

COST-SHARE POLICY, PROCEDURE, AND GENERAL REQUIREMENTS

It is the policy of the State Water Commission that the following categories of projects shall be eligible for cost-sharing, and that the projects are consistent with the public interest to receive cost-share funding from the agency's appropriated funds. Projects that receive Federal Emergency Management Agency funding and/or financial support from the State's Division of Emergency Management Fund are not eligible for funding through the State Water Commission. No funds shall be used in violation of the Anti-Gift Clause of the North Dakota Constitution.

ELIGIBLE ITEMS

It is the policy of the State Water Commission that the following items shall be eligible for cost-sharing upon approval by the State Water Commission:

- I. Construction costs, which include but are not limited to, earthwork, concrete, mobilization and demobilization, dewatering, materials, seeding, rip-rap, re-routing electrical transmission lines, moving storm and sanitary sewer systems, and other underground utilities and conveyance systems, irrigation supply works, and other items and services provided by the contractor. The costs must have been incurred after the cost-share approval date.

The eligibility of certain items for cost-share may be addressed on an individual basis and presented to the State Water Commission for consideration if deemed warranted by Commission personnel.

NON-ELIGIBLE ITEMS

It is the policy of the State Water Commission that the following items shall not be eligible for cost-sharing by the State Water Commission:

- I. Engineering services (not applicable to "*Studies, Reports, Analyses, Surveys, Models, Assessments, Mapping*") to include but not limited to, project development, preliminary and final engineering design, project inspections, contract administration, material testing, preliminary analysis, flood insurance studies, cultural and archeological studies, hydraulic models, soils investigations, and surveying.

Note: In the event of an approved exception to allow engineering services as eligible, preliminary engineering costs preceding the cost-share approval date up to a maximum of two years will be considered eligible. Final engineering costs incurred after the cost-share approval date will be considered eligible. All preliminary engineering and engineering feasibility studies for flood control projects are exempt from any time restrictions.

- II. Acquisition of property interests in fee or easement for projects.

- III. Administrative and legal expenses incurred in connection with any project.
- IV. Maintenance, deferred maintenance, repairs. Maintenance work and deferred maintenance on any project shall not be an eligible item for cost-sharing, except for maintenance that may be required as a result of an unusual climatological event or dam safety repairs.
- V. Projects that do not receive cost-share approval prior to the commencement of the project.
- VI. Construction costs incurred prior to cost-share approval.
- VII. Funding contributions provided by other entities that reduce the project cost to the applicant.
- VIII. Work incurred outside the scope of the project.
- IX. Technical assistance provided as in-kind may not be submitted for cost-share reimbursement.

The eligibility of certain items for cost-share may be addressed on an individual basis and presented to the State Water Commission for consideration if deemed warranted by Commission personnel.

COST-SHARE APPLICATION AND APPROVAL PROCEDURES

It is the policy of the State Water Commission to provide cost-share funding for water development projects. The State Engineer has the authority to cost-share up to \$20,000 without State Water Commission action. Projects estimated in excess of \$20,000 must be presented to the State Water Commission for approval. The State Engineer has the authority to approve cost overruns equal to or less than 10% of the total amount approved for the project, not to exceed \$20,000.

The following are general cost-share application procedures and requirements for State Water Commission and State Engineer approval:

- I. **APPLICATION REQUIRED.** The State Water Commission will not consider any request for cost-sharing for water-related projects unless an application is first made to the State Engineer. The applicant must be a federal or state entity, a political subdivision, or a commission legislatively granted North Dakota recognition.
- II. **PERMITS.** The applicant for cost-sharing must also address the appropriate federal, state, and local permits required. No contract will be initiated until all required permits have been issued.

