

BY-LAWS OF SOUTHWEST WATER AUTHORITY

Adopted September 20, 1991

Amended October 12, 1998

Amended April 1, 2002

ARTICLE I - GENERAL PURPOSE

The Southwest Water Authority is authorized under the laws of the State of North Dakota. The purpose for which the Southwest Water Authority (SWA) is formed and the powers which it may exercise are set forth in Chapter 16-24.5, North Dakota Century Code.

ARTICLE II - NAME AND LOCATION

Section 1. The Southwest Water Authority is hereinafter referred to as SWA.

Section 2. The principal office and place of business of the SWA shall be located in the City of Dickinson, North Dakota, but the SWA may maintain offices and places of business at other places within or without the state as the Board may determine from time to time.

ARTICLE III - SEAL OF SWA

Section 1. The Seal of the SWA shall have inscribed thereon the name of the Authority.

Section 2. The SWA principle office is the designated location of the seal.

Section 3. The seal may be used for causing it or a facsimile thereof to be impressed or affixed or reproduced on any paper or document.

ARTICLE IV - GOVERNING BODY

The business and affairs of the SWA shall be managed by the elected Board of Directors as provided in Chapter 61-24.5, NDCC. The Board shall organize by electing a Chairperson, a Vice-Chairperson, and a Secretary-Treasurer, from the Board of Directors.

ARTICLE V - FISCAL YEAR

The fiscal year of the SWA shall begin on the first day of January of each year and shall end on the last day of December.

ARTICLE VI - DIRECTORS

Section 1. Number, Election and Tenure of Office. The business and affairs of the SWA shall be managed by the Board of Directors, which shall exercise all of the powers of the SWA. The Directors shall be elected in accordance with Chapter 61-24.5, NDCC.

Section 2. Directors. Persons named as Directors shall hold office until their successors shall have been elected and qualified. Vacancies, qualifications, and removal of Directors shall be in accordance with Chapter 61-24.5, NDCC.

Section 3. Validity of Board Action. Nothing contained in Article IX shall affect in any manner whatsoever the validity of any action taken at any meeting of the Board prior to the adoption of these By-Laws.

Section 4. Per Diem. Directors shall receive, by resolution of the Board, per diem and expenses as provided in state law for Board meetings, and such other meetings and duties as may be authorized by the Board.

ARTICLE VII - MEETINGS OF THE DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board may be held at such time and place as the Board may provide by resolution. If set by resolution, no additional notice is required. Otherwise, 14 days notice of all Board meetings shall be given.

Section 2. Special Meetings. Special meetings of the Board may be called by the Chairperson or by any five (5) Directors, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as provided in Section 3. The Chairperson or the Directors calling the meeting shall fix the time and place for the holding of the meeting.

Section 3. Notice. Written notice of the time, place and purpose of any special meeting of the Board shall be delivered to each Director not less than six (6) days previous thereto, either personally or by mail, by or at the direction of the Secretary, or the Chairperson or Directors calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Director, at his or her address, as it appears on the records of the Authority, with postage thereon fully prepaid.

Section 4. Waiver of Meeting Notice. Any Director may waive, in writing, any notice of a meeting required to be given by these By-Laws, either before or after such meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called or convened.

Section 5. Quorum. A simple majority of the Board of Directors shall constitute a quorum for conducting business. At any Board meeting, a majority of the Directors present may adjourn the meeting from time to time, and the Secretary shall notify any absent Directors of the time and

place of such adjourned meeting. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by law, or these By-Laws.

ARTICLE VIII - OFFICERS

Section 1. Officers. The officers of the SWA shall be a Chairperson, Vice-Chairperson and a Secretary-Treasurer, and such other officers as may be determined by the Board of Directors from time to time.

Section 2. Election of Officers. The officers shall be elected by ballot each even-numbered year at the first meeting after the election of Board members for two-year terms by and from the Board of Directors. Each officer shall hold office until the successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the Board for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors, if the Board determines that the best interest of the Authority will be served thereby.

