

OFFICE OF THE STATE AUDITOR

PERFORMANCE AUDIT FOLLOW-UP REPORT

Status of Recommendations

Water Appropriations Division
Industrial Use Permits

Report No. P770.1

September 21, 2016



Robert R. Peterson, State Auditor



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OFFICE OF THE STATE AUDITOR
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September 21, 2016

Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

Jon Patch, Water Appropriations Division Director

A fundamental objective of the Office of the State Auditor's work is to bring about improvements through recommendations. To achieve this, recommendations need to be timely and effectively implemented. The Legislative Audit and Fiscal Review Committee has requested the Office of the State Auditor to perform follow-up work after presentation of performance audit reports to the Committee.

The Office of the State Auditor conducted an audit follow-up on the performance audit of the Water Appropriations Division of the Office of the State Engineer. The audit scope of the original performance audit related to industrial use water permits. The performance audit was conducted by an outside consultant in 2012 and two reports were issued. The objective of this follow-up audit was to determine the status of the 26 recommendations included in the performance audit reports. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our conclusions based on our audit objective. The audit period was July 1, 2013 through June 30, 2016.

Included in the report are the conclusions we made regarding the status of the recommendations included in the performance audit. Management's responses are included for partially implemented recommendations. We want to extend our appreciation to the personnel of the Water Appropriations Division for their assistance and cooperation during the follow-up audit.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Peterson".

Robert R. Peterson
State Auditor



OFFICE OF THE STATE AUDITOR

Performance Audit Follow-Up Water Appropriations Division Industrial Use Permits Summary of Recommendations

The objective of the performance audit conducted on aspects of the Water Appropriations Division was to answer the following questions (both related to industrial use water permits):

“To conduct a performance audit of the industrial water use monitoring and reporting policies and procedures of the Water Appropriations Division for the calendar years of 2010, 2011, and January-June of 2012; and to provide recommendations to help address any identified performance gaps.”

“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.”

A summary of our conclusions made during this follow-up regarding the status of the 26 recommendations made during the performance audit are as follows:

Status of Recommendation	Number	Percentage
Fully Implemented	23	88%
Partially Implemented	3	12%

Partially Implemented

Recommendation 3	Lack of Formal Inspection Protocols	Page 11
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Glossary

Industrial Water Use Permits

Introduction

The Legislative Audit and Fiscal Review Committee requested a performance audit of the Office of the State Engineer Water Appropriations Division during the June 2012 committee meeting. The Office of the State Auditor contracted with KPMG LLP in the fall of 2012 to conduct the requested audit. The audit scope related to industrial use water permits.

Two audit reports were issued by KPMG. The first audit report, dated January 2013, included the results of an assessment of the industrial water use monitoring and reporting policies and procedures employed by the Water Appropriations Division (Division). Chapter 1 of this report includes the results of our review of the status of recommendations included in the first report. Chapter 2 includes the results of our review of the status of recommendations included in the second report. Recommendation numbers coincide with numbers used in the original report.

Recommendation 1.1

The Water Appropriations division should consider the following:

- 1. Develop a standard format for all process documentation. The standard operating procedures (SOPs) may include the following components:**
 - **Applicable rule/regulation**
 - **Related Process (narrative and/or process flow)**
 - **Related documentation required to execute process**
 - **Potential impact for noncompliance of rule/regulation****Brief operational aides may also be developed to summarize processes for staff to reference in the field. This may be of value for new Field Technicians.**
- 2. Document the following processes to reflect agency protocols:**
 - **Monitoring water use limitations**
 - **Monitoring aquifer levels**
 - **Establishment, imposition and collection of penalties**
 - **Enforcement of State Water Commission's metering and reporting policies**
- 3. Establish a protocol to disseminate SOPs and keep staff abreast of current and revised guidance. These protocols should consider leveraging technology to the extent possible.**

Action Taken

The Division has developed a standard format for procedures. The Division uses the standard format as procedures are developed. Examples of procedures using the standard format include monitoring water use limits, monitoring aquifer levels, and assessing penalties. Procedures are disseminated to staff through email.

Status

Fully Implemented.

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Industrial Water Use Permits

Recommendation 1.2

The Water Appropriations Division should consider the following:

1. Enforce compliance with NDCC 61-04-27 required submission date.
2. Request an amendment to NDCC 61-04-27 to revise the AUF required submission date to allow for timely and efficient processing.
3. Develop and implement an electronic reporting tool to help reduce the manual processing effort associated with the current paper-based process, drive efficiencies and help ensure adherence to regulations.