- III. CONTENTS OF APPLICATION. An application for cost-sharing must be in writing, but is not required to be in a prescribed format. A “North Dakota State Water Commission Project Information and Cost-Share Request Form” is available from the Commission upon request. The application must include the following:
- A. Description and location of the proposed project
 - B. Purpose, goal, objective/narrative of the proposed project
 - C. Delineation of costs
 - D. Preliminary designs, if applicable
 - E. Scope of work for an engineering feasibility study
 - F. Additional information as deemed appropriate by the State Engineer
- IV. REVIEW. Upon receiving an application for cost-sharing, the State Engineer shall review the application and accompanying information. If the State Engineer is satisfied that the proposal meets all the requirements, the State Engineer shall present the application to the State Water Commission for approval (for projects where the state cost-share amount is greater than \$20,000), or he may make a determination for approval (state cost-share amount is \$20,000 or less). The State Engineer’s review of the application will include the following items, and any other considerations that the State Engineer deems necessary and appropriate.
- A. If the application for cost-sharing is for project construction, a field inspection will be made, if deemed necessary by the State Engineer. Previous field inspections made by the State Engineer as part of a permit application may satisfy this requirement.
 - B. Engineering plans and specifications will be reviewed.
 - C. If the request is for a study, the State Engineer will review the application to ensure that the study qualifies as an eligible study as defined by the State Water Commission.
 - D. The amount of eligible cost-share will be determined by the project type or the amount requested by the applicant.
- V. NOTICE & APPEARANCE OF THE APPLICANT. For projects with an excess state cost-share amount of \$20,000, the State Engineer shall place the application for cost-sharing on the tentative agenda of the State Water Commission meeting at which the application will be presented. The State Engineer shall give notice to such applicant when the project will be presented to the State Water Commission.
- VI. STATE ENGINEER’S RECOMMENDATION. The State Engineer will make a recommendation to the State Water Commission on an application in excess of \$20,000 for state cost-sharing at the meeting of the commission when such application for cost-sharing is presented for approval. No funds will be disbursed until the State Water Commission and applicant(s) have entered into a contract for state cost-share participation.

- VII. LITIGATION. If a project for which an application for cost-sharing has been submitted is the subject of litigation, the application may be deferred until the litigation is resolved. If a project for which the State Water Commission or State Engineer has approved a cost-sharing request becomes the subject of litigation before the funds approved by the Commission have been disbursed, the State Engineer may withhold such funds until the litigation is resolved.
- VIII. ENGINEERING DESIGNS, PLANS & SPECIFICATIONS. Engineering designs, plans, and specifications for the construction of a project must be approved by the State Engineer. The applicant/project sponsor must also comply with the North Dakota Century Code in the soliciting and awarding of bids and contracts, and all federal, state, and local laws.
- IX. COST SHARING BY OTHER AGENCIES. All applications for cost-sharing shall be reviewed to determine if other local or state agencies are participating in the project costs. If so, the State Water Commission will take this into account, and may reduce the percentage of commission cost-sharing accordingly.
- X. PARTIAL & FINAL PAYMENTS The State Engineer may make partial payment of cost-sharing funds as deemed appropriate. Upon notice by the applicant/project sponsor that all work or construction has been completed, the State Engineer may conduct a final field inspection. If the State Engineer is satisfied that construction has been completed in accordance with the designs, plans and specifications for the project, the final payment for cost-sharing as approved by the State Water Commission shall be disbursed to the project sponsor, less any partial payment previously made. Engineering Feasibility Studies are only entitled to one payment.
- XI. MAINTENANCE AND REPAIRS. Except as otherwise provided, the State Water Commission shall require that the applicant for cost-sharing be responsible for maintenance and repairs of the project.

PROJECTS ELIGIBLE FOR COST-SHARE

- I. *Rural Flood Control Projects.* The primary purpose of rural flood control projects is to manage runoff/drainage from agricultural sources or to provide flood control in a rural setting. Typically, rural flood control projects consist of drains, channels, diversion ditches, or ring dikes. The State Water Commission has established design criteria for rural flood control projects. Projects that are managing runoff/drainage from urban sources are not eligible for State Water Commission cost-share participation.

A. Drains, Channels, Diversion Ditches. The Commission will provide cost-sharing up to 45 percent of the eligible items for the construction of drains, channels, and diversion ditches. Improvement reconstructions are reimbursed at 45 percent. The cost-share of any one project is capped per biennium. County and township road crossing work that are an integral part of the drains, channels,

and diversion ditches and the appropriate costs per the awarded contract bid are eligible for cost-share. A Water Resource District applying for cost-sharing for a rural assessment-based flood control project must comply with regulatory statutes per the North Dakota Century Code. If an assessment-based rural flood control project is to be established within two or more districts, or the project is sponsored by two or more districts, and financial participation is sought from the State Water Commission, each district involved must join in the application for financial assistance.