ARTICLE IX - DUTIES OF OFFICERS

Section 1. Chairperson. The Chairperson shall:

- a. Preside at all meetings of the members and the Board of Directors.
- b. Act on behalf of the Authority and perform such duties as may be necessary for the efficient operation of the Authority.
- c. Sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Authority, or shall be required by law to be otherwise signed or executed.
- d. Perform all duties incident to the office of Chairperson and such duties as may be prescribed by the Board from time to time.

Section 2. Vice-Chairperson. The Vice-Chairperson shall:

- a. In the absence of the Chairperson, or due to inability or refusal to act, perform the duties of the Chairperson and when so acting shall have all the powers of and be subject to all of the restrictions of the Chairperson.
- b. Perform such other duties as from time to time may be assigned by the Board of Directors.

Section 3. Secretary – Treasurer, The Secretary - Treasurer shall:

- a. Keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose.
- b. Arrange for all documents in accordance with the By-Laws or as may be required by state law.
- c. Arrange for a complete copy of the By-Laws of the SWA containing all amendments thereto to be maintained at the SWA's principal office.
- d. Sign with the Chairperson legal documents authorized by the Board of Directors.
- e. Keep a register of the names and post office addresses of all members to be kept up to date.
- f. Serve as the custodian of all funds and securities of the Authority.
- g. Receive and issue receipts for all monies due and payable to the Authority, and deposit such monies in the name of the Authority in such bank, or banks as are selected by the Board of Directors.
- h. Review the annual financial audit of the SWA's financial and accounting records and make any necessary recommendations to the Board of Directors.
- i. Perform the duties incident to the office of Secretary–Treasurer, and such duties as may be assigned by the Board from time to time.

Section 4. Bond. The Secretary-Treasurer and any other officer or agent of the Authority charged with the responsibility for the custody of any of its funds or property shall give bonds in such sum, with a surety, as the Board of Directors shall determine. The Board of Directors in its discretion may require any other officer, agent or employee of the Authority to give bond in such amount, and with a surety, as it shall determine. The expense of such bond shall be paid by the Authority.

Section 5. Executive Committee.

- a. The Executive Committee shall consist of the officers.
- b. The Executive Committee shall only conduct such affairs of the Authority that are assigned by the Board of Directors.

Section 6. Subcommittees. The Authority shall appoint standing or ad hoc subcommittees as needed.

- a. Standing subcommittees shall be established by vote of the Board of Directors. Members shall serve two (2) year terms beginning in July of even-numbered years. Members shall be appointed by the Chairperson and approved by the Board of Directors.
- b. Ad hoc subcommittees may be established, as needed, by the Chairperson, Executive Committee, or a majority vote of the Board of Directors. Members shall be appointed by the Chairperson. Ad hoc subcommittees shall be given specific assignments and a time frame in which to complete its assignment.
- c. Chairperson of subcommittees. Each subcommittee shall appoint a subcommittee Chairperson. The Chairperson must report on subcommittee activities, either in person or in writing, at the next regularly scheduled Board meeting.
- d. Nominations Subcommittee. A nominations subcommittee shall be appointed by the Chairperson in March of each year. The Chairperson of the nominations subcommittee shall accept letters of interest from members of the Board. The nominations subcommittee shall confirm interest and willingness to accept positions from all nominees. Members of the nominations subcommittee are not precluded from being nominated for any position. Nominations for all available positions will be accepted from the floor at the time of elections. Any board member shall be eligible to serve on any standing or ad hoc committee.

ARTICLE X - GENERAL PROVISIONS

Section 1. Rules, Rates and Policies. The Board may adopt such rules, water rates, and policies as may be necessary for the effective and efficient operation of the Southwest Pipeline Project. Such rules, rates and policies may be amended only by a two-thirds affirmative vote of directors present at two successive regular meetings of the Board of Directors. Any proposed amendment must be in writing.

Section 2. Amendments to By-Laws. These By-Laws may be amended only by a two-thirds affirmative vote of directors present at two successive regular meetings of the Board of Directors. Any proposed amendment must be in writing.

CHAPTER 61-24.5 SOUTHWEST WATER AUTHORITY

61-24.5-01. Findings and declaration of policy.

