



# State of North Dakota

Office of the State Engineer

Regulatory Division

900 EAST BOULEVARD AVE. • BISMARCK, ND 58505-0850

Regulatory Division (701) 328-2752 • FAX (701) 328-3696 • <http://swc.nd.gov>

November 9, 2017

Fargo-Moorhead Area Flood Diversion Task Force

RE: Request for North Dakota Regulatory Responsibilities

Dear Task Force Members:

Thank you for your interest in the regulatory requirements of the North Dakota Office of the State Engineer (OSE) as they pertain to the Fargo-Moorhead Area Flood Diversion Project.

Attached, please find brief descriptions of the Sovereign Land, Construction, Surface Drainage, and Floodplain Management regulatory responsibilities of the OSE.

My office provides this information at the request of Governor Burgum to ensure that any alternatives explored by the Task Force take into consideration North Dakota's regulatory responsibilities.

Beyond the OSE regulatory requirements, the applicant is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary for the construction and operation of a proposed project.

If you have any questions regarding the referenced regulatory roles, please feel free to contact Aaron Carranza, Regulatory Division Director, at (701) 328-4813 or by email at [acarranza@nd.gov](mailto:acarranza@nd.gov).

Sincerely,

Garland Erbele, P.E.  
State Engineer

GE:AC:ph/1928

Enclosures



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### **Sovereign Land Permits (N.D.C.C. ch. 61-33 and N.D.A.C. art. 89-10)**

Any project that occurs either partially or wholly on state sovereign land requires authorization from the State Engineer prior to construction. Sovereign lands are those areas, including beds and islands, lying within the ordinary high watermark of navigable lakes and streams.

Applications for a sovereign land permit must be on the form *Application for Authorization to Construct a Project Within Islands and Beds of Navigable Streams and Waters*.

#### **Permitting Process:**

1. Upon receipt, applications will be date stamped and a project file created.
2. A *Solicitation of Views* (SOV) letter will be prepared and provided along with a copy of the application, maps, and design drawings to the following entities:
  - a. North Dakota Game and Fish Department; North Dakota Department of Health; North Dakota State Historical Society; North Dakota Department of Trust Lands; North Dakota Parks and Recreation Department;
  - b. U.S. Fish and Wildlife Service;
  - c. The park district and planning commission of any city or county, if any part of the project is within the boundaries of the city or county;
  - d. Any water resource district in which the proposed project will be wholly or partially located; and
  - e. Other agencies, private entities, and landowner associations as appropriate or required by law.
3. The State Engineer may grant, deny, or condition the application.

#### **Approximate Timeline:**

- |         |   |
|---------|---|
| Step 1: | <b>Days to 2 weeks or more</b> , depending on the complexity of the proposed project, completeness of the application, and availability of staff. |
| Step 2: | <b>30 days</b> , receipt of comments prior to the expiration of the SOV does not terminate the comment period.                                    |
| Step 3: | <b>Days to six weeks or more</b> , depending on the complexity of the project and any comments received, and availability of staff.               |

In general, the applicant should budget approximately **90 days** for the sovereign land permitting process.

**Note:** The Sheyenne and Red Rivers are the only sovereign lands within the Fargo-Moorhead Area Diversion Project as it is currently proposed.



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### Construction Permits (N.D.C.C. § 61-16.1-38 and N.D.A.C. art. 89-08)

Any dam, dike, or other device for water conservation, flood control regulation, watershed improvement, or storage of water which is capable of retaining, obstructing, or diverting more than 50 acre-feet of water requires a permit from the Office of the State Engineer (OSE).

Applications for a construction permit must be on form SFN51695 *Application/Notification to Construct or Modify a Dam, Dike, Ring Dike or Other Water Resource Facility*.

#### Permitting Process:

1. The OSE receives application and conducts an initial review for completeness.
  - a. A complete application includes a properly completed application form, complete plans and specifications, evidence of a property right for property affected by the construction of the project, and any additional information required by the OSE.
2. Upon receipt of a complete application, the OSE must forward the application to the local water resource district of jurisdiction for their review and comment.
3. Once the comment period is complete, the OSE may grant, deny, or condition the permit application.

