicant and any
3 ~~person~~party of record who would be aggrieved by the decision and ~~who filed written~~
4 ~~comments by the date specified under subsection 5 of section 61-04-05~~ may file
5 additional written comments with the state engineer or request an adjudicative
6 proceeding on the application, or both. A request for an adjudicative proceeding must
7 be made in writing and must state with particularity how the person would be
8 aggrieved by the decision and the issues and facts to be presented at the proceeding.
9 If a request for an adjudicative proceeding is not made, the state engineer shall
10 consider the additional comments, if any are submitted, and issue a final decision. If a
11 request for an adjudicative proceeding is made, and if the state engineer determines
12 an adjudicative proceeding is necessary, the state engineer shall designate a time and
13 place for the adjudicative proceeding and serve ~~a copy~~ of the notice of adjudicative
14 proceeding upon the applicant and any person who filed written comments. Service
15 must be made in the manner allowed for service under the North Dakota Rules of Civil
16 Procedure at least twenty days before the hearing.

17 **SECTION 13. AMENDMENT.** Section 61-04-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-04-06. Criteria for issuance of permit.**

- 20 1. The state engineer shall issue a permit if the state engineer finds all of the following:
- 21 4. a. The rights of a prior appropriator will not be unduly affected.
- 22 2. b. The proposed means of diversion or construction are adequate.
- 23 3. c. The proposed use of water is beneficial.
- 24 4. d. The proposed appropriation is in the public interest. In determining the public
25 interest, the state engineer shall consider all of the following:
- 26 a. (1) The benefit to the applicant resulting from the proposed appropriation.
- 27 b. (2) The effect of the economic activity resulting from the proposed
28 appropriation.
- 29 e. (3) The effect on fish and game resources and public recreational opportunities.
- 30 d. (4) The effect of loss of alternate uses of water that might be made within a
31 reasonable time if not precluded or hindered by the proposed appropriation.

1 e. ~~(5)~~ Harm to other persons resulting from the proposed appropriation.

2 f. ~~(6)~~ The intent and ability of the applicant to complete the appropriation.

3 2. Subsection 1 of section 28-32-38 does not apply to water permit application
4 proceedings unless a request for a ~~hearing~~an adjudicative proceeding is made. If an
5 application is approved, the state engineer shall issue a conditional water permit
6 allowing the applicant to appropriate water. ~~Provided, however~~However, the
7 commission ~~may~~, by resolution, may reserve unto itself final approval authority over
8 any specific water permit in excess of five thousand acre-feet [6167409.19 cubic
9 meters]. ~~The state engineer may cause a certified transcript to be prepared for any~~
10 ~~hearing conducted pursuant to this section. The costs for the original and up to nine~~
11 ~~copies of the transcript must be paid by the applicant.~~

12 **SECTION 14. AMENDMENT.** Section 61-04-06.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-04-06.1. Preference in granting permits.**

15 When there are competing applications for water from the same source, and the source is
16 insufficient to supply all applicants, the state engineer shall adhere to the following order of
17 priority:

- 18 1. Domestic use.
- 19 2. Municipal or public use.
- 20 3. Livestock use.
- 21 4. Irrigation use.
- 22 5. Industrial use.
- 23 6. Fish, wildlife, and other ~~outdøør~~ recreational uses.

24 **SECTION 15. AMENDMENT.** Section 61-04-06.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-04-06.2. Terms of permit.**

27 The state engineer may issue a conditional water permit for less than the amount of water
28 requested. Except for water permits for incorporated municipalities or rural water systems, the
29 state engineer may not issue a permit for more water than can be beneficially used for the
30 purposes stated in the application. Water permits for incorporated municipalities or rural water
31 systems may contain water in excess of present needs based upon what may reasonably be

1 necessary for the future water requirements of the municipality or the rural water system. The
2 state engineer may require modification of the plans and specifications for the appropriation.
3 The state engineer may issue a permit subject to fees for water use and conditions the state
4 engineer considers necessary to protect the rights of others and the public interest. Conditions
5 must be related to matters within the state engineer's jurisdiction. All conditions attached to any
6 permit issued before July 1, 1975, are binding upon the ~~permitter~~permitholder.