B. Ring Dikes. A ring dike program shall be developed and sponsored by a Federal, State, or Political Subdivision consisting of one or more occupied farmsteads and/or rural residences. Ring dikes will receive up to a 60 percent cost-share of the eligible items, limited to a maximum of \$40,000 per ring dike. All ring dikes within the program are subject to the Commission's minimum design criteria standards, eligible items, and costs.

Design Criteria: The height is to be constructed greater of 2 ft. above the 1997 flood or 2 ft. above the 100-year flood. The top width is to be constructed as follows: If dike height is 5 ft. or less - 4 ft. top width, if dike height is between 5 ft. and 14 ft. - 6 ft. top width, if dike height is greater than 14 ft. - 8 ft. top width. Sides slopes constructed at 3 horizontal to 1 vertical. Strip topsoil and vegetation to a minimum of 1 foot. Adequate embankment compaction required with fill in 6 in. to 8 in. layers and compact with passes of equipment. Culverts and flap gate installation for internal drainage and back flow prevention. The topsoil is to be spread and seeded.

- II. *Water Supply Projects.* The State Water Commission will provide cost-sharing for up to 60 percent of the eligible items of any cost-sharing application approved for water supply projects. These projects are commonly associated with dams and water retention methods. If sufficient funds are not available for all competing cost-sharing applications, water supply projects for domestic, municipal, and rural uses shall receive highest priority.
- III. *Flood Control Projects.* The State Water Commission will provide cost-sharing for up to 60 percent of the eligible items of any cost-sharing application approved for flood control projects. The nature of these projects is to protect communities from flooding and may include the repair of dams that provide a flood control benefit. These projects are commonly associated with dams, dikes, levees, diversion channels, water retention structures/methods, dam repairs, drop structures, and miscellaneous flood control programs.
- IV. *Dam Safety Projects.* The State Water Commission will provide cost-share for up to 65 percent of the eligible items of any cost-sharing application approved for dam safety repair construction projects. The cost-share percentage of 65 percent is only applicable to those dam safety repairs that do not have any other contributing partners. The local level would be responsible for 35%. On those dam safety repairs of which the North Dakota Game and Fish will be a third

contributing party, the SWC will fund 33.33%, NDG&F 33.33%, and the local level will be at 33.33%. Dam safety repairs that are funded with federal funds, will be cost-shared at 50% of the non-federal costs. The intent of these projects is to return the dam to a state of being safe from the condition of failure, damage, error, accidents, harm or other events that are considered non-desirable.

- V. *Recreation Projects.* The State Water Commission will provide cost-sharing for up to 40 percent of the eligible items of any cost-sharing application approved for the purpose of water-based recreation. Upon proposed project review, the cost-share percentage of up to 40 percent may be adjusted to account for any contributing partners. Various types of projects may constitute a recreation project.
- VI. *Snagging & Clearing.* The State Water Commission will provide cost-share for up to 50 percent of the eligible items for snagging and clearing on watercourses as defined in NDCC 61-01-06. Snagging and clearing projects consist of the removal and disposal of fallen trees and associated debris encountered within or along the primary channel as well as any sediment that has accumulated in the immediate vicinity and any trees in imminent danger of falling in the channel. Snagging and clearing projects are intended to prevent damage to structures such as bridges, and maintain the hydraulic capacity of the channel during flood flows. The snagging and clearing of artificial/man-made channels; the dredging of watercourses for sediment/silt removal; the clearing and grubbing of cattails and other plant vegetation; or the removal of any other unwanted materials are not eligible under State Water Commission's snagging and clearing cost-share policy. The State Engineer reserves the right to determine the eligibility of projects and the percentage of cost-share up to 50 percent.
- VII. *Studies, Reports, Analyses, Surveys, Models, Assessments, Mapping.* The State Water Commission will provide cost-sharing up to 50 percent of the eligible items of any cost-sharing application approved for studies, reports, analyses, surveys, models, assessments, and mapping projects. The percentage of funds is limited by the maximum cost-share limits of eligible project categories to which the purpose of the project corresponds. A paper and electronic copy of the study, report, analysis, survey, model, assessment or mapping project must be provided to the State Water Commission upon completion. One payment will be reimbursed to the project sponsor upon the copy receiving review and approval from State Water Commission personnel.

