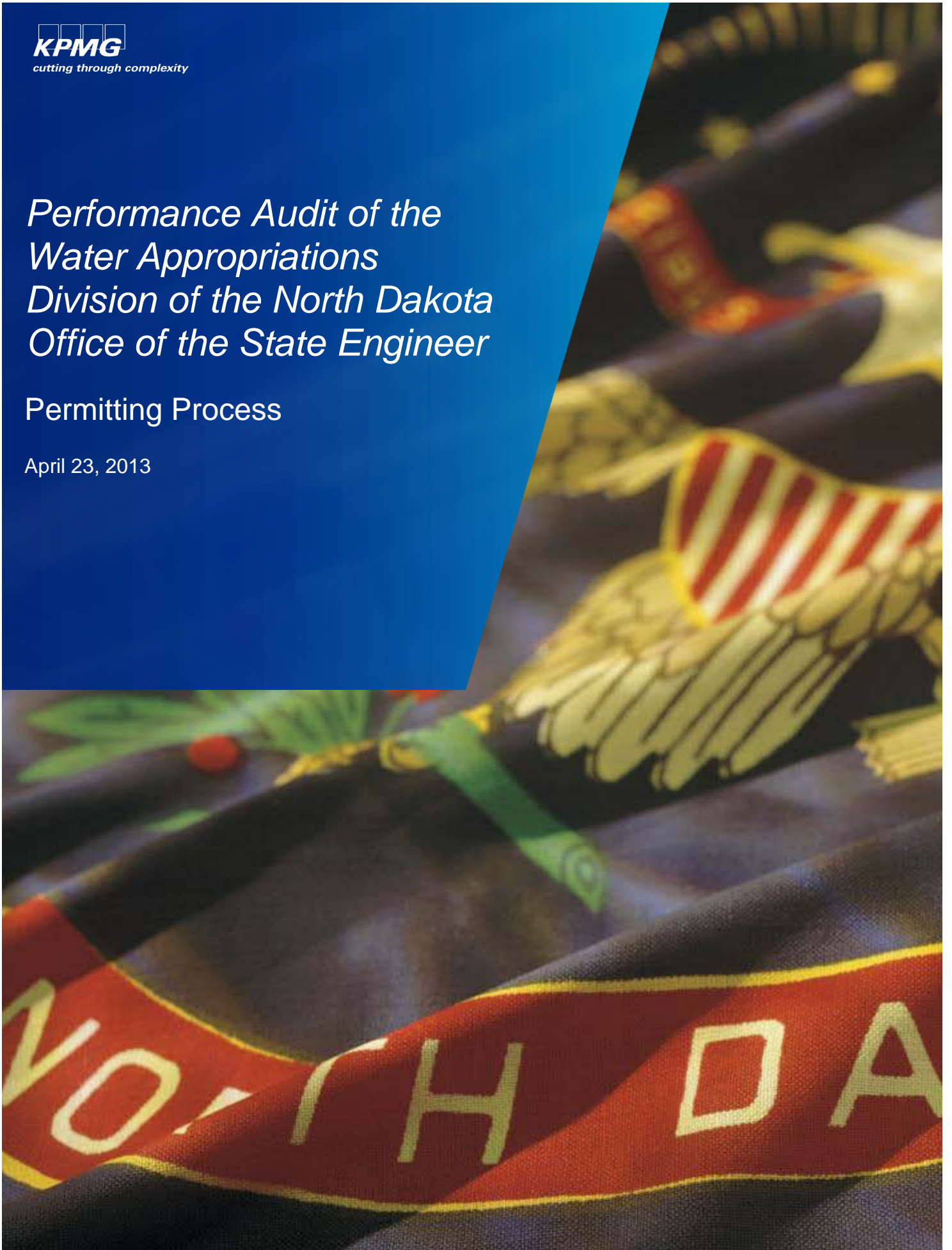


*Performance Audit of the
Water Appropriations
Division of the North Dakota
Office of the State Engineer*

Permitting Process

April 23, 2013



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Executive Summary

KPMG LLP (KPMG) was engaged by the State of North Dakota (State) Office of the State Auditor (State Auditor) and the State Water Commission (SWC) to conduct a performance audit of the Water Appropriations Division of the Office of the State Engineer (State Engineer). The recent oil boom in northwestern North Dakota has led to an increase in the demand for industrial water use permits, as well as raised awareness to whether current permitting processes are sufficient to manage the increased volume of applications. This report presents the results of our work conducted to address the below performance audit objectives relative to the permitting processes employed by the Water Appropriations Division. Our work was performed during the period of February 11th through March 4th and our results are as of March 4th.

Objective and Scope

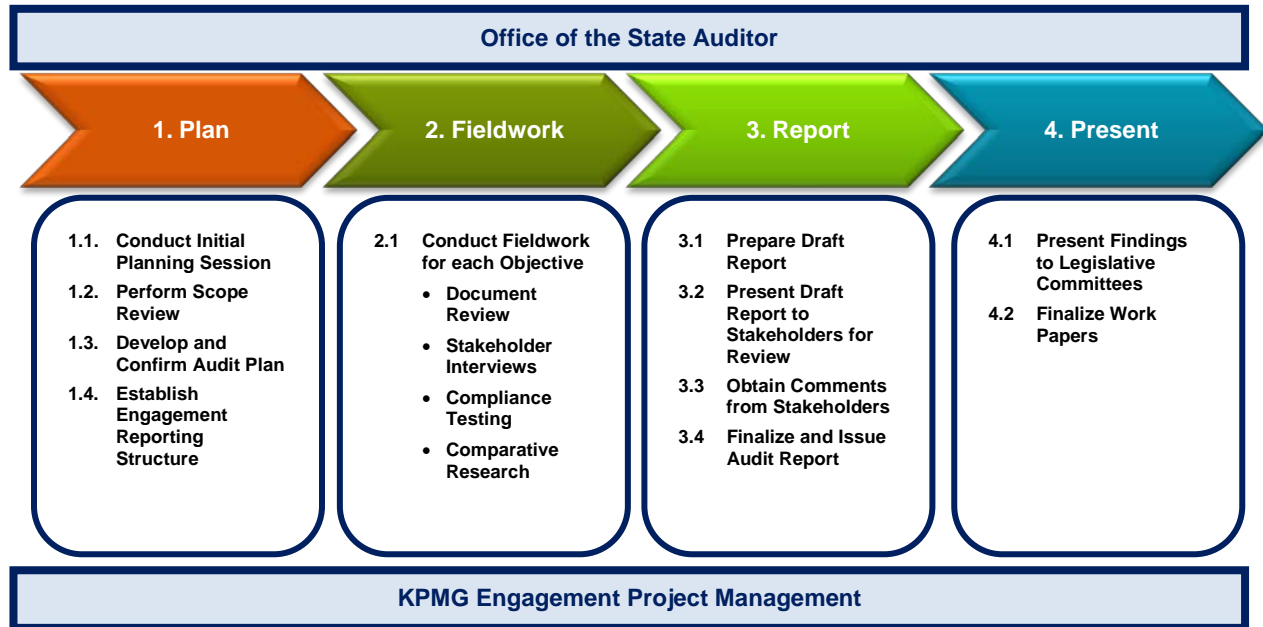
The objective of this engagement was to conduct a performance audit of the permitting policies and procedures of the Water Appropriations Division; and to provide recommendations to help address any identified performance gaps. The performance audit period was permits applied for in calendar years 2010, 2011 and 2012; however, in order to test all phases of the conditional/perfect permit lifecycle - the conditional/perfected permit sample population included permit applications received between 2002 and 2012.

The scope of this engagement included the following five (5) audit objectives defined by the State Auditor. The objectives are summarized in the following table.

Objective	Objective Summary
Objective #1	Assess compliance with any laws, rules, regulations, policies and procedures applicable to the industrial water use permitting processes employed by the Water Appropriations Division.
Objective #2	Determine the reasonableness of time between the submission of an application to the issuance of a conditional/temporary permit and perfection; identify barriers or obstacles that may cause delays in the process.
Objective #3	Evaluate the use of technology throughout the permitting process to determine whether it is being effectively used to help improve the efficiency of the processes.
Objective #4	Assess resource utilization in the permitting processes to determine if adequate resources are dedicated.
Objective #5	Evaluate the communication protocols utilized during the permitting process to communicate with the applicant; also assess internal communication practices.

Approach and Methodology

The engagement was structured in four (4) phases as illustrated below.



The approach included developing an understanding of the pertinent laws, rules, regulations, policies and procedures associated with the appropriation of water in the state through document and system reviews, stakeholder interviews and process observation. Field work included testing of data related to the various permitting controls. In addition, comparative research of the permitting practices employed by five (5) other western U.S. states with similar water appropriation systems was performed. The information gained from the field work was analyzed to help formulate responses to the defined objectives, identify potential findings, and develop related recommendations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Findings and Recommendations

The course of the review identified both compliance and performance related findings. The following table provides an overview of each finding and recommendation included in this audit report. The first three (3) findings are compliance related, while the subsequent findings and recommendations are related to operational efficiency. Additional details on each finding and recommendation can be located in *Section 4 – Finding and Recommendations* of this audit report.

FINDING SYNOPSIS		RECOMMENDATION SYNOPSIS
Compliance Related Findings		
1	Testing results for the sample of conditional/perfected permit applications identified potential violations of statutory requirements and SWC documented policies and procedures, including reported water use prior to permit issuance and the incorrect assignment of priority dates.	<ul style="list-style-type: none"> Review and remediate exceptions Ensure compliance with applicable NDCC and NDAC statutes Assess and re-engineer internal policies, processes and control mechanisms Leverage technology to enhance processes and control mechanisms
2	Testing results for the sample of temporary permit applications indicated potential violations of internal policies and procedures. These include a lack of evidence of proper hydrologic reviews and the lack of a clearly defined permit approval process.	<ul style="list-style-type: none"> Review and remediate exceptions Ensure compliance with applicable internal policies and procedures Develop policies and procedures for the temporary permit application process
3	The Water Appropriations Division has instances of noncompliance related to NDCC 61-04-09, as only 20% of the permits requiring an inspection had evidence of an inspection having been conducted or an extension having been requested. The Water Appropriations Division is also in violation of NDCC 61-04-14 which requires the State Engineer to notify the conditional permit holder of the expiration of the beneficial use date.	<ul style="list-style-type: none"> Assess prioritization of resources Ensure compliance with applicable NDCC and NDAC statutes Develop policies and procedures for the permit inspection process Leverage technology to enhance processes and control mechanisms
Operational Related Findings		
4	The fee structure established for conditional permits under NDCC 61-04-04 has not changed since 1991.	<ul style="list-style-type: none"> Explore alternative fee structures Request a revision to NDCC 61-04-04
5	There are no statutes, rules and/or policies that require a fee for a temporary permit application.	<ul style="list-style-type: none"> Assess the impact of temporary application processing efforts on conditional permit application processing output Develop a fee structure for temporary permit applications
6	The permit application process is manual in nature and paper intensive. Application forms and support documentation is submitted in hard copy format.	<ul style="list-style-type: none"> Develop an online application tool for the intake of applications and fees

FINDING SYNOPSIS		RECOMMENDATION SYNOPSIS
7	There are no formal policies and procedures for the processing of temporary permits issued under NDCC 61-04-02.1.	<ul style="list-style-type: none"> • Develop policies and procedures for the temporary permit application process
8	Communication protocols to communicate information to the general public and permit applicants are not formalized.	<ul style="list-style-type: none"> • Update current publically available content • Develop policies and procedures to govern interaction with the applicant • Develop an online status reporting tool
9	The document management system, including both the permit file and the database system, utilized to maintain records in accordance with NDCC 61-04-01 appears to lack formal structure with regard to file storage, naming convention, etc.	<ul style="list-style-type: none"> • Amend/Develop policies and procedures to help ensure that application documents are filed/uploaded timely • Define a filing structure to include file locations, naming conventions, etc.
10	Components of the permitting process are conducted by resources outside of the Water Appropriations Division.	<ul style="list-style-type: none"> • Assess current roles and responsibilities on the efficiency of the process • Determine capacity to perform all functions within the Water Appropriations Division

Water Appropriations Division Management and Staff Involvement

The Water Appropriations Division management and staff were engaged during the review to facilitate our understanding of the permitting processes, provide requested documentation required for testing activities and conduct follow-up as necessary. Active engagement and cooperation of Water Appropriations Division staff was critical to the successful completion of the performance audit.

Section 1: Water Appropriations Division Profile

Division Overview

The Water Appropriations Division is a component of the North Dakota Office of the State Engineer (State Engineer) with the following designated responsibilities:

- Administering and Processing Water Rights
- Adjudicating and Evaluating Water Rights
- Monitoring Water Resources
- Disseminating Water Resource Information
- Developing Community Water Supplies
- Conducting Water Resource Research
- Identifying and Evaluating Potential Water Supplies for Economic Development

The objective of this performance audit included activities related to the permitting process, specifically permits issued for industrial water use purposes. Other core responsibilities of the Water Appropriations Division were not included in the scope of this effort.

Division Structure

As of February 2013, the Water Appropriations Division employed twenty-three (23) staff members across six (6) functional areas. The table illustrates functional areas and the respective Full Time Equivalents (FTEs) designated to each.

FUNCTIONAL AREA		BASIC SERVICE DESCRIPTION	FTE
1	Division Management	Management of the Division	1.0
2	Water Permit Administration	Administration of permit application process	3.0
3	Ground Water Management	Exploring, monitoring and managing the ground water resources of the State	10.0
4	Surface Water Management	Exploring, monitoring and managing the surface water resources of the State	2.0
5	Hydrologic Data	Collecting and analyzing hydrologic information related to both water resources and water permits	6.0
6	Special Investigations	Conducting and coordinating investigations	1.0
Total			23.0

The Water Appropriations Division has three (3) primary FTEs dedicated to Water Permit Administration; however, staff from Division Management and Ground Water Management/ Surface Water Management are also engaged at various phases of the permitting process.

Water Appropriation in North Dakota

The Water Appropriations Division appropriates the waters of the state of North Dakota through the issuance of water permits. Water permits are issued so that waters of the state can be used for beneficial purposes, including municipal, irrigation and industrial. The permitting process serves to help the Water Appropriations Division oversee the water resources of the state by managing the amount of water that can be legally withdrawn from those resources.

The scope of this review included both conditional/perfected and temporary permits for industrial use. The table below identifies the in-scope permit populations considered as part of this review, as well as the sample population tested for each.

In-Scope Permit Populations		Volume	Sample	Percentage
1	Conditional / Perfected Permits for Industrial Use ⁽¹⁾	420	79	19%
2	Temporary In Lieu of Irrigation Permits ⁽²⁾	69	25	36%
3	Temporary Industrial Use Permits ⁽³⁾	400	40	10%

Notes

- (1) Volumes represent active permits as identified by the Water Appropriations Division as of October 2012.
- (2) Volume represents permits issued in calendar years 2010 through the first six months of 2012 as identified by the Water Appropriations Division
- (3) Volume represents permits issued in calendar years 2010 through the first six months of 2012 as identified by the Water Appropriations Division

Industrial Use Permit Application Volume

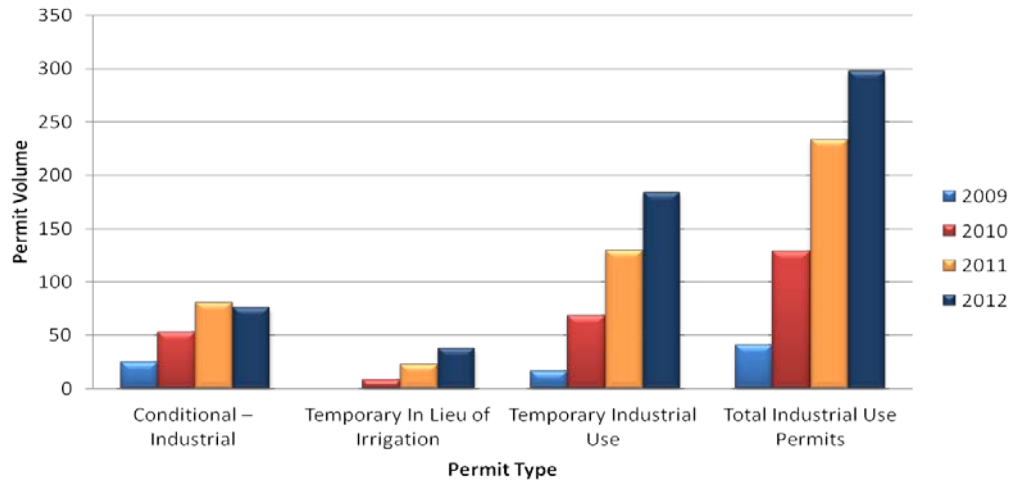
In recent years the Water Appropriations Division has seen an increase in both conditional and temporary industrial use permit applications as a result of the increase in oil activity in the northwestern part of the state. The following table and graphic illustrate the volume change across the different in-scope permit types over the most recent four year period (2009 – 2012).