7 **SECTION 16. AMENDMENT.** Section 61-04-06.3 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-04-06.3. Priority.**

10 Priority in time ~~shall give~~gives the superior water right. Priority of a water right acquired
11 under this chapter dates from the filing of an application with the state engineer, except for
12 water applied to domestic; or livestock purposes, or fish, wildlife, and other recreational uses in
13 which case the priority date ~~shall~~must relate back to the date when the quantity of water in
14 question was first appropriated, unless otherwise provided by law.

15 Priority of appropriation does not include the right to prevent changes in the condition of
16 water occurrence, such as the increase or decrease of streamflow, or the lowering of a water
17 table, artesian pressure, or water level, by later appropriators, if the prior appropriator can
18 ~~reasonably~~ acquire reasonably the prior appropriator's water under the changed conditions.

19 **SECTION 17.** Section 61-04-07.2 of the North Dakota Century Code is created and enacted
20 as follows:

21 **61-04-07.2. Conditional water permit application denial.**

22 If the state engineer determines an application or any portion of an application does not
23 meet the criteria prescribed in section 61-04-06 for any reason other than sufficient information
24 or data is lacking to allow for sound decisionmaking of the impacts of the proposed diversion on
25 the prior appropriators, the resource, or the public interest, the application or portion must be
26 denied.

27 **SECTION 18.** Section 61-04-07.3 of the North Dakota Century Code is created and enacted
28 as follows:

29 **61-04-07.3. Conditional water permit application deferral.**

30 If the state engineer determines an application or any portion of an application does not
31 meet the criteria prescribed in section 61-04-06 because sufficient information or data is lacking

1 to allow for sound decisionmaking of the impacts of the proposed diversion on the prior
2 appropriators, the resource, or the public interest, the conditional water permit application must
3 be placed in a deferred status. The applicant must be notified by mail the application has been
4 placed in deferred status.

5 **SECTION 19. AMENDMENT.** Section 61-04-09 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-04-09. Application to beneficial use - Inspection - Perfected water permit.**

8 After the permit's beneficial use date, or upon notice from the permit holder that water has
9 been applied to a beneficial use, the state engineer shall notify the conditional water
10 permit holder and inspect the works. The inspection must determine the safety, efficiency, and
11 actual capacity of the works. If the works are not properly and safely constructed, the state
12 engineer may require the necessary changes to be made within a reasonable time. Failure to
13 make the changes within the time prescribed by the state engineer shall cause postponement of
14 the permit's priority date to the date the changes are made to the satisfaction of the state
15 engineer. Any intervening application submitted before the date the changes are made will have
16 the benefit of the postponement of priority. When the works are properly and safely constructed
17 and inspected, the state engineer shall issue the perfected water permit, setting forth the actual
18 capacity of the works and the limitations or conditions upon the water permit as stated in the
19 conditional water permit authorized by section 61-04-06.2. All conditions attached to any permit
20 issued before July 1, 1975, are binding upon the ~~permittee~~ permit holder.

21 **SECTION 20. AMENDMENT.** Section 61-04-11 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-04-11. Inspection of works.**

24 If the state engineer, in the course of the state engineer's duties, ~~shall find that~~ finds any
25 works used for the storage, diversion, or carriage of water are unsafe and a menace to life or
26 property, the state engineer ~~at once~~ shall notify the owner or the owner's agent, specifying the
27 changes necessary and allowing a reasonable time for putting the works in safe condition. Upon
28 the request of any party, accompanied by the estimated cost of inspection, the state engineer
29 shall ~~cause~~ inspect any alleged unsafe works ~~to be inspected~~. If they shall be found unsafe by
30 the state engineer, the money deposited by ~~such~~ the party shall ~~be~~ must be refunded, and the fees
31 for inspection shall ~~be~~ must be paid by the owner of such works. If ~~such~~ the fees are not paid by the

1 owner of ~~such~~the works within thirty days after the decision of the state engineer, they ~~shall~~must
2 be a lien against any property of ~~such~~the owner and ~~shall~~must be recovered by a suit instituted
3 by the state's attorney of the county at the request of the state engineer. The state engineer,
4 when in the state engineer's opinion it is necessary, may inspect any works under construction
5 for the storage, diversion, or carriage of water and may require any changes necessary to
6 secure their safety. The fees for ~~such~~the inspection ~~shall~~must be a lien on any property of the
7 owner and ~~shall~~must be subject to collection as provided in this chapter but neither the United
8 States nor the state of North Dakota nor any government agency thereof ~~shall~~may be required
9 to pay such fees.