A. Engineering Feasibility Studies. An engineering feasibility study identifies a water-related problem and the alternatives/options to solve or alleviate the problem, an evaluation of the alternatives/options for technical, engineering, and financial feasibility, and the selection of an alternative/option.

B. Other Studies, Reports, and Analyses. The purpose of these projects is to gather data and/or accomplish a specific task such as flood insurance studies, hydraulic modeling, and flood insurance mapping projects.

C. Emergency Action Plans. The State Water Commission will provide cost-share up to 80 percent, limited to \$25,000, for emergency action plans (EAP's) of each classified high and significant hazard dam. Reimbursement per actual costs incurred.

- VIII. *Irrigation.* The State Water Commission will provide cost-sharing for up to 50 percent of the eligible items of any cost-sharing application approved for irrigation projects. The cost-share must be limited to supporting the irrigation development efforts of political subdivisions. The items eligible for cost-share are those associated with new central supply works, to include water storage facilities, intake structures, wells, pumps, power units, primary water conveyance facilities, electrical transmission and control facilities, and engineering.
- IX. *Bank Stabilization.* The State Water Commission will provide cost-share for up to 50 percent of eligible items of any cost-sharing application approved for bank stabilization projects on public lands or those lands under easement by federal, state, or political subdivisions. Bank Stabilization projects are intended to stabilize the banks of lakes and of watercourses, as defined in 61-01-06 of the NDCC, with the purpose of protecting public facilities. Drop structures and outlets are not considered for funding as bank stabilization projects, but may be eligible under other cost-share program categories.

Bank Stabilization projects, typically consist of a rock or vegetative design, and are intended to prevent the loss of land or damage to utilities, roads, buildings or other facilities adjacent to the lake or watercourse. The State Engineer reserves the right to determine the eligibility of projects and the percentage of cost-share up to 50 percent.

- X. *Technical Assistance.* The State Water Commission will provide cost-share of up to 50 percent of eligible costs based on the type of project as described above. In some cases a portion of the assistance provided may be in the form of in-kind technical assistance. The cost or value of the technical assistance will count toward the Commission's total contribution. The project sponsor, upon awarding a contract for the construction or other work to be performed for a project in which the State Water Commission is providing technical assistance, shall file a copy of the contract with the State Engineer.
- XI. *Emergency Municipal, Tribal, and Rural Water Supply Projects.* The State Water Commission will provide cost-share on the eligible items of any cost-share application approved for emergency municipal, tribal, and rural water supply projects. The percentage of cost-share will be calculated upon review of the application. These projects are associated water systems, whose primary source of water is the Missouri River, Lake Sakakawea, or Lake Oahe, that request emergency assistance due to low water conditions on the Missouri River, Lake Sakakawea, or Lake Oahe, and face a critical need or health risk as a result of the

inability of the water intake system to supply an adequate quantity of quality water to the people served by the municipal, tribal, or rural water system.

- XII. *Dam Removal/Breach Projects.* The State Water Commission will provide cost-share for up to 65 percent of the eligible items of any cost-sharing application approved for a dam removal/dam breach project. Upon proposed project review, the cost-share percentage of up to 65 percent may be adjusted to account for any contributing partners. Each project will be evaluated on, but not limited to, impacts to water rights; reservoir sediment disposal or stabilization, stream bank erosion; the plan for draining the reservoir; method used to breach the dam; and if applicable, sociological, ecological, and historical impacts. A North Dakota State Water Commission Dam Removal/Breach Permit is required.
- XIII. *Municipal, Rural, and Industrial Water Supply Program.* The Municipal, Rural, and Industrial Water Supply Program (MR&I) is administered according to the policies, procedures, and general requirements set forth in North Dakota Administrative Code Article 89-12.

cm/1753