Permit Type ⁽¹⁾	2009	2010	2011	2012
Conditional – Industrial	25	53	81	76
Temporary In Lieu of Irrigation ⁽²⁾	0	8	23	38
Temporary Industrial Use ⁽²⁾	16	68	130	184
Total Industrial Use Permits	41	129	234	298

Notes

- (1) Data provided by the Water Appropriations Division represent calendar year volumes.
- (2) Includes "Industrial – Oil Well Development" and "Industrial – Water Depot" Classifications

Industrial Permit Application Growth



The increase in permit applications, as well as the increase in water appropriators, creates greater demand on the water resources of the state. The increased demand on the water resources of the state highlights the importance of an efficient water appropriation process to help ensure compliance with rules, regulations and policies and to facilitate the effective use of the water resources.

Section 2: Permitting Process Overview

This section provides an overview of permitting processes employed by the Water Appropriations Division. An understanding of these processes was gained through interviews with Water Appropriations Division resources, a review of applicable process documentation, process observation and testing procedures. Any findings related to these processes are further discussed in *Section 4 – Finding and Recommendations* of this audit report.

Water Appropriation System

NDCC Section 61-01-01 states that the “waters of the state belong to the public and are subject to appropriation for beneficial use.” The state authorizes the State Engineer to manage the appropriation process through the issuance of water rights/permits. NDCC 61-04-02 states “Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law.” All applicants requesting water for other beneficial uses, including industrial purposes, are required to submit an application and obtain a permit prior to withdrawing water.

Permitting Process

Permit Types

The Water Appropriations Division grants water rights through the permitting process. Two (2) types of water permits are issued by the Water Appropriations Division - *conditional water permits* and *temporary water permits*. An overview of each permit type is provided below.

- **Conditional Water Permits:** Individuals/Entities can apply for a conditional water permit to gain access to a specified amount water to be used for a defined beneficial use. Once the water permit application is approved by the Water Appropriations Division and a conditional water permit is issued, the individual/entity typically has one (1) to three (3) years to bring the water to beneficial use and meet the conditions of the permit, including those related to any infrastructure necessary to extract the water from the source. Once the permit is inspected and all conditions of the permit met, the conditional permit is converted to a perfected permit granting the permit holder a perpetual right to the water designated in the permit.
- **Temporary Water Permits:** Individuals/Entities can apply for a temporary water permit which provides the permit holder temporary access to water diverted from a designated source for a defined period of time. For industrial water use, there are two (2) types of temporary permits issued – *temporary in lieu of irrigation permits* and *temporary industrial use permits*.
 - **Temporary In Lieu of Irrigation Permits:** Individuals/Entities with an established water right for which the defined beneficial use is irrigation can apply for a temporary in lieu of irrigation permit. A temporary in lieu of irrigation permit allows permit holders to divert water designated for irrigation and use it for industrial purposes. The amount to be diverted is based on average

usage over the life of the permit or, if no usage data is available, the average usage of other permits in the surrounding area. Temporary in lieu of irrigation permits are only issued for a specified period of time, no more than twelve (12) months, and do not permanently change the designated beneficial use purpose of the permit.

- **Temporary Industrial Use Permits:** Individuals/Entities can apply for a temporary industrial use permits which provides the permit holder with temporary access to a specified amount of water to be used for a defined industrial use deemed beneficial by the State Engineer. As indicated by the Water Appropriations Division, the majority of temporary industrial use permits are issued for surface water resources. Temporary industrial use permits are only granted for a specified period of time, no more than twelve (12) months, and do not establish a permanent water right. Use limitations, pumping rates, and other restrictions are also established for each temporary industrial use permit.

Application Documentation Overview

For both conditional and temporary permits, an application and applicable support documentation must be submitted to the Water Appropriations Division. A list of the permit application documents/forms is provided below, along with a brief description.

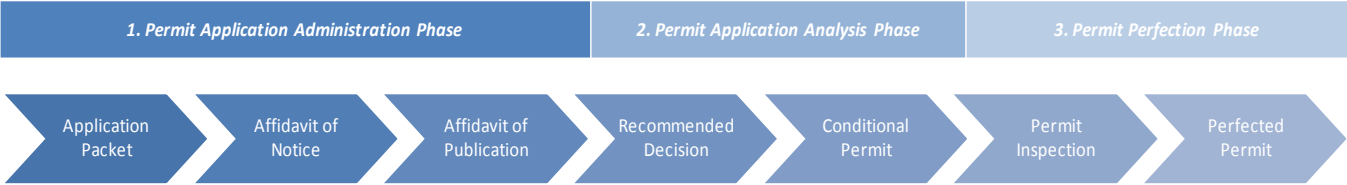
Application Document	Permit Type	Description
Permit Application Form(s)	Conditional / Temporary	Standard application forms required for conditional and temporary permit applications respectively. The forms collect information about the applicant and the proposed appropriation site.
Certified Map	Conditional	A map of the proposed appropriation site must be submitted with permit application. The map must be certified by a licensed land surveyor in the state of North Dakota.
Notice of Application Materials	Conditional	A packet of notification materials including notification instructions, an <i>Affidavit of Notice</i> and a list of permit holders and public use facilities that must be notified as part of the notification process.
Affidavit of Notice	Conditional	An affidavit that indicates that all applicable parties have been notified of the application by the applicant. The affidavit must be signed by the applicants and notarized by notary.
Certified Mail Receipts and/or Form 3877	Conditional	Certified mail receipts and/or Form 3877, which is prepared and signed by the postal service acknowledging delivery of notifications, serves as evidence that all appropriate parties were notified.

Application Document	Permit Type	Description
Public Notice Statement	Conditional	An informational statement developed by the Administrative Staff Officer to the State Engineer to be issued to the applicant and published in the newspaper(s) of the county of the proposed appropriation site.
Affidavit of Publication	Conditional	An affidavit submitted to the Water Appropriations Division by the newspaper(s) confirming publication of the <i>Public Notice Statement</i> .
Comment Period Summary	Conditional	A summary document that includes key dates (e.g., application receipt) and a list of all parties that submitted comments in response to the application
Recommended Decision	Conditional / Temporary	An analysis prepared by the Project Hydrologist in response to the application. The analysis addresses the criteria established by NDCC 61-04-06 and any comments received during the comment period.

Application Processes

The statutory requirements and internal procedures vary for conditional and temporary permit applications. Overviews of the procedures associated with each permit type are provided below. Process flows and detailed process narratives are included in Appendix C.

Conditional Water Permits: Based on our understanding, the application process for conditional permits can be segmented into three (3) phases and seven (7) distinct and sequential process components depicted in the graphic below.



Each of the processing phases and components depicted above are briefly outlined below.

1. Permit Application Administrative Phase

- *Application Packet:* All applicants requesting a conditional water permit are required to complete and submit a conditional water permit application (*SWC Form No. 108*). The application must be submitted via mail, accompanied by a map of the proposed well site certified by a licensed surveyor, and include the appropriate application fee.

Once the application packet is received, the application is assigned a priority date, which is the date of application receipt. The Water Appropriations Division has thirty (30) days to review the application packet and notify the applicant if the application packet is incomplete. If the application

packet is deemed to be incomplete, the applicant is allotted sixty (60) days to provide the additional information. If the requested information is not provided within the sixty (60) day resubmission period, the original priority date is voided and a new priority date will be assigned once the requested application materials are received.

- *Affidavit of Notice*: Once the application packet is deemed complete, the Water Appropriations Division will issue notification materials to the applicant via mail. The notification materials include notification instructions, a map of the notification area, a list of permit holders and public use facilities to be notified and an *Affidavit of Notice*. The notification process is defined by NDCC 61-04-05 and NDAC 89-03-01-04. The Water Appropriations Division will create a permit folder and enter the permit into the database with a status of “Application in Processing”.

Once notified, the applicant is afforded sixty (60) days from notification to submit a completed *Affidavit of Notice* and certified mail receipts and/or postal service Form 3877 confirming notifications were sent to all identified parties. Upon receipt of the *Affidavit of Notice* and support documentation, the Water Appropriations Division will review the materials to verify that all necessary parties were notified. If additional notifications are required or the information supplied is deemed incomplete, the Water Appropriations Division will notify the applicant and request additional information.

If the applicant does not provide the completed *Affidavit of Notice* and support documentation within the sixty (60) day period afforded by NDCC 61-04-05 and NDAC 89-03-01-04, the original priority date is deemed void and a new priority date will be established based on the date the requested application materials are received.

- *Affidavit of Publication*: Once the completed *Affidavit of Notice* and support documentation has been received, the Water Appropriations Division will prepare a *Public Notice Statement*. The statement is provided to the applicant and the official newspaper(s) of the county in which the proposed water appropriations site is located. This public notice is to be published once a week for two consecutive weeks in the official newspaper(s) of the county. Evidence of publication of the *Public Notice Statement* will be provided by the newspaper(s) in the form of an *Affidavit of Publication*.

Per NDCC 61-04-05.1, a thirty (30) day comment period will be held following the first date of publication. The comment period provides interested parties an opportunity to submit written comments to the Water Appropriations Division. At the conclusion of the comment period, the Water Appropriations Division prepares a *Comment Period Summary* that includes information regarding the permit, as well as a list of all comments received during the comment period. Copies of all comment letters are provided to the applicant at the conclusion of the comment period. The completed *Comment Period Summary* indicates the application has met all the statutory requirements and can proceed to the Permit Application Analysis Phase.

At the conclusion of the Permit Application Administration Phase, the Water Appropriations Division will update the application status in the database to “Withheld/Deferred” and scan all permit application documentation to the database.

2. Permit Application Analysis Phase

- *Recommended Decision*: Once the Permit Application Administration Phase is complete, the application is assigned to a Project Hydrologist for review. The Project Hydrologist will assess the

application based on criteria established by NDCC 61-04-06. The assessment will be documented in the form of a *Recommended Decision* that will address both the regulatory criteria and any comments received from interested parties during the comment period (i.e., parties of record).

Once complete, the *Recommended Decision* will be reviewed and approved by SWC management. Once approved, if comments had been received during the comment period, the *Recommended Decision* is mailed to the applicant, as well as any parties of record. At this time a second thirty (30) day comment period will begin to allow comment on the *Recommended Decision* from the applicant and/or other parties of record. During this second comment period, the applicant and/or other parties of record may request an adjudicative proceeding per NDCC 61-04-05.1. If deemed necessary by the State Engineer, the adjudicative proceeding will take place prior to permit issuance so as to address any public concerns over permit issuance.

- *Conditional Permit:* If no adjudicative proceeding is requested or at the conclusion of the proceedings, the permit will be reviewed and signed by the State Engineer and issued to the applicant. The permit will contain the conditions of the permit, as well as specify a date by which the appropriated water must be put to beneficial use (i.e., beneficial use date). The beneficial use date is typically set one (1) to three (3) years in the future to allow time for the development of the infrastructure needed to bring the water to beneficial use and to meet any other conditions placed on the permit, including the installation of an in-line metering device.

At the conclusion of the Permit Application Analysis Phase, the Water Appropriations Division will update the application status and scan all new permit application documentation to the database.

3. Perfection Phase

- *Permit Inspection:* Per NDCC 61-04-09, on or before the beneficial use date or upon notification from the applicant that the water is being put to a beneficial use, the Water Appropriations Division will conduct an inspection of the permit to verify that all required conditions have been met. If all conditions have been met, the conditional permit can proceed into the Perfection Phase.

If the permit holder is unable to meet the conditions of the permit on or before the beneficial use date, an extension request must be submitted to the Water Appropriations Division. Per NDCC 61-04-14, the Water Appropriations Division is to notify the permit holder via certified mail that the period for applying the water to the beneficial use cited in the conditional permit has expired. The permit holder has sixty (60) days from notification to request an extension of time or the permit shall be considered forfeited, abandoned and void. If an extension request is received that demonstrates good cause, an extension of the beneficial use date can be granted.

- *Perfected Permit:* Once all permit conditions have been met, the Project Hydrologist will review the inspection documentation and prepare a second *Recommended Decision* regarding permit perfection. The *Recommended Decision* will be reviewed and approved by SWC management, and the conditional permit will be converted to a perfected permit. Once perfected, the permit will provide the applicant with a perpetual right to the water allocated by the permit.

Per NDCC 61-04-01, the Water Appropriations Division retains all application documentation. Both hard copies and electronic images are filed during the course of the process.

Temporary Water Permits: NDCC 61-04-02.1 provides the State Engineer with the authority to grant temporary permits and to establish a separate procedure for the processing of application for temporary use; however, there are no statutory requirements that govern the temporary permit application process, as such the process was not segmented into components like the conditional permit application process.

Current practice requires that all applicants requesting a temporary permit submit an application to the Water Appropriations Division on the *Application for a Temporary Water Permit* form. The applicant is not required to include support documentation or an application fee. Temporary permit applications can be submitted via mail, fax or email. Once the application is receipted and deemed to have been completed, the application is routed to a Project Hydrologist for review. The process for the two (2) temporary permit applications is further described below.

- *Temporary In Lieu of Irrigation Permits:* Once the hydrologic review is complete, a formal *Recommended Decision* is prepared by the Project Hydrologist. The *Application for a Temporary Water Permit* form and the *Recommended Decision* are routed to SWC management for review and approval. The permit is approved by SWC management on behalf of the State Engineer.

The temporary in lieu of irrigation permit and *Recommended Decision* are provided to the applicant. The Water Appropriations Division retains copies of the final documents and files them with the corresponding irrigation permit folder and uploads the documentation to the database.

- *Temporary Industrial Use Permits:* No formal *Recommended Decision* is required to be prepared by the Project Hydrologist. Once the review is complete, the *Application for a Temporary Water Permit* form is routed to the SWC management for review and approval. However, with approval from SWC management, the Project Hydrologist is authorized to approve the temporary industrial use permit application on behalf of State Engineer.

The temporary industrial use permit is provided to the applicant. The Water Appropriations Division retains and files copies of the final permit and uploads the documentation to the database.

An individual/entity must apply for a new temporary permit on an annual basis or at the conclusion of the temporary appropriation period. While the individual/entity is required to submit a new application annually, there is no statute that limits the number of sequential temporary permits that can be granted. The Water Appropriations Division indicated that after three (3) consecutive temporary permits, an individual entity is requested to submit a conditional permit application.

Application Processes Roles and Responsibilities

As noted previously, multiple staff are engaged in the permitting process. A list of the resources, as well as a high-level overview of their responsibilities is provided below.

Resource Title	General Responsibilities in Permit Process
Administrative Staff Officer to the State Engineer	<ul style="list-style-type: none"> • Receives all Permit Application Mailings • Performs cursory review of Application Packet • Assigns Priority Date • Creates and Manages Permit Folder • Prepares and Mails <i>Public Notice Statement</i> • Reviews Final Permit • Obtains State Engineer Signature on Permit • Mails Signed Permit and Support Documentation to the Applicant
Administrative Assistant to the Water Appropriations Division Director	<ul style="list-style-type: none"> • Mails Notification Materials to the Applicant • Mails <i>Recommended Decision</i> to Parties of Record • Prepares the Final Permit • Scans Temporary Permit Documents to the Database
State Engineer	<ul style="list-style-type: none"> • Reviews the <i>Recommended Decision</i> • Approves Final Permit – Conditional
Director of the Water Appropriations Division	<ul style="list-style-type: none"> • Assigns Project Hydrologist to the Permit Application • Reviews and Approves the <i>Recommended Decision</i> • Reviews and Approves the Temporary Permit
Assistant Director of the Water Appropriations Division	<ul style="list-style-type: none"> • Reviews and Approves the <i>Recommended Decision</i> • Reviews and Approves the Temporary Permit
Water Resource Project Manager	<ul style="list-style-type: none"> • Reviews Application Packet for Completeness • Prepares Notification Materials • Updates Permit Status in the Database • Reviews <i>Affidavit of Notice</i> and Support for Completeness • Reviews and Tracks Comments • Prepares the <i>Comment Period Summary</i> • Scans Permit Application Documents to the Database
Project Hydrologist	<ul style="list-style-type: none"> • Receives Temporary Permit Applications • Performs Hydrologic Analysis • Addresses Comments from Parties of Record • Prepares the <i>Recommended Decision</i> • Prepares Draft of the Permit • Performs Permit Inspections
Contract Staff	<ul style="list-style-type: none"> • Performs Permit Inspections

Permit Application Processing Times

An analysis of permit application processing times was conducted on the conditional and temporary permit application sample populations. For the conditional permit population, the duration was analyzed by phase and component established based on our understanding of the process. For the temporary permit population, only the end-to-end process was analyzed. The results of the analysis are provided in the tables below.

Conditional Permit Application – Receipt through Conditional Permit Issuance

The table below indicates the average duration of each process component from application receipt through the issuance of the conditional permit. The total duration represents the average time it takes an applicant to obtain a conditional water right.

The sample population column includes the number of permit applications included in each calculation. Please note that six (6) applications from the conditional permit sample population were excluded from the analysis: three (3) had priority date that had changed and three (3) did not submit the Affidavit of Notice so no duration could be measured. Subsequent decreases in population size represent permit applications that did not or have not achieved certain process milestones.