10 **SECTION 21. AMENDMENT.** Section 61-04-14 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-04-14. Extending time for application to beneficial use.**

13 The state engineer may extend the time for the application of water to the beneficial use
14 cited in the conditional water permit for good cause shown. When ~~such~~the time has expired, the
15 state engineer may renew and extend the same upon application; provided, however, a
16 conditional water permit, or any portion thereof, ~~shall~~of the application must be considered
17 forfeited, ~~abandoned, and void~~ if no request for renewal is received by the state engineer within
18 sixty days after the date the ~~permittee~~permitholder is informed by ~~certified mail~~ that the period
19 for applying water to the beneficial use cited in the conditional water permit has expired. If a
20 request to extend the time for application to beneficial use for any conditional water permit, or
21 portion thereof ~~of the permit~~, is denied, ~~such~~the conditional water permit, or portion thereof,
22 ~~shall~~of the permit, must be considered forfeited, ~~abandoned, and void~~. Sections 61-04-23
23 through 61-04-25 ~~shall~~do not apply to this section.

24 **SECTION 22. AMENDMENT.** Section 61-04-15 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-04-15. Assignment ~~or transfer~~ of conditional or perfected water permit.**

27 Any conditional or perfected water permit may be assigned only upon approval by the state
28 engineer. ~~Any conditional or perfected water permit may also be transferred, with the approval~~
29 ~~of the state engineer, to any parcel of land owned or leased by the holder of such water permit.~~
30 Upon reasonable proof that ~~such~~the assignment ~~or transfer~~ can be made without detriment to
31 existing rights, the state engineer shall ~~cause~~assign the water permit involved ~~to be assigned or~~

1 ~~simultaneously severed and transferred from such land without losing priority of any right~~
2 ~~previously established. The decision of the state engineer shall be final unless some party~~
3 ~~interested in the same source of water supply shall, within sixty days, bring appropriate action in~~
4 ~~the district court of the county in which the land is located appealing such decision. Applications~~
5 ~~for assignment and transfer shall be in the form required by regulation. The transfer of title to~~
6 ~~land in any manner whatsoever shall~~ must ~~carry with it all rights to the use of water for irrigation~~
7 ~~of such~~ the ~~land, except that any conditional or perfected water permit for irrigation purposes~~
8 ~~must be assigned in accordance with this section.~~

9 **SECTION 23.** Section 61-04-15.2 of the North Dakota Century Code is created and enacted
10 as follows:

11 **61-04-15.2. Add a point of diversion.**

12 A permitholder may add a point of diversion to a conditional or perfected permit without
13 affecting the priority date, if approved by the state engineer. Applications to add a point of
14 diversion must be processed and evaluated in the same manner as a conditional water permit
15 application. The state engineer may approve the additional point of diversion if the proposed
16 addition will not adversely affect the rights of other appropriators.

17 **SECTION 24.** Section 61-04-15.3 of the North Dakota Century Code is created and enacted
18 as follows:

19 **61-04-15.3. Transfer of approved irrigated acreage.**

20 A permitholder may transfer acres approved for irrigation on a conditional or perfected water
21 permit to any tract of land owned or leased by the permitholder without affecting the priority
22 date, if approved by the state engineer. Upon reasonable proof the transfer will not adversely
23 affect the rights of other appropriators, the state engineer shall cause the water permit involved
24 to be simultaneously severed and transferred from such land.

25 **SECTION 25.** Section 61-04-15.4 of the North Dakota Century Code is created and enacted
26 as follows:

27 **61-04-15.4. Change in purpose of use.**

28 A permitholder may change the purpose of use of a conditional or perfected water permit
29 without affecting the priority date, if approved by the state engineer. Applications for a change in
30 the purpose of use must be processed and evaluated in the same manner as a conditional
31 water permit application. A change in the purpose of use may be authorized only for a superior

1 use as determined by the order of priority in section 61-04-06.1. The state engineer may
2 approve the proposed change if the proposed change will not adversely affect the rights of other
3 appropriators.

