

## **CHAPTER 61-31 WATERBANK PROGRAM**

### **61-31-01. Rulemaking authority.**

The agriculture commissioner is authorized to adopt rules, pursuant to chapter 28-32, to implement this chapter.

### **61-31-02. Definitions.**

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

1. "Adjacent lands" means lands bordering or within one-fourth mile of the wetland.
2. "Commissioner" means the agriculture commissioner.
3. "Landowner" means the person, including a lessee, who has actual use and exclusive possession of the land.
4. "Participant" means the landowner participating in the program.
5. "Program" means the state waterbank program.
6. "State assessment team" means representatives from the department of agriculture, the game and fish department, the state engineer's staff, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.
7. "Wetlands" means a natural depressional area that is capable of holding shallow, temporary, intermittent, or permanent water. It does not include sheetwater.

### **61-31-03. Waterbank agreements.**

The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into for a period of five or ten years, with provision for renewal for additional five-year or ten-year periods. The commissioner shall re-examine the payment rates at the beginning of the fifth year of any ten-year initial or renewal period and before the beginning of any renewal period and, providing that funds are available, make needed adjustments in rates for any initial or renewal period.

### **61-31-04. Duties of landowner.**

In the agreement between the commissioner and a landowner, the landowner shall agree:

1. To place in the program for the period of the agreement eligible wetland areas, together with such adjacent areas as determined desirable by the commissioner. These wetlands and adjacent areas may include areas covered by a federal or state government easement which permits agricultural use, except for federal waterbank agreements pursuant to the federal waterbank program [Pub. L. 91-559; 16 U.S.C. 1301 et seq.]. However, in the event that any eligible wetland and adjacent areas are covered by a separate federal or state government easement, the commissioner shall reduce payment rates as appropriate.
2. Not to drain, burn, fill, or otherwise destroy the wetland character of such areas.
3. Not to use such areas for agricultural purposes, except as determined by the commissioner.
4. To effectuate a wetland conservation and development plan for the land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner pursuant to section 61-31-07.
5. To forfeit all rights to further payments or grants under the agreement and the commissioner may require the landowner to refund to the state all payments or grants received thereunder upon violation of the agreement if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the commissioner may deem appropriate if the violation does not warrant termination of the agreement.
6. Upon transfer of the landowner's right and interest in the lands during the agreement period, to forfeit all rights to further payments or grants under the agreement and the commissioner may require that landowner refund to the state all payments or grants

received thereunder unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement.

7. To additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

The agreement of the landowner under this chapter shall be made binding on any tenant or operator of the land covered by the agreement.

#### **61-31-05. Duties of commissioner.**

In return for the agreement of the landowner, the commissioner shall:

1. Make an annual payment to the landowner for the period of the agreement at the rate determined by the commissioner to be fair and reasonable in consideration of the obligations undertaken by the landowner. If the landowner and commissioner agree, all or part of the payments to the landowner may be issued at the onset of the agreement.
2. Provide advice on conservation and development practices on the wetlands and adjacent areas, and to bear such part of the average cost of establishing and maintaining such practices, as the commissioner determines to be appropriate.
3. Increase the rate of annual payments by an amount determined by the commissioner to be appropriate, if the landowner agrees to permit, without other compensation, access to such acreage by the general public subject to applicable state law.
4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank contract may be released to the landowner for haying or grazing, if the portion not released remains in a solid block, and if grazed is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The release date must be determined by the commissioner with the approval of the director of the game and fish department. The landowner may hay or graze released land at a per acre [.40 hectare] rate, established by the commissioner, which must be deducted from the next waterbank payment. If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner is entitled to receive that person's full waterbank payment.
5. The commissioner shall assemble a state assessment team that may assist the commissioner in fulfilling the objectives of the program. The state assessment team may make recommendations to the commissioner regarding applications, and develop management guidelines to be approved by the commissioner which include technical and management practices and rates of payment and a standardized priority system for evaluating applications. Applications for the program may be submitted to any representatives of the state assessment team or their agencies to be reviewed and submitted to the commissioner.

#### **61-31-06. Renewal of agreement - Transfer of lands.**

Any agreement may be renewed or extended at the end of the agreement period for an additional period of five or ten years by mutual agreement of the commissioner and the landowner, subject to any rate redetermination by the commissioner. If during the agreement period the landowner sells or otherwise divests the ownership or right of occupancy of the land, the new landowner may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this section, including the provisions for renewal and adjustment of payment rates, or the new landowner may choose not to participate in the program.

#### **61-31-07. Termination of agreement.**

The commissioner may terminate or amend any agreement by mutual agreement with the landowner if the commissioner determines that the termination would be in the public interest.

**61-31-08. Conservation and development practices.**

For the purpose and implementation of wetland conservation and development plans as provided in sections 61-31-04 and 61-31-05, the commissioner has authority to enter into agreements with the director of the game and fish department for any assistance which may be appropriate and which will further the objectives of this chapter.

**61-31-09. Drainage of wetlands.**

Repealed by S.L. 1993, ch. 609, § 7.

**61-31-10. Authorization for receipt of funds - Continuing appropriation.**

The commissioner is authorized to receive funds for this program from any private or public source, and is also authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly. The commissioner shall work with the governor, director of the game and fish department, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop sources of funding to implement this chapter.

All funds received by the commissioner from any private or public source and from any North Dakota state agency as well as all funds appropriated by the legislative assembly for implementing this chapter must be transferred to a special fund in the state treasury, which is hereby created, to be known as the state waterbank fund. The state waterbank fund and interest earned thereon is hereby appropriated as a standing and continuing appropriation solely for the purpose of implementing this chapter, including payment of money due upon waterbank agreements entered under this chapter.