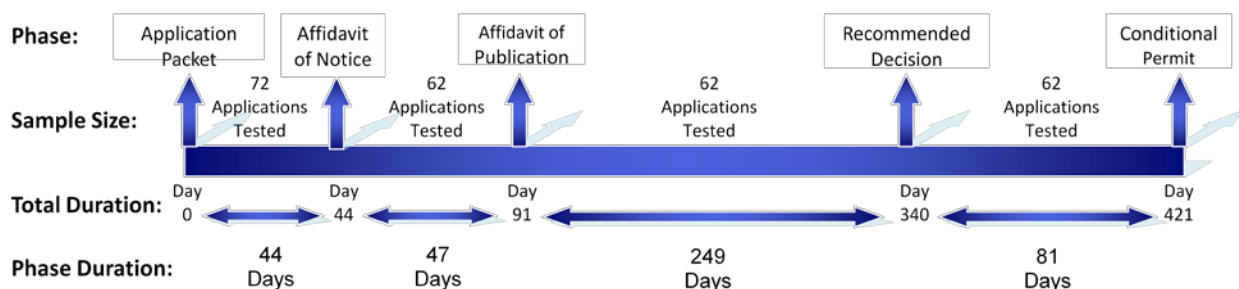
The durations for each component listed below depict the average duration of all permits tested.

Processing Times				
Permit Type	Sample Population	Phase	Component	Duration (Days)
Conditional	-	Administration	Application Packet	-
	73		Affidavit of Notice	44
	72		Affidavit of Publication	47
	62	Analysis	Recommended Decision	249
	62		Conditional Permit	81 ⁽¹⁾
	Total – Application Receipt → Conditional Permit Issuance			

Notes

(1) The Conditional Permit duration may include a mandatory thirty (30) day comment period in cases where comments were received.

The graphic below provides a visual depiction of process duration time by component.



To provide additional insights in the permitting application processing time analysis, the shortest and longest durations for each testing component are listed below.

Component	Shortest Duration	Longest Duration
<i>Affidavit of Notice</i>	0 Days	139 Days
<i>Affidavit of Publication</i>	12 Days	315 Days
<i>Recommended Decision</i>	8 Days	1,893 Days
<i>Conditional Permit</i>	0 Days	2,170 Days

The following observations were noted as part of the permit process duration analysis:

- Allocated time periods associated with the *Affidavit of Notice* and *Affidavit of Publication* are dictated by North Dakota Century Code, and applicant response time.
- The *Recommended Decision* process component may have a longer duration period based on several factors:
 - Complexity of hydrologic analysis required
 - Principles of groundwater
 - Number of Project Hydrologists on staff
 - Number of permits in queue for review
 - Complexity of permit

Conditional Permit Application – Conditional Permit Issuance through Permit Perfection

The table below indicates the average duration of each process component from permit inspection through permit perfection. Please note that no duration was calculated for the period of conditional permit issuance through permit inspection due to the fact that the time permitted varies significantly by permit. The Water Appropriations Division indicated that it typically affords a permit holder one (1) to three (3) years to bring the water to beneficial use.

The sample population included ten (10) permit applications that had been inspected and perfected.

Processing Times				
Permit Type	Sample Population	Phase	Component	Duration (Days)
Perfected	10	Perfection	Permit Inspection	-
	10		Perfected Permit	119
	Total – Conditional Permit Issuance → Permit Perfection			119

Temporary Permit Application – Receipt through Temporary Permit Issuance

The table below indicates the average duration of each process component from the application receipt through the issuance of the conditional permit. The total duration represents the average time it takes an applicant to obtain a conditional water right.

Processing Times				
Permit Type	Sample Population	Phase	Component	Duration (Days)
Temporary	65	N/A	Application	-
	65		Temporary Permit	13
	Total – Application Receipt → Temporary Permit Issuance			13

The Water Appropriations Division noted that application processing times can vary significantly based on a number of factors, including water source. As such, no duration goals have been established. Based on the comparative research, it appears that other states face similar uncertainty with regard to process duration and were unable and/or not willing to provide average processing times.

Section 3: Auditing Process

Objectives

The performance audit was defined by the following audit objectives. Testing was conducted across the various objectives, as appropriate, to confirm that the execution of permitting practices was compliant with established regulations, policies and procedures.

	Objective	Testing Component	Testing Universe	Testing Sample
1	Assess compliance with any laws, rules, regulations, policies and procedures applicable to the industrial water use permitting processes employed by the Water Appropriations Division.	• Conditional /Perfected Permits	420	79
		• Temporary In Lieu of Irrigation Permits	75	25
		• Temporary Industrial Use Permits	400	40
2	Determine the reasonableness of time between the submission of an application to the issuance of a conditional/temporary permit and perfection; identify barriers or obstacles that may cause delays in the process.	• Conditional /Perfected Permits	420	79
		• Temporary In Lieu of Irrigation Permits	75	25
		• Temporary Industrial Use Permits	400	40
3	Evaluate the use of technology throughout the permitting process to determine whether it is being effectively used to help improve the efficiency of the processes.	• The review assessed the current use of technology and identified potential technology gaps.	N/A	N/A
4	Assess resource utilization in the permitting processes to determine if adequate resources are dedicated.	• The review assessed resource utilization and identified potential gaps.	N/A	N/A
5	Evaluate the communication protocols utilized during the permitting process to communicate with the applicant; also assess internal communication practices.	• The review assessed communications protocols and identified potential gaps.	N/A	N/A

Approach

The approach included reviewing applicable regulatory and process documentation, interviewing internal stakeholders, observing processes, conducting comparative research, including interviews with representatives from other U.S. states, and conducting the testing activities to assess compliance with applicable regulations and policies.

The following interviews and follow-up meetings were conducted as part of field work activities.

MEETING	ATTENDEES (DIVISION/MEETING PURPOSE)
External Interview	South Dakota Department of Environment and Natural Resources
External Interview	Montana Department of Natural Resources and Conservation
External Interview	Wyoming State Engineer's Office
External Interview	Colorado Division of Natural Resources
External Interview	Minnesota Department of Natural Resources
SWC Interview	Division Director
SWC Interview	Assistant Division Director
SWC Interview	Project Hydrologist A
SWC Interview	Water Rights Administration
SWC Interview	Project Hydrologist B
SWC Interview	Project Hydrologist C
SWC Interview	Project Hydrologist D
SWC Interview	Project Hydrologist E
SWC Interview	Division Director

Testing Activities

Testing was performed to assess whether the Water Appropriations Division's permit application processes were compliant with laws, regulations, policies and procedures. The testing activities included identifying sample populations relevant to each objective, reviewing available permit files, and accessing the following database resources: Water Permit Records Database and the Temporary Water Permits Database.

A judgmental non-random sample selection process was undertaken to identify the sample populations. The selection process took into account the following criteria: Permit Type, Location, Project Hydrologist and Permit Application Status. This approach allowed for adequate coverage across permit types and geographic locations.

Comparative Analysis

The comparative analysis conducted included research on permitting and discussions with representatives from the following five (5) U.S. states: Colorado, Minnesota, Montana, South Dakota and Wyoming. These five (5) states were selected due to geographical similarities with North Dakota, as well as the observance of western water law. The research focused on processes, duration, fees and technology use. Based on the research, it appears that the permitting processes employed by the Water Appropriations Division are consistent with those of other U.S. states with similar water laws. Information gathered during the comparative research has been included throughout the report as appropriate.

Findings and Recommendations

Findings and recommendations were developed related to areas on non-compliance and performance/process gaps identified. The following table illustrates the structure of the findings and recommendations as dictated by performance audit standards.

GAO ELEMENT	GAO ELEMENT DESCRIPTION
Criteria	The criterion cites and summarizes the laws, regulations, policies, procedures, and leading or standard practices of the program or operation mentioned in the finding.
Condition	The condition provides specific observations and examples of the finding in the current state and provides evidence that supports the cause of the finding.
Effect	The effect indicates the possible risk(s) the finding may have.
Recommendation	The recommendation(s) are suggestions management may consider when formulating action plans to address the findings and potential risks we identified in the report.
Management Response	<i>Current Status of Condition:</i> Comments on the finding from management responsible for implementing action plans to mitigate the risks. <i>Response to Recommendation:</i> Comments on the recommendations from management responsible for implementing action plans to mitigate the risks.

Section 4: Findings and Recommendations

FINDING #1	TESTING RESULTS – CONDITIONAL PERMIT APPLICATIONS																
Criteria	Testing was conducted to assess compliance with established regulations, policies and procedures. Additional information on the testing activities is provided in Appendix B.																
Condition	<p>Testing results identified the following exceptions related to non-compliance.</p> <ol style="list-style-type: none"> <p><i>NDCC 61-04-02 – Permit for Beneficial Use of Water Required</i></p> <p>A permit is required prior to the appropriation of water for a beneficial use.</p> <ul style="list-style-type: none"> 3% of the sample population reported use prior to the approval date of the conditional water permit. <table border="1" data-bbox="448 667 1403 814"> <thead> <tr> <th>Test Condition</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of exceptions</th> </tr> </thead> <tbody> <tr> <td>Permit Issuance Prior to Water Use</td> <td>65</td> <td>97%</td> <td>2</td> </tr> </tbody> </table> <p><i>NDCC 61-04-09 – Application to Beneficial Use – Inspection – Perfected Water Permit, NDCC 61-04-14 – Extending Time for Application of Water to Beneficial Use, and NDAC 89-03-01-12 – Extensions and Cancellation</i></p> <p>An inspection is required to be performed by the Water Appropriations Division on or before the beneficial use date established by the permit, or prior to the application of water for a beneficial use unless an extension request is received from the applicant.</p> <ul style="list-style-type: none"> 80% of the sample permits requiring an inspection did not have evidence to substantiate that an inspection had been conducted (i.e., inspection form) or evidence that an extension request had been filed. Please refer to Finding #3 for additional information. <table border="1" data-bbox="448 1220 1403 1367"> <thead> <tr> <th>Test Condition</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of exceptions</th> </tr> </thead> <tbody> <tr> <td>Permit Inspections Completed</td> <td>50</td> <td>20%</td> <td>40</td> </tr> </tbody> </table> <p><i>NDAC89-03-01-01.1 – Priority Date, NDCC 61-04-04 – Filing and Correction of Application, NDCC 61-04-05 – Notice of Application – Contents – Proof – Failure to File Satisfactory Proof, and NDAC 89-03-01-04 – Notice of Application</i></p> <p>The priority date is established as the date the application is received unless application processing steps are not completed within the timeframes established by regulation. Earlier priority dates are given precedence during times of limited appropriation (i.e., drought).</p> <ul style="list-style-type: none"> 7% of the sample population had inaccurately assigned priority dates. <ul style="list-style-type: none"> 4% of the sample population had priority dates that changed without evidence to substantiate that established regulatory timelines had been exceeded. 3% of the sample population contained evidence to substantiate that established 	Test Condition	Sample Population	Compliance Rate	No. of exceptions	Permit Issuance Prior to Water Use	65	97%	2	Test Condition	Sample Population	Compliance Rate	No. of exceptions	Permit Inspections Completed	50	20%	40
Test Condition	Sample Population	Compliance Rate	No. of exceptions														
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Permit Inspections Completed	50	20%	40														

FINDING #1	TESTING RESULTS – CONDITIONAL PERMIT APPLICATIONS
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regulatory timelines had been exceeded; however, no change was reflected in the priority date.

Test Condition	Sample Population	Compliance Rate	No. of exceptions
Priority Date Accurately Established	76	93%	5

4. *NDAC 89-03-01-01 – Submission of Application for Conditional Water Permit*

An applicant is required to submit a map prepared and certified by a licensed surveyor as part of the application packet.

- 3% of the sample population did not include a map signed by a licensed surveyor.

Test Condition	Sample Population	Compliance Rate	No. of exceptions
Application Packet Complete	79	97%	2

5. *SWC Policy – Recommended Decision Issued to All Parties of Record*

SWC policy requires that the *Recommended Decision* be sent to all parties of record.

- 2% of the sample population did not include evidence to substantiate that the *Recommended Decision* had been mailed to all parties of record.

Test Condition	Sample Population	Compliance Rate	No. of exceptions
Communication Protocols Followed	65	98%	1

Effect

- Exceptions may:
- Indicate non-compliance with laws, regulations and/or policies.
 - Impact the ability of the Water Appropriations Division to efficiently and accurately monitor water usage. The inspection process serves to confirm the conditions of the permit have been met, including the installation of an in-line metering devices used to collect and report water use data.
 - Impact permit holders during times of reduced appropriation by assigning priority dates that do not accurately reflect the date of submission. In times of reduced appropriation, the priority date establishes the superiority of the water right.

Recommendation

- The Water Appropriations Division should:
- Review exceptions in Appendix B and take appropriate action to remediate.
 - Ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the conditional permit application process.
 - Leverage technology to enhance controls.
 - Consideration should be given to implementing database system notifications to alert

FINDING #1	TESTING RESULTS – CONDITIONAL PERMIT APPLICATIONS
	<p>staff of pending process milestones and regulatory deadlines.</p>
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) review exceptions in Appendix B and take appropriate action to remediate, 2) ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the conditional permit application process, 3) consider implementing data base system notifications to alert staff of pending process milestones and regulatory deadlines.</p> <p>It is important to note that the large number of exceptions (80%) regarding permit inspections completed is a staff based issue. For the 2013-2015 biennium budget, the State Engineer has requested an additional FTE (Water Resource Manager) to primarily perform water permit inspections.</p> <p>One of the two positions requested in the Water Appropriations Division is a Water Resource Manager to primarily perform water permit inspections. As in past budgets, the Water Appropriations Division has allocated funding for a temporary summer inspector during the 2013-2015 biennium. Water Appropriations Division anticipates that with these inspectors we will eliminate the large backlog of inspections. However, if this backlog persists, Water Appropriations Division can have the hydrologists perform inspections in their respective project areas. During the 1990's hydrologists performed water permit inspections. In doing so, they were not able to perform analytical tasks leading to new conditional water permit approval.</p>
<p>Auditor's Concluding Remarks</p>	<p>There are several actions required in the Perfection Phase to perfect a permit, to include the inspection conducted by a Water Appropriations Division contractor(s), and the analysis conducted by the Hydrologist after the inspection has been completed. A permit cannot be perfected until all comments/discrepancies identified during the inspection have been cleared.</p> <p>Additional staff resources may assist the Water Appropriations Division in conducting analysis and applicable follow-up once the inspection has been completed; however, the Water Appropriations Division should ensure there is a process in place to timely identify, notify, and remediate potential issues/ backlogs that may hinder a permit from being perfected. As it is not clearly identified at which point in the Perfection Phase the delays are incurring, the Water Appropriations Division should ensure adequate resources are allocated, where applicable, to help expedite the process of bringing appropriate permits to perfection status. Clear delineation of roles and responsibilities of the Hydrologist, contractors, and others involved in the Perfection Phase should be documented and communicated.</p> <p>Since it appears that the Water Appropriations Division is in noncompliance with North Dakota Century Code and North Dakota Administrative Code, it is critical that appropriate steps are taken to ensure compliance.</p>