Action Taken

North Dakota Century Code (NDCC) Section 61-04-27 requires permit holders to submit annual use forms (AUFs) to the Division. The due date for submitting forms was changed from February 1 to March 31 by the 2013 Legislature. Late fees are assessed on AUFs submitted after March 31. According to North Dakota Administrative Code (NDAC) Section 89-03-01-13.1, AUFs submitted after March 31 will be assessed a fine of \$50 if submitted before June 1 or \$250 if submitted after June 1.

The Division has reduced the amount of manual processing by providing permit holders the ability to submit AUFs online. If the permit holder chooses to submit the AUF in paper form, the Division has the ability to scan the form into the database. The Division now prints a Quick Response (QR) Code on the paper forms. Once a completed paper form is scanned by the Division, the QR code allows for information to be automatically attached to the correct permit within the database.

Status

Fully Implemented.

Recommendation 2.1

The Water Appropriations Division should consider the following:

1. Require implementation of remote terminal metering devices to supplement or replace the current self-reporting system.
 - Initial implementation efforts may focus on water depot sites and/or industrial sites with network accessibility in order to alleviate cost and data transfer concerns.
 - Consideration should be given the potential cost sharing options with the permit holders to disperse the costs associated with implementation.
2. Development of formal policies and procedures to govern field inspection activities to help ensure that all sites/permits requiring an inspection are assessed and meter readings obtained. Established policies and procedures may include:
 - Development of universal requirements/criteria to determine the frequency with which field inspections should be conducted
 - Creation of a comprehensive field inspection schedule

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- **Establishment of protocols to validate execution of all required field inspections**

Action Taken

The Division requires a telemetry system for all permits with an industrial use for oil field purposes. Telemetry allows for the remote transmission of data. Water use data is recorded on the device located at the well and is transmitted daily to the Division's database. The daily transmission of water use provides the Division the ability to closely monitor the well. The Division has established written procedures for performing inspections of water depots (industrial use permits providing water for oil field purposes).

Status

Fully Implemented.

Recommendation 2.2

The Water Appropriations Division should consider the following:

1. **Development and implementation of an online data entry system to allow permit holders to submit use data electronically. Design elements of an online reporting system to consider may include:**
 - **Interface with databases (i.e., 4D)**
 - **Form design (e.g., required fields)**
 - **Electronic unit conversion calculations**
 - **User account creation to allow management of multiple permits**
 - **Electronic notification capabilities (e.g., annual AUF memo)**
 - **Controls to identify potential condition violations (e.g. exceptions reporting)**

An online reporting tool could help alleviate much of the administrative effort associated with the current paper-based process and be expanded to address other self-reporting controls such as the Monthly Meter Reporting process

2. **Encourage e-mail submission of AUFs. E-mail submission would allow for the Water Appropriations Division to receive AUFs in a format that could be attached in appropriate database, removing the need for scanning.**
3. **Explore current database capabilities related to conducting automatic conversion of measurement data to acre-feet. Automatic conversion would help remove a manual step from the process and help ensure accurate and consistent water usage conversion.**

Action Taken

Annual usage forms (AUFs) can be submitted online through a web link unique to each permit number. If the permit holder chooses to submit the AUF in paper form, the Division has the ability to scan the form into the database. The Division now prints a Quick Response (QR) Code on the paper forms. Once a completed paper form is scanned by the Division, the QR code allows for information to be automatically attached to the

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correct permit within the database. According to data provided by the Division, 6.5% of AUFs were submitted online in 2013 and over 13% were submitted online in 2015.

The Division made the decision to continue with manual calculation of measurement data to acre-fee. The Division's calculations are now included on the AUF submitted.

Status Fully Implemented.

Recommendation 2.3 The Water Appropriations Division should consider the following:

1. **Enforce compliance with applicable NDAC requirement of a 1:1 permit-to-AUF reporting relationship. This may assist in more efficiently and effectively processing AUFs and subsequently the identification of use violations.**
2. **Communicate requirements and expectations to permit holders.**
3. **Develop and implement an online reporting system to allow permit holders to submit use data electronically to support enforcement of 1:1 reporting relationship.**

Action Taken Annually, the Division mails a letter explaining the annual usage form (AUF) requirements and an AUF to permit holders for each permit number. The AUF can be submitted online or mailed to the Division. All AUFs are required to be completed and returned to the Division by the due date of March 31. If the AUF is not returned by the due date, a late fee is assessed.

Status Fully Implemented.

