

September 8, 2025

Department of Water Resources
1200 Memorial Highway
Bismarck, ND 58504-5262

RE: Comments on Proposed Administrative Rule Changes – Regulatory Processes

Dear Director Haase,

Thank you for the opportunity to comment on the proposed changes to the North Dakota Administrative Code chapters 89-01-0, 89-03-01, 89-03-02, 89-07-02, 89-10-01, 89-11-01, 89-15-01, and Article 90. The North Dakota Water Resource Districts Association (the “WRDA”) appreciates the work of the Department of Water Resources (the “DWR”) to establish clear and predictable timelines for reviewing and processing of construction and drainage permits. Clear and predictable timelines will be beneficial both for water resource districts and for the landowners and communities that benefit from the projects that are associated with the permit applications.

The WRDA offers the following comments regarding this proposal:

General Comments

- The WRDA suggests that the DWR develop a standardized checklist to accompany permit applications. This would help applicants understand what constitutes a “complete” application and would reduce delays due to missing information.
- The WRDA is concerned that the use of ‘working days’ rather than calendar days can be confusing, particularly when it comes to holidays. The use of calendar days is unambiguous and would provide more clarity. While it constitutes shorter timelines for both the DWR and water resource districts, the WRDA suggests changing all uses of working days to calendar days while leaving the number the same (e.g., revising 15 working days to 15 calendar days for the completeness check for drainage permits).
- The DWR should consider including steps in the proposed process to formally acknowledge receipt of applications and notify applicants when an application is deemed complete.
- Additionally, the rules should address timelines for gathering signatures on approved permits. Delays at this step have proven to be a barrier to timely project execution.
- The proposed appeals process is a positive step forward and is greatly appreciated.

Proposed Changes Related to Construction Permits

- The proposed 45 working day timeline to determine application completeness should be reduced to 15 calendar days, aligning with the drainage permit process. Technical issues should be addressed in the subsequent review steps and not delay the completeness determination.
- The current practice of approving permits conditioned on right-of-way acquisition should be formally codified in the rules to reflect existing procedures.

Proposed Changes Related to Drainage Permits

- If a permit is deemed to have interdistrict or statewide significance, the DWR’s information-gathering meeting should occur prior to the water resource district process. This sequencing would ensure all parties have access to relevant information early in the process.

- The WRDA supports the elimination of the statewide water resource district process, which has been costly and time-intensive without clear benefits. However, the WRDA encourages maintaining the timeline requirement for water resource districts as a way to maintain accountability and transparency for producers and the DWR. The WRDA supports predictable timelines for all entities involved in the application process, including the 120-day timeline for water resource districts to issue a decision on a drainage application under N.D. Admin. Code § 89-02-01-09.3. The 120-day timeline ensures water resource districts complete their investigations and issue decisions in a reasonable and timely fashion, and provides concrete deadlines upon which producers and other applicants can rely.
- The WRDA agrees that the eight-point test under N.D. Admin. Code § 89-02-01-09.2 is not appropriate for inclusion in administrative code. However, the WRDA believes the eight-point test remains a valuable tool and will encourage continued use of the test by water resource districts through other means. For example, water resource districts have a statutory requirement under N.D. Cent. Code § 61-32-03 to investigate each application and, if an investigation reveals a project proposed under an application will result in flooding or other downstream impacts, the reviewing water resource district must require a flowage easement as a condition to the approved permit. Continued utilization of the eight-point test under Section 89-02-01-09.2 will ensure all water resource districts conduct full and proper investigations of applications, as required by state law.

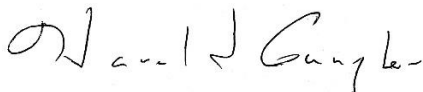
Other Permit/Determination Processes that Could Be Addressed

The WRDA believes the proposed processes provide helpful clarity and predictability for construction and drainage permits. There are other permits and determinations that could benefit from similar processes. Specifically, the WRDA recommends applying similar timeline structures to the following:

- Sovereign Lands Permits
- Stream Crossing Determinations: A 30-calendar-day timeline would be appropriate. Additionally, as was discussed during the legislative session, the WRDA continues to encourage the DWR to consider contracting out this work to expedite reviews.

Thank you again for the opportunity to provide input. The WRDA looks forward to continued collaboration with the DWR to appropriately manage water across North Dakota for the benefit of all. If you have any follow up to this comment letter, please reach out to Jack Dwyer, WRDA Executive Secretary, at jack@dwyerlawnd.com.

Sincerely,



Harold Gaugler
President