FINDING #2	TESTING RESULTS – TEMPORARY PERMIT APPLICATIONS																																										
Criteria	Testing was conducted to assess compliance with established regulations, policies and procedures. Additional information on the testing activities is provided in Appendix B.																																										
Condition	<p>NDCC 61-04-02.1 authorizes the State Engineer to issue emergency or temporary use of water for periods not to exceed twelve (12) months if the State Engineer determines that such use will not negatively impact existing appropriators. The statute also provides the State Engineer the authority to establish a separate procedure for the processing of applications for emergency or temporary use.</p> <p>While the Water Appropriations Division has established procedures for the processing of temporary use permits, the internal policies and processes are not formally or adequately documented (See Finding #7). As such, testing was conducted based on our understanding of current practices developed through interviews with Water Appropriations Division staff.</p> <p>Testing results include:</p> <ol style="list-style-type: none"> 5% of the in lieu of irrigation and 28% of the industrial use permits did not contain evidence of an original permit application. As a result, it was not possible to verify completion of the application and/or the presence of a signature. <table border="1" data-bbox="456 894 1430 1066"> <thead> <tr> <th>Test Condition</th> <th>Permit Type</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of Exceptions</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Application Complete</td> <td>Industrial Use</td> <td>40</td> <td>95%</td> <td>2</td> </tr> <tr> <td>In Lieu of Irrigation</td> <td>25</td> <td>72%</td> <td>7</td> </tr> </tbody> </table> The Water Appropriations Division requires that all temporary water permits be reviewed by a Project Hydrologist prior to issuance; however, the current practice does not require documentation of the hydrologic review for temporary industrial use permits to be filed in the document management system by the Project Hydrologist. As a result, it was not possible to verify that a hydrologic review was conducted for 90% of the temporary industrial use permits included in the sample population. <table border="1" data-bbox="456 1304 1430 1457"> <thead> <tr> <th>Test Condition</th> <th>Permit Type</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of Exceptions</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Evidence of Project Hydrologist Analysis</td> <td>Industrial Use</td> <td>40</td> <td>10%</td> <td>36</td> </tr> <tr> <td>In Lieu of Irrigation</td> <td>25</td> <td>100%</td> <td>0</td> </tr> </tbody> </table> The permit must be signed by the State Engineer or an approved delegate (i.e., Water Appropriations Division Director). However, 16% of the sample population of in lieu of irrigation permits reviewed did not include a signature. As such, it was not possible to verify that the permits had obtained the appropriate approvals. <table border="1" data-bbox="456 1623 1430 1776"> <thead> <tr> <th>Test Condition</th> <th>Permit Type</th> <th>Sample Population</th> <th>Compliance Rate</th> <th>No. of Exceptions</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Permit Signed</td> <td>Industrial Use</td> <td>40</td> <td>100%</td> <td>0</td> </tr> <tr> <td>In Lieu of Irrigation</td> <td>25</td> <td>84%</td> <td>4</td> </tr> </tbody> </table> 	Test Condition	Permit Type	Sample Population	Compliance Rate	No. of Exceptions	Application Complete	Industrial Use	40	95%	2	In Lieu of Irrigation	25	72%	7	Test Condition	Permit Type	Sample Population	Compliance Rate	No. of Exceptions	Evidence of Project Hydrologist Analysis	Industrial Use	40	10%	36	In Lieu of Irrigation	25	100%	0	Test Condition	Permit Type	Sample Population	Compliance Rate	No. of Exceptions	Permit Signed	Industrial Use	40	100%	0	In Lieu of Irrigation	25	84%	4
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FINDING #2	TESTING RESULTS – TEMPORARY PERMIT APPLICATIONS
<p>Effect</p>	<p>Observations from testing may:</p> <ul style="list-style-type: none"> • Result in the inconsistent application of practices due to a lack of formally documented policies and procedures. • Impact the ability to substantiate that applications were adequately reviewed to assess the impact on existing appropriators and/or subject to the appropriate approval process.
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Review observations in Appendix B and take appropriate action to remediate. • Ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the conditional permit application process. • Document policies and procedures to govern the temporary permit application process (See Finding #7). <ul style="list-style-type: none"> ○ Consideration should be given to defining appropriate approval protocols for temporary permits. ○ Consideration should be given to requiring formal documentation of the hydrologic review process for temporary industrial use permits.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) review observations in Appendix B and take appropriate action to remediate, 2) ensure compliance with all applicable laws, regulations and/or policies by assessing and reengineering current policies, processes and controls to identify and track compliance throughout the temporary permit application process, and 3) document policies and procedures to govern the temporary permit application process.</p> <p>It is important to note that as stated in Finding 2, Condition item 2, the current practice does not require documentation of the hydrologic review (Recommended Decision) for all temporary industrial permits. Because most temporary water permits are for small amounts of water and, for the most part, divert surface water from small ponds and sloughs, the impact on other water users is virtually non-existent. This statement should not be misleading given the following context. During the current wet climate conditions the landscape throughout North Dakota has seen a dramatic increase in the number of small-scale surface water bodies (ponds and sloughs). These water bodies are for the most part ephemeral and will dry up during normal and dry climate periods. As a result, these water bodies are not managed as long-term sustainable sources of water where the rights of prior appropriators must be considered. Most of the water in these small-scale surface water bodies will be lost to the atmosphere by evaporation and plant transpiration.</p> <p>In addition, the temporary water permit applicant if not the landowner at the water source must obtain permission from the landowner to divert water. Most landowners would like to have the water removed to increase agricultural production. Further, some of the surface water bodies are flooding roads and other infrastructure that can be mitigated by putting this water to beneficial industrial use.</p> <p>As a result, and given the current permit workload, it is deemed unnecessary to prepare</p>

FINDING #2	TESTING RESULTS – TEMPORARY PERMIT APPLICATIONS
	<p>Recommended Decisions for most of the temporary water permits. However, there are circumstances where a thorough analysis is required and is documented in a Recommended Decision. Recommended Decisions for temporary water permits are prepared on an as need basis by the project hydrologist.</p>

FINDING #3	LACK OF FORMAL INSPECTION PROTOCOLS
<p>Criteria</p>	<p>NDCC 61-04-09 requires that the State Engineer inspect the works associated with a conditional permit on or before the beneficial use date established during the application process or upon notice from the owner that the water has been applied to a beneficial use. NDCC 61-04-14 indicates that the State Engineer can extend the time for a permit holder to apply the permitted water to the beneficial use cited in the conditional permit for good cause. However, when the beneficial use date has passed and no request for renewal has been received within sixty (60) days of the permit holder being notified that the beneficial use date has expired, the State Engineer shall consider the permit forfeited, abandoned or void.</p>
<p>Condition</p>	<p>NDCC 61-04-09 states that the inspection process is intended to determine the actual capacity of the works, its safety, and efficiency. The inspection process verifies that all permit conditions have been met, including validation that an in-line metering device meeting defined specifications has been installed to measure usage.</p> <ol style="list-style-type: none"> 1. <i>Inspections Not Consistently Performed</i> <p>The Water Appropriations Division indicated that they primarily utilize contractors to conduct inspections of the works of conditional permits that met the criteria established by NDCC 61-04-09; however, only 20% of the sample population of conditional water permits which had reached their beneficial use date or which had reported water use through the Annual Use Reporting process had been inspected and perfected by the Water Appropriations Division. The lack of inspection performance is further impacted by the fact that the policies and procedures governing the process are not formally documented.</p> 2. <i>Notification of Beneficial Use Date Expiration Not Consistently Issued</i> <p>If a conditional permit holder is unable to put the appropriated water to beneficial use prior to the date established by the permit, an extension of time can be requested. To facilitate this process, the Water Appropriations Division is required to notify the permit holder that the period for applying water to the beneficial use cited in the conditional permit has expired. However, based on the review it does not appear that the Water Appropriations Division consistently issued notifications to the permit holder regarding the expiration of the beneficial use date. In the instances where evidence of notification was observed, the notifications appear to have been issued after the beneficial use date.</p>

FINDING #3	LACK OF FORMAL INSPECTION PROTOCOLS
<p>Effect</p>	<p>The lack of a formal and consistently executed notification and inspection process may:</p> <ul style="list-style-type: none"> • Result in the inconsistent application of practices. • Result in non-compliance with laws, regulations and/or policies. • Limit the ability to verify the capacity of the works, its safety, and efficiency. • Increase the risk associated with the collection and verification of water use data.
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Ensure compliance with NDCC 61-04-09 and NDCC 61-04-14 by conducting inspections and communicating with the permit holder about the permit perfection process. • Assess staffing responsibilities to determine if current resource levels are sufficient to meet operational requirements. Re-prioritization of staff responsibilities may be necessary to help ensure compliance. • Establish formal policies and procedures to govern the permit inspection process. This should include consistent inspection forms and document filing protocols. • Develop a notification tool within the database to assist in the identification of conditional permits with beneficial use dates expiring in the near future to facilitate the issuance of notifications required by NDCC 61-04-14. <ul style="list-style-type: none"> ○ Consideration should also be given to validating that inspections have been conducted for all permits reporting usage during the Annual Use Reporting process.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) ensure compliance with NDCC 61-04-09 and NDCC 61-04-14 by conducting inspections and communicating with the permit holder about the permit perfection process, 2) assess staffing responsibilities to determine if current resource levels are sufficient to meet operational requirements, 3) establish formal policies and procedures to govern the permit inspection process. This should include consistent inspection forms and documents filing protocols, 4) develop a notification tool within the database to assist in the identification of conditional permits with beneficial use dates expiring in the near future to facilitate the issuance of notifications required by NDCC 61-04-14.</p> <p>It is important to note that the large number of exceptions (80%) regarding permit inspections completed is a staff based issue. For the 2013-2015 biennium budget the State Engineer has requested an additional FTE (Water Resource Manager) to primarily perform water permit inspections.</p> <p>One of the two positions requested in the Water Appropriations Division is a Water Resource Manager to primarily perform water permit inspections. As in past budgets, the Water Appropriations Division has allocated funding for a temporary summer inspector during the 2013-2015 biennium. Water Appropriations Division anticipates that with these inspectors we will eliminate the large backlog of inspections. However, if this backlog persists, Water Appropriations Division can have the hydrologists perform inspections in their respective project areas. During the 1990's hydrologists performed water permit inspections. In doing so, they were not able to perform analytical tasks leading to new conditional water permit</p>

FINDING #3	LACK OF FORMAL INSPECTION PROTOCOLS
	<p>approval.</p> <p>The Water Appropriation Division provides inspection report forms on its electronic database. Further, an additional “checklist” form is provided to inspectors. Prior to retaining a temporary summer inspector the SWC electronic database is queried to provide a list of conditional water permits needing inspections. This is the basis for selecting inspections. Lacking staff, as previously indicated, has prevented timely inspections on or before all beneficial use dates. This deficiency will be addressed through the requested additional FTE (Water Resource Manager).</p>
<p>Auditor’s Concluding Remarks</p>	<p>There are several actions required in the Perfection Phase to perfect a permit, to include the inspection conducted by a Water Appropriations Division contractor(s), and the analysis conducted by the Hydrologist after the inspection has been completed. A permit cannot be perfected until all comments/discrepancies identified during the inspection have been cleared.</p> <p>Additional staff resources may assist the Water Appropriations Division in conducting analysis and applicable follow-up once the inspection has been completed; however, the Water Appropriations Division should ensure there is a process in place to timely identify, notify, and remediate potential issues/ backlogs that may hinder a permit from being perfected. As it is not clearly identified at which point in the Perfection Phase the delays are incurring, the Water Appropriations Division should ensure adequate resources are allocated, where applicable, to help expedite the process of bringing appropriate permits to perfection status. Clear delineation of roles and responsibilities of the Hydrologist, contractors, and others involved in the Perfection Phase should be documented and communicated.</p> <p>Since it appears that the Water Appropriations Division is in noncompliance with North Dakota Century Code and North Dakota Administrative Code, it is critical that appropriate steps are taken to ensure compliance.</p>

FINDING #4	FEE STRUCTURE FOR CONDITIONAL PERMIT HAS REMAINED CONSTANT SINCE 1991						
Criteria	NDCC 61-04-04 establishes the fee structure for conditional water permit applications.						
Condition	<p>NDCC 61-04-04.1 sets the fees that must accompany a conditional water permit application. The fees collected are to be paid by the State Engineer into the Water Use Fund of the state treasury.</p> <ol style="list-style-type: none"> <i>Fee Structure Last Amended in 1991</i> The fee structure for conditional water permit applications has not been updated in approximately twenty-two (22) years. <i>Application Fee Represents the only Cost to the Applicant/Permit Holder</i> The application fee is currently the only fee imposed on applicants/permit holders. The current fee structure for industrial use conditional permits is as follows: <table border="1" data-bbox="558 730 1292 894"> <thead> <tr> <th data-bbox="558 730 1032 787">Allocation Request</th> <th data-bbox="1032 730 1292 787">Application Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="558 787 1032 840">Industrial Use – 724 acre-feet or less</td> <td data-bbox="1032 787 1292 840">\$250</td> </tr> <tr> <td data-bbox="558 840 1032 894">Industrial Use – greater than 724 acre-feet</td> <td data-bbox="1032 840 1292 894">\$750</td> </tr> </tbody> </table> <i>Increase in Application Volume</i> While the fee structure for conditional permits has remained constant, the volume of total conditional permit applications has increased by 142% since 2009 based on data supplied by the Water Appropriations Division; and the volume of industrial use conditional permits has increased 204% during the same timeframe. <i>Comparative Research</i> The comparative research identified alternative fee structures employed by other states. Examples of different fee components include: <ul style="list-style-type: none"> Colorado charges a variety of fees, including fees associated with the late filing of evidence of well construction and/or pump installation. Minnesota charges an annual usage fee. Montana and Wyoming set the one-time application fee based on the water source from which the applicant is proposing to divert water. South Dakota employs an application fee structure based on 120 acre-foot thresholds. South Dakota charges an inspection fee (\$200) to supplement the application fee. The application fees identified through the comparative research ranged from \$50 - \$1,000. 	Allocation Request	Application Fee	Industrial Use – 724 acre-feet or less	\$250	Industrial Use – greater than 724 acre-feet	\$750
Allocation Request	Application Fee						
Industrial Use – 724 acre-feet or less	\$250						
Industrial Use – greater than 724 acre-feet	\$750						
Effect	The fee structure may not be representative of the current processing effort.						
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> Explore alternative fee structures to reflect current application processing and use monitoring activities. Potential structures may include: <ul style="list-style-type: none"> <i>Annual Permit Fee</i> – Charge a fee for permit maintenance (i.e., monitoring). 						

FINDING #4	FEE STRUCTURE FOR CONDITIONAL PERMIT HAS REMAINED CONSTANT SINCE 1991
	<ul style="list-style-type: none"> ○ <i>Annual Use Fee</i> – Charge a fee based on annual usage. ○ <i>Inspection Fee</i> – Charge a fee for the inspection process. ○ <i>Alternative Fee Tiers</i> – Establish additional fee tiers based on requested allocation amount. The current fee structure has only two tiers. • Consider alternative variables on which to base the fee structure. <ul style="list-style-type: none"> ○ Assess the correlation between the requested allocation and processing effort to determine if allocation is the most appropriate variable on which to base fees. • Conduct a workload analysis of the permit application process to determine an approximate processing cost per application. The analysis may include assessing elapsed and direct processing time, processing expectations and objectives, resource availability and resource capacity to quantify the processing effort. • Request a potential revision to NDCC 61-04-04. Potential fee changes could be based on a cost per application value, an inflation multiplier or an alternative methodology.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) explore alternative fee structures to reflect current application processing and use monitoring activities as per potential fee structures as noted, 2) consider alternative variables on which to base the fee structure by assessing the correlation between the requested allocation and processing effort to determine if allocation is the most appropriate variable on which to base fees, 3) conduct a workload analysis of the permit application process to determine an approximate processing cost per application. The analysis may include assessing elapsed and direct processing time, processing expectations and objectives, resource availability and resource capacity to quantify the processing effort, 4) request a potential revision to NDCC 61-04-04. Potential fee changes could be based on a cost per application value, an inflation multiplier or an alternative methodology.</p> <p>Due to current staffing constraints, any work on the above recommendations would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. The Water Appropriation Division can provide options or evaluate alternatives relating to the fee structure or intent of what costs to cover with the fee structure depending on direction provided by the legislative committee.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p>

FINDING #5	NO FEE IS REQUIRED FOR TEMPORARY PERMIT APPLICATIONS
Criteria	No statutes, rules and/or polices require a fee for a temporary permit application.
Condition	<p>Per NDCC 61-04-02.1, the State Engineer has the authority to grant temporary water permit applications for a period of up to twelve (12) months; however, there is currently no fee required for a temporary permit application.</p> <ol style="list-style-type: none"> 1. <i>Application Processing Time</i> Temporary permit applicants are required to submit only the temporary application in order to initiate the permitting process. Upon receipt, the temporary permit application is reviewed by a Project Hydrologist and a decision is rendered as to whether to grant the requested allocation. Temporary permits are addressed upon receipt and, due to the nature of the permits, are processed in an expedited manner. Based on the sample population of temporary permits tested, the average processing duration from receipt through issuance was thirteen (13) days. 2. <i>Increase in Application Volume</i> In recent years, the Water Appropriations Division has seen an increase in temporary permit applications, including those designated for industrial purposes. Based on data provided by the Water Appropriations Division, there has been a steady increase from year to year in both temporary in lieu permit applications and temporary industrial use permit applications associated with oil-related activities (i.e., Oil Well Development and Water Depots) since 2009. 3. <i>Comparative Research</i> Comparative research identified two states, Wyoming (\$50) and Colorado (\$100) that charge a fee for temporary permit applications. The other states did not provide any information about fees related to temporary permit applications.
Effect	<p>The lack of a fee structure for temporary water permits may:</p> <ul style="list-style-type: none"> • Negatively impact the processing time of conditional permit applications by diverting resource efforts. • Not be reflective of processing requirements associated with increasing conditional and temporary application volumes.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Assess the time, resource and cost impact of temporary permit applications on the conditional permit application population. <ul style="list-style-type: none"> ○ Conditional permit applications represent a fee-for-service model; if the temporary permit process is negatively impacting the processing of conditional permits, a cost assessment should be conducted to quantify cost recovery. • Develop a fee structure for temporary permit applications that corresponds to the level of effort required for processing. <ul style="list-style-type: none"> ○ The fee structure could assume a variety of forms, including targeting specific

FINDING #5	NO FEE IS REQUIRED FOR TEMPORARY PERMIT APPLICATIONS
	beneficial purposes (i.e., industrial). Additional variables to consider in establishing a fee structure may include requested allocation amount and/or water source.
Management Response	<p>We agree, and the Water Appropriation Division will 1) assess the time, resource and cost impact of temporary permit applications on the conditional permit application population, 2) explore the implementation of a fee structure for temporary permit applications that corresponds to the level of effort required for processing.</p> <p>Due to current staffing constraints, any work on this recommendation would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. The Water Appropriation Division can provide options or evaluate alternatives relating to creation of a new fee structure for temporary water permits or intent of what costs to cover with the fee structure depending on direction provided by the legislative committee.</p> <p>It is important to note that development of a fee structure for temporary water permit applications is a complex issue in part due to different temporary use purposes and use amounts. For example, a filing fee for temporary use to suppress a fire should be different in relation to that for oil field industrial use sales.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p>

FINDING #6	APPLICATION PROCESS IS MANUAL IN NATURE
Criteria	Timely review of permit applications promotes efficiency.
Condition	<p>In 2012, the Water Appropriations Division processed 133 conditional permit applications, including 76 designated for industrial use, and 527 temporary applications, including 222 designated for use by the oil industry. All conditional permit applications are submitted in hard copy format via mail. Temporary permit applications are submitted via mail, email or fax because they do not require support documentation (i.e., map) or an application fee.</p> <p>Upon receipt of the applications, the Water Appropriations Division manually:</p> <ol style="list-style-type: none"> 1. Receipts the application and fee. 2. Reviews the application packet for completeness 3. Issues correspondence regarding public notice and permit issuance. <ul style="list-style-type: none"> o Current practice requires the submission of affidavits, including the <i>Affidavit of Notice</i> and the <i>Affidavit of Publication</i>, as well as the issuance of the <i>Recommended Decision</i> and the permit. 4. Enters application information into the appropriate database – Permit Database or Temporary Permit Database.