It is hereby found and declared by the legislative assembly that many areas and localities in southwestern North Dakota do not enjoy adequate quantities of high-quality drinking water. It is also found and declared that other areas and localities in southwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of southwestern North Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission and delivery system, is a feasible approach to provide southwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that opportunity for greater economic security, protection of health, property, enterprise, preservation of the benefits from the land and water resources of this state, and the promotion of the prosperity and general welfare of all of the people of North Dakota depends on the effective development and utilization of the land and water resources of this state, and necessitate and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project to supply and distribute water to southwestern North Dakota, as authorized by chapter 61-24.3, and acts amendatory thereof and supplementary thereto, be established and constructed, to:

1. Provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water, and municipal uses.
2. Provide for the future economic welfare and property of the people of this state, and particularly the people of southwestern North Dakota, by making available waters from Lake Sakakawea and the Missouri River for beneficial and public uses.

It is also declared necessary to study and further develop water resources to provide adequate water supplies for energy, industrial, agriculture, and other opportunities in southwest North Dakota. The provisions hereof may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary thereto.

61-24.5-02. Definitions.

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

1. "Authority" means the southwest water authority.
2. "Board" means the board of directors of the southwest water authority.
3. "Person" includes any natural person, state agency, municipality, political subdivision, public or private corporation, limited liability company, partnership, or association.
4. "Southwest pipeline project" includes the project and works, or any part thereof, authorized in chapter 61-24.3.
5. "Works" includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for operation of the southwest pipeline project, all water rights acquired and exercised by the authority in connection with the southwest pipeline project, and all means of delivering and distributing water through the utilization of a pipeline transmission and delivery system, as authorized in chapter 61-24.3.

61-24.5-03. Southwest water authority created.

The southwest water authority shall consist of that part of the state which is included within the boundaries of Dunn, Stark, Golden Valley, Billings, Slope, Bowman, Adams, Grant, Hettinger, Morton, and Mercer Counties.

Such authority is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

61-24.5-04. Board of directors - Officers - Meetings - Compensation.

61-24.5-05. Initial board of directors.

61-24.5-06. Election of county directors of the southwest water authority.

The petition must be accompanied by an affidavit substantially as follows:

County of _____)

Subscribed and sworn to before me on _____,

Page No. 2

61-24.5-07. Election of city directors of the southwest water authority.

Any person who is a resident and qualified elector of the city of Dickinson or Mandan who aspires to the office of director of the southwest water authority shall, at least sixty days and before five p.m. on the sixtieth day before the election, file with the city auditor a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election, except that the petition for the first election must be signed by not less than two hundred qualified electors. Signers of a petition must reside within the corporate limits of the city, and each signer of the petition shall include with the signer's name the signer's mailing address. The petition must include the candidate's name, post-office address, and the title of the office of the southwest water authority for which the candidate is seeking election.

The petition must be accompanied by an affidavit substantially as follows:

State of North Dakota)
) ss.

City of _____)

I _____, being sworn, say that I reside in the city of _____ and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected at the municipal election to be held on _____, _____, and I request that my name be printed upon the election ballot as provided by law, as a candidate for the office.

Subscribed and sworn to before me on _____, _____.

Notary Public

Upon receipt of the petition, the city auditor shall without fee place the name of the aspirant on the election ballot as a candidate for the office of director. The candidate or candidates, depending on whether one or two directors are being elected, receiving the highest number of votes are elected. The provisions of chapter 40-21 govern the election of directors from the city of Dickinson or Mandan for the southwest water authority.

61-24.5-08. Term of office of directors - Oath of office - Bonds.

Members of the board of directors of the authority hold office for a term of four years, until a successor has been duly elected and qualified. If the office of any director becomes vacant by reason of the failure of any director elected at any election to qualify or for any other reason, the director's successor must be appointed to fill the vacancy by the board of county commissioners of the county in which the vacancy occurs, or by the governing body of the city of Dickinson or Mandan, as appropriate. A director appointed to fill a vacancy shall hold office for the unexpired term of the director whose office has become vacant, and until a successor has been elected and qualified.