Recommendation 2.4 The Water Appropriations Division should consider:

1. **Developing policies and procedures to help ensure consistency across the document management system. Policies and procedures would help to establish consistency with regards to the timeliness of filing/uploading documentation, the association of documents/notes across all pertinent file sources, and consistency in notification format (e.g., date, author, purpose).**
2. **Explore database enhancements, such as system notifications that remind the user of the necessary filing steps, including association of files with all impacted permit records.**

Action Taken The Division developed procedures for scanning documents into the database. Also, database enhancements have been implemented.

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Status Fully Implemented.

Recommendation 2.5

The Water Appropriations Division should consider:

1. Enforcing compliance with NDAC 89-03-01-13 and current policy for AUF completion, including potential rejection of the AUF, additional field inspections and/or suspension of water use pending receipt of complete AUF.
2. Communicating/Educating completion requirements and expectations to permit holders. This may include posting additional guidance on the reporting process on the SWC website and/or conducting community education sessions.
3. Developing and implementing an online reporting system to allow permit holders to submit use data electronically. Form design would allow for the creation of required fields, thus helping to ensure complete information is obtained.

Action Taken

Late fees are assessed to permit holders not submitting the required annual usage form (AUF) by the March 31 due date. Letters are mailed to permit holders explaining the requirement along with the AUF. Permit holders have the ability to submit the AUF online or mail in the completed form.

Status Fully Implemented.

Recommendation 2.6

The Water Appropriations Division should consider:

1. Use of electronic recording devices that would allow for the collection and transmission of well data to the database directly from the field, thus reducing/eliminating the need to enter the data into the Field Book and database.
 - The Division previously piloted handheld devices but the program was terminated due to Field Technician concerns. Given the amount of data collected and the administrative time required to input the well data into the database manually, consideration should be given to reinstatement of the electronic recording devices.
2. Increase the use of Water Loggers or alternative electronic data collection tools. Consideration should be given to cost and maintenance prior to implementation.

Action Taken

The Division partnered with the U.S. Geological Survey of the Division of Interior to provide real time recorders on 17 observation wells. The Division monitors ground water sources through a state-wide system of observation wells (over 4,000 wells). The Division is in the process of testing options available to add telemetry systems to additional observation wells. The Division's ability to use telemetry systems was limited by the high data transmittal costs. However, the Division was able to negotiate a \$3 per month station fee with a provider (down from \$30 per

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month). In addition, the Division is researching the appropriate power source needed as observation wells are in remote locations.

Status Fully Implemented.

Recommendation 2.7 **The Water Appropriations Division should consider the following (related to conditional/perfected permits):**

- 1. Review exceptions in Appendix B and take appropriate action to address.**
- 2. Ensure compliance with applicable laws, regulations and/or policies.**
- 3. Leverage technology where applicable to reduce manual effort that may attribute to exception.**
- 4. Findings and Recommendations included throughout the report are intended to help address performance gaps identified that may have resulted in the exception.**

Action Taken The Division requires a telemetry system for all permits with an industrial use for oil field purposes. The due date for submission of annual usage forms is now March 31. When forms are not received by the due date, the Division assesses a fee for late submission.

The Division appears to be monitoring observation wells in accordance with policy. The inspections of observation wells are completed based on the number of measurements deemed necessary by the hydrologists.

Status Fully Implemented.

Recommendation 3.1 **The Water Appropriations Division should consider the following (related to temporary in lieu of irrigation permits):**

- 1. Review exceptions in Appendix B and take appropriate action to address.**
- 2. Ensure compliance with applicable laws, regulations and/or policies.**
- 3. Leverage technology where applicable to reduce manual effort that may attribute to exception.**
- 4. Findings and Recommendations included throughout the report are intended to help address performance gaps identified that may have resulted in the exception.**

Action Taken The Division requires a telemetry system for all permits with an industrial use for oil field purposes. The Division is monitoring the annual usage forms received from permit holders to ensure the usage amounts appear accurate and are within the limits of the permit.

Status Fully Implemented.

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Recommendation 4.1 **The Water Appropriations Division should clearly document the reporting requirements for each permit type to include the criteria utilized to determine reporting requirements. Any exemption to a reporting requirement for a specific permit type, including hydrologist discretion, should be clearly documented in the permit file.**

Action Taken Industrial use permits for oil field purposes are required to have a telemetry system. All other permit types are required to submit an annual usage form. The Division documents the reporting requirements in the conditions section of the water permit. There are no exceptions to the reporting requirements.

Status Fully Implemented.