FINDING #6	APPLICATION PROCESS IS MANUAL IN NATURE
	<p>5. Scans permit documentation to the appropriate database – Permit Database or Temporary Permit Database.</p> <p>6. Files the permit documentation in a hard copy permit file.</p>
Effect	<p>Manual processes may:</p> <ul style="list-style-type: none"> • Increase processing times. • Result in data entry errors. • Create document management issues. • Result in the inefficient utilization of resources.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Develop and Implement an online application intake tool to allow permit applicants to submit application data and pay fees electronically. Design elements of an online reporting system to consider may include: <ul style="list-style-type: none"> ○ Interface with databases (i.e., 4D) ○ Form design (e.g., required fields) ○ Communication forums (e.g., correspondence) ○ Electronic notification capabilities (e.g., beneficial use date) <p>The online application tool could be linked to an online account management system through which annual, monthly and weekly use reporting and general communications could be performed.</p> <p>The implementation of an online system may require a change to NDAC 89-03-01-01 that requires the submission of a certified map as part of the application packet. As such, an analysis should be conducted to determine the necessity of the map given current practices and available technologies.</p>
Management Response	<p>We agree, and the Water Appropriation Division will develop and implement an online application intake tool to allow permit applicants to submit application data and explore a system to pay fees electronically.</p> <p>The performance audit proposes changes to the current process that are aimed at long-term improvements to the water permitting process that we believe may take considerable staff resources to implement and we know we currently have staffing constraints in completing inspections and processing applications. Due to current staffing constraints, any work on this recommendation would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. It is important to note that during the transition period from paper to electronic filing, a dual filing system will be maintained.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p>

FINDING #7	NO FORMAL POLICIES AND PROCEDURES FOR THE PROCESSING TEMPORARY APPLICATIONS
Criteria	<p>The Water Appropriations Division is responsible for the administration of temporary permits per NDCC 61-04-02.1.</p>
Condition	<p>NDCC 61-04-02.01 provides the State Engineer with the authority to develop and implement separate procedures for the processing of applications for temporary uses, and the Water Appropriations Division has developed documentation on the temporary permit application process, specifically the “Policy for Obtaining a Temporary Water Permit for Industrial Use, In Lieu of Irrigation”, which is available on the SWC website. While the 2011 policy document provides an overview of the temporary in lieu of irrigation application process, it does not address the internal processing requirements or provide reference to temporary industrial use permits that aren’t associated with an existing irrigation permit.</p> <p>Due to the lack of formal policy and procedure documentation, current observed practices could not be verified against formal policy or procedure. Noted process observations include:</p> <ol style="list-style-type: none"> 1. <i>Documentation of Project Hydrologist Review Not Required</i> <p>There was a lack of evidence of a review by a Project Hydrologist for temporary industrial use permit applications within the document management system. It was noted that 90% of temporary industrial use permits included no evidence of a review by a Project Hydrologist. Per the Water Appropriations Division, the completion of a review is required; however, the filing of the analysis is not a current practice.</p> 2. <i>Permit Approval Protocols Not Documented</i> <p>There was no evidence of formal establishment of delegates able to approve temporary permits on behalf of the State Engineer. During the review it was noted that multiple individuals within the Water Appropriations Division had approved temporary industrial use permit applications on behalf of the State Engineer, including the Division Director, the Assistant Division Director and Project Hydrologists. The Water Appropriations Division indicated that current policy allows for specified staff to approve temporary industrial use permits on behalf of the State Engineer; however, due to the lack of policy and process documentation related to the approval process, no evidence was available to confirm that all permits were subject to the appropriate approval protocols.</p>
Effect	<p>The lack of formally documented policies and procedures may:</p> <ul style="list-style-type: none"> • Result in the inconsistent application of practices. • Result in the loss of institutional knowledge due to staff turnover. • Limit ability to manage and communicate protocols and updates. • Result in non-compliance with division policies.

FINDING #7	NO FORMAL POLICIES AND PROCEDURES FOR THE PROCESSING TEMPORARY APPLICATIONS
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Develop formal policies and procedures to reflect current practices for processing temporary permit applications. Documentation should address the following potential process gaps: <ul style="list-style-type: none"> ○ Define the temporary permit application approval process and identify staff eligible to approve permits on behalf of the State Engineer. ○ Develop a process to document and file the hydrologic review performed for temporary industrial use permits. This practice is currently in place for temporary in lieu of irrigation permit applications and will provide greater visibility into the decision process. ○ Include a task to verify the existence of related pending conditional permit applications, and to assess the potential circumvention of the conditional permit application process. ○ Document scanning and filing requirements should be established to help ensure that appropriate documentation is retained and available within the document management system. Please refer to Finding #9 for additional information.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will develop formal policies and procedures to reflect current practices for processing temporary permit applications, which will address the potential process gaps as identified.</p> <p>It is important to note that as stated in Finding 2, Condition item2, the current practice does not require documentation of the hydrologic review (Recommended Decision) for all temporary industrial permits. Because most temporary water permits are for small amounts of water and, for the most part, divert surface water from small ponds and sloughs, the impact on other water users is virtually non-existent. This statement should not be misleading given the following context. During the current wet climate conditions the landscape throughout North Dakota has seen a dramatic increase in the number of small-scale surface water bodies (ponds and sloughs). These water bodies are for the most part ephemeral and will dry up during normal and dry climate periods. As a result, these water bodies are not managed as long-term sustainable sources of water where the rights of prior appropriators must be considered. Most of the water in these small-scale surface water bodies will be lost to the atmosphere by evaporation and plant transpiration. In addition, the temporary water permit applicant if not the landowner at the water source must obtain permission from the landowner to divert water. Most landowners would like to have the water removed to increase agricultural production. Further, some of the surface water bodies are flooding roads and other infrastructure that can be mitigated by putting this water to beneficial industrial use.</p> <p>As a result, and given the current permit workload, it is deemed unnecessary to prepare Recommended Decisions for most of the temporary water permits. However, there are circumstances where a thorough analysis is required and is documented in a Recommended Decision. Recommended Decisions for temporary water permits are prepared on an as need basis by the project hydrologist.</p>

FINDING #8	LACK OF FORMAL COMMUNICATIONS MANAGEMENT PROTOCOLS
<p>Criteria</p>	<p>The Water Appropriations Division is responsible for communicating with the general public, applicants and permit holders on the rules, requirements and processes of obtaining water rights.</p>
<p>Condition</p>	<p>Formal communication protocols have not been established to govern interaction with the public.</p> <ol style="list-style-type: none"> 1. <i>Permitting Process – Conditional Permits</i> <p>The SWC website includes instructions on the filing of conditional water permits (<i>Conditional Water Permit Application Completion Instructions</i>) and references to applicable statutes and rules that address components of the application process. However, no publically available documentation outlines the end-to-end process or specifically addresses the hydrologic review which accounts for approximately 60% of the application processing time based on the processing time analysis conducted on the sample population.</p> 2. <i>Permitting Process – Temporary Permits</i> <p>With the exception of the guidance provided for temporary in lieu of irrigation permit applications (<i>Policy for Obtaining a Temporary Water Permit for Industrial Use</i>) and the <i>Application for a Temporary Water Permit</i> form, there is no other information available to the public regarding the temporary permit process and/or permit requirements, including the need for temporary industrial use permit holders with a granted allocation >15 acre-feet to install an in-line continuous metering device.</p> 3. <i>In-Process Communications</i> <p>Formal communication protocols to facilitate interaction with the applicant during the permitting process have not been established. Current practice places the responsibility on the applicants to contact the Water Appropriations Division directly via phone and/or email to obtain processing instructions, status updates and other pertinent information.</p>
<p>Effect</p>	<p>The lack of formal communications management protocols may:</p> <ul style="list-style-type: none"> • Divert Water Appropriations Division resources from application processing and use monitoring activities to field and respond to inquiries. • Not accurately reflect the complexity of the process.

FINDING #8	LACK OF FORMAL COMMUNICATIONS MANAGEMENT PROTOCOLS
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Develop an online status reporting tool to provide applicants with an alternative means by which to obtain status information. <ul style="list-style-type: none"> ○ The online status tool could potentially be linked to the permit database system. ○ The development of an online status tool could coincide with the addition of new statuses within the permit database system. <p>Currently the permit database only allows for the assignment of two statuses for conditional permit application: “Application in Processing” or “Withheld/Deferred”. Consideration should be given to expanding the status options to include statuses that align to process milestones, such as Notification, Publication, Hydrologic Review, etc.</p> <ul style="list-style-type: none"> • Update the current application instructions to include additional details about the permitting process, specifically information on the hydrologic review component of the process and the time required to complete the step. • Provide information on water sources and associated processing times/permit availability. <ul style="list-style-type: none"> ○ Since processing times are often impacted by the water source, providing additional information on the water sources that are fully allocated or nearing full allocation may increase applicant awareness of potential processing delays. • Develop and publish additional information on the temporary application process and permit requirements to better educate the public. • Establish formal communication procedures to govern interactions with applicants. <ul style="list-style-type: none"> ○ Formal protocols may include initial outreach by the Project Hydrologist once the application has been assigned for review and/or periodic status update calls/emails.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) develop an online status reporting tool to provide applicants with an alternative means by which to obtain status information, 2) update the current application instructions to include additional details about the permitting process, specifically information on the hydrologic review component of the process and the time required to complete the step, 3) provide information on water sources and associated processing times/permit availability, 4) develop and publish additional information on the temporary application process and permit requirements to better educate the public, and 5) establish formal communication procedures to govern interactions with applicants.</p> <p>The performance audit proposes changes to the current process that are aimed at long-term improvements to the water permitting process that we believe may take considerable staff resources to implement and we know we currently have staffing constraints in completing inspections and processing applications. Due to current staffing constraints, any work on this recommendation would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process.</p> <p>The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p> <p>Please see Appendix D for additional information related to this management response.</p>

FINDING #9	INCONSISTENCIES WITHIN THE DOCUMENT MANAGEMENT SYSTEM
<p>Criteria</p>	<p>Per NDCC 61-04-01, any documentation provided in the water permit application process shall be maintained on file under the control of the State Engineer.</p>
<p>Condition</p>	<p>To help ensure adherence to the NDCC requirement, the Water Appropriations Division maintains a document management system that consists of a collection of permit databases and hard copy permit files. In 2011, the Water Appropriations Division implemented a new practice of scanning and uploading all permit documentation to the appropriate database at the conclusion of the permitting process (i.e., issuance of the permit). To incorporate historical records into the database, the Water Appropriations Division initiated a records digitization effort that is ongoing.</p> <p><i>1. Incomplete or No Permit Application Documentation</i></p> <p>During the course of the review, instances were identified in which incomplete or no application documentation had been uploaded to the database for both historical (pre-2011) and current (post-2011) application records.</p> <p><i>2. Inconsistency in File Structure</i></p> <p>The review also identified inconsistencies with regard to the types of documents uploaded, the filing location of document types, the naming convention used for document types, and the document description field.</p>
<p>Effect</p>	<p>Inconsistencies and gaps within the document management system may:</p> <ul style="list-style-type: none"> • Impact the ability to capture and retain historical information. • Impact the ability to track and manage permit records.
<p>Recommendation</p>	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Amend/Develop policies and procedures for uploading files to include scanning at defined intervals in the process, such as at key milestones (e.g., Notice of Affidavit). • Define a structure to govern the electronic storage of records in the database. This process should address required documentation to be scanned, filing locations and standard naming conventions for each file type. <ul style="list-style-type: none"> ○ Currently the hydrologic review conducted for temporary industrial use permits is not filed in either the database or with the permit file. Consideration should be given to developing policies and procedures to ensure that the analytical review conducted for all industrial permits is documented and filed within the document management system.
<p>Management Response</p>	<p>We agree, and the Water Appropriation Division will 1) amend/develop policies and procedures for uploading files to include scanning at defined intervals in the process, such as at key milestones (e.g. Notice of Affidavit), 2) define a structure to govern the electronic storage of records in the database. This process should address required documentation to be scanned, filing locations and standard-naming conventions for each file type, including temporary industrial use permits.</p> <p>The performance audit proposes changes to the current process that are aimed at long-term</p>

FINDING #8	LACK OF FORMAL COMMUNICATIONS MANAGEMENT PROTOCOLS
	<p>improvements to the water permitting process that we believe may take considerable staff resources to implement and we know we currently have staffing constraints in completing inspections and processing applications. Due to current staffing constraints, any work on these recommendations would need to be prioritized along with the recommendations in Findings 4, 5, 6, 8, and 9 that are aimed at fee structures and long-term improvements to the water permitting process. The intent of prioritization is to deal with compliance issues first then address efficiency issues and not to imply that no action will be taken on lower priority issues.</p> <p>Please see Appendix E for additional information related to this management response.</p>

FINDING #10	BIFURCATED CONDITIONAL PERMIT APPLICATION PROCESS
Criteria	<p>The Water Appropriations Division is responsible for the administration of water rights through the permitting process.</p>
Condition	<p>Components of the conditional water permitting process occur outside the Water Appropriations Division. These process components include:</p> <ol style="list-style-type: none"> 1. <i>Application Documentation Receipt</i> All permit application materials are received by the Administrative Staff to the State Engineer, this includes the initial application. Upon receipt the Administrative Staff to the State Engineer reviews the application packet, assigns a priority date and processes the application fee prior to delivery to the Water Appropriations Division for processing. 2. <i>Permit Folder Creation</i> The Administrative Staff to the State Engineer creates and manages the permit application folder through the Permit Application Administration Phase. 3. <i>Public Notice Material Preparation and Issuance</i> The Administrative Staff to the State Engineer develops the <i>Public Notice Statement</i> and issues it to the applicant and appropriate county newspaper(s). 4. <i>Reviews and Obtains Final Approval</i> The Administrative Staff to the State Engineer reviews the final permit and obtains the signature of the State Engineer. 5. <i>Issuance of Permit</i> The Administrative Staff to the State Engineer issues the <i>Recommended Decision</i> and conditional water permit to the applicant. <p>A comprehensive process analysis was not conducted to assess the impact of the delegation of roles and responsibilities; however, the bifurcation of the process may result in duplicative effort and/or loss of control of process components.</p>

FINDING #10	BIFURCATED CONDITIONAL PERMIT APPLICATION PROCESS
Effect	<p>The current model may:</p> <ul style="list-style-type: none"> • Result in the duplication of application processing efforts (i.e., application review). • Delay application processing due to competing priorities. • Limit the ability of the Water Appropriations to manage the end-to-end process.
Recommendation	<p>The Water Appropriations Division should:</p> <ul style="list-style-type: none"> • Assess the allocation of responsibilities on the efficiency of the permitting process. • Determine if the resource capacity exists to perform process components within the Water Appropriations Division. • Establish a dedicated mailbox for permit application documentation.
Management Response	<p>We agree, and the Water Appropriation Division will 1) assess the allocation of responsibilities on the efficiency of the permitting process, 2) determine if the resource capacity exists to perform process components with the Water Appropriation Division, and 3) establish a dedicated mailbox for permit application documentation.</p>

Appendix A – Relevant State Statutes

North Dakota Century Code

61-01-01. Waters of the state – Public Waters.

All waters within the limits of the state from the following sources of water supply belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use must be acquired pursuant to chapter 61-04:

- 1. Waters on the surface of the earth, excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes;*
- 2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water;*
- 3. All residual waters resulting from beneficial use, and all waters artificially drained; and*
- 4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.*

61-04-01. Petitions, reports, surveys, and other documents filed in office of commission.

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

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

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

61-04-02.1. Emergency or temporary authorization.

The state engineer may authorize emergency or temporary use of water for periods not to exceed twelve months if the state engineer determines such use will not be to the detriment of existing rights. The state engineer shall establish by rule a separate procedure for the processing of applications for emergency or temporary use. No prescriptive or other rights to the use of water shall be acquired by use of water as authorized herein.

61-04-03. Application for water permit – Contents – Information to accompany.

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

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

The date of the receipt of the application provided for in section 61-04-03 in the commission office shall be noted thereon. If the application is defective as to form, incomplete, or otherwise unsatisfactory, it shall be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If the application is corrected as required and is refilled within such time, it, upon being accepted, shall take priority as of the date of its original filing. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling. The application may be amended by the applicant at any time prior to the Page No. 2 commencement of administrative action by the state engineer as provided in sections 61-04-05 through 61-04-07.