Members of the board of directors elected from a county must be elected at the primary election and assume office on the first Monday in July following their election. Members of the board of directors elected from the city of Dickinson or Mandan must be elected at the municipal election and assume office on the first Monday in July following their election.

In 2002 all directors' terms are deemed to have expired, and each county shall elect one director to serve on the board of directors and the city of Dickinson shall elect two directors to serve on the board of directors. In 2002 one director from the city of Dickinson and directors from Adams, Billings, Dunn, Grant, Oliver, and Slope Counties must be elected for two-year terms and in 2004 and thereafter must be elected for four-year terms. In 2010 the director from the city of Mandan must be elected to a four-year term. All subsequent directors elected must be elected for four-year terms.

Before assuming the duties of the office of director, each director shall take and subscribe to the oath of office prescribed by law for civil officers. The authority treasurer must be bonded in an amount as the board may prescribe.

61-24.5-09. Powers and duties of the district board of directors.

The board of directors of the southwest water authority has the power:

1. To sue and be sued in the name of the authority.

2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, and all other appurtenant facilities used in connection with the southwest pipeline project, or any part thereof.
3. To accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the southwest pipeline project, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the southwest pipeline project, or any part thereof.
5. To furnish assurances of cooperation, and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations and political subdivisions of North Dakota for the performance of obligations for the construction, operation, or maintenance of the southwest pipeline project, or any part thereof, or for the delivery of water to any such department, agency, or political subdivision.
6. To construct or purchase separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the authority, and to procure the services of engineers and other technical experts, and to retain an attorney or attorneys to assist, advise, and act for it in its proceedings.
8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the southwest pipeline project, or any part thereof.
9. To enter into a contract or contracts for a supply of water from the United States or the state water commission and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority.
10. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States or the state water commission and authorization to make collections of money for and on behalf of the United States or the state water commission in connection with the southwest pipeline project, or any part thereof.
11. To sell or exchange any and all real property purchased or acquired by the authority. All moneys received pursuant to any such sale or exchange shall be deposited to the credit of the authority and may be disbursed for the payment of expenses of the authority.
12. Notwithstanding any other law, to exercise the powers granted to a municipality under subsection 5 of section 40-33-01 pursuant to the limitations set forth therein. The authority may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01 solely from revenues to be derived by the authority from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the authority pursuant to the laws of the state or invested on the authority's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and

funds, if any, appropriated annually by the board of the authority or received from federal or state sources.

13. To study and analyze options for providing additional water supplies to southwest North Dakota for purposes, including domestic, rural water, municipal, livestock, energy development, industrial, mining, and other uses.
14. To conduct engineering, legal, financial, educational, and other activities to further the completion of the southwest pipeline project, or any part thereof, or any other works or projects necessary to provide adequate water supplies for southwest North Dakota.

61-24.5-10. District budget - Tax levy.

For each taxable year through 2020, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. All moneys collected pursuant to the levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, certificates of deposit guaranteed or insured by the United States or an instrumentality or agency thereof, and bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-16.1-11.

61-24.5-11. District budget - Determination of amount to be levied - Adoption of levy - Limitation.

In July of each year, the board of directors shall estimate and itemize all the administrative expenses and obligations of the district, including expenses of directors, expenses of operating the office, and any other obligations and liabilities relating to administrative, clerical, engineering, surveying, investigations, legal, and other related expenses of the authority. Upon the completion and adoption of such budget, the board of directors shall make a tax levy in an amount sufficient to meet such budget. Such levy must be in the form of a resolution, adopted by a majority vote of the members of the board of directors of the district. Such resolution must levy in mills, but may not exceed one mill, and must be sufficient to meet the administrative, engineering, surveying, investigations, legal and related expenses, obligations, and liabilities of the district as provided in the budget. The board shall also prepare and adopt an annual budget for operation, management, maintenance, and repayment of the southwest pipeline project. Revenues for operation, management, maintenance, and repayment of the southwest pipeline project must come from water service contract revenues.

61-24.5-12. Board to certify mill levy to city auditors, county auditors, and state tax commissioner.