Recommendation 4.2 **The Water Appropriations Division should consider the following:**

- 1. Enforce compliance with procedures for incomplete forms, including the potential rejection of the form, additional field inspections and/or suspension of water use pending receipt of complete information.**
- 2. Communicate/educate permit holders of their responsibilities in the monitoring and reporting process, and clearly articulate expectations with regards to annual and monthly reporting controls. This may include posting additional guidance on the reporting process on the SWC website and/or conducting community education sessions.**
- 3. Implement an online reporting tool; the tool can include required data fields to help ensure completion of forms prior to submission.**

Action Taken The Division has implemented a system to allow permit holders to submit annual usage forms (AUFs) online. If a permit holder does not submit the AUF by the due date, a late fee is assessed. Letters are mailed along with AUFs by the Division informing the permit holder of the reporting requirements. The Division's website contains a document with statutes and rules pertaining to water permits.

Status Fully Implemented.

Recommendation 4.3 **The Water Appropriations Division should consider the following:**

- 1. Develop formal policies and procedures to govern field inspection activities to help ensure that all sites/permits requiring an inspection are accessed and meter readings obtained.**

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- **Established policies and procedures may include development of universal requirements/criteria to determine the frequency with which field inspections should be conducted, the creation of a comprehensive field inspection schedule and protocols to validate execution of all required field inspections.**

Action Taken

The Division has established formal procedures for inspecting water depots and conditional water permits. A standard form to document the inspection of a water depot is used to enhance the consistency in the process.

Status

Fully Implemented.

Recommendation 4.4

- The Water Appropriations Division should consider the following:**
- 1. Review exceptions in Appendix B and take appropriate action to address.**
 - 2. Ensure compliance with applicable laws, regulations and/or policies.**
 - 3. Leverage technology where applicable to reduce manual effort that may attribute to exception.**
 - 4. Findings and Recommendations included throughout the report are intended to help address performance gaps identified that may have resulted in the exception.**

Action Taken

The Division has implemented a telemetry system. The telemetry system is required for all water depots. The Division has implemented an online option for permit holders to submit annual usage forms (AUFs). Late fees are assessed on AUFs submitted after the March 31 due date. The Division attempts to perform field inspections on water depots at least once every two years.

Status

Fully Implemented.

Recommendation 5.1

- The Water Appropriations Division should consider the following:**
- 1. Formally documenting policies and procedures related to imposition and collection of penalties to promote consistent application of approved processes across the organization.**
 - 2. Allocate responsibilities to hydrologist to manage imposition and collection of penalties process in their designated assigned regions. The Director of the Water Appropriations Division would serve as oversight of the process to ensure compliance with policies and procedures.**
-

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Action Taken The Division has established procedures for the imposition and collection of penalties. The procedures assign responsibilities to staff responsible for certain steps in the process.

Status Fully Implemented.

Recommendation 6.1 **The Water Appropriations Division should consider the following:**

- 1. Conduct a staffing analysis to help determine if additional resources are required and/or if reallocation of responsibilities is appropriate.**
- 2. Require permit holders to implement remote terminal monitoring or enhance and expand the current field inspection activities.**
- 3. Formally document standard operating procedures to standardize processes and help ensure consistent application.**
- 4. Assess and leverage technology capabilities for reporting and monitoring practices.**

Action Taken The Division conducted a staffing analysis and determined a need for five additional full-time equivalents (FTEs). The 64th Legislature approved the addition of four FTEs. Telemetry systems are required on all industrial use permits for oil field purposes. The Division has implemented a system to allow permit holders to submit annual usage forms online.

Status Fully Implemented.

Permitting Process

Introduction

The Legislative Audit and Fiscal Review Committee requested a performance audit of the Office of the State Engineer Water Appropriations Division during the June 2012 committee meeting. The Office of the State Auditor contracted with KPMG LLP in the fall of 2012 to conduct the requested audit. The audit scope related to industrial use water permits.

Two audit reports were issued by KPMG. The second audit report, dated April 2013, included the results of an assessment of the permitting process for industrial use employed by the Water Appropriations Division (Division). Chapter 1 of this report includes the results of our review of the status of recommendations included in the first report. Chapter 2 includes the results of our review of the status of recommendations included in the second report. Recommendation numbers coincide with numbers used in the original report.

Recommendation 1

The Water Appropriations Division should (related to conditional permits):

- **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 staff of pending process milestones and regulatory deadlines.**

Action Taken

The Division has modified policies and procedures related to the conditional permit application process. We reviewed compliance with requirements for 10 selected conditional permit files. We identified compliance with requirements related to priority dates and with notifications related to expired beneficial use dates.