61-04-04.1. Application fees.

The following fees must accompany an application and must be paid by the state engineer into the water use fund of the state treasury:

- 1. For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census \$500*
- 2. For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census \$250*
- 3. For irrigation \$200*
- 4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893039.52 cubic meters] or less \$250*
- 5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893039.52 cubic meters] \$750*
- 6. For recreation, livestock, or fish and wildlife \$100*
- 7. For commercial recreation \$200*
- 8. Water permit amendment \$ 50*

61-04-05. Notice of Application – Contents – Proof – Failure to file satisfactory proof.

When an application is filed which complies with this chapter and the rules adopted under this chapter, the state engineer shall instruct the applicant to:

1. Give notice of the application by certified mail in the form prescribed by rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except:

a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.

b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.

c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.

2. Give notice of the application by certified mail in the form prescribed by rule to all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site. The state engineer shall provide a list of all persons who must be notified under this subsection to the applicant.

3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use water facilities within a twelve-mile [19.32-kilometer] radius of the proposed water appropriation site. The state engineer shall provide a list of all municipal or public use water facilities that must be notified under this subsection to the applicant.

4. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice of the application, in a form prescribed by rule, in the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.

6. The applicant shall pay all costs of the publication of notice.

61-04-05.1. Comments – Hearings.

1. *Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.*
2. *A person filing written comments may also request an informational hearing on the application by the date specified by the state engineer under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the informational hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.*
3. *If two or more municipal or public use water facilities request the informational hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.*
4. *The state engineer shall consider all written comments received and testimony presented at an informational hearing, if held, and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended decision must be mailed to the applicant and any person who filed written comments.*
5. *Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments by the date specified under subsection 5 of section 61-04-05 may file additional written comments with the state engineer or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made, and if the state engineer determines an adjudicative proceeding is necessary, the state engineer shall designate a time and place for the adjudicative proceeding and serve a copy of the notice of adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.*

61-04-06. Criteria for issuance of a permit.

The state engineer shall issue a permit if the state engineer finds all of the following:

1. *The rights of a prior appropriator will not be unduly affected.*
2. *The proposed means of diversion or construction are adequate.*
3. *The proposed use of water is beneficial.*
4. *The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:*
 - a. *The benefit to the applicant resulting from the proposed appropriation.*
 - b. *The effect of the economic activity resulting from the proposed appropriation.*

- c. *The effect on fish and game resources and public recreational opportunities.*
- d. *The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.*
- e. *Harm to other persons resulting from the proposed appropriation.*
- f. *The intent and ability of the applicant to complete the appropriation.*

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

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

On or before the date set for the application of the water to a beneficial use, or upon notice from the owner that water has been applied to a beneficial use, the state engineer shall cause the works to be inspected, after due notice to the holder of the conditional water permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, its safety, and efficiency. If the works are not properly and safely constructed, the state engineer may require the necessary changes to be made within such time as the state engineer deems reasonable and shall not issue a perfected water permit until such changes are made. Failure to make the changes within the time prescribed by the state engineer shall cause postponement of the priority under the water permit to the date the changes are actually made to the satisfaction of the state engineer, and any intervening application submitted prior to the date the changes are actually made may have the benefit of such postponement of priority. When the works are found in satisfactory condition, after inspection, the state engineer shall issue the perfected water permit, setting forth the actual capacity of the works and such limitations or conditions upon the water permit as stated in the conditional water permit as authorized by section 61-04-06.2; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

61-04-014. Extending time for application to beneficial use.

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

North Dakota Administrative Code

89-03-01-01. Submission of application for conditional water permit.

Application for a conditional water permit must be submitted to the state engineer on the form provided by the state engineer. A map containing the information prescribed by the state engineer must accompany the application. The map must be prepared from a survey, aerial photograph, or topographic map, and must be certified by a licensed surveyor unless another type of map is first approved by the state engineer. Application forms are available at the office of the state engineer in Bismarck. A fee schedule and instructions for completion of the form are enclosed with it. Information not requested in the application may nonetheless be required by the state engineer.

History: Amended effective April 1, 1989; February 1, 1994.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-06(4)(f)

89-03-01-01.1. Priority date.

The date of receipt by the state engineer of a properly completed application must be endorsed thereon. Except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses where a water permit is not required, this date of filing establishes the original priority date of an application, subject to final acceptance of the application and issuance of a perfected water permit by the state engineer. For water applied to domestic livestock, or fish, wildlife, and other recreational uses, where a water permit is not required, the priority date is the date the quantity of water was first used.

History: Effective April 1, 1989; amended effective August 1, 1994.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.3

89-03-01-04. Notice of application.

1. When a proper application is filed, the state engineer shall forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts: the places and use of appropriation, the amount of and purpose for which the water is to be used, the applicant's name and address, and the newspaper in which the notice of the water permit application will be published. The notice must also state that the notice published in the newspaper will contain a date by which any person having an interest in the application may file written comments regarding the proposed appropriation with the state engineer and that anyone who files written comments will be mailed a copy of the state engineer's recommended decision on the application.

2. Upon receipt of the completed notice forms, the applicant shall send a notice of application by certified mail to the following:

- a. To the governing body of each city located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.*

b. To the governing body of the township or other governing authority of each rural subdivision located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion. A rural subdivision is a subdivision which has lots of ten acres [4.05 hectares] or less and is geographically located outside of a city.

c. To the governing body of the township or other governing authority for each rural tract of land which is owned by more than ten individuals and is located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.

d. Except for record title owners whose land falls within subdivision a, b, or c, each record title owner of real estate within a one-mile [1.6-kilometer] radius of the proposed point of diversion. The determination of title owners must be based on title records on file with the register of deeds of the appropriate county. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.

e. To each person holding a water permit for the appropriation of water from an appropriation site located within a radius of one mile [1.61 kilometers] of the location of the proposed water appropriation site.

The state engineer shall provide the applicant a list of all persons who must be notified under this subdivision.

f. To each municipal or public use water facility within a twelve-mile [19.31-kilometer] radius of the proposed water appropriation site is located. The state engineer shall provide the applicant a list of all municipal or public use water facilities that must be notified under this subdivision.

3. After notice of application has been mailed to those required by this section, the applicant shall properly complete an affidavit of notice and return it to the state engineer by certified mail. The affidavit of notice must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices by certified mail. This affidavit must be mailed to the state engineer within sixty days from the date the state engineer sent the notices of application to the applicant. If a properly completed affidavit of notice is not submitted within sixty days, the priority date of the conditional water permit application will be amended to the date on which the state engineer receives the affidavit of notice. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the application must be considered to have been withdrawn by the applicant.

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; April 1, 2000; April 1, 2004.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-10. Emergency or temporary authorization.

Application for a temporary appropriation must be made on the form provided by the state engineer.

In that request the applicant must indicate the reason for the permit, quantity of water needed, proposed point of diversion, type of use, place of use, rate of withdrawal, source of water, dates of proposed use, and applicant's address. The state engineer will evaluate the request and, if it is granted, the state engineer will list on the temporary authorization conditions that govern the appropriation. An applicant for

emergency use of water, if the situation warrants, may telephone the office of the state engineer requesting immediate use of water. Following an oral request and oral approval by the state engineer for authorization, the above procedures must be completed. The applicant for temporary or emergency appropriations is responsible for all damages that may be caused to other appropriators and any other individual as a result of an emergency or temporary use of water.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02.1

89-03-01-12. Extensions and cancellation.

Where the time has expired to put all or any portion of the water of a conditional water permit to the beneficial use named in the permit, the state engineer will notify the permittee of this fact. The state engineer will provide the permittee with a form upon which the permittee may request an extension for applying the water to the beneficial use and to explain why an extension should be granted. Except in overriding circumstances no extension will be granted when other conditional water permit applications are pending from a limited source of supply.

History: Effective April 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-14

Appendix B – Testing Results

TESTING RESULTS FOR OBJECTIVE #1:

Conditional/Perfected Permits

Testing was conducted to assess whether the execution of the permitting practices for conditional permits issued for industrial purposes was consistent with established regulations, policies and procedures. Each of the testing components is outlined below, followed by any identified exceptions from the sample population.

Population Overview

The sample population included 79 conditional and perfected permits. Key characteristics of the population include:

- The sample population included 60 ground water and 19 surface water permits.
- The sample population included representation from 19 counties, including Williams (28) and Mountrail (12) that have a relatively high volume of industrial water use.
- The sample population included permits from over 35 identified water sources (e.g., Shell Creek), as well as ten (10) permits for which the water source is listed as “Unidentified”.
- The sample included permits assigned to ten (10) different “Project Leaders”.

Application Complete (Sample Population = 79 Permits)

Permit documentation related to the application process (i.e., applications, maps and fees) was reviewed to assess compliance with regulations and internal policies and procedures.

- 100% of the sample population included an application with all the required data points
- 98.7% of the sample population included the signature of the applicant. The one noted exception is included in the table below.

Permit No.	Exception Notes
6401	The application included in the permit file did not include the signature of the applicant. Despite the lack of a signature, it appears the administrative process continued with the issuance of the public notice materials.

- 97.4% of the sample population had evidence of a map certified by a licensed surveyor. The noted exceptions are included in the table below.

Permit No.	Exception Notes
5802	The map included in the file was prepared in 1973; however, the application was not submitted until 2005. In addition, the map does not include the signature or stamp of the licensed surveyor.

Permit No.	Exception Notes
6029	The map does not include the signature or stamp of the licensed surveyor.

- 100% of the sample population tested had evidence of receipt of the appropriate application fee.

Affidavit of Notice (Sample Population = 76 Permits)

Permit documentation related to the notification process was reviewed to assess compliance with regulations (NDCC and NDAC) and internal policies and procedures. The sample included 76 permits, as three (3) permit applications included in the sample population had not progressed to this point in the process.

- 100% of the sample population tested had evidence of the public notification (i.e., *Affidavit of Notice*) in the document management system.

Priority Dates Established Accurately (Sample Size = 76 Conditional/Perfected Permits)

NDCC 61-04-09 requires that, in cases where an application is deemed to be complete, the priority date established is the date the application was initially received by the Water Appropriations Division. If an application is deemed incomplete, the applicant has sixty (60) days upon notification of corrections required in order to provide additional information, and retain the original priority date. If application is not completed in the given period, the priority date will be amended to the date when required materials are provided.

In addition, NDCC 61-04-05 requires that the applicant provide an *Affidavit of Notice* within sixty (60) days of receiving notification from the State Engineer of the requirement. If a complete *Affidavit of Notice* is not submitted within the allotted time period, the priority date is voided and a new priority date will be assigned based on the date the requested application materials are received.

Testing was conducted to verify that the established priority dates were accurate.

- 93.4% of the sample population tested included a priority date that was verifiable based on the available documentation. There were five permits, however, that had been priority dates that did not appear to be supported by the documentation.
 - 2.6% of the sample population tested indicated that the applicant was not compliant with the sixty (60) day submission period for the *Affidavit of Notice*. As such the priority date should have been altered to reflect the violation, however, no change was to the priority date was reflected in the permit file. The exceptions are noted below.

Permit No.	Application Date	Priority Date	Date of Notice Given	Date Affidavit of Notice Received	Duration of Notice Period
6159	4/23/2010	4/23/2010	5/13/2010	7/15/2010	63
6173	6/9/2010	6/9/2010	6/18/2010	9/10/2010	84

- 2.6% of the sample population tested indicated a priority date change; however, there did not appear to be evidence to support the assignment of a new priority date. The exceptions are included in the table below.

Permit No.	Application Date	Priority Date	Date of Notice Given	Date Affidavit of Notice Received	Duration of Notice Period
6057	9/23/2008	1/7/2009	10/20/2008	12/1/2008	42
6201	10/27/2010	12/7/2010	12/23/2010	1/6/2011	14

- 1.3% of the sample population tested included two different priority dates on the conditional permit and the perfected permit. The exception is included in the table below.

Permit No.	Conditional Priority Date	Perfected Priority Date
5802	12/12/2005	12/9/2005

Affidavit of Publication (Sample Population = 75 Permits)

Permit documentation related to the publication process was reviewed to assess compliance with regulations and internal policies and procedures. The sample included 75 permits, as four (4) permit applications included in the sample population had not progressed to this point in the process.

- 100% of the sample population tested had evidence of publication (i.e., *Affidavit of Publication*) in the document management system.

Water Usage Prior to Permit Issuance (Sample Size = 65 Conditional/Perfected Permits)

NDCC 61-04-02 requires that a water permit must be obtained from the State Engineer prior to withdrawing waters from the state for any purpose other than domestic use.

- 96.9% of the sample population tested did not report water usage prior to the issuance of the conditional permit.
 - 3.1% of the sample population tested appears to have reported water usage on the permit prior to the issuance date. The exceptions are included in the table below.

Permit No.	Date of Permit Issuance	First Year of Use Reported
5721	12/7/2010	2006
5949	4/3/2009	2008

Communication with Parties of Record (Sample Size = 65 Conditional/Perfected Permits)

NDCC 61-04-05.1 requires that any individual/entity that has filed written comments regarding a permit application shall be sent a copy of the *Recommended Decision*. Testing was conducted to verify that proper communication procedures were performed for those who had filed written comments.

- 98.5% of the sample population tested included evidence that all parties of record had been provided a copy of the *Recommended Decision*.
- 1.5% of the sample population tested did not appear to include all parties of record in the distribution of the *Recommended Decision*. The exception is included in the table below.

Permit No.	Exception Notes
6061	One impacted party listed on the Comment Summary was not included in the mailing of the Recommended Decision.

Inspections Completed (Sample Size = 50 Conditional/Perfected Permits)

Per NDCC 61-04-09, on or before the beneficial use date or upon notification from the applicant that the water is being put to a beneficial use, the Water Appropriations will conduct an inspection of the permit to verify that all required conditions have been met. Permit documentation related to the inspection process was reviewed to assess compliance. The sample included fifty (50) permits, as twenty nine (29) permit applications from the total sample had not progressed to this phase of the process.

The breakdown of the 50 Conditional/Perfected permits in the sample is listed below.

Permit Type	No. of Permits	Population Notes
Conditional Permits	29	Permits were assigned beneficial use dates that have passed, yet no inspection appears to have been performed and there is no record of a request for an extension.
	11	Permits reported water usage prior the expiration of the beneficial use date, however, no inspection appears to have been performed.
Perfected Permits	10	Permits were inspected and have been perfected.
Total	50	Total permits requiring an inspection per NDCC 61-04-09

- 20.0% of the sample population tested had evidence of an inspection.
 - Of the exceptions, 72.5% (29 Permits) represent permits where the beneficial use date has passed and no record of an inspection or extension was located. The exceptions are included in the table below.

No.	Permit No.	Beneficial Use Date	No.	Permit No.	Beneficial Use Date	No.	Permit No.	Beneficial Use Date
1	5640	2/1/2012	11	6001	6/1/2011	21	6189	5/1/2012
2	5721	1/1/2012	12	6028	11/1/2011	22	5958A	11/1/2012
3	5879	2/11/2011	13	6029	11/1/2011	23	6196	1/1/2013
4	5949	5/1/2010	14	6033	5/1/2011	24	5739	6/1/2008
5	5956	2/1/2011	15	6037	11/1/2011	25	5759	10/1/2008
6	5968	7/1/2010	16	6046	3/1/2012	26	5779	12/1/2008
7	5973	5/1/2010	17	6057	3/1/2012	27	5824	8/1/2009
8	5975	6/1/2010	18	6061	10/6/2012	28	5825	8/1/2009
9	5983	4/1/2011	19	6082	6/1/2012	29	5940	6/1/2011
10	5991	4/1/2011	20	6091	7/1/2012			

- Of the exceptions, 27.5% (11 Permits) indicated water usage prior to the beneficial use date and no record of an inspection or extension was located. The exceptions are included in the table below.

No.	Permit No.	First Year Usage Reported	No.	Permit No.	First Year Usage Reported
1	6023	2010	7	6173	2011
2	6060	2011	8	6193	2011
3	6086	2011	9	6201	2011
4	6134	2011	10	6235	2012
5	6157	2011	11	6305	2012
6	6159	2011			

Notification of Beneficial Use (Sample Size = 31 Conditional/Perfectured Permits)

Per NDCC 61-04-14, the State Engineer is required to notify the permit holder by certified mail that the period for applying water to the beneficial use cited in the conditional permit has expired. This notification allows for the permit holder to file an extension of the beneficial use date, if good cause can be shown. Permit documentation was reviewed to assess compliance.

- 6.4% of the sample population tested included evidence of notification by the Water Appropriations Division that the beneficial use date had expired. The 29 exceptions are identified on page 50.

Extension Request Not Received (Sample Size = 29 Conditional/Perfectured Permits)

Per NDCC 61-04-14, a conditional water permit, or any portion thereof, shall be considered forfeited, abandoned, and void if no request for renewal is received by the State Engineer within sixty (60) days after the date the permit holder is informed by certified mail that the period for applying water to the beneficial use cited in the conditional permit has expired. Permit documentation was reviewed to assess compliance.

- 0.0% of the sample population tested included evidence of an extension request; however, none of the permits had been forfeited, abandoned or voided due to a lack of achieving the beneficial use date or submitting a request for an extension.