4 **SECTION 26. AMENDMENT.** Section 61-04-23 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-04-23. ~~Forfeiture~~Cancellation of water rights - Inspection of works.**

7 Any appropriation of water must be for a beneficial use, and when the appropriator fails to
8 apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in
9 the permit for three successive years, unless the failure or cessation of use has been due to the
10 unavailability of water, a justifiable inability to complete the works, or other good and sufficient
11 cause, the state engineer may ~~declare~~cancel the water permit or right ~~forfeited~~. For purposes of
12 this chapter, an incorporated municipality or rural water system has good and sufficient cause
13 excusing the failure to use a water permit, if the water permit ~~may~~ reasonably may be
14 necessary for the future water requirements of the municipality or the rural water system. The
15 state engineer ~~shall~~, as often as necessary, shall examine the condition of all works constructed
16 or partially constructed within the state and compile information concerning the condition of
17 every water permit or right and all ditches and other works constructed or partially constructed
18 ~~thereunder~~under the permit or right.

19 **SECTION 27. AMENDMENT.** Section 61-04-24 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-04-24. ~~Forfeiture~~Cancellation of water rights - Notice - Contents.**

22 1. If it appears that any water appropriation or portion ~~thereof~~ an appropriation has not
23 been used for a beneficial use, or having been so used at one time has ceased to be
24 used for that purpose for more than three successive years, unless the failure or
25 cessation of use is due to the unavailability of water, a justifiable inability to complete
26 the works, or other good and sufficient cause, the state engineer shall set a place and
27 time for a hearing. For purposes of this chapter, an incorporated municipality or a rural
28 water system has good and sufficient cause excusing the failure to use a water permit,
29 if the water permit ~~may~~ reasonably may be necessary for the future water
30 requirements of the municipality or the rural water system. Any ~~holder of a water-~~
31 ~~permit~~permitholder using water from a common source of supply, any applicant

1 therefor for a permit to use water from a common source of supply, or any interested
2 party may request the state engineer to conduct a hearing, ~~the purpose of which is the~~
3 ~~cancellation of~~ to cancel any unused water rights to the common source of supply. Any
4 decision of the state engineer in denying a request for a hearing may be appealed in
5 ~~the manner prescribed by section 61-04-07~~ accordance with chapter 28-32. Prior to the
6 hearings, the state engineer shall serve notice upon the permitholder and upon the
7 owners of land benefited by the appropriation or works, except where the lands
8 benefited are within the geographical boundaries of a city, in which case notice must
9 be given to the governing body of the city, to show cause by ~~such~~ a time and at ~~such~~ a
10 place why the water appropriation or a portion ~~thereof~~ of the appropriation should not
11 be ~~declared forfeited and canceled~~.

12 2. In addition to the time and place of hearing, the notice must contain:

13 ~~1.~~ a. A description of the water appropriation.

14 ~~2.~~ b. The permit number upon the records of the commission.

15 ~~3.~~ c. The date of priority.

16 ~~4.~~ d. The point of diversion.

17 ~~5.~~ e. A description of the lands benefited by the appropriation as indicated on the
18 ~~application for a water permit on file in~~ with the ~~office of the~~ commission.

19 ~~6.~~ f. Notice that the permitholder, the owners of land benefited by the appropriation or
20 works, and other interested parties whose right to use water may be affected by a
21 cancellation of the appropriation are to show cause why the appropriation, or a
22 portion ~~thereof~~ of the appropriation, should not be canceled.

23 3. The notice must be served personally or sent by ~~registered or~~ certified mail at least
24 thirty days before the date of hearing to the permitholder and to the owners of land
25 benefited by the appropriation as indicated on the ~~application for a water permit on file~~
26 ~~in~~ with the ~~office of the~~ commission, or to persons having an interest in works as they
27 appear from the records of the county treasurer or the recorder. In addition, the notice
28 must be published in ~~at~~ the official newspaper ~~of general circulation~~ in the county in
29 which the point of diversion is located once each week for two consecutive weeks prior
30 to the date of hearing.