Upon the adoption of the annual mill levy by the board of directors, but no later than October first, the secretary of the board shall send one certified copy of the mill levy to the county auditor of each county which is a member of the authority. Copies of all such documents must be sent to the state tax commissioner.

61-24.5-13. County auditors to extend tax levy.

The county auditor of each county within the authority, to whom a mill levy is certified in accordance with this chapter, shall extend the levy upon the tax lists for the current year against each description of real property and all personal property within the county in the same manner and with the same effect as other taxes are extended.

61-24.5-14. County treasurer or city auditor to collect and remit district taxes - District fund established - Nonreverter - Disbursements.

The treasurer of each county in which a mill levy has been certified shall collect the taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the treasurer of the authority, on demand, all taxes, interest, and penalties so collected, and shall forthwith notify the secretary of the authority of such payment. Expenditures must be approved by the board of directors.

61-24.5-15. Proceedings to confirm contract.

The board of directors of the authority, after entering into a contract with the United States government, the state of North Dakota, or with any public corporation or political subdivision of the state of North Dakota, may commence a special proceeding in and by which the proceedings of the board and the making of such contract, or contracts, must be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding must comply as nearly as possible with the procedure required in the case of irrigation districts under the laws of North Dakota.

61-24.5-16. Procedure for exclusion from authority of county not benefited.

1. Any county in the authority not benefited or not to be benefited, in whole or in part, by the southwest pipeline project, or any part thereof, may be excluded from the authority as provided herein. The board of county commissioners of any such county may by resolution direct the county auditor and the chairman of the board to file with the board of directors of the authority a petition, for and on behalf of the county, requesting the board of directors of the authority to exclude such county therefrom. A certified copy of the resolution of the county board must accompany and be filed with such petition. The petition and resolution must state specific reasons why such county will not be benefited by the southwest pipeline project, or any part thereof.
2. Within sixty days from the date of filing said resolution and petition for exclusion from the authority, the authority board shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing is set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed within the authority. The hearing mentioned in such notice must be held not less than ten nor more than twenty days after the last publication of such notice. The notice must state that any person, corporation, limited liability company, municipality, and county in the authority may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.
3. If after the hearing on the petition the authority board of directors shall determine that the county requesting to be excluded from the authority will not be benefited, the authority board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such county from the authority. If, however, the authority board shall decide that such county will be benefited, it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such county from the authority. A county excluded from the authority is not liable for any obligations thereof incurred after exclusion but is liable for and shall pay to the authority taxes levied before exclusion.
4. If any contract has been made with the United States or any agency thereof, or the state of North Dakota or any agency thereof, before such petition is filed, such petition may not be granted unless consented thereto by the appropriate agency of the United States or North Dakota, and if such agency gives its consent upon condition, such conditions must be included in the order of exclusion and the county may be required to, and in that event such county shall continue to, pay and satisfy any obligations under any such contract.

61-24.5-17. Appeal from orders of authority board.

An appeal from an order of the board of directors of the authority denying a petition for exclusion may be taken to the district court of the petitioning county. The appeal provided for herein must be taken within thirty days after the order of the authority board has been filed with the secretary thereof and public notice of such order has been made. The appeal must be taken by serving notice of appeal upon the secretary of the authority. The appeal must be docketed as any cause pending in district court is docketed and thereupon the court shall have and exercise original jurisdiction and shall hear and determine the cause de novo without a jury. An appeal to the supreme court may be taken by the petitioning county or by the authority, from any judgment entered therein in district court, and from any order of said court if an appeal would lie from such order if entered by the court in a civil action.

61-24.5-18. Easement granted for ditches, canals, tramways, and transmission lines on any public lands.

In connection with the construction and development of the southwest pipeline project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the southwest pipeline project, provided, however, that the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of any and all right of way of roads prior to such grant becoming effective.

61-24.5-19. Operation and maintenance fund.