Status

Fully Implemented.

Recommendation 2

The Water Appropriations Division should (related to temporary permits):

- **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 temporary permit application process.**
-

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- **Document policies and procedures to govern the temporary permit application process (See Finding #7).**
 - **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.**

Action Taken

The Division has developed a procedure for the temporary permit application process. We reviewed compliance with requirements for 10 temporary permit files. The Division is complying with the procedure for processing temporary permit applications. We identified compliance with requirements related to processing properly completed applications, having evidence of a hydrologist review, and signing approved permits.

Status

Fully Implemented.

Recommendation 3

The Water Appropriations Division should:

- **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.**
 - **Consideration should also be given to validating that inspections have been conducted for all permits reporting usage during the Annual Use Reporting process.**

Action Taken

The Division established procedures for conducting inspections of conditional permits to be perfected. The Division conducted a staffing analysis related to the backlog of hydrological reviews, increase in the number of temporary permit applications, the backlog of water permit inspections, and monitoring of water use. The results of the analysis identified a need for five additional full-time equivalents (FTE). The 2015 Legislative Assembly approved an increase of 4 FTE.

When a conditional water permit is approved, a beneficial use date is established. The beneficial use date is typically 1 to 3 years from the date

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of approval of the conditional water permit. According to state law, a permit with an expired beneficial use date requires an extension of the use date, an inspection to perfect the permit, or cancellation of the permit.

The 2015 Legislative Assembly modified state law to require the Division to send a notification to permit holders after the beneficial use date had expired (previously, notification was required on or before the use date). Based on our review, the Division is sending notifications to permit holders as required. However, the notifications are not automatically generated by the system. Annually, Division personnel generate a list of permit holders to receive a notification letter.

Based on information provided by the Division, we identified 30 industrial use conditional permits with an expired beneficial use date in excess of 3 years. We judgmentally selected 5 permits to review. We identified 3 permittees had requested extensions and no extension had been granted. The other two permits had requested inspections of the permit (one in 2013 and one in 2015). No inspections have been performed. Division personnel stated there is a lack of resources available to conduct inspections. While additional FTE were provided to the Division, personnel stated resources were mainly allocated to assist with the backlog of permit applications.

Status

Partially Implemented.

Management's Response

Agree with the status of the recommendation. The division is developing a systematic approach to better leverage technology through the establishment of automatic triggers in our database to alert management as beneficial use dates are approached or lapsed as opposed to the current method of doing episodic (typically annual) queries. Concerted effort will be made to hire temporary water right inspector(s) to assist in reducing the backlog of permits eligible for inspection. With the slowdown in water depot growth and the increase in procedural efficiencies, some of the personnel time currently devoted to water depot inspections will be assigned to performing more water permit inspections.

Recommendation 4

The Water Appropriations Division should (related to conditional permits):

- **Explore alternative fee structures to reflect current application processing and use monitoring activities. Potential structures may include:**
 - **Annual Permit Fee – Charge a fee for permit maintenance (i.e., monitoring).**
 - **Annual Use Fee – Charge a fee based on annual usage.**
 - **Inspection Fee – Charge a fee for the inspection process.**

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- **Alternative Fee Tiers – 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.**
 - **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.**

Action Taken

The Division took appropriate action to establish an administrative rule related to the annual water use reporting. According to NDAC, a late fee is to be assessed when annual use forms are submitted after the due date.

The Division conducted a staffing analysis related to the backlog of hydrological reviews, increase in the number of temporary permit applications, the backlog of water permit inspections, and monitoring of water use. However, the analysis did not include determining the processing costs per application. The costs to process an application can differ greatly due to the location, water source, other permits in the area, and other factors.

Industrial use conditional water permit applications continue to have the same fee structure since 1991. State law requires an application fee of \$250 be assessed for a request of 724 acre-feet or less and \$750 fee for a request greater than 724 acre-feet. According to Division personnel, no bill draft was developed to modify industrial use conditional water permit application fees due to legislators' comments during the original report presentation to the Legislative Audit and Fiscal Review Committee.

Status

Partially Implemented.

Management's Response

Agree with the status of the recommendation. The division did explore alternative fee structures and variables on which to base water permit fees. The fees for conditional water permits are established in statute. Legislators' comments during the presentation of the 2nd audit to the Legislative Audit and Fiscal Review Committee in July, 2013, indicated

Chapter 2 Permitting Process

there wasn't any will by committee members to raise fees and the effort would be futile.

