

**ARTICLE 7-08
WATERBANK PROGRAM**

Chapter
7-08-01 Implementation of the North Dakota State Waterbank Program

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IMPLEMENTATION OF THE NORTH DAKOTA STATE WATERBANK PROGRAM**

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7-08-01-01. Purposes and basis.

These rules provide terms, conditions, and procedures for the administration by the commissioner of agriculture of the waterbank program as enacted by the forty-seventh legislative assembly in 1981 and codified in North Dakota Century Code chapter 61-31.

History: Effective August 1, 1987.
General Authority: NDCC 61-31-01
Law Implemented: NDCC 61-31-01

7-08-01-02. Definitions.

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

1. "Adequate fence" means legal fence as defined in North Dakota Century Code section 47-26-01.
2. "Adjacent lands" means lands bordering the wetland or within one-fourth mile of the wetland.
3. "Commissioner" means the commissioner of agriculture.
4. "Drainage" means vulnerable to destruction through artificial or natural process.
5. "Participant" means the landowner participating in the program.
6. "Program" means the state waterbank program.
7. "State assessment team" means representatives from the department of agriculture, the game and fish department, the state engineer's staff, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990; October 1, 1993.
General Authority: NDCC 61-31-01
Law Implemented: NDCC 61-31-01

7-08-01-03. State assessment team.

Repealed effective October 1, 1993.

7-08-01-04. Procedure for participation in the program.

1. Applications for the program may be submitted to any representatives of the state assessment team or their agencies to be reviewed and submitted to the commissioner.
2. The state assessment team shall submit recommendations to the commissioner who will make the final determination of applications to be funded according to the commissioner's evaluation of the recommendations and available waterbank funds. A letter of nonacceptance will be mailed to unsuccessful applicants. Applications may be resubmitted at any time.
3. Renewal of agreements can take place after a written proposal to do so is received from the participant prior to termination of the contract. Such renewal will be subject to redetermination of payment rates.
4. The acreage designated for participation must be documented on an agricultural stabilization and conservation service farm photo and attached to the application or contract, or both.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-05. Reassessment procedure.

Repealed effective October 1, 1993.

7-08-01-06. Participation priority.

If all eligible applicants having the same assessment rating cannot be included in the program, the priority will be based on earliest date of application.

History: Effective August 1, 1987; amended effective February 1, 1988.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-07. Rate of payment.

Repealed effective May 1, 1990.

7-08-01-08. Acreage limitations and designations.

Unless otherwise approved by the commissioner in consultation with the state assessment team:

1. Total acreage [hectarage] of adjacent land must be at least equal to qualifying wetland acreage [hectarage] included in the application but may not exceed four times the acreage [hectarage] of the wetlands. Wetlands previously drained may be offered if the participant will agree to restore such wetlands to levels which will qualify them under North Dakota Century Code section 61-31-03.
2. Total acreage [hectarage] allowed for a participant in the program must be at least ten acres [4.05 hectares] and not more than one hundred sixty acres [64.75 hectares].
3. The acreage [hectarage] designated for participation must be described by metes and bounds or other legal description or method specifically delineating the acreage [hectarage] to be included in the program.

4. Acreage [hectarage] selected for the program must have signs posted to indicate participation in the program and whether walking public access is allowed on that acreage [hectarage].

History: Effective August 1, 1987; amended effective February 1, 1988; May 1,1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-09. The waterbank agreement.

Repealed effective October 1, 1993.

7-08-01-10. Drought emergency.

If the governor or the United States department of agriculture declares a drought emergency, the grass cover on lands included in the program may be released to a qualified participant for haying or grazing with the authorization of and under the terms prescribed by the commissioner as provided in subsection 4 of North Dakota Century Code section 61-31-05.

1. A written request to open program lands for haying or grazing must be submitted to the commissioner by the participant.
2. The release date must be determined by the commissioner of agriculture with the approval of the state game and fish director. Under no circumstances shall emergency haying or grazing be allowed prior to July fifth.
3. Notice of approval of the request to hay or graze a waterbank tract and the conditions to do so must be mailed to the participant.
4. Conditions shall include, but are not limited to, the following: date on which entry can be made on the land and date by which all hay, machinery, or livestock must be removed from the tract; the amount and date by which, or how payment is to be submitted to the commissioner's office; the date on which the tract will be open to haying or grazing, or both. The payment for hay or grass may be deducted from the next waterbank payment, provided it is not the last year of the contract period.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1,1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-05

7-08-01-11. Violations.

1. It is a violation of the waterbank agreement if the participant does not fulfill each and every term of the waterbank agreement established between the participant and the commissioner, including the management guidelines adopted by the state assessment team which are incorporated by reference into the waterbank agreement.
2. If the commissioner determines a violation of the waterbank agreement has occurred, the commissioner may take enforcement in concert with North Dakota Century Code chapter 61-31 or other applicable statutes as the commissioner deems appropriate. The participant may appeal the decision pursuant to North Dakota Century Code chapter 28-32.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1,1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-04