To identify and distinguish the revenues received by the southwest water authority from water user entities for operation and maintenance of the southwest pipeline project, the southwest water authority shall maintain a fund designated as the southwest pipeline project operation and maintenance fund. All moneys received by the southwest water authority, whether from payments made by water user entities, or otherwise, for operation and maintenance of the southwest pipeline project must be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, must be kept in the fund distinct from all other moneys, and must be disbursed only for the particular purpose or purposes for which the moneys were received.

61-24.5-20. Revenues for operation and maintenance - Deposit - Use.

Money derived and received by the southwest water authority from water user entities for operation and maintenance of the southwest pipeline project must be deposited by the southwest water authority in the operation and maintenance fund and must be used to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

61-24.5-21. Reserve fund for replacement.

To identify and distinguish the revenues received by the southwest water authority from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there must be maintained a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the southwest water authority, whether from payments made by water user entities, or otherwise, for replacement and extraordinary maintenance of the southwest pipeline project, which are by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, must be kept by the southwest water authority in the fund distinct from all other moneys and may be disbursed only for the particular purpose for which the moneys were received.

61-24.5-22. Revenues for replacement - Deposit - Use.

Money derived and received by the southwest water authority from water user entities for replacement and extraordinary maintenance of the southwest pipeline project must be deposited by the southwest water authority in the reserve fund for replacement and must be

used to pay for replacement or extraordinary maintenance of works that are part of or associated with the southwest pipeline project.

CHAPTER 61-24.3 SOUTHWEST PIPELINE PROJECT

61-24.3-01. Legislative findings and intent.

The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, necessitates, and requires the exercise of the sovereign powers of the state and concern a public purpose. Therefore, it is hereby declared necessary that the southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed twenty-five million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter may not be construed to, in any manner, abrogate or limit the rights, powers, duties, or functions of the state water commission or the state engineer, but are supplementary thereto. Nor may this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

61-24.3-02. Definitions.

In this chapter:

1. "Commission" means the state water commission.
2. "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, limited liability companies, and other entities which have entered into and executed water service contracts with the commission for the purchase of water from the commission through the southwest pipeline project.

61-24.3-03. Authorization of southwest pipeline project.

The preliminary designs for a water supply facility for supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River for multiple uses, as set forth in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, are hereby confirmed and approved, under the designation of the southwest pipeline project, and the construction of the southwest pipeline project shall be initiated and completed by the state water commission substantially in accordance with plan B of the engineering preliminary design final report, state water commission project no. 1736, dated September 1982, except as otherwise specifically provided in this chapter. The commission shall have the authority to eliminate the construction of any primary or secondary transmission mains which are part of plan B of the engineering preliminary design final report if the water user entities to be served by the primary or secondary transmission mains do not execute water service contracts for the purchase of a sufficient quantity of water, as determined by the commission, to justify the construction of the primary or secondary transmission mains. Chapter 49-22 shall not apply to this chapter. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state.

61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services.

Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for

labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section does not apply to contracts that involve federal moneys when a preference would be contrary to federal laws or regulations, contracts covered under chapter 48-01.2, or to architect, engineer, professional right of way, and land surveying services.

61-24.3-04. Water treatment.

The extent and type of water treatment and the location of a water treatment plant or plants for the southwest pipeline project shall be determined by the commission, in accordance with law and as in the judgment of the commission the interests of the state and the water user entities of the southwest pipeline project are best served. In determining the location of the water treatment plant or plants, the commission may only consider alternatives that will provide treated water to all potential using entities at a cost not to exceed the cost of water from the single treatment facility originally provided for in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982. Any existing water treatment facility that is to be used in the final pipeline design must be made available to the state in operable condition free of deferred maintenance costs and at a cost that does not exceed the actual depreciation, maintenance, and operation costs of that facility. A water treatment facility is in operable condition if, at the time it becomes part of the southwest pipeline project, it is meeting the needs of its current users. Capital improvements necessary for upgrading any existing water treatment facility to be used in the southwest pipeline project must be borne by the state water commission.

61-24.3-05. Intake structure.