1 **SECTION 28. AMENDMENT.** Section 61-04-25 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-04-25. ~~Forfeiture~~Cancellation of water rights - Hearing - Appeal.**

4 At the hearing the ~~verified report~~recommended decision of the state engineer ~~or engineers~~
5 ~~of the state water commission~~ is prima facie evidence for the ~~forfeiture and~~ cancellation of the
6 water permit or portion ~~thereof~~of the permit. If no one appears at the hearing, the water permit
7 or portion ~~thereof~~ must be ~~declared forfeited and~~ canceled. If interested parties appear and
8 contest the cancellation, the state engineer shall hear the evidence and, if it appears that the
9 water has not been put to a beneficial use, or, having been so used at one time, has ceased to
10 be used for ~~such~~the purpose for more than three successive years, unless the failure or
11 cessation of use is due to the unavailability of water, a justifiable inability to complete the works,
12 or other good and sufficient cause, the ~~same~~permit, or a portion ~~thereof~~of the permit, must be
13 ~~declared forfeited and~~ canceled. For purposes of this chapter, an incorporated municipality or a
14 rural water system has good and sufficient cause excusing the failure to use a water permit, if
15 the water permit ~~may~~ reasonably may be necessary for the future water requirements of the
16 municipality or the rural water system. An appeal may be taken from the decision of the state
17 engineer in accordance with chapter 28-32.

18 **SECTION 29. AMENDMENT.** Section 61-04-26 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-04-26. Recorder to record water permit or order affecting water right.**

21 A water permit may be recorded as any other instrument affecting the title to real property
22 without acknowledgment or further proof. ~~A copy of any~~The order declaring any~~canceled a~~
23 ~~water right, or portion thereof, forfeited, canceled, or abandoned shall~~of a water right must be
24 filed by the state engineer ~~in the office of~~with the county recorder ~~in the county or counties~~
25 where the affected land is located, and it shall be recorded as any other instrument affecting the
26 title to real property without acknowledgment or further proof. Any document filed under this
27 section ~~shall~~must be listed in the index of the property affected as provided in section 11-18-07.

28 **SECTION 30. AMENDMENT.** Section 61-04-27 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-04-27. Information filed with state engineer - Installation of measuring devices.**

2 ~~On or before the~~By March thirty-first day of March of each year all persons holding a water
3 permit, permitholders shall file with the state engineer, on forms supplied by the state engineer,
4 topographic, mapping, foundation test borings, design, water use, and such other information as
5 the state engineer shall ~~require~~requires. The state engineer may also may require any such
6 ~~persons~~permitholders to install measuring devices, ~~which must conform~~ conforming to the state
7 engineer's specifications, at all points specified by the state engineer.

8 **SECTION 31. AMENDMENT.** Section 61-04-28 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-04-28. Correction of application or water right by state engineer.**

11 Upon proof satisfactory to the state engineer that an ~~application for~~ a water permit
12 application or any water permit contains a nonmaterial error relative to the point of diversion,
13 the legal description of the land to which the water is to be applied, or the quantity of water, the
14 state engineer may, by written notice to the holder of the affected water permit or application,
15 correct the error without publication of notice.

16 **SECTION 32. AMENDMENT.** Section 61-04-29 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-04-29. Enforcement.**

19 The state engineer has full power and authority to institute, maintain, and prosecute to
20 determination in an administrative proceeding or any of the courts of this state, or in any of the
21 federal courts, any and all actions, suits, and special proceedings that may be necessary to
22 enjoin unauthorized use of water, ~~to~~ enforce an order of the state engineer or the ~~state water~~
23 commission, or ~~to~~ otherwise administer the provisions of this chapter. Notwithstanding any other
24 provision of law, the state engineer may issue administrative orders requiring the immediate
25 cessation of water use when the state engineer has a reasonable belief that ~~such~~the use is
26 unauthorized or continued use will damage the rights of prior appropriators.

27 **SECTION 33. REPEAL.** Sections 61-04-07, 61-04-15.1, 61-04-17, and 61-04-22 of the
28 North Dakota Century Code are repealed.