Recommendation 5

The Water Appropriations Division should:

- **Assess the time, resource and cost impact of temporary permit applications on the conditional permit application population.**
 - **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.**
 - **The fee structure could assume a variety of forms, including targeting specific beneficial purposes (i.e., industrial). Additional variables to consider in establishing a fee structure may include requested allocation amount and/or water source.**

Action Taken

The Division performed an assessment of the time required to process temporary permit applications. A new fee structure for temporary permit applications was established in Administrative Code.

Status

Fully Implemented.

Recommendation 6

The Water Appropriations Division should:

- **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:**
 - **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)**

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. 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.

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Action Taken

The Division has implemented the ability for temporary water permit applications to be submitted online. Payment for the application may also be made online. According to the Division's data, 65% of the temporary water permit applications were submitted online in calendar year 2015.

Status

Fully Implemented.

Recommendation 7

The Water Appropriations Division should:

- **Develop formal policies and procedures to reflect current practices for processing temporary permit applications. Documentation should address the following potential process gaps:**
 - **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.**

Action Taken

The Division has established a procedure for the processing of temporary permit applications. The procedure includes steps to perform in the application process. In addition, the State Engineer signed a document providing the Director of the Water Appropriations Division authority to sign temporary water permits.

Status

Fully Implemented.

Recommendation 8

The Water Appropriations Division should:

- **Develop an online status reporting tool to provide applicants with an alternative means by which to obtain status information.**
 - **The online status tool could potentially be linked to the permit database system.**
-

Chapter 2 Permitting Process

- The development of an online status tool could coincide with the addition of new statuses within the permit database system.

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.

- 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.
 - 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.
 - 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.

Action Taken

The Division has established additional status options to be assigned to a permit. The additional statuses allow for a more descriptive explanation of where in the review process an application is. Applicants have the ability to check the status of an application on the Division’s website.

The Division has created an addendum to the application packet. The addendum lists the steps in the permit review process and approximate timeframes for each step. Also, the Division’s website includes information on the permitting process.

Status

Fully Implemented.

Chapter 2
Permitting Process

Recommendation 9

The Water Appropriations Division should:

- **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.**
 - **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.**

Action Taken

The Division has established steps within a standard operating procedure for the scanning of documents into the database. However, this procedure relates to conditional permits only. The procedure established for processing temporary water permits includes no information related to the scanning of documents or how certain information is to be stored. For example, the scanning of hydrologist reviews and the storage of applications submitted online are not addressed in the procedure. Our limited review of permit files and discussions with Division personnel identified inconsistencies with the scanning of information into the database.

Status

Partially Implemented.

Management's Response

Agree with the status of the recommendation at the conclusion of the audit, however, the division has since implemented a standard operating procedure for the processing of temporary water permit applications. The division admits there were inconsistencies with what was being scanned and stored in the temporary water permit database, however, those inconsistencies should be eliminated with the recently developed standard operating procedure describing the workflow and processes associated with the documentation scanning of temporary water permits.

Recommendation 10

The Water Appropriations Division should:

- **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.**
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Chapter 2
Permitting Process

Action Taken

The Division performed an assessment of the permitting process. Responsibilities performed outside the Water Appropriations Division are being transitioned into the Division. The Division has established a dedicated email address for public inquires and water permit processing functions.

Status

Fully Implemented.

Glossary

Acre-Foot – the volume of water that will cover an area of one acre to a depth of one foot (325,851 gallons).

Beneficial Use – a use of water for a purpose consistent with the best interests of the people of the state.

Conditional Water Permit – a permit application that has fulfilled all the administrative, legal, and hydrological requirements and is approved to begin applying water to beneficial use. The permit holder has until a specified future “beneficial use” date to develop the proposed project, though an extension of time to put the water to beneficial use can be requested.

Industrial Use – the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining and processing enterprises.

Perfected Water Permit – once a conditionally water permit has been developed, the works will be inspected by State Engineer staff to determine if water is being applied to beneficial use in accordance with the prescribed conditions. Once the permit conditions have been met, the permit will be perfected. The perfection of the permit establishes a water right.

Temporary Water Permit – a permit that authorizes the beneficial use of water for up to a twelve-month period. A temporary water permit does not result in a water right.

Water Right – a legal right to use a specified amount of water for a beneficial purpose.

Water Appropriations Division’s “North Dakota’s Water Permitting Process” fact sheet used for identifying definitions of above terms.