The intake structure to be utilized for the withdrawal of water from the water source for the southwest pipeline project shall be determined by the commission, as in the judgment of the commission the interests of the state and water user entities of the southwest pipeline project are best served. In making its determination on the selection of the intake structure, the commission shall consider, among other things, cost, project stability, capacity and ability to withdraw water, and flexibility in delivering water to water user entities.

61-24.3-06. Secondary transmission mains.

Secondary transmission mains shall be constructed as part of the southwest pipeline project, as provided in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, except as provided in section 61-24.3-03.

61-24.3-06.1. Water distribution lines.

Notwithstanding the plans and specifications of state water commission project no. 1736, as authorized in this chapter, the state water commission is hereby authorized to investigate the integration of rural water delivery into the southwest pipeline project, state water commission project no. 1736. If the commission determines that construction cost savings, operation and maintenance cost savings, operation efficiencies, and other advantages can be realized by incorporating water supply, distribution, and delivery into one entire system, and that such benefits and advantages outweigh any additional costs or disadvantages, the commission shall plan, design, integrate, incorporate, construct, operate, and maintain the southwest pipeline project and rural water delivery as one system. The exercise of this authority must be in the manner and time as the commission may deem appropriate.

61-24.3-07. Capacity for industrial use.

Upon receipt of a commitment from any large industrial user through the execution of a water service contract for the purchase of water from the southwest pipeline project, or other appropriate contract, as required by the commission, the commission shall have the authority to include in the southwest pipeline project sufficient capacity to provide water to such large industrial user, and to determine the rates and charges for delivery of water to the industrial user.

61-24.3-08. Capacity for South Dakota users.

Upon receipt of a commitment from water user entities in South Dakota, through the execution of a water service contract for the purchase of water from the southwest pipeline project, whereby no less than the total additional capital costs of increasing the capacity of the southwest pipeline project to provide water through the southwest pipeline project for the water user entities in South Dakota will be paid by the water user entities in South Dakota, the commission shall have the authority to include in the southwest pipeline project the additional capacity for water user entities in South Dakota as provided in plans SD of the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, and to determine the rates and charges for the operation and maintenance costs of delivery of water to such water user entities.

61-24.3-09. Pipeline construction standards.

The commission, as in its judgment the interests of the state and the water user entities of the southwest pipeline project are best served, shall determine the pipeline construction standards to be utilized for the southwest pipeline project. In making its determination, the commission shall consider cost, maintenance, life of pipelines, and other factors it deems appropriate.

61-24.3-10. Commission to construct, operate, and maintain southwest pipeline project - Rules made by commission.

The commission shall have the authority to:

1. Construct the southwest pipeline project as provided in this chapter.
2. Operate and maintain, or provide for the operation and maintenance of the southwest pipeline project.
3. Exercise all express and implied rights, powers, and authorities, including all powers and authorities granted in chapter 61-02, necessary to carry out the provisions and purposes of this chapter.
4. Make and enforce orders, rules, and bylaws for the operation and maintenance of the southwest pipeline project.
5. Sell, transfer, or exchange property acquired for the southwest pipeline project provided the commission determines the property is not necessary for the operation, maintenance, or construction of the southwest pipeline project. For a period of sixty days, the property must first be offered for sale, transfer, or exchange to the current owner of the surrounding property from which the property was obtained. Any parcel of property sold, transferred, or exchanged under this section may not exceed two acres [.81 hectare]. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale, transfer, or exchange of property pursuant to this subsection.

61-24.3-10.1. Deposits of income.

All income derived from the lease and management of lands acquired by the state water commission for the southwest pipeline project must be deposited in the resources trust fund.

61-24.3-11. Commission to fix water rates for the southwest pipeline project.

The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the southwest pipeline project. The payments for water service include each water user entity's proportionate share of the operation, maintenance, and

replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the southwest pipeline project reserve fund for replacement, as established by section 61-24.3-16, for replacement and extraordinary maintenance of southwest pipeline project works. The amount of such reserve fund for replacement shall be determined by the commission.

61-24.3-12. Operation and maintenance - Commission to employ manager and employees.