#### Approximate Timeline:

- |         |  |
|---------|--|
| Step 1: | <b>One day to 45 days</b> , depending on the complexity of the proposed project, completeness of the application, and availability of staff. |
| Step 2: | <b>One to 45 days</b> , depending on the WRD's meeting frequency or complexity.  |
| Step 3: | <b>Days to 6 weeks or more</b> , depending on OSE project workload and design complexity.  |

In general, the applicant should budget approximately **120 days** for the construction permitting process.

**NOTE:** The Fargo-Moorhead Area Flood Diversion Project is to be permitted in phases. The first phase, the diversion inlet control structure (OSE Construction Permit No. 2489), is the only piece of the southern embankment currently authorized by the OSE for construction. As additional phases are designed and submitted for permitting, steps 1-3 above will be followed by the OSE. At the time of the initial permit application, the southern embankment was proposed to be constructed in five phases, with permitting information for the final phase anticipated to be submitted to the OSE in April 2022.



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## Surface Drainage Permits (N.D.C.C. § 61-32-03 and N.D.A.C. art. 89-02)

Any person, before draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty (80) acres or more, shall first secure a permit to do so. Types of projects that require permits are agricultural drains, assessment drains, lateral drains, diversions acting as drains, pumping or placement of fill activities, and the modification of existing drains.

Applications for a surface drain permit must be on form SFN2830 *Application for Surface Drain*.

### Permitting Process:

1. Office of the State Engineer (OSE) receives application and conducts initial review for completeness.
  - a. Complete applications include a properly completed application form, an aerial image depicting the location of the drain, and any additional information required by the OSE.
2. The application is reviewed by the OSE to determine if it meets the criteria for “drainage of statewide or interdistrict significance” (SW/IDS).
3. Upon completion of the SW/IDS review, OSE refers the application to the water resource district (WRD) of jurisdiction for consideration and approval.
  - a. For non-SW/IDS applications, the WRD is the final permitting authority.
  - b. For SW/IDS applications, the WRD must conduct a public meeting/hearing, publish notice of the meeting/hearing in the local newspaper, and send an approved application to the OSE for final review and approval.

### Approximate Timeline:

- |         |   |
|---------|---|
| Step 1: | <b>Days to 2 weeks or more</b> , depending on the complexity of the proposed project, completeness of the application, and availability of staff. |
| Step 2: | <b>Days to 2 weeks or more</b> , depending on the complexity of the proposed project, availability of staff, and responsiveness of applicant.     |
| Step 3: | <b>Days to 120 days or more</b> , depending on the WRD’s meeting frequency and whether the application is of SW/IDS.                              |

In general, the applicant should budget approximately **30 to 120 days** for the non-SW/IDS permitting process and longer for the SW/IDS permitting process.

**NOTE:** The interception of several Cass County assessment drains with the proposed FM diversion channel may trigger the requirement for a surface drain permit.



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## Floodplain Management (N.D.C.C. ch. 61-16.2)

The Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) is administered by the local participating community. Each participating community in North Dakota has a designated floodplain administrator that implements local ordinances and ensures compliance with state statutes as well as the NFIP's minimum standards outlined in Title 44 Code of Federal Regulations, Part 59-80. The Office of the State Engineer (OSE) reviews proposed developments within NFIP regulatory floodways and provides guidance to the local NFIP-participating community.

Applications for an OSE floodway review must be on form SFN61171 *Application for the State Engineer's Floodway Review*.

### Office of the State Engineer Floodway Development Review Process:

1. The OSE receives application and conducts an initial review for completeness.
  - a. The OSE staff may request additional information, including a hydraulic model, to better understand the effects of the proposed project.
2. Upon receipt of a complete application, OSE staff reviews the proposed project for affected area impacts.
3. The OSE notifies the community whether the proposed use is in compliance with state and federal law.

### Approximate Timeline:

Step 1: **Days to 6 weeks or more**, depending on the complexity of the proposed project, information requested by the OSE, and response of the project sponsor.

Steps 2 & 3: **One to 30 days**, depending on OSE project workload.

In general, the applicant should budget approximately **90 days** for the OSE floodway review process.

**NOTE 1:** The identified floodplain for a community has the potential to change (either increase or decrease) due to an updated statistical determination of the 1% chance flood event resulting from an expanded period of record.

**NOTE 2:** All development within the NFIP-delineated floodplain is regulated by the local participating community. The OSE staff serves an advisory and coordination role, providing clarification and assistance to ND participating communities.