Testing Results – Objective #2

Temporary Permits

Testing was conducted to assess whether the execution of the permitting practices for temporary permit applications was consistent with established regulations, policies and procedures. Each of the testing components is outlined below, followed by any identified exceptions from the sample population.

Population Overview

The sample population included 65 temporary permits. Key characteristics of the population include:

- The sample population included 40 temporary industrial use permits
- The sample population included 25 temporary in lieu of irrigation permits
- The sample population includes 29 ground water and 36 surface water permits

Application Packet (Sample Size =65 Temporary Permits)

Permit documentation related to the application process was reviewed to assess compliance with regulations and internal policies and procedures.

- 86.2% of the sample population tested included a completed permit application. The exceptions are included in the table below.
 - 72.0% of the sample population of temporary in lieu of irrigation permits tested included evidence of a completed permit application.

- 95.0% of the sample population of temporary industrial use permits tested included evidence of a completed permit application.

Permit No.	Type	Permit No.	Type	Permit No.	Type
2010-4353	In Lieu of Irrigation	2011-4719	In Lieu of Irrigation	2012-4830	In Lieu of Irrigation
2011-4791	In Lieu of Irrigation	2012-14336	In Lieu of Irrigation	2011-4745	Industrial Use
2012-14424	In Lieu of Irrigation	2012-4807	In Lieu of Irrigation	2012-14355	Industrial Use

Analysis Evidenced for Approved Permits (Sample Size =65 Temporary Permits)

As noted previously, current practice does not require the formal preparation of a *Recommended Decision* or analysis memo for temporary industrial use permits. Formal *Recommended Decisions* are required for temporary in lieu of irrigation permits. Permit documentation was reviewed to assess compliance with this requirement.

- 100% of the sample population of temporary in lieu of irrigation permits tested included a *Recommended Decision* prepared by a Project Hydrologist.
- 10.0% of the sample population of temporary industrial use permits tested included evidence of a hydrologic review. While not required per policy, the permits for which no analysis was located are identified in the table below.

Permit No.			
2010-4094	2010-4126	2010-4132	2010-4136
2010-4148	2010-4218	2010-4280	2011-4543
2011-4566	2011-4574	2011-4613	2011-4644
2011-4673	2011-4691	2011-4721	2011-4755
2011-4756	2011-4758	2011-4763	2011-4765
2011-4770	2011-4788	2012-14195	2012-14211
2012-14222	2012-14253	2012-14288	2012-14336
2012-14340	2012-14406	2012-14424	2012-14451
2012-14508	2012-4815	2012-4852	2012-4853

Approval Provided for Issued Permits (Sample Size =65 Temporary Permits)

Per policy of the State Engineer, all permits are to be signed upon issuance. For temporary permits, a member of the Water Appropriations Division is permitted to sign on behalf of the State Engineer. In most cases this is either performed by the Division Director or the Assistant Division Director. In some instances, another member of the Division (i.e., Project Hydrologist) would sign the permit. Testing was conducted to verify that all issued permits included a signature.

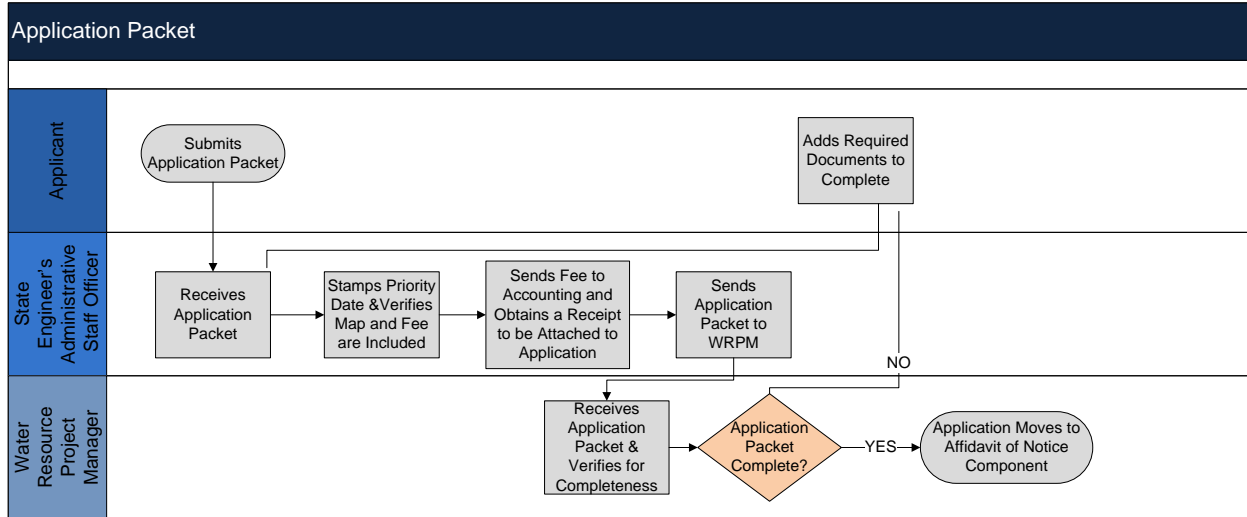
- 100% of the sample population of temporary industrial use permits tested included a signature on the permit of a member of the Water Appropriations Division staff.
- 84.0% of the sample population of temporary in lieu of irrigation permits tested included a signature on the permit of a member of the Water Appropriations Division staff.
 - 16% of the sample population of temporary in lieu of irrigation permits tested lacked a signature on the permit of a member of the Water Appropriations Division staff. The exceptions are included in the table below

Permit No.	Exception Notes
2012-14355	Signed permits were not located in either the hard copy permit file or in the 4D database.
2012-4807	
2012-4823	
2012-4830	

Appendix C – Conditional Permit Application Process

Based on our understanding of the application process for conditional permits, we segmented the process into seven (7) distinct and sequential process components. Process flows for each of the seven (7) process components are provided below and accompanied by brief process narratives.

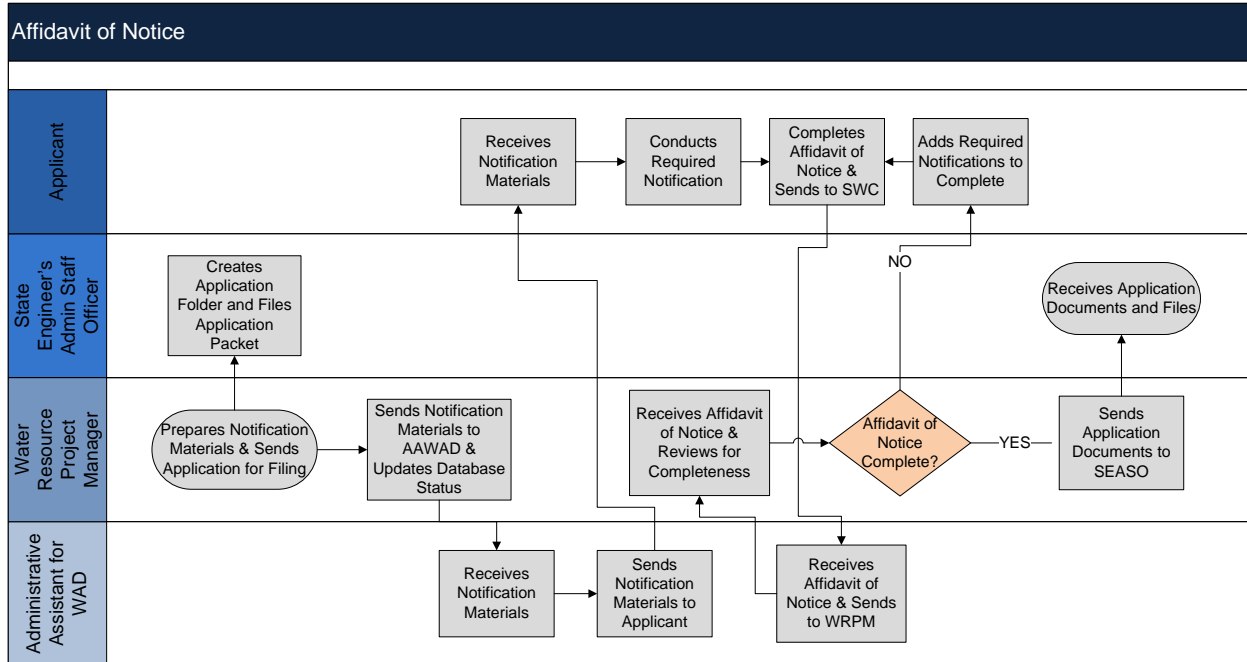
Component #1: Application Packet



1. The applicant will submit his/her application packet. The application packet includes the *Form No. 108*, a certified map of the proposed appropriation site, and the application fee.
2. The State Engineer's Administrative Staff Officer (SEASO) will receive the application packet, stamp the application with a priority date, and perform a cursory review of application packet.
3. The SEASO will send the application fee to the Accounting Department for processing. Upon processing, a payment receipt will be provided to the SEASO, and included with the application packet.
4. The SEASO sends the application packet to Water Resource Project Manager (WRPM).
5. The WRPM will review the application packet, and verify the packet includes all required documents and that all documents have been completed. The Water Appropriations Division is provided thirty (30) days to conduct the initial review and notify the applicant if the application packet is incomplete.
6. If the application packet is determined to be incomplete, the WRPM will notify the applicant of the additional information required for processing. The applicant is provided sixty (60) days to submit the requested information in order to retain the original priority date.

- Once the application packet is determined to be complete, the application packet will move to *Affidavit of Notice* process component.

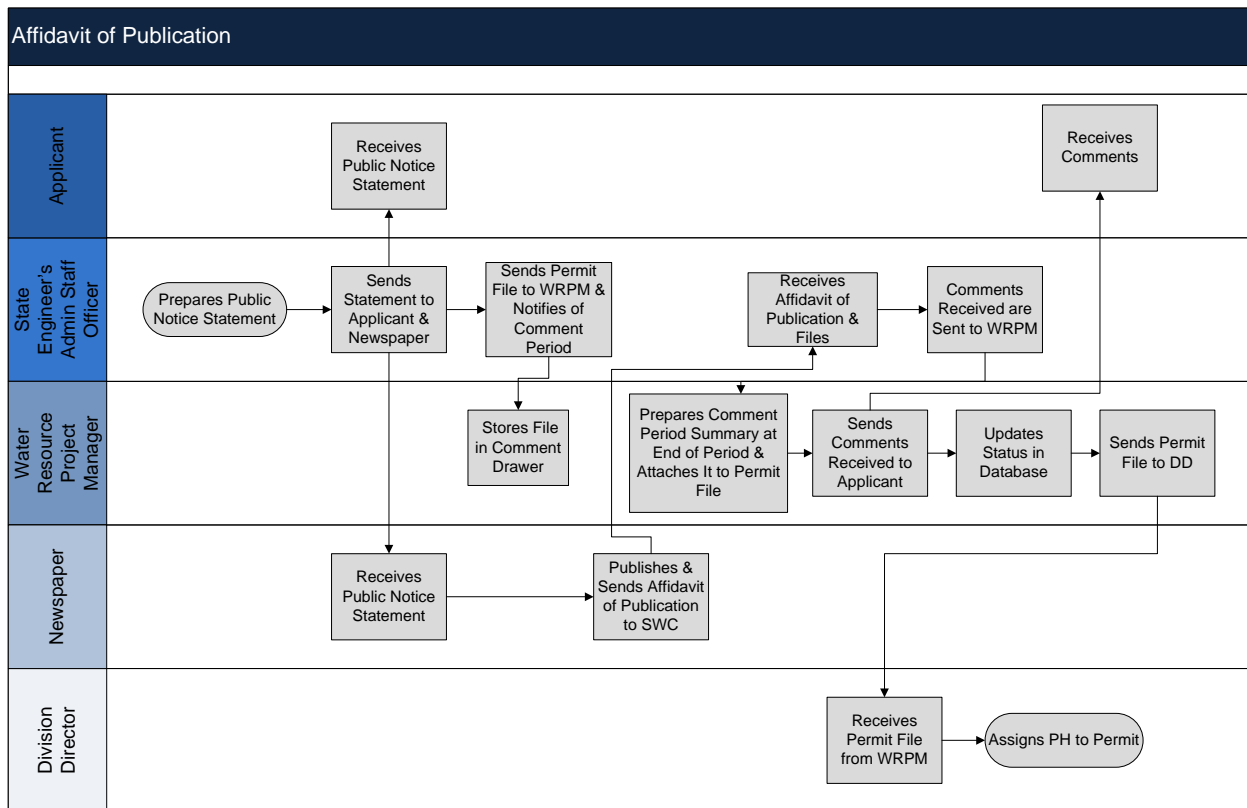
Component #2: Affidavit of Notice



- The WRPM will prepare the notification materials, including notification instructions, map of notification area, lists of permit holders and public use facilities within the designated notification area, and *Affidavit of Notice*.
- The WRPM sends the application packet to the SEASO who will create a permit file for the application materials.
- The WRPM will send the notification materials to the Administrative Assistant for the Water Appropriations Division (AAWAD).
- The WRPM will update the application status in the 4D database.
- The AAWAD will provide the notification materials to the applicant.
- The applicant will execute the notification process.
- The applicant will complete the *Affidavit of Notice*, and mail with Certified Receipts/Form 3877 to the State Water Commission.
- The AAWAD will receive the *Affidavit of Notice*, and send materials to the WRPM.

9. The WRPM will review the *Affidavit of Notice* for completeness.
10. If *Affidavit of Notice* is not complete, the WRPM will request additional information from the applicant.
11. When the *Affidavit of Notice* is verified as complete, the WRPM will send the application materials to the SEASO for filing, and the application moves to the *Notice of Application* process component.

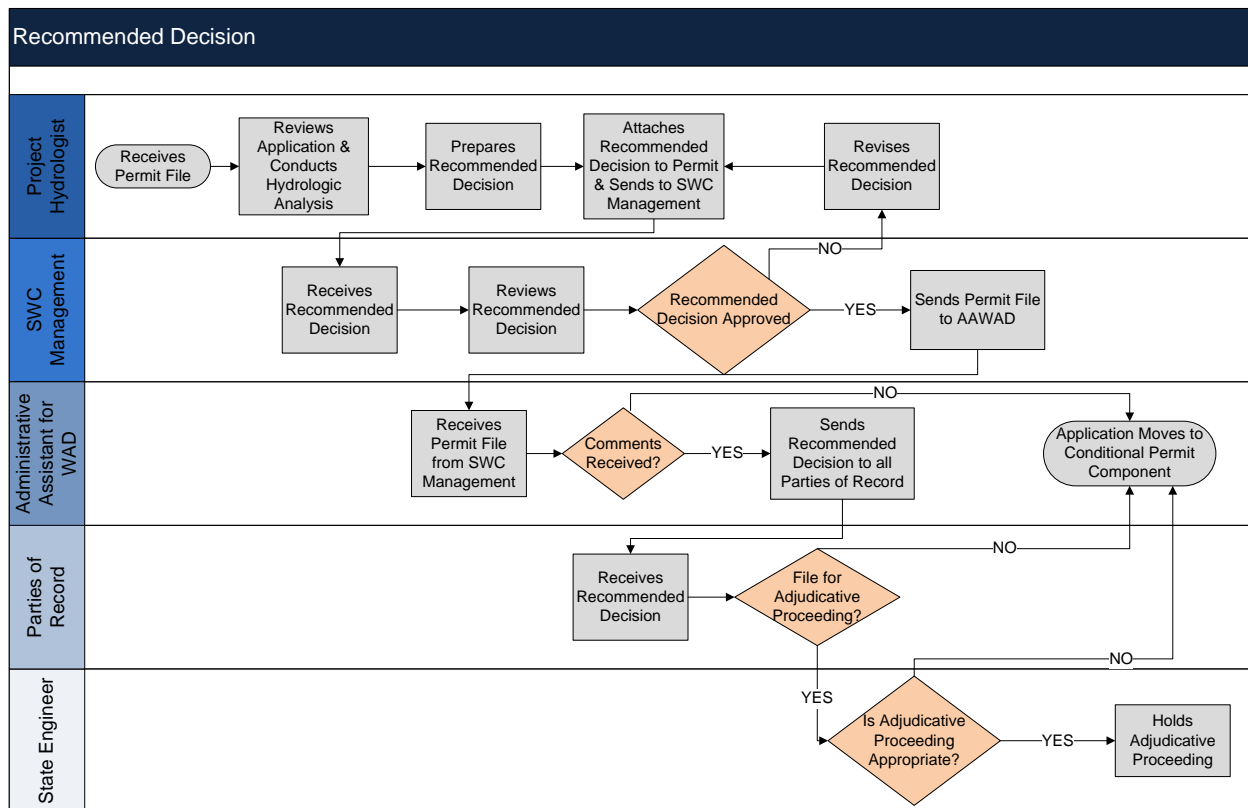
Component #3: Affidavit of Publication



1. The SEASO will prepare the *Public Notice Statement*.
2. The SEASO will send the *Public Notice Statement* to the applicant, as well as the official newspaper(s) of the county. The SEASO will notify the WRPM that the comment period is to begin.
3. The WRPM will file the application file in the comments drawer.
4. The applicant and newspaper(s) will receive the *Public Notice Statement*. The applicant will be responsible for contacting the newspaper(s) in order to pay any fees associated with publication.