The commission shall obtain the assistance necessary for the operation and maintenance of the southwest pipeline project. To that end, it may appoint a manager, and may appoint subordinate officers and employees. It may designate the manager its general agent in respect to the operation and maintenance of the southwest pipeline project, but subject, nevertheless, in such agency, to the supervision, limitation, and control of the commission. It may appoint or employ such contractors, engineers, attorneys, and other experts, agents, and servants as in the judgment of the commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation, within legislative appropriation, and the bonds of all such persons so engaged. Subject to the control and regulation of the commission the manager of the southwest pipeline project may appoint and employ such deputies and other subordinates, and such contractors, engineers, attorneys, and other experts, agents, and servants as the manager shall deem required. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the southwest pipeline project, shall remain within the appropriation and earnings lawfully available in each year for such purpose.

61-24.3-13. Removal and discharge of appointees.

The commission may remove and discharge any and all persons appointed in the exercise of powers granted by this chapter, whether by the commission or by the manager of the southwest pipeline project. Any such removal may be made whenever in the judgment of the commission, the public interests and the interests of the southwest pipeline project require it. All appointments and removals contemplated by this chapter shall be made as the commission shall deem most fit to promote the purpose and efficiency of the southwest pipeline project.

61-24.3-14. Operation and maintenance fund

To identify and distinguish the revenues received by the commission from water user entities for operation and maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project operation and maintenance fund. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for operation and maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in said fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

61-24.3-15. Revenues for operation and maintenance - Deposit - Use.

Money derived and received by the commission from water user entities for operation and maintenance of the southwest pipeline project shall be deposited by the commission in the operation and maintenance fund, and shall be used for no purposes other than to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

61-24.3-16. Reserve fund for replacement.

To identify and distinguish the revenues received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the state treasurer from the commission, whether from payments made by water user entities for replacement and extraordinary maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by the state treasurer only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in the fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

61-24.3-17. Revenues for replacement - Deposit - Use.

Money derived and received by the commission from water user entities for replacement and extraordinary maintenance of the southwest pipeline project shall be deposited by the commission in the reserve fund for replacement, and shall be used for no purposes other than to pay for replacement or extraordinary maintenance of works which are part of or associated with the southwest pipeline project.

61-24.3-18. Water rates for capital costs - Deposit.

Money derived and received from water user entities for capital costs of the southwest pipeline project may be pledged by the commission for the repayment of bonds issued for the construction of the southwest pipeline project. Any money not pledged must be deposited by the commission in the resources trust fund, established pursuant to section 57-51.1-07, and may be expended only pursuant to legislative appropriation for the purposes specified in subsection 1 of section 57-51.1-07.

61-24.3-19. Validation of water service contracts.

Water service contracts entered by the commission for the distribution and sale of water to water user entities from the southwest pipeline project are confirmed and approved by the legislative assembly. The commission may commence a special proceeding in and by which the proceedings of the commission and the making of water service contracts are judicially examined, approved and confirmed, or disapproved and disaffirmed. The proceeding must comply as nearly as possible with the procedure authorized by sections 61-07-22 through 61-07-28 for irrigation district contracts. The requirements of section 40-33-16 are not applicable to contracts between the state water commission and cities for water service and cities for water service from the southwest pipeline project, provided the contracts were approved by the city governing body and executed before January 1, 1999.

61-24.3-20. Other pipelines - Commission approval required.

Upon construction of the southwest pipeline project, utilities, corporations, limited liability companies, companies, or any other person or entity which proposes to install or construct a pipeline or other underground conveyance system which crosses or intersects the southwest pipeline project may do so only with the approval of the commission, in accordance with the requirements and conditions imposed by the commission for the pipeline or other crossing.

61-24.3-21. Authorization of facilities - Water service areas.

Notwithstanding the plans and specifications of state water commission project no. 1736, as authorized in this chapter, the state water commission may include as part of the southwest pipeline project the delivery of water from southwest pipeline facilities to areas in Dunn County, Mercer County, and Oliver County and plan, design, integrate, incorporate, construct, operate, and maintain necessary facilities for this purpose as part of the southwest pipeline project,

consistent with this chapter. The exercise of this authority must be in the manner and time the commission deems appropriate.