5. The newspaper will publish the *Public Notice Statement* once a week for two consecutive weeks, and provide an *Affidavit of Publication* to the State Water Commission.
6. The SEASO will receive the *Affidavit of Publication*.
7. The SEASO will receive any comments sent to the State Water Commission regarding the permit application.
8. Any comments received will be sent to the WRPM for acknowledgement. The WRPM will send a response to verify receipt of letters to all Parties of Record. At the end of the comment period, a *Comment Period Summary* will be prepared and attached to the permit file by the WRPM.
9. The WRPM will mail the applicant a copy of any comments received.
10. The WRPM will update the application status in the database and send the permit file to the Division Director (DD).
11. The DD will receive the permit file and assign a Project Hydrologist (PH) to the application.

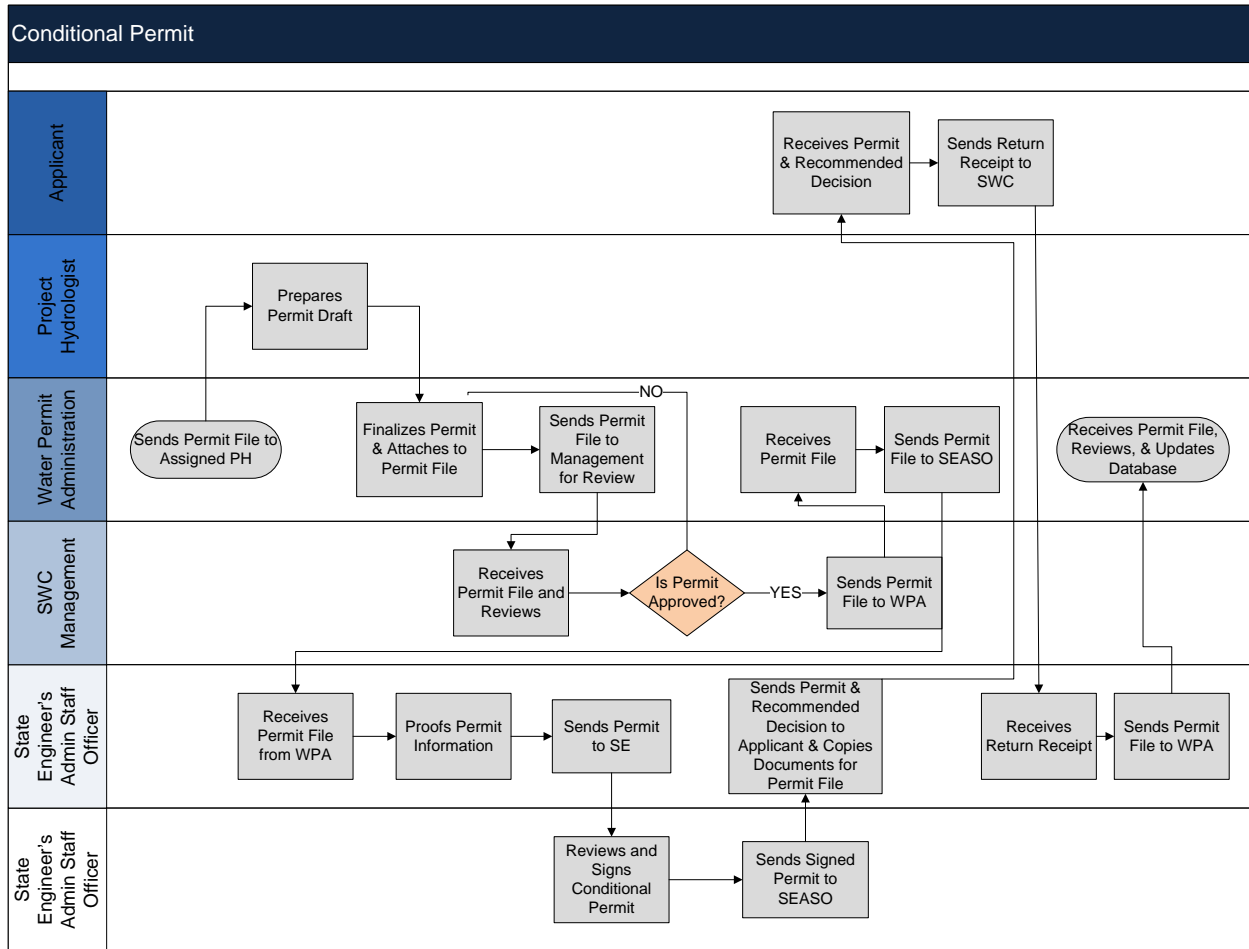
Component #4: Recommended Decision



1. The assigned PH will receive the permit file and review the application. A hydrologic analysis of the requested permit will be conducted.
2. The PH will prepare a *Recommended Decision*.
3. The *Recommended Decision* will be attached to the permit file, and sent to the State Water Commission management for review.
4. State Water Commission management will review the *Recommended Decision*. Any suggested revisions will be made by the PH before the *Recommended Decision* will be approved.
5. Once the *Recommended Decision* has been approved, management will send the permit file to the AAWAD.
6. If comments have been received, the AAWAD will send a copy of the *Recommended Decision* to any Parties of Record. A second thirty (30) day comment period will begin.
7. Parties of Record will receive the *Recommended Decision*, and can provide additional comments or request an Adjudicative Proceeding.

8. If Adjudicative Proceeding has been requested the State Engineer will decide if this is appropriate or not. If appropriate, the Adjudicative Proceeding will take place before permit will advance further into the process.
9. If no Adjudicative Proceeding is requested, the application can move on to the conditional permit component.

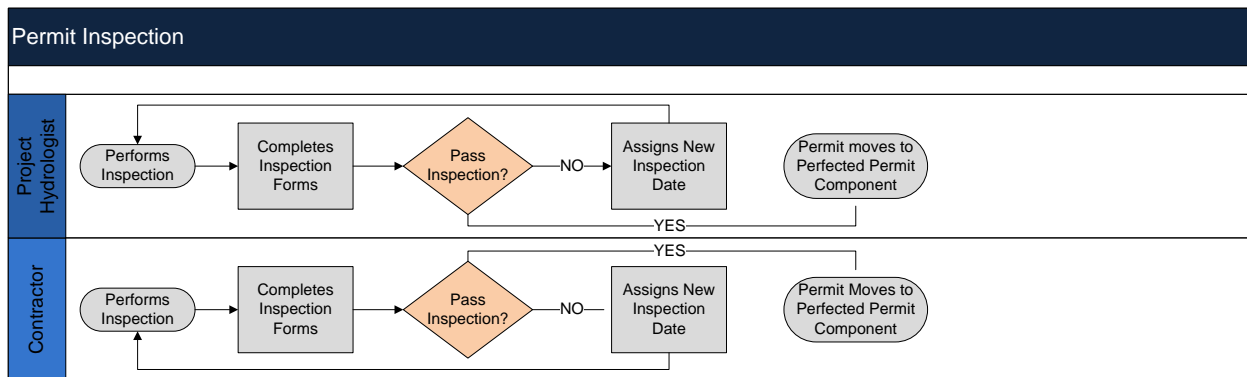
Component #5: Conditional Permit



1. The Water Permit Administration (WPA) will send the permit file to the PH.
2. The PH will receive the permit file and prepare a draft of the conditional permit.
3. The permit draft will be attached to the permit file, and sent to the WPA who will prepare a finalized permit. These documents will be attached to the permit file, and sent to State Water Commission management for review.

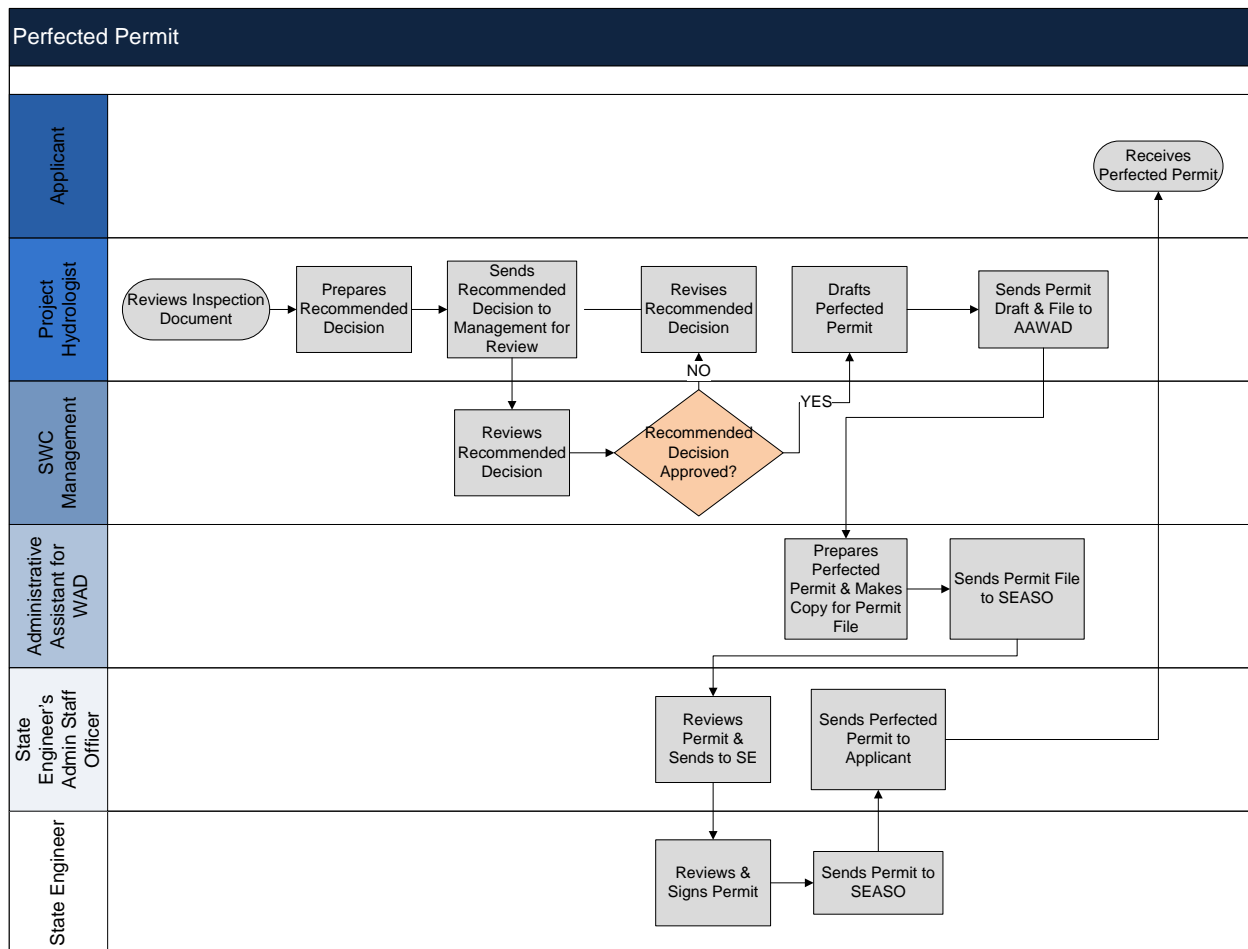
4. State Water Commission management will review the permit. If revisions are needed, the permit will be sent to the WPA for revisions to be made. Once approved by management the permit will be sent to the WPA.
5. The WPA will send the permit file to the SEASO.
6. The SEASO will review the final permit, and send it to the State Engineer (SE).
7. The SE will review and sign the final permit, and then send it back to the SEASO.
8. The SEASO will send the permit and *Recommended Decision* to the applicant. The SEASO will make copies of documents for the permit file.
9. The applicant will receive the permit and *Recommended Decision*, and send the return receipt back to the State Water Commission.
10. Upon return receipt, the SEASO will send the permit file to WPA for review, update status in the database, and filing.

Component #6: Permit Inspection



1. The PH or a Contractor will perform an inspection of permit upon the beneficial use date or prior to the permit reporting water usage.
2. Inspection forms will be completed by the PH/Contractor performing the inspection.
3. If the permit passes the inspection, it will move on the perfected permit process component. If the permit does not pass the inspection, a new inspection date will be assigned.

Component #7: Perfected Permit



1. The PH will review the inspection documents.
2. The PH will prepare a second *Recommended Decision* for the permit in regards to whether or not it should be perfected, and will send it to State Water Commission management for review.
3. The State Water Commission management will review the *Recommended Decision*. All necessary revisions will be made to the *Recommended Decision* by the PH before it will be approved by management.
4. Once the *Recommended Decision* is approved the PH will draft the perfected permit in the database, and send the draft and permit file to the AAWAD.
5. The AAWAD will prepare the final permit, and will make a copy of the permit to be kept in the permit file. The permit file will be sent to the SEASO.
6. The SEASO will proof the final permit and send it to the SE.
7. The SE will review the permit, and sign it. The SE will send the permit to the SEASO.
8. The SEASO will mail the perfected permit to the applicant.

Appendix D – Additional Management Responses: Finding 8

It is important to note that the Water Appropriation Division currently provides a brochure entitled “Water Permitting Process Water Guide” that was last updated in 2004 (Appendix 3). This guide is currently being updated and will be placed on the SWC website. In addition, our information sheet prepared by the Water Appropriation Division entitled, “Water Permit Application Process Time Table” has been provided to water permit applicants on a limited basis (Appendix 4). This timetable will be expanded and will be placed on the SWC website.

Although not documented, project hydrologists are encouraged to contact permit applicants when the application is assigned, to inform the applicant about the hydrologic setting and timeline for completion of the permit application. In the future this procedure will be required.

The SWC website contains the following documents relating to the water permitting process;

- 1) Conditional water permit application completion instructions
- 2) Permit status definitions
- 3) Application for conditional water permit
- 4) Temporary water permit application (SFN 60158)
- 5) Policy for obtaining a temporary water permit for industrial use
- 6) Flow meter specifications
- 7) Application for change in use
- 8) Application for change in point of diversion
- 9) Domestic, livestock, fish and wildlife or other recreational use registration form
- 10) Water permit database

The permit applicant can query the Water Permit Database on-line by entering their water permit application number. In doing so, the status of the permit application can be determined (see aforementioned documents – Permit Status Definitions). Given the large degree of uncertainty associated with “science based” hydrogeologic system analysis, it is not practical to develop a system that periodically updates time of permit completion.

Appendix E – Additional Management Responses: Finding 9

It is important to note the records management component of the Water Permit Database was first created in 2009. Records management was added to the Water Permit Database as part of a broader initiative to provide an overall digital records management solution for the agency. This initiative was started first with the agency project records. For this project, the agency contracted with an outside firm to scan and OCR all of the agency project records. Once completed, a similar contract was to be applied to other areas where the agency maintained paper records including the water permit records. Upon completion of the digitization of the project records, significant problems were discovered in the conversion process and the resulting product. As a result, the Water Commission made the determination that internal conversion of the water permit records would yield a more functional and usable end product.

Document conversion for the water permit records is a very large project and will require a significant commitment of man-hours to complete. Given the availability of internal staff time to commit to this project, a priority structure was developed to address the most needed components of the system. This priority included the initial capture of the annual use forms, which are not currently stored in the water permit file folders. At the same time, desktop scanners were purchased for key users in the permit workflow to capture new permit applications that are filed. Currently, the scanning is performed when the permit application has been completed and internal processing of the permit begins.

With this workflow in place, the next step in the process was to address existing water permits. At this point, there have not been sufficient staff resources available to begin the document conversion process for all existing water permit records. As a result, depending upon the timing of the receipt of new permit applications, digital records of all permits for which applications were received prior to the initiation of the workflow described above are unavailable.

The file structure that is implemented for the water permits is created and maintained by the water permit database application. As each permit record is created an associated folder is created which contains four folders; Annual Use, General, Legal Documents, and Photos. This structure was developed to provide some consistency and to separate the records into functional units that were designed to address organizational deficiencies that have been identified with current paper records. The system is designed to place the files in chronological order. Files can only be added to this system through the Water Permit Database application, and this application enforces strict naming conventions that are based upon date, time, and an arbitrary serial number. The date and time are generally obtained from the scanned file and this approach works well moving forward. However, in order to place the historic files chronologically, the date and time that appropriately reflects the actual document date, can be defined by the user. Currently, PDF documents are the only type of document that can be uploaded to the system with the exception of the Photos, which can include JPEG, PNG, TIFF, and BMP file formats. The document description field is a user-defined field that is attached to each document. Each Permit Record is unique. Aside from the Legal Documents that are the same in each permit jacket (i.e. Permit Application, Conditional Water Permit, Perfected Water Permit, etc.), each permit can have unique documentation. There is currently no

method that would allow the naming convention flexibility required of this field for it to be useful if normalized list entries are applied to this field. For example, while all of the documents included in the Annual folder could be labeled "Annual Use", currently these documents are being labeled with the year (i.e. "2009 Annual Use", "2010 Annual Use", etc.) to make the documents easier to identify. Lists can be applied to this field that would provide suggestions, but end-users should continue to have the flexibility to apply names relevant to the document being uploaded.